In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case Reference	**:**	**LON/00AY/LAC/2023/0011**
Property	**:**	**Flats B & C, 137 Dulwich Road, London SE24 0NG**
Applicants	**:**	**Leah Nicholls (Flat B)** **Carolina Harvey & Mike Harvey (Flat C)**
Respondent	**:**	**Assethold Ltd**
Representative	**:**	**Eagerstates Ltd**
Type of Application	**:**	**Payability of administration charges**
Tribunal	**:**	**Judge Nicol** **Ms M Krisko FRICS**
Date and venue of Hearing	**:**	**21st March 2024** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**21st March 2024**

DECISION

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(1) The charges challenged in this matter are not reasonable or payable by the Applicants to the Respondent:

(a)"Admin costs for rent collection" of £38.40 for each occasion when the annual ground rent of £125 was demanded in each year from 2017 to 2023 inclusive.

(b) The further "Admin costs for rent collection" of £32.40 charged to Ms Nicholls in 2016.

(c)The sums of £257.62 from Ms Nicholls and £158.29 from Mr & Mrs Harvey said to be overdue by letters dated 5th April 2019.

(d) Further sums invoiced to Ms Nicholls: £421.02 on 24th February 2021, £584.42 on 1st September 2021, £704.42 on 1st March 2022 and 2023 and £377.62 on 28th February 2024.

(e) A further administration charge of £120 claimed from Ms Nicholls by letter dated 11th October 2021.

(2) The Respondent shall reimburse the Applicants their Tribunal fees totalling £300.

(3) Further, the Tribunal grants orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from seeking to recover any of their costs of these proceedings through the service charge or by charge to any individual Applicants.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicants are the lessees of 2 of the 3 flats at the subject property. They are also shareholders and directors of the Right to Manage company which has managed the property since 2011.

2. The Respondent is the freeholder and their managing agents are Eagerstates. The Applicants pointed out that the Respondent and Eagerstates are related companies, having the same directors, but the Tribunal was already aware as both companies are frequently involved in Tribunal proceedings relating to various properties in their portfolio.

3. The Applicants applied on 2nd May 2023 for a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the reasonableness and payability of certain administration charges. The Respondent alleged that some of these charges were service charges. Service charges are subject to separate statutory jurisdiction under section 27A of the Landlord and Tenant Act 1985 but, as described below, the Respondent has provided no evidence to establish their allegation and, in any event, has had full notice of the Applicants' case and full opportunity to respond to it.

4. The Tribunal heard the case on 21st March 2024. Two of the Applicants, Ms Nicholls and Mrs Harvey, attended. The Respondent did not attend and was not represented.

5. The documents before the Tribunal consisted of a bundle of 164 pages compiled by the Applicants, provided in 3 separate parts.

Procedural Issues

6. The Tribunal issued standard directions in this matter on 11th September 2023. Paragraph 1 of the Tribunal's directions required the

Respondent to send accounts, estimates and demands to the Applicants by 2nd October 2023. On 2nd October 2023 Mr Gurvits of Eagerstates emailed to the Tribunal various such documents and stated,

> *Please find attached copies of the last demands which show the amount due:*
>
> *As a breakdown of the amounts outstanding, these are:*
>
> *Flat 2 – £158.28 final service charges from RTM handover*
> *Flat 3 – £250 ground rent, £94.22 final charges from RTM handover, £115.20 admin charges for the collection of the ground rent and £120 being costs incurred in anticipation of S.146 due to non-payment of the account*

7. It is mystifying why Mr Gurvits should have sent this material to the Tribunal. The directions were clear it had to go to the Applicants. Moreover, most, if not all, of the many directions orders Mr Gurvits has seen over the years instructed him to copy the other parties in on any correspondence to the Tribunal but he did not do so.

8. Inevitably, on 5th October 2023, the Applicants complained that the Respondent had not complied with the directions. By letter dated 12th October 2023, the Tribunal directed the Respondent to explain themselves. Mr Gurvits's response was an email on 27th October 2023 briefly asserting that the Respondent had complied.

9. On 16th November 2023, Mr Gurvits applied in Order form 1 for an extension of time for providing the Respondent's Statement of Case. The Applicants objected on the basis that the Respondent had already had enough time and has a history of causing delays in this and other litigation. By letter dated 23rd November 2023 the Tribunal notified the parties that the Respondent's application was refused on the grounds that it was vague and unevidenced.

