



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

Case reference : **LON/00BH/LSC/2023/0165**

Property : **49C Vicarage Road, London E10 5EF**

Applicant : **Westleigh Properties Limited**

Representative : **Gateway Property Management Limited**

Respondent : **Mr Remi Anthony Adegbite**

Representative : **N/A**

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 Apollo Fonka**

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

Date of hearing : **20 October 2023**
Date of decision : **22 November 2023**

DECISION

Decisions of the tribunal

- (1) The insurance premiums totalling £2,194.75 are payable by the respondent as they have been demanded in accordance with the terms of the lease.
- (2) The sums of annual service charges claimed by the applicant are not payable by the respondent tenant as they have not been demanded in accordance with the lease.
- (3) The sum of £300 legal fees/administration costs are not reasonable and are not payable by the respondent.

The application

1. The applicant issued proceedings in the County Court on 22 July 2022 making a claim for £12,257.22 although it was unclear as to how that sum was broken down. A Defence was filed giving no substantial reasons for the defence of the claim. Subsequently, D.J. Naido on 29 March 2023 an Order:

Transfer to the first Tier (Property Chamber)

2. In Directions dated 5 May 2023 the tribunal stated:

The Tribunal will only deal with Service and Administration Charges. Once the tribunal has issued its decision, the case will be sent back to the County Court for any other issues to be dealt with.

Preliminary issue

3. The respondent had previously requested an adjournment of the final hearing, to which the applicant agreed without recourse to the tribunal. However, both parties were informed they were required to attend the hearing on 20 October 2023 and orally renew any request for an adjournment. The respondent did not attend the hearing and the tribunal considered his request in his absence. Despite the respondent's assertion he had suffered a recent bereavement, no details of this were provided to the tribunal or any substantive reason as to why the respondent was unable to attend the hearing. Therefore, the request for an adjournment was refused.

The hearing

4. An oral face-to face hearing was held at which the applicant attended and was represented by Ms Emma Mooris, Corporate Paralegal. In addition, the applicant provided a hearing bundle of 157 (electronic) pages on which it relied. The respondent was not present and was not represented.
5. In its documents the applicant provided a breakdown of all the charges claimed, the service charge accounts for end of years 2018, 2019, 2020 and 2021 and copy of demands for service and administration charges sent to the respondent.
6. The applicant accepted the lease made no provision for the collection of a reserve fund and therefore the intended major works of external and internal redecoration could not go ahead until the necessary funds had been collected through the service charges for which the respondent's liability was 25%.
7. The applicant told the tribunal that service charges were paid in arrears and that sums for major works were demanded as an additional sum to the annual service charges and classed as further and additional charges. The applicant asserted that service charges have been demanded in accordance with the lease. The applicants also asserted it had carried out consultation in accordance with the provisions of section 20 of the Landlord and Tenant Act 1985 in respect of the intended major works.
8. A demand for pre-action legal expenses of £300 incurred on 30 March 2016 was demanded in an invoice dated 19 September 2016. Demands for the service charges was made as follows:
 - (i) Demand dated 27 Sept 2018 in the sum of £597.97 due on 19 October 2018 for the period 1 June 2017 to 31 May 2018.
 - (ii) Demand dated 8 October 2019 in the sum of £631.74 due on 29 October 2019 for the period 1 June 2018 to 31 May 2019.
 - (iii) Demand dated 14 October 2020 in the sum of £552.46 due on 4 November for the period 1 June 2019 to 31 May 2020.
 - (iv) Demand dated 30 June 2021 in the sum of £469.50 due on 21 July 2021 for the period 1 June 2020 to 31 May 2021.
 - (v) Demand dated 19 July 2021 due on 9 August 2021 for s.20 external repair and redecoration in the sum of £6,793.80.
9. Demands for the annual insurance premiums were made in December of each year and said to be due on 29 December in respect of the insurance for the year ahead for the following sums:

29/12/2017: £604.59

29/12/2018: £520.45

29/12/2019 £534.91

29/12/2020: £534.80

Reasons for the tribunal's decision

10. In reaching its decision the tribunal had regards to the terms of the lease on which the applicant relied. The lease is dated 17 December 1982 for a term of 99 years with effect from 1 January 1992. Since 1 December 2010 Gateway Property Management Limited has been instructed by the applicant to manage the building, of which the respondent's flat forms part.
11. By clause 1 of the lease, the respondent covenanted to pay to the applicant by way of 'further or additional rent' a contribution to the insurance premium which are payable from time to time when demanded. Clause 2(4) of the lease required the respondent to contribute one quarter towards the costs and expenses of repairing and maintaining the building. The applicant asserted that service charges have been demanded in accordance with the lease. The applicants also asserted it had carried out consultation in accordance with the provisions of section 20 of the Landlord and Tenant Act 1985 in respect of the intended major works.
12. The tribunal finds clause 1 of the lease sets out the date on which service charges are payable and states:

YIELDING AND PAYING FIRST therefore during the said term the rent specified in the Second Schedule hereto such rent being payable yearly in advance on the First day of January in every year free of any(?) deductions whatsoever the first payment being a proportionate part of the first such annual payment calculated from the date of the signing hereof to the Thirty first day of December next following AND SECONDLY during the said term by way of premium for insuring and keeping insured the building of which the maisonette forms part in respect of the insured risks hereinbefore defined such further to be payable on demand

13. The tribunal finds the demands for service charges have not been made in accordance with the terms of the lease, as the service charge year has been defined by the applicant to be 1 June of one year to 31 May of the next and not 1 January of one year to 31 December of the same year as set out in the lease. The tribunal finds the due date of the sums of service charges demanded (including balancing charges) do not accord with the

terms of lease and are demanded on dates other than 1 January. Further, the tribunal finds the service charges are being demanded in arrears rather in advance and a demand for estimated service charges for the year ahead are not provided by the applicant.

14. Further, the tribunal finds the demand for a contribution for proposed major works said to be due on 9 August 2021 was not made in accordance with the lease, although the respondent is liable to make such a contribution under clause 2(4) of the lease for these works, when it is properly demanded.
15. The tribunal finds the demands for payment of additional rent in respect of the insurance payments have been properly demanded and are payable by the respondent
16. The tribunal was satisfied the demands for payment had been sent to the correct postal and email address for the respondent and finds they would have been received by him.
17. The tribunal finds clause 2(18) makes provision for the payment of fees incurred by the lessor in respect of matters incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925. The tribunal finds the service of the 'Letter before Action' for which a £300 fee has been charged to the respondent falls within this clause. However, as the demand made by the applicant contained sums incorrectly demanded. The tribunal finds this sum of £300 is unreasonable and not payable by the respondent.
18. In conclusion the tribunal finds the demands for payment of the insurance premiums totalling £2,194.75 are payable by the respondent. However, the tribunal finds all other sums of service charges (including the sum for major works) have not been demanded in accordance with the terms of the lease and are therefore, not payable by the respondent. The sum of £300 legal costs is not reasonable and is not payable by the respondent.
19. The matter is now remitted to the county court for all further orders as are required.

Name: Judge Tagliavini

Date: 22 November 2023

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).