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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LSC/2023/0300**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**First Floor Flat, 19 Nassington Road, London, NW3 2TX**
Applicant	**:**	**Ms. Susan West**
Representative	**:**	**In person**
Respondent	**:**	**19 Nassington Road (London) Freehold Limited**
Representative	**:**	**Ms. Schulman - Director**
Type of application	**:**	**Payability and reasonableness of Service Charges Section27A and 20C Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Sarah McKeown**
Date and Venue of hearing	**:**	**19 January 2023 at 10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**19 January 2024**

DECISION

Decisions of the tribunal

(1) The Tribunal finds as follow:

(a) 2016 – the Applicant's share of the works in respect of the electrician meter cupboard works (being £108.93) are not payable.

(b) 2022:

(i) the Applicant's share of the charge for the broken window (being £81.87) are not payable.

(ii) The Applicant's share of the roof repairs (said to be £628.50) are not payable.

(c)2023 - the service charge in the sum of £228.50 is payable.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The Tribunal makes an order as against the Respondent for a refund of 50% of the tribunal fees paid by the Applicant, i.e. in the sum of £100.

References are to page numbers in the bundles provided for the hearing. The Applicant's bundles are LB1 and LB2, the Respondents bundle is (R).

The Application – p.4 (R)

1. The Applicant tenant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether administration charges are payable and reasonable. The application seeks to challenge service charges in 2016, 2022 and 2023. She also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish her liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act.

2. 19 Nassington Road, London, NW3 2TX, is a five-storey property which has been converted to create four flats. In 2017, 19 Nassington Road (London) Freehold Limited ('the landlord") acquired the freehold interest. The landlord company is owned by three of the four lessees:

   (i) Garden Flat: On 11 July 2023, Ms. Alice Gailes aquired the leasehold interest from Jennie Howarth and Jeremy Howe. She is a shareholder and resides in her flat.

   (ii) Ground Floor: Ms. Susan West (the Applicant) is the leaseholder. She is a shareholder and resides in her flat.

(iii) First Floor: Ms. Judith Schulman has been the leaseholder since 2010. She resides in her flat and is a shareholder. She is the landlord's active director and has represented the landlord in these proceedings.

(iv) Top Floor Maisonette: Mr. Matthew Zienau and Ms. Varina Zienau are the leaseholders. They are brother and sister. They do not occupy their flat. They are not shareholders.

3. On 21 November 2023 (LB2 p.186) the Tribunal gave directions. It was noted that the following were the issues:

(a) 2022: opposition to the payability and reasonableness of the sum of £2,450 expended on roof repairs;

(b) 2016: dispute about the inclusion of £749 for repairs to the electrical meter cupboard. The Applicant asserts that the damage was caused by the tenants of the Top Floor Maisonette and that this should not be a service charge expense. The landlord's response was that the cause of the damage was unknown. The meter cupboard was in disrepair in any event. It would not have been proportionate to recover the cost from the tenant/leaseholder.

(c) 2022: dispute about the inclusion of £360 for repairs to a window in the hallway. It is asserted that the damage was caused by the tenants of the Top Floor Maisonette and that this should not be a service charge expense. The landlord responds that the cause of the damage was unknown. It would not have been proportionate to recover the cost for the tenant/leaseholder.

(d) 2023: liability to pay a "top up" charge of £228.50. it is disputed that the sum is payable pursuant to the terms of the lease.

4. On 25 July 2023, the landlord ("the Respondent") applied for retrospective dispensation pursuant to s.20ZA of the Landlord and Tenant Act 1985 from the statutory consultation requirements in respect of roof repairs following a leak, which were carried out between 16 December 2021 and 3 January 2022. That application has proceeded under reference number LON/00AY/LDC/2023/0194. By order of 21 November 2023 (LB2 p.186) the Tribunal ordered, among other things, that that application and this application should be heard together.

Documentation

5. The Applicant Landlord has provided a bundle of documents, split into two – LB1 and LB2, comprising a total of 169 pages. The Respondent has provided a

bundle (in respect of her application, but the Tribunal has had regard to both bundles in respect of both applications) comprising 160 pages.

The Hearing

6. The Applicant, Ms. West, attended the hearing and she represented herself. Ms. Schulman, one of the leaseholders, freeholders and a director of the Respondent company attended the hearing and represented the Applicant.

