



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AQ/LSC/2021/0053**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **170 Headstone Drive, North Harrow, Middlesex HA1 4UR**

Applicant : **Mr Christopher Cooke**

Representative : **In person**

Respondent : **Flanagan Developments Limited trading as Flangan Properties**

Representative : **Mr Niall Muirhead (Company Secretary)**

Type of application : **Section 27A Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002**

Tribunal member : **Judge Donegan**

Date of paper determination : **06 May 2022**

Date of decision : **06 May 2022**

DECISION

This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 46 pages, the contents of which I have noted.

Decisions of the tribunal

The tribunal determines that no sums are payable by the applicant for service charges or administration charges for the years 2017/18 to 2019/20, inclusive.

The background and procedural history

1. The respondent is the freeholder of 170/170A Headstone Drive, North Harrow, Middlesex HA1 4UR ('the Building'), which comprises two flats. The applicant is the long leaseholder of 170 Headstone Drive ('the Property'), which is on the ground floor of the Building.
2. The applicant originally sought a determination under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') as to whether service charges are payable for the Property. The sums claimed are the respondent's charges for managing the Building, including time spent issuing ground rent demands, preparing accounts and dealing with correspondence.
3. The sums demanded for the Property are:
2017/18 - £139.16
2018/19 - £141.25
2019/20 - £132.50
The respondent now contends these are administration charges within Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'). The tribunal is treating this application as an application to determine the 'payability' of these charges, whether as service charges or administration charges.
4. The application form is dated 04 January 2021. At panel 7, the applicant requested a determination of service charges for the years 2017/18-2020/21 "*and ongoing further years*". However, the parties have only addressed the years 2017/18-2019/20 and this decision is limited to those years.
5. The tribunal issued directions on 17 March 2021. The case was allocated to the paper track, to be determined on the basis of written representations. Neither party has objected to this allocation or requested an oral hearing.
6. The respondent filed a digital bundle in accordance with the directions. However, there has been a delay in determining the application for reasons that are unclear.

7. The case was reviewed by Deputy Regional Judge Vance in March 2022. The case officer then wrote to the parties on 23 March, in the following terms:

*“Judge Vance has reviewed this application and **directs** as follows:*

1. *Neither party has addressed the question of why the costs demanded are, or are not, payable by the Applicant under the terms of his lease, whether as service charges (as defined in Section 18 Landlord and Tenant Act 1985), or administration charges (as defined in Schedule 11 Commonhold and Leasehold Reform Act 2002).*
 2. *By **28 March 2022**, the Respondent must write to the tribunal, copying in the Applicant, explaining why the costs in question are payable under Applicant’s lease, whether they were demanded as service charges or administration charges and why the demands sent to him amounted to valid demands in law.*
 3. *The Application must send to the tribunal, and to the Respondent, any written response by **31 March 2022**.*
 4. *The application will then be determined on the papers in the week commencing **4 April 2022**.”*
8. The parties made written representations in accordance with these directions. Unfortunately, there was another delay before the paper determination took place 06 May 2022.
9. The relevant legislation is set out in the appendix to this decision.

The lease

10. The lease was granted William Taylor (*“the Lessor”*) to Robin O’Neil Lawrence and Lorraine Caroline Bardouille (*“the Lessee”*) on 30 September 1986, for a term of 99 years from 29 September 1985. The starting ground rent was £50 per annum, increasing to £75pa after 33 years and £100pa after 66 years.
11. The lease is ‘maisonette style’ and requires the Lessee to repair and insure the Property. It does not include conventional service charge provisions, requiring the Lessor to produce annual budgets and accounts or requiring the Lessee to pay advance charges and end of year balancing charges.
12. The Lessee’s covenants are at clause 5 and include:
- “(a) To pay the Reserved Rent out of the Property*
 - (b) To pay and indemnify the Lessor against all outgoings payable in respect of the Property*

...

