FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2023/0360**
Property	**:**	**47C Birdhurst Rise, South Croydon, London, CR2 7EJ**
Applicant	**:**	**Benjamin Phillimore**
Representative	**:**	**In person**
Respondent	**:**	**Stephen Clacy and Wendy Nunn**
Representative	**:**	**In person**
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 B MacQueen** **Mr Waterhouse, FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**18 March 2024**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £5, 814.62 is payable by the Applicant in respect of the service charges for the period 1 November 2021 to 31 July 2022.

(2) The Tribunal makes the determinations as set out under the various headings in this Decision.

(3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(4) The Tribunal makes an order under the Commonhold and Leasehold Reform Act 2002, Schedule 11 paragraph 5A, that there is no liability to pay the landlord's administration charge in respect of litigation costs.

(5) The Tribunal determines that the Respondent shall pay the Applicant £300.00 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

The Application

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge period 1 November 2021 to 31 July 2022 (the relevant period).

The Hearing

2. The hearing was conducted as a hybrid hearing as the Applicant appeared in person at Alfred Place, London, and the Respondent Stephen Clacy appeared in person via video link. Wendy Nunn was not present at the hearing.

3. At the start of the hearing, the Applicant made an application for the Respondent to be barred from taking any further part in all or part of the proceedings (rule 9(7) of the 2013 Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the 2013 Rules). The application was made on the basis that the Respondent had failed to comply with the Tribunal's directions dated 14 October 2023.

4. The Respondent confirmed that he had supplied copies of relevant invoices and documents that he intended to rely upon by email on 28

January 2024, albeit later than 11 January 2024, which was the date provided for by the directions made by the Tribunal.

5. The Tribunal considered the submissions made by the parties and found that the Respondent should not be barred. The Tribunal found that the amended directions made on 20 February 2024 extended the date for the Applicant's reply from 25 January to 5 March 2024, and also extended the time for the hearing bundle to be provided from 22 February 2024 until 11 March 2024. The Tribunal found that this extension of time meant that the Applicant was afforded more time to prepare his case and was not prejudiced by the Respondent's late response. Additionally, the Tribunal considered the overriding objective (rule 3 of the 2013 Rules) and in particular the need to allow flexibility within the proceedings and to ensure that parties are able to participate fully in the proceedings. The Tribunal therefore determined that by hearing both parties the Tribunal would deal with the matter justly and fairly in order to make a decision as to the service charge amount owing for the relevant period.

The background

6. The property which was the subject of this application was 47C Birdhurst Rise, South Croydon, London, CR2 7EJ (the Property). 47 Birdhurst Rise was described by the Applicant as a Victorian house which was converted into five flats. 47C was one of those flats.

7. 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.

8. The Applicant held a long lease of the Property which required the landlord (the Respondent) to provide services and the Applicant 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 service charge was divided equally between the flats with the Applicant being responsible for 20%.

9. In accordance with the Tribunal directions a bundle consisting of 123 pages was prepared for the hearing.

The Issues

10. At the start of the hearing the parties confirmed that the relevant period the Tribunal was asked to determine was 1 November 2021 to 31 July 2022. A Right to Manage company took over the management of the Property on 1 August 2022 and so charges after this period are not relevant.

11. In accordance with the Tribunal directions the Applicant provided a schedule in the form attached to the directions which identified the issues that the Tribunal was asked to determine. Unfortunately, the Respondent did not complete the column for the landlord's comments.

12. The Applicant confirmed that all of the issues identified in the Schedule remained in dispute. The Respondent confirmed that he no longer wished to pursue the charge of £330 for the survey fee in relation to porch A, and conceded that this should not have formed part of the service charge.