7. Ms. West was asked questions by Ms. Schulman. The decision in LON/00AY/LDC/2023/0194 sets out the evidence/submissions made in respect of the Respondent's application pursuant to s.20ZA Landlord and Tenant Act 1985.

8. In respect of the "top-up" charge, Ms. West said that there were two "demands" for £228.50, the first being at the start of 2022 and then second in about December 2022. She was asked by the Tribunal as to whether the first "demand" for £288.50 was the subject of the application. The application form refers only to an email in December 2022 asking for a "top-up" which was challenged and asks "[a]m I obliged to pay this 'top-up' when the lease doesn't appear to allow for such a demand?". Ms. West referred to her Statement of Case, at p.51(R) which referred to an email in June 2022 asking for a "top up", which the Applicant states she paid "under protest". It goes on to state that there was then another request for a "top up" payment of £228.50, which was disputed, that this sum was again requested in June 2023 and she states "I don't believe I am obliged to pay this 'top up' when the lease doesn't appear to allow for such a demand".

9. Ms. Schulman accepted that the request for the "top-up" was not made in accordance with the mechanism in the Lease. It was clarified that the Respondent had "re-invoiced" the sum requested in December 2022/January 2023 on 31 July 2023 (LB2 p.164).

10. There was a discussion about whether the payment requested in December 2022/January 2023 fell within the Service Charge Year 2022 or 2023. Ms. West's position was that the money was requested in December 2022 and fell within the Service Charge Year of 2022 (but no document to this effect was in any of the bundles). The Respondent's position was that it was requested in the email of 5 January 2023 (LB2 p.159).

11. Turning to the charge for the broken window, the Respondent confirmed that there was no service charge "demand" in relation to this amount, but it was paid from the "house account" and that the total sum of the cost was £360 (so the Applicant's share would be 22.74% of that amount).

12. In respect of the charges for the meters, it was confirmed that there was no service charge "demand" in relation to this amount, but it was paid from the "house account" and the sums of £335 (which related to Ms. Howarth's junction box) and £144 (which related to the Applicant's junction box) were the total amount (so the Applicant's share would be 22.74% of that amount). Ms. Schulman said that, at the material time, Ms. West was a director of the Respondent company. Ms. West said that whilst she accepted this, at the time, Ms. Schulman was the sole person dealing with the bank account and she (Ms. West) was never consulted on what was paid.

13. Ms. West was taken to LB2 p.142 and it was put to her that the email showed that there was a problem with the electrics in 2013, that they looked dangerous, and that the Freeholder would need to get an electrician and she agree with this. She was then taken to p.143 (the email of 26 September 2016 from the Applicant) and she agreed that she was asking if the repair would be a "house charge". She was then taken to the email above (also dated 26 September 2016) and she agreed that Ms. Schulman had responded by stating that it would be an "expense for the house account".

14. Ms. Schulman referred to LB2 p.145 and the email from the Applicant on 4 October 2016 as well as the response the following day from Ms. Schulman. Ms. West was asked if she agreed that she was asking Ms. Schulman's views on charging the cost to the house and Ms. Schulman's response was that the "cost should be for the RTM". Ms. West agreed bt said that when she sent her email of 4 October 2016, she was probably thinking that the cost should be charged to the house as, if it was, Mr. and Ms. Zienau would have to pay some of the charge, when the alternative was that Ms. Howarth would pay the cost of the repair to her junction box and Ms. West would pay the charge relating to her junction box.

15. In respect of the charge for the broken window, Ms. Schulman asked Ms. West whether she agreed that Ms. Schulman had not been provided with proof that the damage had been caused by people staying in the top floor flat. Ms. West responded by asking what Ms. Schulman would accept as "proof". Ms. West confirmed that she had not seen the damage caused. Ms. Schulman then asked the basis on which Ms. West claimed that the damage was caused by the people in the top floor flat. Ms. West said that her conclusion was reached on the balance of probabilities and she had a number of pieces of evidence (referring to her Statement of Case): the damage was caused whilst she was away, the window looked like it had been broken from the inside, she had a conversation with the person renting a room in the top floor and when she asked if building work done, he looked shifty and said no but he had had a crate delivered from France. She said, putting it together, it looked as if something had hit the window and she knew it was not her and presumed it was not Ms. Schulman (or her contractors).