(h) To pay one half of the cost of maintaining and repairing the party matters (“the party matters”) specified in Clause 6 hereinafter appearing”

13. Clause 6 provides:

“IT IS HEREBY AGREED that the following are to be treated as party matters to be maintained and repaired at the equally shared expenses of the lessees of the Lower Flat and the Upper Flat namely: -

(a) The wall dividing the staircase and hall demised with the Upper Flat from the Lower Flat

(b) The area hatched black on the plan

(c) The sewers drains conduits gutters drainpipes and all other pipes and conducting media serving both Flats

(d) The fences separating land demised with the Upper Flat from the Lower Flat or vice versa”

The lease does not state how these shared expenses are to be demanded from, or paid by, the Lessee and makes no mention of management fees.

The parties’ submissions

14. The digital bundle included copies of the tribunal application, the respondent’s demands, both parties’ statements of case, the lease, and an official copy of the freehold register. The tribunal considered all these documents and the parties’ written representations, responding to Judge Vance’s directions, when deciding the application.

15. The respondent’s demands are each headed “*Service Charges*” and give a breakdown of their time. They charge an hourly rate of £60 with additional fees for correspondence. There are two fixed charges each year: £90 (based on 1.5 hours work) for preparing and issuing ground rent demands and charge accounts and £25 for document storage, copying, stationery, postage, and packaging.

16. The statements of case focus on the amount of these charges. In brief, the applicant disputes the time claimed and says the charges are excessive for the work done. The respondent takes exception to these challenges. The time claimed is genuine and reasonable and their charges are lower than other managing agents. Further, they have offered the applicant an opportunity to inspect their file or photocopies to check the time claimed. He has not taken up this offer.

17. The respondent’s statement of case briefly touched on the lease terms, referring to the indemnity for outgoings (clause 5(b)). Their written representations, dated 28 March 2022, stated that the management

charges were actually administration charges under Schedule 11 of the 2002 Act. They gave further details of the work done but did not identify any lease clause/s permitting the recovery of these charges.

18. The applicant's written representations dated 29 March 2022, suggested ways to reduce the respondent's charges and proposed an annual fee of £15. It concluded "*The lease contains no reference to management or administration charges but I offer the flat rate as detailed above in fairness and without prejudice.*"

The tribunal's decision

19. The management charges claimed by the respondent, as detailed at paragraph 3 of this decision, are not payable by the applicant as service charges or administration charges.

Reasons for the tribunal's decision

20. The applicant has proposed an annual fee £15 per annum but there is nothing to suggest this offer has been accepted. The management charges have not been agreed and must be determined by the tribunal.
21. The management charges were originally claimed as service charges. This is clear from the heading on the respondent's demands. The only shared expenses payable as service charges are those detailed at clause 6 of the lease. These do not include management charges.
22. The respondent now says the management charges are administration charges. This is at odds with the form of the demands and correspondence in the bundle. Further, the respondent has not identified any lease clause/s permitting the recovery of such charges. The indemnity at clause 5(b) only applies to outgoings for the Property and does not extend to the respondent's charges for managing the Building.
23. The management charges are not contractually recoverable as service charges or administration charges under the terms of the lease. It is unnecessary for the tribunal to determine whether these charges were reasonably incurred (reasonable in amount) under section 19 of the 1985 Act as they are not payable.

Costs

24. There were no applications for orders under section 20C of the 1985 Act and/or paragraph 5A of the Schedule 11 to the 2002 Act, restricting the respondent's ability to recover their costs. Equally there was no

application for a refund of the tribunal application fee. The tribunal makes no costs orders.

Name: Judge Donegan

Date: 06 May 2022

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18 Meaning of “service charge” and “relevant costs”

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 Limitation of service charges: reasonableness

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

...

Section 20C Limitation of service charges: costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

...

Section 27A Liability to pay service charges: jurisdiction

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -

- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Part 1

Reasonableness of Administration Charges

Meaning of “administration charges”

- 1(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Reasonableness of administration charges

- 2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

...

Liability to pay administration charges

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- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

Limitation of administration charges: costs of proceedings

5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph –
- (a) “litigation costs means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
- (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

<u>Proceedings to which costs relate</u>	<u>“The relevant court or tribunal”</u>
<u>Court proceedings</u>	<u>The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court</u>
<u>First-tier Tribunal proceedings</u>	<u>The First-tier Tribunal</u>
<u>Upper Tribunal proceedings</u>	<u>The Upper Tribunal</u>
<u>Arbitration proceedings</u>	<u>The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.</u>