13. The issues for determination were as follows:

    (i) The payability and/or reasonableness of service charges for the period 1 November 2021 to 31 July 2022 relating to:

        a. Building Insurance - £2, 893.16
        b. Lighting to common ways - £145.34
        c. Insurance Claim excess (storm gable) - £250.00
        d. Survey Fees (storm gable) - £1, 128.00
        e. Survey Fees (storm damage to main gable) - £672.00
        f. Survey Fees (masonry and render Flat A balcony) - £396.00
        g. Scheduled maintenance of rainwater goods - £600.00
        h. Scheduled maintenance of drainage - £750.00
        i. Inspection of communal lighting system - £396.00
        j. Inspection of auto fire detection system - £396.00
        k. Repair of fire system - £134.40
        l. Sundry tile repairs - £792.00
        m. Supply of rocksalt - £240.00
        n. Asbestos inspection - £432.00
        o. Management fee - £1, 458.33
        p. Management fee for insurance claims - £300.00

14. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal made determinations on the various issues as follows:

Building Insurance - £2, 893.16:

15. The Applicant stated that the premium was excessively priced. In particular, at page 34 of the bundle was a copy of the insurance policy that had been obtained for the property by the Right to Manage company dated 31 July 2023, and that premium was £1,909.49. Additionally, the insurance price charged by the Respondent by way of service charge was for a 12 month period rather than the 9 month period ending on 31 July

2022 when the Right to Manage company took over. The Applicant stated that he was willing to pay a pro-rata rate comparable to the policy at page 34 of the bundle. In response to a question from the Respondent, the Applicant confirmed that when the new insurance policy was taken out by the Right to Manage company, he did inform the insurance company of the relevant claim history relating to 47 Birdhurst Rise.

16. The Respondent accepted that it was appropriate for a 9 month pro-rata rate to be determined, however in relation to the price, the Respondent maintained that the premium he had obtained was reasonable. He confirmed that the policy was part of a large block policy and that he had worked hard to obtain the price. The Respondent stated that the claim history for 47 Birdhurst Rise meant that he was not able to obtain a lower price.

17. The Tribunal found that the amount charged for insurance should be for a nine month period and reduced the amount accordingly. In relation to the price, whilst accepting that the Applicant was able to obtain a lower price from 31 July 2023, the Tribunal was conscious that insurance premiums fluctuate in price year on year. The Tribunal therefore accepted that the landlord obtained insurance for the premium of £2, 893.16 and that this was a reasonable amount. In light of this, the Tribunal determined that the service charge for the period 1 November 2021 to 31 July 2022 should be **£2, 169.87**.

Lighting to common ways - £145.34:

18. The Applicant stated that no invoice had been received for this lighting. The only communication he had received about this cost was the information that the Respondent had provided at page 74 of the bundle. Additionally, the Applicant took the Tribunal to pages 23, 24, and 25 of the bundle where there was correspondence about the lights not working as well as a photograph.

19. The Respondent confirmed that the charge was in relation to an electricity bill which he had calculated by estimating the standing charge and the unit charge, with the standing charge being 25p per day and the unit charge 15p per unit. He calculated the standing charge at £100 and the unit charge at £75. At the hearing, the Respondent agreed that this charge needed to be adjusted to a nine-month period.

20. The Tribunal found that the estimated amount of £145.34 was excessive and therefore reduced the amount to take account of the nine-month period. Whilst the Tribunal accepted the evidence of the Applicant that the lights were not working effectively throughout all of the relevant period, the Tribunal found that the standing charge would still be payable. The Tribunal therefore found that **£100.00** was a reasonable amount for this item.

Insurance Claim excess (storm gable) - £250.00:

21. The Applicant stated that he was unsure which insurance claim this cost related to as he had not been provided with detail from the Respondent. The Respondent confirmed that this claim related to the storm on 18 February 2022 and the amount was for insurance excess that was payable to the insurance company.

22. The Tribunal found that a £250.00 excess was a reasonable amount for an insurance claim as a result of storm damage and therefore found that **£250.00** was payable.