10. By emails dated 24th and 28th November 2023, the Applicants sought guidance as to what should happen next in the light of the Respondent's continued failure to comply with the directions and the refusal of their application for an extension of time. By emails dated 27th and 28th November 2023 Mr Gurvits complained that the Applicants' statement of case was not clear or coherent. Judge Powell considered these emails and wrote to the parties on 15th December 2023 making the following points:

    (a) He considered the issues to be "very straightforward".
    (b) The Applicants' application form explains that they challenge two invoices issued by the Respondent and the additional costs added by subsequent invoices.
    (c) The Applicants had made a prima facie case that the charges may not be payable or reasonable and the burden now turns to the Respondent to make a case that they are payable and reasonable.

(d) The Respondent could do this by providing an explanation in each case as to what the charges are and how they arose, and why they are still payable after 6 years.
(e) Further, submissions should be provided, by reference to the lease, statute and case law, as to the payability and reasonableness of each invoiced amount, not only of the original charges but also of the additional charges subsequently added.
(f) In particular, the Respondent should address the recoverability of "Admin costs for rent collection" in the light of *Avon Ground Rents Ltd v Stampfer* [2022] EWCA Civ 1375.
(g) If the Respondent remains unclear about any challenge, they must simply do their best to reply to the Applicants' points in the appropriate column of the Disputed Charges Schedule.
(h) The time limits in various directions were extended and the hearing on 21st March 2024 would proceed as planned.

11. By email dated 19th January 2024, addressed only to the Tribunal, Mr Gurvits stated, in full, "We will need a few extra days to produce this and should do so within the next week". This is the worst example of Mr Gurvits's failure to comply with Tribunal procedure. Despite having been told to use the Tribunal form Order 1, and having used it in these proceedings, he did not do so this time. Further, despite having his earlier application specifically refused for a lack of reasoning or evidence, he again provided none. It is inconceivable that he didn't realise that an application in this form was bound to fail.

12. By email dated 22nd January 2024, the Applicants pointed out that the Respondent had not complied with the extended deadline, 19th January 2024, for the provision of their statement of case. They also made submissions by email on this issue the following day, urging the Tribunal not to give the Respondent yet more time to comply. Mr Gurvits replied by email dated 23rd January 2024 alleging that the Respondent had made an application for an extension of time – presumably, this was a reference to his email of 19th January 2024.

13. On 24th January 2024, Judge Powell directed that, unless the Respondent complied with Direction 3 of the Directions of 11th September 2023 by 4pm on 31st January 2024, they would be debarred from further participation in the proceedings and the Tribunal may determine summarily all issues against the Respondent without further notice.

14. By email dated 31st January 2024 Mr Gurvits provided a copy of the Applicants' Disputed Charges Schedule with brief comments in the column allowed for the Respondent's answers. The email itself stated,

> *We have done our best to respond to the statement issued by the Applicants.*

As we have previously noted, the case has not been set out clearly at all and it isn't clear what the case is but we have still done our best to respond

15. The problem for the Respondent is that, while this was clearly intended by Mr Gurvits to be the Respondent's compliance with the directions and the unless order, the email and attached Schedule did not achieve that objective. Paragraph 3 of the directions of 11th September 2023 listed four main bullet points setting out the documents the Respondent was required to send to the Applicants. At best, the comments in the Schedule dealt with the first bullet point. It was not accompanied by copies of any relevant invoices or other documents, a statement setting out any administration charge provisions in the lease or any legal submissions nor any witness statements. While the lack of witness statements can be excused on the basis that the Respondent did not wish to rely on witness evidence, the other two items would be essential to the Respondent's case. As described further below, the Tribunal is unable to understand where the Respondent's figures come from without the relevant supporting documents. Also, Judge Powell specifically set out what legal submissions the Respondent needed to provide (see sub-paragraphs (e) and (f) in paragraph 10 above).

16. Therefore, the Respondent did not comply with the unless order. The consequence is that they have been barred from further participation in the proceedings. The unless order took effect the moment the Respondent failed to comply with it – no further steps were required for the bar to be implemented.

