



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

Case reference : **LON/00AE/LSC/2023/0225**

Property : **4a Brendon Avenue London NW10 1SS**

Applicant : **Eastfields Investments Limited**

Representative : **Rice-Jones & Smith (Mr S Hayward)**

Respondent : **Mr S Wolfrum**

Representative : **Not present and not represented**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 and liability to pay and reasonableness of administration charges under paragraph 5 Schedule 11 of the Commonhold and Leasehold Reform Act 2002**

Tribunal members : **Judge Pittaway
Ms J Naylor FRICS FRIPM**

Date and Venue of Hearing : **15 December 2023
10 Alfred Place, London WC1E 7LR**

Date of decision : **6 January 2024**

DECISION and DIRECTIONS on Rule 13 Application

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant is not liable to pay by way of service charge the fees and charges demanded by the Respondent in the Schedule of Expenditure contained in the bundle before the Tribunal. The reasons for the Tribunal's decision are set out below.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The Tribunal determines that the Applicant is not liable to pay an administration charge under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (4) The Tribunal issues Directions in respect of the application for costs and fees made by the Applicant under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the '**Rules**').

The applications

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the **1985 Act**") as to the liability to pay sums demanded of the Applicant in respect of service charge years 2014 to 2022.
2. The Applicant seeks an order under s20C of the 1985 Act and an order to reduce or extinguish the tenant's 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**").
3. The Applicants also seek an order for costs and fees under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**").
4. Directions were issued on 14 July 2023. Paragraph 2 of the Directions required the Respondent to send the Applicants by 11 August 2023 copies of all relevant service charge accounts and estimates for the years in dispute together with all demands for payment and details of any payments made.
5. The Applicant advised the Tribunal that the Respondent had not complied with the Directions, but had sent a schedule of charges that the Applicant submitted had no bearing on the requirements under the Lease.

6. The Tribunal decided to conduct a case management conference which was held by video hearing on 16 November 2023. This was attended by Mr Cowan, a director of the Applicant, Mr Hayward, the Applicant's representative, and Mr Wolfrum. Mr Wolfrum denied being in breach of the Tribunal's Directions on the basis that he was not a Respondent, although he confirmed that he had been the leaseholder of the ground floor flat and the freeholder of the property since 2002. He asserted that he did not recognise Eastfields Investments Limited as the leaseholder of 4a Brendon Avenue, despite that company being registered at the Land Registry as the leaseholder. He asserted that the terms of the lease had been varied with a previous leaseholder. Mr Wolfrum confirmed that the variation had not been registered at the Land Registry.
7. The Tribunal issued Directions on 16 November 2023 confirming that the Hearing would take place on 15 December 2023 and requiring the Respondent to provide by e mail copies of all relevant service charge accounts and estimates for all the years in dispute by 23 November 2023. It noted that the Respondent was in breach of the Directions of 14 July 2023 and referred to the note on those Directions as to the consequence of a respondent failing to comply with directions, namely the tribunal debaring the respondent from taking further part in the proceedings and that it may determine all issues against it under Rules 9(7) and (8) of the Rules. The Tribunal stated that the Respondent would be debarred from taking any further part in the proceedings if it failed to comply with this direction.
8. On 28 November 2023 the Applicant's solicitors advised the Tribunal that the Directions of 16 November 2023 had not been complied with and that the only document received from the Respondent was an undated schedule of expenditure.
9. The Applicant provided a bundle of documents to the Tribunal which included this schedule. It is a 15 page schedule of expenditure, claiming £58,952.82 in respect of the period from 8 June 2014 to 1 August 2023 (hereinafter referred to as the '**schedule of expenditure**').

The hearing

10. The Applicant was represented by Mr Hayward at the Hearing. Mr Cowan attended the hearing. Mr Wolfrum did not attend the Hearing nor was he represented.
11. Mr Naylor placed on record that in the past Mr Cowan had worked for a company with whom Mr Naylor had had a business relationship. Mr Cowan no longer works for that company and Mr Naylor no longer has a business relationship with Mr Cowan and has never had dealings with, or a business relationship with, the Applicant company. At the start of the hearing the Tribunal recorded that it did not consider that any conflict of interest arose by reason of this disclosure.

