FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference		**LON/00AE/LSC/2022/0231 (PAPER REMOTE)**
Property	:	**Flat 11, Abbotsford Court, 3 Lakeside Drive, Park Royal, London NW10 7FZ**
Applicant	:	**Mr Mark Bahig Bekiet**
Representatives	:	**In person**
Respondent	:	**Adriatic Land 7 Limited**
Representative	:	**Ms Jennifer Hollyoak of J B Leitch Solicitors**
Type of Application	:	**s.27A Landlord and Tenant Act 1985 application for a determination to liability to pay and reasonableness of service charges**
Tribunal Members	:	**Judge Professor Robert Abbey**
Date and venue of Hearing	:	**24 January 2023 by a paper-based decision**
Date of Decision	:	**24 January 2023**

DECISION

Decisions of the tribunal

1. The Tribunal determines that the service charges claimed in the sums for 2020 of £225.36, for 2021 of £169.82 and for 2022 of £206.92, (the total in dispute being £602.92), are, for the reasons set out below, both reasonable and payable by the applicant to the respondent.

2. The applications pursuant to Section 20C of the Landlord and Tenant Act 1985 and Schedule paragraph 5A of the Commonhold and Leasehold Reform Act 2002 are dismissed

The application

3. The applicant seeks and the tribunal is required to make a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") regarding the service charge payable by the applicant in respect of services provided for **Flat 11, Abbotsford Court, 3 Lakeside Drive, Park Royal, London NW10 7FZ** (the property) and the liability to pay such service charge. Specifically, the items in dispute concern whether several service charges for 2020 of £225.36, for 2021 of £169.82 and for 2022 of £206.92 are payable.

4. The Tribunal by Judge Donegan issued initial Directions on 20 September 2022. The Judge confirmed that the applicant also seeks an order for the limitation of the respondent's costs in the proceedings under section 20C of the 1985 Act and an order to reduce or extinguish their liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').

5. Abbotsford Court forms part of a wider estate known as First Central Park. The respondent is the head leaseholder of First Central Park. The respondent is the head leaseholder of part of the estate pursuant to terms of the superior lease dated 5 June 2013 and made between (1) Guinness Limited. (2) Redrew Homes Limited and (3) First Central Management Company Limited. The application concerns the service charges or estate charge, for expenses relating to First Central Park, for the years 2020, 2021 and 2022.

6. First Central Management Company Limited ("First Central Management") is the named management company under the Superior Lease and is the party responsible for the maintenance of the Estate. First Central Management thus incur a service charge which is subsequently demanded in the appropriate apportionment from the respondent under the terms of the Superior Lease. The respondent then

demands such costs from the applicant by way of an estate service charge at (their relevant proportion in accordance with the terms of the Lease.

7. The application form incorrectly named Homeground Management Limited as the respondent. During the course of the Directions hearing, it became clear that Adriatic Land 7 Limited, should be substituted as the respondent. The estate charge for each of the three years was demanded on behalf of this company

8. The applicant is the lessee of the property pursuant to a long lease granted in respect of the flat in the property and registered at the Land Registry under title number AGL406697. The property maintenance, i.e., of the structure of the whole block is the responsibility of the respondent.

9. According to the lease terms, the tenant must pay a proportion of the service charges raised by the landlord. The lease of the property provides that the respondent is liable to pay to the applicant service charges or management charges for a proportionate part of the sums expended by the applicant in carrying out services to the property and to the estate in which it is located. In relation to service charges or estate charges, the applicant covenanted at the third paragraph of the lease as follows-

> *"(a)(i) To pay the Maintenance Charge, the Estate Charge, the Heat Charge, the Standing (charge and the Rent on the days and in the manner herein provided without any deduction (whether by way of set off lien charge or otherwise whatsoever). "*

By the Third Schedule Paragraph 13 of the Lease, the Applicant covenanted with the Respondent as follows: -