Survey Fees (storm gable) - £1, 128.00:

23. The Applicant told the Tribunal that this claim was not valid and that in any event survey fees should be included in any insurance claim.

24. The Respondent confirmed that the relevant invoice was at page 78 of the bundle. The survey related to storm damage from 9 February 2020 and that the invoice had been issued on 24 July 2022 because the work related to preparing a report, and then commissioning and overseeing the work. In answer to the question as to why this work was not completed by the insurance company, the Respondent confirmed that under the insurance policy, he was required to commission a survey and arrange for the work to be completed.

25. The Tribunal found that the amount charged for the survey was not reasonable. It was unclear what the extent of the damage to the gable end had been and the Tribunal was not provided with any detail as to the works that were completed. The £1, 128.00 claimed by the Respondent was therefore disproportionate and the Tribunal reduced this figure to **£500.00**, that being the amount the Tribunal found to be reasonable for a survey fee and storm damage work.

Survey Fees (storm damage to main gable) - £672.00:

26. The Applicant told the Tribunal that this survey was not conducted in the relevant charging period and also that survey fees should be included in an insurance claim.

27. The Respondent confirmed that this related to the storm on 18 February 2022 and that his insurance policy was such that he was required to commission the survey.

28. The Tribunal found that there was insufficient evidence to justify the £672.00 fee. The Tribunal therefore used its expert knowledge to reduce

the amount payable to **£325.00** for a survey fee following storm damage.

Survey Fees (masonry and render Flat A balcony) - £396.00:

29. The Applicant told the Tribunal that this work was not completed to a satisfactory standard and took the Tribunal to the photograph at page 18 of the bundle. Further the Applicant described the work as minor and questioned the timing of the survey given that the Right to Manage company was about to take over. Additionally, there was no invoice provided.

30. The Respondent told the Tribunal that he always used a surveyor when he was aware of any problems as he wanted to find out what the issue and solution were.

31. The Tribunal found that the cost of £396.00 was not reasonable. The detail as to the work completed was not clear and no invoice was provided. Using its expert knowledge, the Tribunal found that a charge of **£180.00** for this work was reasonable given the small scale of the area involved and the lack of detail to justify a higher amount.

Scheduled maintenance of rainwater goods - £600.00:

32. The Applicant stated that he did not believe that this work had been completed and that the amount was being claimed fraudulently. He confirmed that no one had seen this maintenance work completed.

33. The Respondent confirmed that the relevant invoice for this work was at pages 82 and 83 of the bundle. In response to questions, the Respondent confirmed that he did not have a mechanism to check that the work was completed, and that he had received the invoice and paid it.

34. Whilst the Tribunal acknowledged that it was possible that the work was completed without the knowledge of the residents, it did not accept that the work needed to be completed on two occasions in close proximity and invoiced on 20 July 2021 and 30 November 2021. The Tribunal therefore disallowed the 20 July 2021 invoice. The Tribunal also reduced the invoice of 30 November 2021 to **£250.00** because the amount was excessive. In particular, the Tribunal would not expect to see "setting up signage" as a specific chargeable amount for work of this nature.

Scheduled maintenance of drainage - £750.00:

35. The Applicant referred the Tribunal to pages 26 and 27 of the bundle. In particular an email dated 1 November 2022 that confirmed that there

was a blockage in the pipe which could not be cleared without a drains expert. This email related to work the Right to Manage company commissioned to the drains after it took over. On page 27 the Applicant confirmed that the invoice from a drains company was from the company who the Right to Manage company had used to cleared the blocked drain. The work that was completed by them included cutting a hole in the stack pipe to remove the blockage with a high-pressure jet. The Applicant concluded that had the drains been maintained as the Respondent claimed, this blockage would not exist.

36. The Respondent confirmed that he had received the invoice relating to the scheduled maintenance of the drains and paid it. He confirmed that he did not know why the drains were blocked when the Right to Manage company took over.