The Property

12. The application describes 4a Brendon Avenue (the '**Property**') as a two bedroom maisonette in a purpose built block of two flats, the other being 4 Brendon Avenue, the ground floor maisonette.
13. Official copies of entries on the register at HM Land Registry confirm that the Applicant is the registered proprietor of the Property, under a lease for a term of 999 years from 25 March 1960 at a fixed ground rent of £7 per annum ('the '**Lease**'). The Respondent is the registered proprietor of the ground floor flat 4 Brendon Avenue and of the freehold land known as 4 and 4a Brendon Avenue.
14. Neither party requested an inspection of the Property and the Tribunal did not consider an inspection necessary.
15. Clause 4(ii) of the Lease provides,
16. *'That the lessors will (subject to contribution by the Lessee as hereinbefore provided) at all times during the said term (1) keep the main walls roof chimney stack pipes and gutters of the building of which the demised premises form part and the drains gas and water pipes and storage tank and electric wires used in common by the Lessee in good and substantial repair and decoration'*
17. Clause 2(iv) contains a covenant by the Lessee ,
18. *'To contribute one moiety of all moneys expended by the Lessors from time to time in the performance of their covennats contained in sub-clause (ii) of clause 4 hereof such contribution to be paid withi twenty-one days of request being made by the Lessors to the Lesse for payment of such contribution'.*

The issues

19. The Tribunal identified the relevant issues for determination as follows:
 - (i) Whether the Applicant is liable to pay by way of service charge the sums claimed by the Respondent in his schedule of expenditure.
 - (ii) The Applicant's S20C application.
 - (iii) The Applicant's application under paragraph 5a of Schedule 11 of the 2002 Act.
 - (iv) The Applicant's Rule 13 Costs application.

The Tribunal's determination

20. The Tribunal reached its decision after considering the written and oral evidence of Mr Cowan, including documents referred to in that evidence, the documents in the bundle before it, including Mr Wolfrum's schedule of expenditure, and has taken into account its assessment of that evidence. It also has had regard to the submissions made by Mr Hayward.
21. By reason of not complying with the Tribunal's Directions of 16 November 2023 the Respondent is disbarred from taking any further part in the proceedings, but the Tribunal has had regard to the documents provided by him that are included in the bundle before it.
22. This determination does not refer to every matter raised in every document the Tribunal reviewed or took into account in reaching its decision. However, this does not imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.
23. The law referred to is set out in the Appendix to this decision.
24. The reasons for Tribunal's determinations on the various issues are set out below

Liability to pay by way of service charge the sum claimed in the schedule of expenditure

25. Mr Hayward submitted that the Applicant disputes the entirety of the sum claimed by Mr Wolfrum. It has received no service charge demands or invoices from the Respondent. The only information provided is that set out in the schedule of expenditure. Of that schedule of expenditure only three items are identifiable as possibly recoverable by way of service charge under the terms of the Lease. These are an estimated cost of £1500 exclusive of VAT for roof repairs claimed in 2018, a sum of £229 exclusive of VAT claimed in 2018 for water damage, and an estimate of £1,500 exclusive of VAT for roof repairs in 2020. These sums are not supported by invoices, the demands have not been made within 18 months of being incurred, and the charge for water damage should have been covered by insurance.
26. The Tribunal heard evidence from Mr Cowan that the roof is in reasonable repair. Mr Cowan was unable to say if it had been recently repaired.
27. As to the purported Deed of variation, a copy of which was in the bundle, which purported to vary the service charge provisions of the Lease, Mr

Hayward submitted that this was made with a previous leaseholder, it was not a Deed and it had not been registered at the Land Registry. It is therefore not binding on the Applicant.

The tribunal's decision

28. The tribunal determines that the Applicant are not liable to pay by way of service charge the charges demanded by the Respondent in the schedule of expenditure.

Reasons for the tribunal's decision

29. The Tribunal find that the Deed of Variation is not binding on the Applicant. It has not been registered at H M Land Registry. It has therefore reached its determination on the basis of clauses 4(ii) and 2(iv) of the Lease.
30. The Tribunal accept Mr Hayward's submission that only three of the items in the schedule of expenditure might be service charge items. The other items are not referred to in Clause 4(ii) of the Lease. This was stated in Mr Cowan's witness statement and that evidence has not been challenged by the Respondent. The Tribunal finds that the other sums set out in the schedule of expenditure are not recoverable by way of service charge under the terms of the lease. The three items are therefore the only sums set out in the schedule of expenditure that are before the Tribunal to consider.
31. The Respondent has provided no evidence that the works the subject of the three claims were ever undertaken, nor that any demand for those service charge items were made in the form required by section 21B of the 1985 Act nor that demands for payment were made within 18 months of the relevant costs being incurred, as required by section 20B of the 1985 Act.
32. The Applicant is therefore not liable to pay service charge in the amount of these sums.

