



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

**Case reference** : **LON/00AR/LSC/2023/0415**

**Property** : **Flat 3 Christine Court, 44 Wennington Road, Rainham, Essex RM139UB**

**Applicant** : **Andrew Charalambous**

**Respondent** : **Christine Court Residents Association Limited**

**Respondent's Representative** : **Simon Lehva, director of the Respondent company**

**Type of application** : **An application under section 27A Landlord and Tenant Act 1985**

**Tribunal** : **Judge Timothy Cowen  
Ms Rachael Kershaw**

**Date of Decision** : **12<sup>th</sup> February 2024**

---

**DECISION**

---

**Order of the tribunal**

1. Under section 27A of the Landlord and Tenant Act 1985, the Tribunal determines that any service charges which have been demanded by the Respondent for the following service charges years:

2018/2019  
2019/2020  
2020/2021  
2021/2022  
2022/2023  
2023/2024

are not payable because the Applicant is entitled to withhold payment under section 21B(3) of the Landlord and Tenant Act 1985.

2. Under section 20C of the 1985 Act, the costs incurred by the Respondent are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

## **REASONS FOR THE DECISION**

### **Background**

- (1) The applicant leaseholder seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable.
- (2) The lessee 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.
- (3) By the directions order of 14 November 2023 in this matter, the case was allocated to the paper track to be heard in the week commencing 12 February 2024. Either party was entitled, under the terms of that order, to make a request by 28 November 2023 for a hearing. No such request has been received by the Tribunal. We are therefore deciding this case on the papers and without a hearing.
- (4) The Applicant's sole challenge to payability of the service charges for the period 2018-2023 are that demands for payment have not been accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges in accordance with s21B Landlord and Tenant Act 1985.

### **The Property**

- (5) This application relates to Christine Court, 44 Wennington Road, Rainham, Essex RM139UB ("the Building") which comprises eight flats.
- (6) The Respondent is the freehold owner of the Building. The Applicant is the leasehold owner of Flat 3 in the Building ("the Flat").
- (7) The Applicant and the Respondent are the successors in title of the parties to a 99 year lease of the Flat dated 25 July 1980 ("the Lease")

### **The Application**

- (8) The Applicant has applied to this Tribunal under section 27A of the Landlord and Tenant Act 1985 for a determination of his liability to pay

service charges for the years 2018/2019, 2019/2020, 2020/2021, 2021/2022, 2022/2023 and 2023/2024.

- (9) The challenge in relation to all the service years is the same: namely that any demands for payment in respect of those years have not complied with section 21B of the Landlord and Tenant Act 1985 and that therefore, under the terms of that section, the Applicant is entitled to withhold payment.

### **The relevant covenants in the Lease**

- (10) The service charge provision in the Lease is at clause 4(2) which requires the lessee to:

“Contribute and pay the sum of Seventy five pounds on the signing hereof and thereafter annually on the Twenty fifth day of March in each year one-eighth part or Seventy five pounds whichever shall be the greater towards the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto.”

- (11) The Fourth Schedule specifies the costs and expenses incurred by the lessor in complying with its repair maintenance and management obligations.

### **Factual background**

- (12) It seems from the evidence supplied to us that, for some time, the service charges have been managed in a way which is different from those set out in the Lease above. Since some time before 3 June 2014 (which is the date of the earliest document we have seen), the lessees have been paying a monthly sum to the Respondent company (£80 prior to the letter dated 3 June 2014 and now £110). This monthly sum is occasionally increased by the Respondent and the increase is notified to the lessees. If there is no increase then, in the words of the witness statement of the Respondent’s director, Mr Lehva, “The Company only writes to the Leaseholders when the service charge has changed. The Company does not write to the Leaseholders to tell the service charge has not changed”.
- (13) It is therefore not clear to us how many service charge demands have been made to the Applicant over the years, but we have seen a number of letters in which the Respondent demands that the Applicant make his monthly payment and we have seen a number of letters in which the Respondent has informed the Applicant of the costs and expenses which have been incurred in the Building.

### **The Statutory Requirement**

- (14) Section 21B of the Landlord and Tenant Act 1985 states:

“(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.”

(15) A form for the required summary was prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007, which applies to any demand for service charges made after 1 October 2007. The wording of the form is set out in full in regulation 3 and Appendix A to those Regulations.

(16) It appears to be common ground between the parties that the Respondent has never sent the required statutory summary to the Applicant. Paragraph 21 of Mr Lehva’s witness statement would seem to imply that. There in any event is no indication in the evidence we have seen of any demand accompanied by the required statutory summary.

(17) The Respondent’s case instead seeks to justify its failure to serve the required statutory summary. It essentially makes three points:

a. **Purpose.** The Applicant informed the Respondent that he had a copy of the required statutory summary. The Applicant has therefore seen the summary and must be aware of his rights and obligations. No purpose would be served by sending him further copies.

b. **No prejudice to the Applicant.** The Respondent’s failure to serve the required statutory summary has caused no loss or prejudice to the Applicant.

c. **Prejudice suffered by the Respondent and other leaseholders.** The Applicant withholding service charges has prevented necessary works being carried out on the Building, because the Respondent has insufficient funds.

(18) All of those statements may be true and we have no reason to doubt them. However, it is clear, from section 21B itself and the 2007 Regulations, that the statutory requirement is a matter of strict liability. The Tribunal has no power to dispense with the requirement. There is no defence of reasonable excuse.

(19) We must therefore reject each of the arguments of the Respondent set out above. We do not have discretion to consider whether the Applicant subjectively was aware of the rights and obligations in the required statutory summary. We cannot consider whether the Applicant would

have received any actual benefit from receiving the required statutory summary. We do not have the power to dispense with the requirement if he has seen the summary already. We do not have any discretion to consider the relative prejudice to the parties.

- (20) The required statutory summary must accompany every service charge demand. In this case, there is no demand which complies with section 21B in respect of any of the service charge years in question.
- (21) It follows that we must determine, in relation to the payability of service charges under section 27A of the Landlord and Tenant Act 1985, that the Applicant is entitled to withhold all of the service charges for the years in question. We have therefore made that determination above.

### **Section 20C**

- (22) The Applicant also seeks an order under section 20C of the Landlord and Tenant Act 1985 to prevent the Respondent from passing on any costs of these proceedings to the Applicant as service charges.
- (23) The Respondent has been represented by its director, Mr Lehva, throughout these proceedings. He has filed a witness statement in which he says that the officers of the company are volunteers and that no-one receives any form of remuneration. It is therefore difficult to imagine that the Respondent has incurred anything other than the most nominal costs, if at all, in these proceedings.
- (24) Nevertheless, the Respondent has failed to comply with basic requirements to serve service charge demands and has run defences which are completely unmeritorious in law. It would therefore in our judgment be appropriate to make an order under section 20C in the Applicant's favour, for what it is worth.

**Name:** Judge Timothy Cowen  
Ms Rachael Kershaw

**Date:** 12 February 2024