



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

**Case reference** : **LON/00AC/LSC/2023/0439**

**Property** : **Simmay Villas, 152 Holders Hill Road,  
London, NW7 1LU**

**Applicant** : **Farhad Mohammadi and Shiva Samadi  
(Flat 1)  
Wing Yee Mak (Flat 2)  
Pezhman Zomorodnia (Flat 3)  
Roberto Anzaldua Gi (Flat 4)**

**Representative** : **N/A**

**Respondent** : **Assethold Ltd**

**Representative** : **N/A**

**Type of application** : **Reasonableness/payability of service  
charges and an administration charge**

**Tribunal members** : **Judge Prof R Percival**

**Venue** : **Paper determination**

**Date of decision** : **29 February 2024**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal determines that the service charges demanded on 28 November 2023 are not payable by any of the Applicants.
- (2) The Tribunal determines that the administration charge of £60 demanded on 28 November 2023 is not payable by any of the Applicants.
- (3) The Tribunal makes orders under Landlord and Tenant Act 1985, section 20C and under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that the costs of these proceedings may not be recovered by a service charge or an administration charge.
- (4) The Tribunal orders that the Respondent reimburse the Applicants' application fee.

## **The application**

1. The Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable.
2. The Applicants also seek 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 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.
3. Directions were given on 15 December 2023. Those directions specified that the Tribunal hearing the applications would also consider whether a reimbursement order should be made under rule 13(2) of the Tribunal Rules (First-tier Tribunal)(Property Chamber) Rules 2013 ("the 2013 Rules").
4. In the directions, the issue between the parties was identified as whether any service charges remain payable as an "amount outstanding from previous account", as demanded by the Respondent; and whether an administration charge is payable in respect of the cost of collecting ground rent in respect of each Applicant.
5. The relevant statutory provisions referred to may be consulted at:  
<https://www.legislation.gov.uk/ukpga/1985/70/contents>  
<https://www.legislation.gov.uk/ukpga/2002/15/contents>

## **Determination**

6. The property is a mid-20th century house converted into four self-contained flats. The Applicants established an RTM company and acquired the right to manage on 10 November 2022.
7. This is the third application started in 2023 relating to the property. In each case, the Applicants were the same. The first (LON/00AC/2023/0047) was the subject of an oral hearing on 11 October 2023, and a decision on 16 October 2023. It was heard by Ms R Kershaw and me (“the first decision”). The second (LON/00BC/LSC/2023/0171) was determined by me on the papers on 13 December 2023 (“the second decision”).
8. In the first, the Respondent conceded (both in the Scott schedule and orally before us by counsel) that none of the charges demanded for the service charge year 2023 were payable. In respect of the previous year, we made a series of determinations (assisted on occasion by concessions by the Applicants) as to which service charges were payable and which were not.
9. In the second decision, we concluded that various sums demanded in September 2023 were covered by the (inevitable) concession in relation to that year, or were otherwise not payable.
10. In the directions given on 16 December 2023, the Respondent was required to provide a full explanation of the basis upon which a demand was made for “service charges outstanding” was made (with further details specified as to what was required to be disclosed and explained), and a full explanation of the legal basis under the lease upon which a demand was made for an administration charge in respect of the costs of charging the ground rent. If the demand in respect of the costs of the ground rent was in the nature of a service charge, the Respondent was required to explain the legal basis.
11. These directions were not complied with by the Respondent, either by the deadline of 18 January 2024, or at all.
12. The Applicants were required to send to the Tribunal and the Respondent the demands made for the administration charges referred to in the application form, and to clarify the nature of the demands, by 5 January 2024.
13. On 3 January 2024, the Applicants provided a schedule setting out the newly demanded service charges, together with appendices exhibiting the demands.