16. Ms. West accepted that a window repair would fall within the terms of the Lease, but said that if it had been damaged by someone in the Building, that person should bear the cost. Ms. Schulman confirmed that if it had been

established that someone in the Building had caused the damage, the cost would not have been passed on to Leaseholders, but the person who caused the damage would have been pursued.

17. In relation to the "top-up" charge, Ms Schulman said that since she had moved in, charges had been billed in certain way which was not in accordance with the mechanism in the Lease: a fixed amount was charged in relation to the dates for payment in the Lease, but no invoices were sent for interim payments or final charges.

18. Ms. Schulman confirmed that "demands" went out in the form of emails to Leaseholders in advance of the due date for the fixed amount, but when there were "extra" costs like painting or insurances, there would be a request for an additional amount (e.g. p.28(R), p.115(R)). Ms. West said that she agreed that the "fixed charge" had not changed for many years, but she said that it was never the case that the semi-annual charges were paid and then *ad hoc* sums were requested. Instead, when there were major works there would be discussions in advance, an agreement as to the cost and then an email sent through with the respective share of the costs.

19. Ms. West said that new invoicing had been introduced, in accordance with the lease and Leaseholders were now invoiced for interim payments and Ms. West had been invoiced for the final maintenance charge for 2023 as well as an interim maintenance charge for 2024.

20. Ms. Schulman asked Ms. West if she accepted that if she was reimbursed for costs, those costs would fall to the freeholders, but Ms. West said that she could not answer that.

21. Ms. Schulman said that she was the sole director of the Respondent and was doing her very best to run it in way where the asset the freeholders owned was maintained in a good state, she took time in respect of the accounts and had regularised the position in terms of ensuring service charge demands were made in accordance with the Lease. Ms. West said that she shared the desire for the Property to be preserved in the best way possible.

The Applicants' Leases – LB1 p.92

22. It is not disputed that the Fourth Respondent holds her interest in the Ground Floor Flat on the same terms as a Lease dated 21 June 1990 between Craig Properties Limited and Ms. Chapman. following are the material terms:

The interim maintenance charge is £350 p.a.

The Lessee's share of the maintenance fund was 22.74%

Cl. 3 – the Lessee covenanted to observe and perform the obligations and regulations set out in part 1 of the Fifth Schedule and in the Ninth Schedule

First Schedule, para. (iii) defines:

(a) the maintenance year as a period commencing on 26th day of December and ending on 25th December in the following year;
(b) the payment dates as 24 June and 25 December in each maintenance year;
(c) the maintenance charge as the amount or amounts from time to time payable under Clause 2(a) of Part 1 of the Fifth Schedule and shall include any VAT;
(d) the interim maintenance charge was whichever was the greater of the sum specified in para. 8 of the Particulars of one half of the maintenance charge for the more recent preceding maintenance year for which a certificate had been given by the Lessor's Managing Agents or Accountants;
(e) the maintenance fund was the amount from time to time held by the Lessors or their managing agents in respect of payments of interim maintenance charge and the balance of maintenance charge made by the Lessee and the lessees of the Other Demised Parts of the Property

The Fifth Schedule sets out the Lessees covenants which are, as material, as follows:

1 (a) To pay the Lessors in respect of each Maintenance Year a Maintenance Charge being that percentage specified in paragraph 9 of the particulars of the proper costs expenses and amounts which the Lessors shall in relation to the Property reasonably incur in the relevant Maintenance Year or set aside by way of reasonable provision for future expenditure and which are mentioned in the Eighth Schedule hereto the amount of such Maintenance Charge to be determined by the Lessors Managing Agent or Accountant acting as an expert and not as an arbitrator as soon as conveniently possible after the expiry of each Maintenance Year

1 (b) To pay in advance on account of the Lessee's liability under sub-clause (a) hereof Interim Maintenance Charges on each and every one of the payment Dates the first proportionate payment thereof in respect of the period for the date hereof to the next following Payment Date to be made on the execution hereof PROVIDED THAT upon the Lessor's Managing Agent's acting properly or Accountant's certificate being given as aforesaid there shall be paid by the Lessee to the Lessors any difference in the

total of The Interim Maintenance Charges paid for the relevant Maintenance Year and the Maintenance Charge so certified for that year.