> *'To indemnify and keep indemnified the Company against all damages costs and any other liabilities resulting from any non-observance or non-performance by the Buyer or his undertenant of any covenants relating to the Properly herein contained or on the registers of the title above. "*

The Seventh Schedule Part 1 of the Lease details the expenditure to be recovered by means of the Estate Charge: -

> *"The sums spent by First Central Management Company Limited or and incidental to the observance and performance of the covenants on the part of the First Central Management Company Limited contained in Schedule 3 of each Superior Lease".*

Part II of the Seventh Schedule details the Estate Charge percentage applicable to the property and each flat within the development as follows: -

"Plot Number 133 Estate charge 0.2 728%"

10. These provisions enable the respondent to make and demand service charges that must under the terms of the lease be repaid by the respondent.

11. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision.

The hearing

12. The tribunal had before it an electronic trial bundle of documents prepared by the parties, in accordance with previous directions.

13. This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was classified as P (PaperRemote). A face-to-face hearing was not held given that all issues could be determined in a remote hearing on paper. The documents that the Tribunal was referred to are in the electronic bundle described above and supplied by the parties to this dispute.

14. The Tribunal did not consider that an inspection was possible or necessary. However, the Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.

Decision

15. The tribunal is required to consider the reasonableness and payability of the disputed service charges for 2020 of £225.36, for 2021 of £169.82 and for 2022 of £206.92, in total £602-92, are payable. In that regard the Tribunal was mindful that in the case of *ASP Independent Living Ltd v Godfrey* [2021] UKUT 313 (LC) Judge Elizabeth Cooke affirmed at [7] that:

> *"It is well-established that where a lessee seeks to challenge the reasonableness of a service charge, they must put forward some evidence that the charges are unreasonable; they cannot simply put the landlord to proof of reasonableness "*

16. This was an issue in this dispute as, will be seen below, there was very little before the Tribunal from the applicant in support of his application.

17. The respondent says that the estate charge demand was for its service charges properly incurred in relation to the property. The respondent as landlord of the property is responsible for the cleaning, repair, maintenance and other provision of services to the block and estate in which the property is situated and the applicant is required to pay a reasonable proportion of the cost of that work/service in accordance with the provisions of the lease of the property.

18. In the trial bundle the respondent has provided the tribunal with a detailed response to each of the applicant's disputed items. The Tribunal noted that the applicant's challenges are vague and unparticularised. For example, the applicant wrote in an email to the Tribunal and dated 31 October 2022 that his case was as follows:-

> *"1. No Estimate Budget was received with relation to the Estate charges at any point since 2019. The only statement of account was dated on 10/05/2022 for the amount of £602.10. The management company never provided any invoices on time.*
> *2. The two letters received from Home Ground property were undated... I don't no why.*
> *3. I have received in the bundle sent by corespondents solicitors copies of the budget but not detailed to which invoices this budget relates.*
> *4. Received an invoice from RMG - Residential Management Group - dated 17th June 2022 for service charge of 24th June 2022 - 23rd September 2022 for £103.00 plus £42.00 management fees (There was no invoice for this extra charge).*
> *5. Received statement of account from RMG dated August 19th 2022 for the total of £363.06 showing charge of administration fees of £80.00 (Again, there was no invoice for this charge).*
> *6. Received invoice from RMG dated 20th October 2022 for £33.55 to reverse the service charge from 24th September 2022 - 23rd December 2022 at £103.53 to 29th September 2022 - 28th December 2022forf 137.08 at increase of 33%.*
> *7. I have received the budget from Tideway property for the year 2022/2023 at a total cost of £892,942.99 this is an absurd amount of money to maintain a small Estate.*
> *8. I went to the tribunal to seek justice and to receive a fair rate. The current charge is disproportionate at 33% while the inflation rate is at 10%."*

19. As can be seen from the above there is no particularisation of the nature of the applicant's case. Instead, the applicant has merely said what was wrong with the process rather than the issues he had with

specific service charge items. On the other had the respondent says that copy budgets, statements of account and the corresponding demands for payment have been provided to the applicant for the years in question, namely 2020-2021 and 2021-2022.