14. The document received from the Applicants assert that the amounts demanded are new and different sums, albeit under the description “amount outstanding from previous account”. The amounts demanded from each flat as service charges were, for each of flats 1 to 4 respectively, £500.02, £41.65, £562.02 and £310. There is nothing in either the demands themselves or in the papers relating to the previous applications that gives any indication as to what the service charges demanded relate.
15. The demands are dated 28 November 2023
16. The directions made it clear that the Tribunal had before it the papers relating to the previous two cases, in addition to the decisions, and would take those into account in determining this application as necessary.
17. I consider the service charge demands first. It is a matter for the Applicants on an application under section 27A to establish that service charge demands are unreasonable. However, in this case, the Applicant must, in effect, simply say to the Tribunal that they have no idea as to what these demands relate. That cannot do more than that, given the failure of the Respondent to provide any particularisation at all. Had the Respondent adhered to the directions, it would have had to have provided that information, but it has not done so.
18. In the context of the previous applications, I conclude that the Applicants are entitled, in these specific and unusual circumstances, to say that the facts speak for themselves. These latest demands, although they are asserted to be outstanding from a previous account, are made over a year after Applicants’ RTM company acquired the right to manage. They have been demanded after two decisions by this Tribunal, and were not brought up in either case. No basis upon which they are owed is asserted in the demand.
19. Further, the second decision noted that “the conduct of the Respondent is redolent of an attempt to punish, or extract value from, tenants who have successfully exercised the right to manage”, although this perception did not influence the determinations made in that decision.
20. In this case, that conclusion adds force to the Applicants’ case. The Respondent is represented by its managing agent Eagerstates, and in particular by Mr R Gurvits of that company. Mr Gurvits is an extremely experienced property manager. He cannot have been unaware that he could not issue service charge demands in respect of expenditure after the acquisition date. Yet he did so, conceding on challenge. Similarly, it is likely that he appreciated that the September 2023 service charge demands were implausible, but made them. And less than three months later, again made these demands. If nothing else, it is surprising that a property manager of his experience would consider it appropriate to make two demands so close together. These circumstances cry out for an

explanation. In defiance of the Tribunal's directions, the Respondent has provided none.

21. *Decision:* the service charges demanded on 28 November 2023 are not payable.
22. In the same demand letter, the Respondent demanded a payment of £60 from each of the Applicants as "Admin cost for collection of ground rent". The Applicants challenge the payability of this charge under paragraph 5 of schedule 11 to the Commonhold and Leasehold Reform Act 2002.
23. The directions with which the Respondent failed to comply included a requirement for an explanation as to the provision in the lease justifying the making of this charge.
24. The lease contains a number of provisions allowing for the landlord to charge the tenant in schedule 4 (tenant's covenants), including paragraph 4 (interest on late payment), paragraph 7 (various enforcement costs, and the cost of consents), paragraph 9.6 (registration fee on assignment etc) and paragraph 14.3 (costs of works to remedy breaches). Evidently, none make provision for the charging of an administration fee for demanding the ground rent.
25. I note that if there had been a provision allowing for the making of such a charge (on a variable basis), a charge of £60 to each leaseholder would evidently be wholly unreasonable in amount.
26. *Decision:* The administration fee of £60 charged as "admin cost for collection of ground rent" is not payable.
27. I add that, again, it is difficult to believe that a property manager of Mr Gurvits' experience could have thought that such a fee could be properly charged.

### **Applications for additional orders**

28. The Applicants applied for an order under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

29. As I said at the same point in the second decision, it is highly doubtful whether any costs, if there are any, could be charged to the Applicants through a service charge, or as an administration charge. But to avoid any possibility of doubt, I make both orders. As in that decision, I cross refer to the relevant considerations set out in the first decision.
30. It is evident, in the light of the findings I make above, that it is just and equitable that both orders be made.
31. As prefigured in the directions, of the Tribunal's own motion, I make an order for the reimbursement by the Respondent of the Applicants application fee of £100. The Respondent, in failing to adhere to the directions, but nonetheless failing to withdraw the demands, has again acted unconscionably, and an order to reimburse the application fee is appropriate in those circumstances.
32. *Decision:* The Tribunal orders
  - (1) under section 20C of the 1985 Act that the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant;
  - (2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished; and
  - (3) under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicant's application fee.

### **Rights of appeal**

33. 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 London regional office.
34. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
35. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

36. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

**Name:** Judge Professor Richard Percival    **Date:** 29 February 2024