2 To pay all rates taxes assessments charges impositions and outgoings which may at any time be assessed charged or imposed upon the Demised Premises or any part thereof

The Sixth Schedule sets out the Lessor's covenants, which include:

1 Subject to the payment by the Lessee of the rent The Maintenance Charge and the Interim Maintenance Charge herein mentioned and provided that the Lessee has complied with all the covenants agreements and obligations on his part to be performed and observed to keep in good repair and decoration and (so far as the Lessors may from time to time in their reasonable discretion consider necessary) to renew and amend the following parts of the Property (but subject to the exclusion set out below)

(a) The structure of the Property INCLUDING without prejudice to the generality of the foregoing:
  (i) The roofs and foundations
  ...
(b) The Conduits in under and upon the Property not exclusively serving the Demised Premises or Other Demised Parts of the Property...
(c) The Common Parts
(d) ...
(e) All other parts of the Property not included in the foregoing sub-Paragraphs (a) (b) (c) and (d) hereof

...

5 To pay and discharge any rates... taxes duties assessments charges impositions an outgoings assessed charged and imposed upon the Property as distinct from any assessment made in respect of the Demised Premises or Other Demised Parts of the Property

23. The Eighth Schedule provides that it is the intention of the parties "that the Lessors shall have the power to incur such costs and expenses if they consider the same are necessary or desirable in the general interests of the Lessees or occupiers of the Property or in the interests of good estate management:

(1) The reasonable costs and expenses properly incurred by the Lessors in relation to any matter referred to in Part I of the Sixth Schedule
(2) The cost of any additional insurance affected in connection with the property or any part therof

...

The Law

24. Section 18 of the Landlord and Tenant Act 1985 provides:

> "(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 service, 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 estimate 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.

25. Section 19 of the 1985 Act provides:

> "(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 provision 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"

26. Section 27A provides:

"(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

Service Charges

27. A letter from the Applicant (27 June 2023, LB1 p.58) confirms that the Applicant has transferred the sum of £295.14 but had not paid (so far as it material): £81.86 for the broken window replacement (which was said to be the responsibility of the top floor flat, as it is said the "unlawful sub-tenant" had caused the damage; £228.50 "top up" charge. It confirms that she had been awarded £2,774.40 from the building insurance, less £350 for policy excess. It states that the latest invoice did not constitute a valid demand as it did not comply with the statutory requirements and was therefore not payable.

28. The Respondent responded on 21 July 2023 (LB1 p.60) stating, in summary:

(a) In respect of the £81.86, there was reference to the "email from Norman Saville at Stretchers" to the Applicant's solicitor as well as his email of 22 February 2023 and it was asserted that this was owed;

(b) In respect of the £228.50, it was said that the request would be restated with the "statutory compliant" information and the reason it was due was set out in the Respondent's email of 5 January 2023. This explained that the invoice for the annual household insurance renewal had been received, it had increased, meaning that the sum held in the "house account" would be insufficient going forward to pay for the basic monthly cleaning and electricity charge;

(c) In respect of the s.20 point, a chronology was set out. It was said that the Applicant was consulted and account was taken of all her concerns;

(d) In respect of the trellis, it was said that nothing was owed as the Applicant had been paid for the assessed damage, the new trellis was more elaborate than the old one;

(e) The requests for payment had been done in the same manner for 13 years, but the next one would be statutorily compliant;

Year 2016

29. The application disputes the following charges:

30. Electrician meter cupboard works (£335 for Ms. Howarth's junction box and £144 for the Applicant's meter cupboard).

31. The Applicant argues that the damage was caused by a bike being stored in the meter cupboard, the bike being owned by one of the tenants of the leaseholders of the top floor flat (Applicant's email of 26 September 2016 – LB2 p.143). It is said that the cost of repair was paid from the service charge (i.e. split between all leaseholders) and the Applicant's position is that it should not have been raised as a service charge.

32. The Respondent's position (LB2 p.131) is that, at the time, the freehold was owned by Mr. Zienau and Ms. Zienau and the maintenance was done through a RTM company managed by Ms. Schulman, Ms. Howarth and the Applicant as directors. It is said, in summary;

(a) The meters had been in a bad state from 2013 (as noted by the Applicant in her emails of 14 September 2013 (LB2 p.142), 26 September 2016 (LB1 p.143) and in the photographs). If a bike did cause the damage, it was only because the meters were already rusty;
(b) There was no proof the damage was caused by the tenant of the top floor flat and it could have been caused by anyone with access;
(c) The Applicant's contemporaneous correspondence demonstrates her view that the costs should be taken from the household account;
(d) As a director, the Applicant was jointly responsible for the decision put the cost on the household account;

33. There is no service charge demand for this year. As stated above, requests for money were made by email. The only references in the documents in the bundles to this charge is at LB2 p.145 which is an email from the Applicant referring to an invoice for Ms. Howarth's junction box and at p.144(R) which refers to an invoice for Ms. West's junction box.