20. As such it did seem to the Tribunal that the respondent has tried its best to properly respond to the challenges made by the applicant. However, the applicant has failed to provide any information as to the reasons he believes the work was not carried out or not carried out to a proper standard and provided no evidence to support his assertions for the respondent to deal with. For example the Directions issued by the Tribunal required the tenant to send to the landlord by post and, if possible by email a schedule in the form attached to the directions, completed by the tenant setting out in the relevant column, by reference to each service charge year: the item and amount in dispute, the reason(s) why the amount is disputed; and the amount, if any, the tenant would pay for that item. All that the applicant stated in the schedule was "*no invoices/2 invoices from RMG*". So, in response and in regard to estate repairs the applicant asserted that:-

> "*In order to respond the Respondent requires further information as to what specific charges makeup the sum of £226.23 as calculated by the Applicant as it does not correlate to any charge demanded. The Respondent has provided copies of the invoices relating to the charges demanded for the years in question. In order to respond the Respondent requires further information as to what specific charges makeup the sum of £169.82 as calculated by the Applicant as it does not correlate to any charge demanded. The Respondent has provided copies of the invoices relating to the charges demanded for the years in question. The Respondent cannot respond nor ascertain the basis upon which the charge of £603.53 is disputed as the Applicant has confirmed that invoices have been received from this charge.*"

21. This pattern of challenge and explanation was repeated throughout the schedule. The applicant appears to have disputed all work carried out which the respondent believes to be unreasonable. The respondent's position is that the applicant has failed to put forward any evidence or reasoning as to why he believes the charges in question to be unreasonable.

22. Reference was made to in the Directions to Section 20b of the Landlord and Tenant Act 1985 which states the following: -

> *"(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to*

subsection (2j) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred. "

23. The Respondent asserts that Section 20b of the Act does not apply to this Application. The sums in question date back to the period September 2020 and were demanded from the tenant within a short few months after the respondent becoming aware of such costs on 10 March 2022, less than 18 months of such costs being incurred. The Tribunal accepts that the evidence supports this and therefore finds that there is no issue in this regard that might affect the payability of the disputed service charges.

24. It was apparent to the Tribunal that the applicant's case lacked detail and substance. There were simply repeated requested for further information. The respondent simply failed to say why or how the service charges were unreasonable. As such the Tribunal could not find any reason to be concerned with the service charges. In these circumstances the Tribunal was unable to find any reason to find any of the challenges acceptable and as such the applicant's claims must be rejected.

25. Therefore, the Tribunal determines that the service charges claimed in the sum for 2020 of £225.36, for 2021 of £169.82 and for 2022 of £206.92 are, for the reasons set out above, both reasonable and payable by the applicant to the respondent.

26. The applicant also seeks Orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and Schedule 11, Paragraph 5A of the Commonhold and Leasehold Reform Act 2002 in the applicant's favour. In this regard, it is the tribunal's view that it is both just and equitable not to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985.

27. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in the decision set out above, the tribunal determines that it is not just and equitable for an order to be made under section 20C of the 1985 Act that the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

28. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would be just to allow the right to claim all the costs as part of the service charge.

29. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should have to pay them.

30. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal considered all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented. The Tribunal also considered all oral and written submissions before it at the time of the original hearing. Bearing in mind the complete lack of detail from the applicant and the fact that the respondent has completely succeeded before the Tribunal it seems right, appropriate and proportionate for there not to be an order under s20c as well as pursuant to Schedule 11, Paragraph 5A of the Commonhold and Leasehold Reform Act 2002.

Name:	Judge Professor Robert Abbey	**Date:**	24 January 2023

Appendix of relevant legislation and rules

Landlord and Tenant Act 1985 (as amended)

Section 18

(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

(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 27A

(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.

Landlord and Tenant Act 1985

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 leasehold valuation tribunal or the First-tier 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

ANNEX - 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.