37. The Tribunal preferred the evidence of Applicant and accepted that if the drains had been maintained as the Respondent claimed, they would not have been blocked when the Right to Manage company took over. The Tribunal therefore did not find that the charge for scheduled maintenance of drainage was reasonable.

Inspection of communal lighting system - £396.00:

38. The Applicant confirmed that at pages 16 and 17 of the bundle were witness statements from residents who shared the communal area and communal entrance door. In these statements the residents confirmed that since the communal front door locks were changed in November 2017, residents had not allowed anyone access to conduct light testing. The Applicant confirmed that it would not have been possible to access the area without being let in by the residents. In addition, the Applicant took the Tribunal to a photograph at page 25 of the bundle which showed the poor condition of the lighting prior to the Right to Manage company taking over the management, and at page 21-25 of the bundle emails that confirmed that the communal lights were not working. Finally, at page 19 of the bundle was an invoice from the company used by the Right to Manage company to install new emergency light fitting in June 2023.

39. The Respondent confirmed that he had a large portfolio and did not know if this work was completed.

40. The Tribunal preferred the evidence of the Applicant because of the work completed by the Right to Manage company when they took over and the evidence of the poor condition of the lighting as described by the Applicant. The Tribunal therefore did not find that the cost of inspection of the communal lighting system was reasonable and disallowed that cost.

Inspection of auto fire detection system - £396.00:

41. The Applicant reiterated the evidence he had given when the Tribunal was considering the communal lighting and confirmed that it would not have been possible for access to be given to carry out an inspection without a resident letting the person in. Additionally, the Applicant took the Tribunal to page 25 of the bundle and confirmed that the photograph of the battery that showed an expiry date of "March 2017" was removed from the fire detection system in August 2022. The Applicant told the Tribunal that if the fire detection system was being inspected a battery from March 2017 would not be in the system.

42. The Respondent was not able to explain why the battery was within the system and confirmed that an invoice for the work had been sent and he had paid the amount.

43. The Tribunal preferred the evidence of the Applicant and accepted that if the inspection had taken place properly there would not be a battery from 2017 found in the system. The Tribunal therefore did not find that the fire detection system inspection was a reasonable charge and disallowed this amount.

Repair of fire system - £134.40:

44. The Applicant told the Tribunal that because of the battery found from 2017 (as described above) he did not believe that this work had been completed. Additionally, the Applicant confirmed that a sticker on the fire extinguisher showed that it had not been checked since 2012. The Applicant also reiterated that the residents' witness statements (pages 16 and 17 of the bundle) confirmed that access to the building would have had to be permitted in order for the work be to completed.

45. The Respondent confirmed that an invoice had been received and he had paid the amount. He was not able to offer any further explanation.

46. The Tribunal preferred the evidence of the Applicant and found that no details were provided of any repair to the fire system. In particular no certificate had been provided to the Tribunal in relation to any work to the fire system. The Tribunal therefore found that the cost was not reasonable and disallowed this amount.

Sundry tile repairs - £792.00:

47. The Applicant told the Tribunal that the work fell outside the relevant period and should not be allowed.

48. The Respondent confirmed that the relevant invoice was at page 91 of the bundle and was dated 31 March 2022. Therefore, the work fell within the relevant period. The Respondent further confirmed that there had been a number of problems with the roof tiles rising and many repairs had been needed over the years.

49. The Tribunal accepted the evidence of the Respondent that repair to the tiles were necessary, however the Tribunal did not accept the cost of the work as being £792.00. Using its expert knowledge, the Tribunal determined that a reasonable cost for this work would be **£660.00**.

Supply of Rock Salt - £240.00

50. The Applicant told the Tribunal that the work was not conducted and no salt was laid. The Applicant referred to a telephone conversation in 2017 where he had asked the Respondent to stop laying salt, and that there was a running joke that if salt was laid it would start raining.

51. The Respondent confirmed that it was the responsibility of the landlord to take action in relation to making the property safe and he had determined that rock salt was necessary.