34. There has been no service charge for these costs, either in accordance with the Lease or compliant with s.47 Landlord and Tenant Act 1987 which provides:

"Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

35. If there is no compliance with s.47 of the 1987 Act, the leaseholders are not liable to pay the service charges until such time as there is compliance (assuming there is no other bar to the validity of the charge). The effect of s.47(2), therefore, is "suspensory only", in that any service charge is treated as not being due from the leaseholder at any time before the information is furnished by the freeholder.

36. Pursuant to s.21B Landlord and Tenant Act 1985, a demand for the payment of a service charge must be accompanied by a summary of the rights and liabilities of the tenants of dwellings in relation to service charges. The form and content of that summary is found in the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007, reg. 3. The text of the summary prescribed by the regulations is set out in Appendix A. If the landlord fails to comply with s.21B, the tenants are not liable to pay the service charges until such time as it does, i.e. the tenants' liabilities are not extinguished, but are suspended (again, assuming there is no other bar to the validity of the charge).

37. But for the non-compliance with s.47 and s.21B and the terms of the lease, the Tribunal would have found that these charges would have been payable by the Applicant, as the charges fall within para. 1 of the Sixth Schedule (the junction boxes were in state of disrepair since about 2013 in any event). As, however, there has not been this compliance, the Tribunal cannot find that the Applicant's share of these charges (22.74% of £479) which is £108.93, is validly due from her at this time.

Year 2022

38. The application disputes the following charges:

39. *Charge for broken window (£360 in total)*: the application states that the Applicant returned from holiday on 12 October 2022 and found the window in the hallway of the Building had been broken. Her position was that the person who caused the damage needed to pay.

40. The Respondent's position (LB2 p.133) is that it is not clear who caused the damage to the window. The Applicant asserted that it was a guest of the top Respondent investigated with the tenants of the top floor flat but did not know anything about the crate that the Applicant said had damaged the window. As there was no evidence about how the damage had been caused, Ms. Howarth and Ms. Schulman had to pay for the repair from the household account.

41. Ms. West may well be satisfied that it was the occupant of the top floor flat which caused the damage to the window (although it is noted that in her email of 16 October 2022, LB2 p.157, she does not put it higher than suspecting that the cause was a large delivery or furniture being moved), but it was not unreasonable of the Respondent not to charge the leaseholder of the top floor flat. It was made aware of Ms. West's position but, having put the accusation to the occupant of the top floor flat, any damage was denied (LB2 p.158, p.101(R)). It is, therefore, not clear how the damage was caused, nor who caused the damage. That being so, the Tribunal is satisfied that the cost would fall within para. of the Sixth Schedule and would be due under the terms of the Lease, save that no demand was served which complied with the requirements of the Lease and/or with s.47 Landlord and Tenant Act 1987 and/or s.21B Landlord and Tenant Act 1985. That being so, and for those reasons, the Tribunal cannot (and does not), at this time, find that this amount is validly due as a service charge from the Applicant, whose share would be £81.87.

42. *Cost of roof repairs of (the Applicant's share is said to be £628.50)*: The Applicant makes the point that no s.20 consultation took place and raises, essentially, the same issues that she does in application LON/00AY/LDC/2023/0194 as to why she says that retrospective dispensation pursuant to s.20ZA should not be granted in that application. The Tribunal refers to the decision in that application. The Tribunal finds that these charges

do fall within para. of the Sixth Schedule and would be due under the terms of the Lease, save that no demand was served which complied with the requirements of the Lease and/or with s.47 Landlord and Tenant Act 1987 and/or s.21B Landlord and Tenant Act 1985. That being so, and for those reasons, the Tribunal cannot (and does not) find that this amount is validly due as a service charge from the Applicant at this time.

