



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

Case reference : **LON/00AE/LSC/2021/0069**

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

Property : **36 Rainham Road, London NW10 5DJ**

Applicants : **(1)Gordon White & Clare Swan (Flat A)
(2)Reihanne Sara Verdi & Moritz
Garlich (Flat B)**

Representative : **N/A**

Respondent : **Victoria Ajilore**

Representative : **Tayo Ajilore (Managing Agent)**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge Tagliavini
Mr D Jagger MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **29 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was [insert the code and description, e.g. 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 79 pages, the contents of which the tribunal has noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charges and administration costs.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicants in respect of the service charge years 2015 to 2021. .

The background

2. The property which is the subject of this application is a terraced Victorian house converted into two flats.
3. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary in light of the pandemic, nor would it have been proportionate to the issues in dispute.
4. The First Applicants hold a long lease of the property dated 17 October 2003 made between Victoria Olukemi Ajilore and Olesugun Abayomi and Victoria Olukemi Ajilore for a term of 125 years from 25th March 2003. The Second Applicants hold a long lease of Flat B dated 17 October 2003 made between the same parties and for an identical term. A Deed of Rectification dated 22nd July 2016 was subsequently entered into in respect of Flat B in which a substantive change was to the arrangements for insurance.

5. The leases require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate.

The issues

6. In their application, the Applicants identified the relevant issues for determination as follows:
 - (i) The payability of service charges under the terms of the lease.
 - (ii) The payability of service charges for the years 2015 to 2021 due to demands for payment not satisfying the requirements of ss. 47 & 48 of the Landlord Tenant Act 1985 and s. 20B of the 1985 Act.
 - (iii) The validity of any consultation in respect of major roof works.
 - (iv) Whether an order should be made under s.20C of the 1985 Act or paragraph 5 of Schedule 11 of the 2002 Act.

Preliminary issues

7. The Respondent failed to take an active role in this application or comply with the tribunal's directions dated 11 May 2021 and the Managing Agent wrote to the tribunal in an email dated June 8, 2021, stating:

'There are 2 freeholders of the property below and notification has not been sent to both freeholders. One of the freeholders, Mrs Ajilore is not in county. I think the most appropriate thing to do will be to make a request for a tribunal. Both freeholders will be notified of this and ill contact you or the leaseholders should they decide not to go through a tribunal.'

8. The tribunal finds that for the purpose of this application the named respondent is the sole landlord of the leases assigned to the applicants. Therefore, the absence of a freeholder as alleged, is not relevant for the purposes of this application. Further, the tribunal is satisfied that the Respondent has been made aware of these proceedings by reason of the service of documents and the Respondent's acknowledgment of the same through her Managing Agent.
9. None of the Applicants provided the tribunal with witness statements or gave details of the date on which they became long leaseholders of their respective flats. A copy of a demand dated 22nd November 2019 addressed to Sara & Moritz was provided, seeking payment for service charges, ground rent, refurbishment, and maintenance for the period

8th July 2016 to 31st December 2019 in the sum of £9,027.02 of which £260.89 was attributable to ground rent. The Respondent's Schedule also set out the sums payable from the leaseholders of Flat A from 2015 to 2019 in the sum of £9,613.26 of which £350 was attributable to ground rent. A second Schedule (January 2021) sent to the Applicants by the Respondent indicated that the sums now due up to and including 2021 were £11,039.54 (Flat A) and £10,476.70 (Flat B) less £500 and £410.89 for ground rent (not in the jurisdiction of the tribunal) respectively. Therefore, the tribunal was able to reasonably find that the leaseholders of Flat A were liable for service charges from 2015 onwards, and the leaseholders of Flat B became liable for the payment of service charges from (mid?) 2016 onwards.

10. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Validity of demands

11. The tribunal finds that none of the demands for payment of service charges have been made in the correct format and finds they do not comply with sections 47 and 48 of the Landlord and Tenant Act 1987, nor have they been accompanied by a Statement of Tenant's Rights. Therefore, the tribunal determines that no sums are payable until properly demanded by the Respondent. In any event, those sums that have been incurred more than 18 months before a valid demand is served are not payable by reason of the operation of section 20B of the 1985 Act.
12. The tribunal finds that the costs of the major works projects are limited to £250 per flat as no consultation in accordance with the provisions of section 20C of the 1985 Act took place. Further, where any demand for payment of the £250 is made 18 months from the date it was incurred, no sum is payable by reason of the operation of 20B of the 1985 Act.
13. The tribunal finds that the Applicants are required by the terms of their lease to contribute in equal shares (50/50) to the cost of the Buildings Insurance. However, in the absence of any proof that such insurance has been placed in any of the service charge years in dispute, the tribunal finds that the cost of the insurance is not reasonable or payable.
14. The tribunal finds that the charges headed 'miscellaneous' are not reasonable or payable as these have not been explained by the Respondent, and in common with the rest of the amounts claimed by the Respondent, have not been supported by copies of invoices. Similarly, the tribunal finds the sum of 20% attributed to VAT is not payable as it unclear, to which sums said to have been expended by the Respondent it refers.

15. The tribunal determines that the Applicants are liable to pay service charges on service of a valid demand at the rate of 50% per flat.

Application under s.20C and refund of fees

16. In the application form, the Applicants applied for an order under section 20C of the 1985 Act. Having taken into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. Similarly, the tribunal makes an order under paragraph 5 of Schedule 11 of the 2002 Act so that the Respondent may not pass any administration costs in connection with these proceedings onto the Applicants.

Name: Judge Tagliavini

Date: 29 September 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).