52. The Tribunal accepted that it was the Respondent's decision as to whether to lay rock salt and therefore this work was reasonable. However, the Tribunal did not accept that the cost was reasonable and took the view that £240.00 was excessive for the amount of rock salt that would be required. The Tribunal therefore reduced the amount to **£120.00**.

Asbestos inspection - £432.00:

53. The Applicant relied on the witness statements at pages 16 and 17 of the bundle from residents to state that the survey was not completed. Additionally, the Applicant stated that when the Right to Manage company had had an asbestos survey, no asbestos had been found. The Applicant therefore stated that having two asbestos surveys completed in nine months was excessive.

54. The Respondent told the Tribunal that asbestos was in the tiles and the electricity system and therefore the inspection was necessary. He thought that a second inspection had taken place as part of the hand over to the Right to Manage company.

55. The Tribunal found that it was not reasonable to have two asbestos inspections within nine months. The cost of the second inspection was disallowed, meaning that **£166.00** was payable.

Management fee - £1, 458.33:

56. The Applicant confirmed that he was content with an 11.3% charge, but the amount needed to be recalculated so that it related to the relevant charging period and only included relevant works. The Applicant further stated that a standardised management fee would be preferred. Further he stated that there was no breakdown of the fees which meant that it was difficult to see what the fee related to.

57. The Respondent accepted that the fee needed to be adjusted to reflect the relevant period.

58. The Tribunal found that a reasonable management fee, calculated on a pro rata basis for the relevant period, was **£1, 093.75**.

Management fee for insurance claims - £300.00:

59. The Applicant told the Tribunal that a separate management fee for insurance claims was not appropriate as this work should have been included within the management fee, therefore this should not be allowed.

60. The Respondent told the Tribunal that there was a lot of work involved in the insurance claims for 47 Birdhurst Rise and that this work involved paying contractors, managing accesses and dealing with the insurance company. Given there was a high claim ratio for the building, it was appropriate for a separate management fee to be charged.

61. The Tribunal found that a management fee for insurance claims was not reasonable and that insurance work should be covered under the general management fee. The Tribunal therefore disallowed this fee.

The Tribunal's Decision

62. The Tribunal determines that the amount payable is **£5, 814.62** and this is broken down as follows:

Summary Table

Item	**Cost as Determined by the Tribunal**
Building Insurance	£2, 169.87
Communal Electricity	£100.00

Insurance Claim excess (Storm gable)	£250.00
Survey Fees (Storm gable)	£500.00
Survey Fees (storm damage to main gable)	£325.00
Survey Fee (masonry and render Flat A balcony)	£180.00
Scheduled maintenance of rainwater goods	£250.00
Scheduled maintenance of drainage	£0
Inspection of Communal Lighting System	£0
Inspection of auto fire detection system	£0
Repair to fire system	£0
Sundry tile repair	£660.00
Supply of rock salt	£120.00
Asbestos Inspection	£166.00
Management Fee	£1, 093.75
Management Fee for Insurance Claims	£0
Total	**£5, 814.62**

Application under s.20C and refund of fees

63. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application and hearing

amounting to £300.00. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal ordered the Respondent to refund the £300.00 fee paid by the Applicant within 28 days of the date of this Decision.

64. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taken into account the determinations above, the Tribunal determined that it was just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

65. In the application form, the Applicant made an applicant under paragraph 5A, schedule 11 of the Commonhold and Leasehold Reform Act 2002. This is an order which reduces or extinguishes the tenant's liability to pay administration charges in respect of litigation costs. Having heard the submissions of the Applicant and taking into account the determinations above, the Tribunal determined that it was just and equitable in the circumstances for an order to be made under schedule 11, so that the Respondent may not pass on any administration charges incurred in connection with the proceedings before the Tribunal.

Name: Judge Bernadette MacQueen **Date:** 18 March 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).