43. *Other issue:* An issue arose during the hearing as to whether the earlier "top-up" charge of £228.50, i.e. that requested at the start of 2022, was included in the application. It is not recorded as an issue in the order of 21 November 2023 (LB2 p.186). It is mentioned in the application form (p.18(R)) but it is mentioned as part of the history. The question the Tribunal is asked to decide is whether the Applicant is obliged to pay the "top-up" requested in January 2023. It is also referred to in the Applicant's Statement of Case (p.51(R)), but the Applicant's position is that she does not believe that she is "obliged to pay" the "top-up" requested in January 2023 (i.e. no issue is raised about the earlier "top-up" charge and there is no request for a refund of that charge, which was paid). Taking all of that into account (along with the evidence given at the Tribunal hearing as set out above), the Tribunal does not find that this charge forms part of the application.

<u>Year 2023</u>

44. *"Top-up" of £228.50.*

45. The application states that Ms. Schulman sent an email to leaseholders in December 2022 asking for a "top-up" to the bi-annual service charge and the Applicant was asked to pay and extra £228.50. There was a further demand for the £228.50 in June 2023 (when the second "instalment" for that service charge year was due).

46. The Respondent's position (LB2 p.134) is that for some considerable time, the leaseholders had paid a fixed amount of service charge twice a year on request for the payment dates specified in the lease. The fixed amount had not changed for some time, but at various times, the lessees had been asked to make "top-up" payments to meet one-off costs, and this approach had been accepted. It is accepted that the procedure is not set out in the lease. It is stated that a different method had now been introduced, which was enforceable under the lease procedure. It is said that by the time of this hearing, the leaseholders will have been invoiced for their share of the 2023 actual maintenance costs which will replace the top-up charge which forms this part of the application.

47. The Applicant was provided with a hard copy of an email dated 5 January 2023 (LB2 p.159) from Ms. Schulman which stated that the invoice for the annual household insurance renewal had been received (and been paid) and the payment had increased (for the reasons set out in the email). It was said that

there was £687 in the "house account" to last until 24 June 2023 and this would be insufficient to pay for the basic monthly cleaning and electricity charge and there was a need to make an additional "top up payment" to the bank account and so the leaseholders were asked for contributions, of which the Applicant's share was £228.50.

48. In respect of the amount requested in the email of 5 January 2023, the Tribunal has not been provided with any earlier request for payment and so finds that this falls within the Service Charge year 2023. The email of 5 January 2023 does not comply with the requirements of the Lease, nor with s.47 Landlord and Tenant Act 1987 and s.21B Landlord and Tenant Act 1985. There has been a further demand, however, dated 31 July 2023 (LB2 p.164) which does meet these requirements.

49. The Tribunal is therefore satisfied that this charge is valid and is due and owing.

Costs

50. Section 20C of the Landlord and Tenant Act 1985 provides as follows:

"(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.... the First-tier Tribunal... 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".

51. When faced with such an application, the Tribunal may make such order as it considers just and equitable in the circumstances.

52. The relevant part of paragraph 5A reads as follows:

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

53. At the hearing, the Applicant maintained her application under s.20C but had no further submissions to make.

54. The Tribunal is satisfied that Ms. Schulman has acted throughout in the best interests of the Respondent Company. Ms Flannery and Ms Walker have been willing to assume the responsibility for managing this troubled Building without remuneration. The Applicant has succeeded in respect of some of the charges disputed, but not on the basis put forward in the application. Had there ben compliance with the Lease and the statutory requirements, the Tribunal would have found the charges which are in dispute all lawfully due and any the

failure to comply with the necessary requirements means only that the charges are not due at this time, i.e. they are "suspended" rather than extinguished (unless there is some other bar to their recovery). The Tribunal therefore does not make an order under s.20C.

55. Any application for an order under paragraph 5A of Schedule 11 to the 2002 Act is not relevant to this case.

56. The Applicant has made an application for a refund of the fees (£200) that she had paid in respect of her application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In view of our findings above, we do not make such an order. The Tribunal has regard to the matters set out in paragraph 54 and has had regard to the relative success of the Applicant: Cannon v 38 Lambs Conduit LLP [2016] UKUT 371 (LC). The Tribunal makes an order for reimbursement of 50% of the Applicant's fees, i.e. £100 from the Respondent.

Conclusion

57. This application has concerned the liability of the Applicant, as a leaseholder, to pay the charges in dispute. It does not preclude any liability she may have, as a Freeholder, for such costs, if such costs are not met by way of service charge.

Judge Sarah McKeown
19 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)