



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

Case reference : LON/00AY/LSC/2023/0377

Property : Flat 210, 130 Clapham Common
Southside, London SW4 9DX

Applicant : Jamie Henderson

Respondent : Latitude Management Company Ltd

Representative : JB Leitch Solicitors

Type of application : For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985 an
application under s.20C.

Tribunal members : Judge Simon Brilliant
Mr Richard Waterhouse FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 26 February 2024

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the sum of £1,505.60 is payable by the Applicant in respect of the advance service charges for the year 2023/2024.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that only 20% of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The applicant (“the tenant”) seeks a determination pursuant to s.27A Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of interim service charges payable by the tenant in respect of the service charge year 2023/2024.

The hearing

2. The hearing was conducted on paper. We had a bundle of 488 pages, a great deal of which were emails between the parties. The most important documents were:

- (a) The notice of application.
- (b) The lease.¹
- (c) The Scott Schedule filled in by both parties.
- (d) The witness statements of the tenant and of Mr Dabysing, a property manager employed by the managing agents FirstPort Management Ltd (“the current managing agents”).

The background

3. The property which is the subject of this application is a one-bedroom flat (“the flat”) in a converted building (“the building”). The building has mixed commercial and residential use.

4. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

5. The residue of the reversion is now vested in the respondent (“the landlord”).

6. The tenant holds the residue of the term of a long lease of the flat which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. The relevant issues for determination as follows:

¹ Strictly an underlease, but for the sake of convenience we shall refer to it as a lease.

- (a) The payability of the interim service charges for the year 2023/2024.
- (b) Whether an order should be made under s.20C.

The payability of the interim service charges

8. By clause 3 of the lease the tenant covenanted with the landlord in the terms of Schedule 2, and to perform its obligations and observe the conditions in Schedule 5.

9. By paragraph 1.2 of Schedule 2 the tenant covenanted to pay the Service Charge Contributions in accordance with its covenant in Schedule 5.

10. By paragraph 1 of Schedule 5, the tenant covenanted to pay the Service Charge contributions

11. Service Charge Contributions are defined in paragraph 2.2 of Schedule 5 as sums which relate to the respective Services supplied under each Head in Schedule 4.

12. Importantly, Schedule 4 sets out the various Heads. Schedule 6 sets out the percentages payable in respect of each Head. The Heads and respective percentages payable by the tenant were as follows:

- 1. Payable by Residential Units: 0.87%.
- 2. Payable by the Apartments in the Main Residential Blocks: 1.11%.
- 3. Payable by the Retail Store and Residential Units: 0.59%.
- 6. Payable by all the Estate: 0.57%.

13. The amounts payable under Heads 4 (Payable by Retail Store alone) and Head 5 (Payable by A1 retail Unit alone) are nil.

14. On 01 June 2023, the landlord sent the tenant a statement regarding the interim service charge. It consisted of anticipated expenditure for the service charge year between 01 June 2023 – 31 May 2024. The total figure was then divided in half in order to constitute the half yearly payment in advance.

15. The Heads and respective percentages payable by the tenant were stated to be as follows:

- 2. Payable by Residential Units: 0.87%. This was formerly Head 1.

3. Payable by Car Park Service Charges: 1.087%. This was formerly within Head 1 and not a separate Head.
 4. Payable by all the Estate: 0.57%. This was formerly Head 6.
 5. Payable by the Apartments in the Main Residential Blocks: 1.11%. This was formerly Head 2.
 6. Payable by the Retail Store and Residential Units: 0.59%. This was formerly Head 3.
16. The tenants complaint is, primarily, that the percentages no longer equate to the Heads as set out in Schedule 6. Accordingly, he says that the wrong percentages have been applied to each Head. Moreover, he has now been charged under Heads 4 and 5 which were previously nil.
17. In the Scott Schedule the tenant is unable to give a figure of how much he says he should be paying under each Head.
18. The witness statement of Mr Dabysing explains what has gone wrong. The building was originally managed by Mainstay Group Ltd (“the original managing agents”). It issued the service charge budget, accounts and demands with reference to the Heads as numbered in Schedule 6.
19. In 2003, the original managing agents were replaced by the current managing agents. When this happened the Heads were automatically reordered in the current managing agents’ internal systems. In effect, the tenant is being charged appropriately, except that the numbers identifying Heads have been changed.
20. We accept this analysis. We do not consider that there is any provision in the lease which prevents the renumbering. It does not seem to us that any prejudice has been occasioned to the tenant as a result of the renumbering.
21. There is, however, one additional matter which needs to be dealt with. It will be appreciated from comparing the original Heads with the current ones that there is now one additional Head, namely Car Park Service Charges. As we have said, this was formerly within Head 1 and not a separate Head.
22. This additional Head is charged at a higher rate, namely 1.087% rather than at 0.87%. This is because there are 93 parking spaces for 104 units. Since 2011 there has been a separate Head for car parking, and until now there has been no objection to it.
23. The landlord says that it has the power to adopt a different Head by virtue of paragraph 2.2 of Schedule 5 which provides as follows:
- 2.2 The Service Charge Proportion in relation to the Services

provided under schedule 4 is to be calculated primarily on a comparison for the time being of the gross internal area (as defined in the Measuring Code) of the Premises with the aggregate gross internal areas of the Premises and the other areas by which the relevant Head is payable (excluding the caretaker's office accommodation) as initially set out in schedule 6; but if the comparison is inappropriate having regard to the nature of any expenditure or item of expenditure incurred, or the areas which benefit from it or otherwise, the Landlord or Manager may in its absolute discretion:

2.2.1 adopt such other method of calculation of the proportion(s) of the expenditure to be attributed to the Premises as is fair and reasonable and proper in the circumstances; ...

24. It is argued that the landlord is therefore able to adopt a separate Head for the car park expenditure and to alter the contribution payable to ensure that the expenditure attributed is fair and reasonable. Therefore, in accordance with the lease the tenant's service charge contribution to the revised Head 3 has been altered to 1.087% to ensure that the contributions are fair and reasonable for these reasons.

25. We accept this submission. The tenant is therefore liable to pay the interim service charge demanded, namely £1,505.60.

Application under s.20C and refund of fees

26. The tenant has made such an application on behalf of all the tenants in the building. Whilst we have found against the tenant, we are very critical of the way in which the current managing agents dealt with reasonable requests for an explanation of what was going on.

27. The demand was dated 01 June 2023. There then followed literally dozens of emails between the tenant and the current managing agents about what was going beginning on 03 July 2023. Eventually, the tenant commenced these proceedings on 09 October 2023.

28. Had the tenant been given a reasonable explanation as soon as he raised his queries it is unlikely the dispute would have rumbled on or the need for these proceedings.

29. We accordingly consider it just and equitable that the landlord passes only 20% of its costs through the service charges.

Name: Simon Brilliant

Date: 26 February 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).