Application under s.20C

33. In the application and at the Hearing Mr Hayward applied for an order under section 20C of the 1985 Act. Having heard the submissions from Mr Hayward, and taking into account the non-attendance of the Respondent at the Hearing and the determination 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.

Application under paragraph 5a of Schedule 11 of the 2002 Act.

34. Mr Hayward submitted that administration costs under paragraph 5A of Schedule 11 of the 2002 Act are not recoverable under the terms of the Lease.
35. For the avoidance of doubt and in the circumstances the Tribunal determines that no administration charge is payable by the Applicant under paragraph 5A of Schedule 11 of the 2002 Act.

Directions in respect of Rule 13 costs application

36. At the Hearing Mr Hayward applied for an order for costs, under Rule 13 of the Rules.
37. The application was made within the time limits prescribed by rule 13(5).
38. Rule 13(6) provides that the Tribunal may not make an order for costs against a person (“the paying person”) without first giving that person an opportunity to make representations.
39. Accordingly, this application will be determined by the Tribunal subject to the directions set out below.

Directions

40. The tribunal considers that this application may be determined by summary assessment, pursuant to rule 13(7)(a).
41. The application is to be determined without a hearing and on the basis of the written submissions from the parties. However, any party may make a request to the tribunal that a hearing should be held or the tribunal may decide that a hearing is necessary for a fair determination of the application. Any such request for a hearing should be made by **31 January 2023** giving an indication of any dates to avoid in **March and April 2024**. The tribunal will then notify the parties of the hearing date. The hearing will have a time estimate of two hours.

The applicant’s case

42. By **31 January 2023** the Applicant shall send to the Respondent a statement of case setting out:

- (a) The extent to which it is seeking costs under Rule 13(1)(a) and the extent to which it is seeking costs under Rule 13(1)(b)
- (b) The reasons why it is said that the Respondent has acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC), with particular reference to the three stages that the Tribunal will need to go through, before making an order under rule 13;
- (c) Any further legal submissions;
- (d) Full details of the costs being sought, including:
- A schedule of the work undertaken;
 - The time spent;
 - The grade of fee earner and his/her hourly rate;
 - A copy of the terms of engagement with the applicants;
 - Supporting invoices for solicitor's fees and disbursements;
43. By **21 February 2024** the Respondent shall send to the Applicant a statement in response setting out:
- (a) The reasons for opposing the application, with any legal submissions;
- (b) Any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs;
- (c) Details of any relevant documentation relied on with copies attached.
44. By **28 February 2024** the Applicant may send to the Respondent a statement in reply to the points raised by the respondent.
45. If you or your witness intends to give oral evidence at the hearing from somewhere outside of the United Kingdom, you must comply with paragraph 6 of the Amended Directions of 22 September 2023.
46. The Applicant must seek to agree the contents of a hearing bundle with the Respondent, and must then prepare a digital, indexed and paginated hearing bundle, in Adobe PDF format, which must be emailed to all other parties, and to the tribunal, at London.Rap@justice.gov.uk by **8 March 2024**. The subject line of the email must read: "BUNDLE FOR HEARING" followed by the case reference and the address of the Property.

47. Only those documents sent in bundles are likely to be before the tribunal at the full hearing and parties should not send documents “piecemeal” to the case officer.
48. The bundle shall contain copies of:
- This determination
 - any subsequent directions
 - The applicants’ statements with all supporting documents;
 - The respondent’s statement with all supporting documents.

It is essential that the parties include any relevant correspondence to the tribunal within their digital bundle.

49. The tribunal will determine the matter on the basis of the written representations received in accordance with these directions in the week commencing **11 March 2024**.
50. If a hearing is requested, the Tribunal will notify the parties the details of the hearing.
51. Any letters or emails sent to the tribunal must be copied to the other party and the letter or email must be endorsed accordingly. Failure to comply with this direction may cause a delay in the determination of this case, as the letter may be returned without any action being taken.
52. Applications for further directions, interim orders, variations of existing directions, or a postponement of the final hearing/determination must be made using form Order 1.
- 53. If the Applicant fails to comply with these directions the tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).**
- 54. If the Respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.**

Name: Judge Pittaway

Date: 6 January 2024

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).

The Law

Landlord and Tenant Act 1985

20B Limitation of service charges: time limit on making demands.

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

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Meaning of “administration charge”

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.

Liability to pay administration charges

5(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).