17. The Tribunal is satisfied that the Respondent was aware that this hearing was going ahead. Judge Powell reiterated it in his letter of 15th December 2023. The Applicants discussed the hearing with Mr Gurvits only the day before.

18. The Respondent has continually made clear their contempt for the Tribunal and its procedures. They are fully aware of what they need to do but they have not contacted the Tribunal about the hearing, whether to ask for an adjournment, explain their absence or anything else. In these circumstances, and given their debarment, the Tribunal is satisfied that it is in the interests of justice to proceed with the hearing in the absence of the Respondent.

The Substantive Issues

19. The charges which the Applicants challenge are:

(a) "Admin costs for rent collection" of £38.40 for each occasion when the annual ground rent of £125 was demanded in each year from 2017 to 2023 inclusive.
(b) Ms Nicholls was also charged £32.40 in 2016.
(c) By letters dated 5th April 2019, Eagerstates alleged that £257.62 was overdue from Ms Nicholls and £158.29 from Mr & Mrs Harvey.

(d) Ground rent invoices thereafter claimed more sums were owed by Ms Nicholls: £421.02 on 24th February 2021, £584.42 on 1st September 2021, £704.42 on 1st March 2022 and 2023 and £377.62 on 28th February 2024.
(e) On 11th October 2021, Eagerstates sent Ms Nicholls a letter headed "Notice of Proceedings" in which they purported to add a charge of £120.

20. In the light of the Court of Appeal's judgment in *Avon Ground Rents Ltd v Stampfer* [2022] EWCA Civ 1375, to which Judge Powell directed the Respondent's attention in December, charges for the administration of the collection of ground rent requires specific justification in that the terms of the lease must allow them. The Respondent has provided no such justification and the Tribunal couldn't see one in the lease. The Applicants directed the Tribunal's attention to paragraph 6 of the Sixth Schedule to the lease but that merely permits the employment of managing agents for the purposes, amongst other things, of collecting rents – it does not permit separate charges for carrying out that function. Therefore, these charges are neither reasonable nor payable.

21. In relation to the charges referred to in sub-paragraphs (c) and (d) of paragraph 19 above, it is not possible to identify from the documents before the Tribunal any justification for any of the charges or how they have been calculated. A simple assertion that they are owing from the last service charges prior to the exercise of the right to manage is insufficient. For this reason alone, these charges are neither reasonable nor payable.

22. Mr Gurvits has apparently asserted to the Applicants that invoices were raised for these amounts within 18 months of the relevant expenditure having been incurred but there is no evidence to support this assertion – on the contrary, the Applicants are adamant that none were ever received. They also pointed to the ground rent invoices up to and including February 2019 which all stated that nothing was owing on each Applicant's account.

23. Paragraph 31 of the Fourth Schedule to the lease provides that the Interim and Service Charges are "recoverable in default as rent in arrear." The limitation period for claiming rent under section 19 of the Limitation Act 1980 is 6 years. To the extent that the sums were invoiced more than 6 years after the Applicants' liability allegedly arose, they would not be recoverable in any event.

24. In the Scott Schedule the Respondent asserted that the sum of £158.20 invoiced to Mr & Mrs Harvey is due from the RTM company. However, this sum was demanded from them as individual lessees. On the Respondent's own case, Mr & Mrs Harvey cannot be liable for this sum.

25. The Applicants complained that, in fact, the Respondent owes money to the RTM company. Just 3 weeks before the RTM took effect, the Applicants paid estimated Interim Charges which included amounts

such as management fees yet to be incurred and contributions to the reserve fund. Since these sums would not have been used, the Applicants say they should have been returned and the only reason why they haven't sued for it is that they were just glad to be rid of the Respondent and didn't want to be bothered further by them. However, the RTM company is not a party to the current proceedings (even though most of its members are) and no claim for such sums was included in the application. Therefore, the Tribunal cannot rule on this.

26. The Respondent sought to impose the additional charge of £120 for Ms Nicholls's failure to pay the charges referred to in sub-paragraphs (c) and (d) of paragraph 19 above. However, since those charges are not payable, this further charge is not reasonable and, therefore, not payable.

Costs

27. The Applicants sought 3 orders in relation to costs:

(a) The Applicants paid a fee to the Tribunal of £100 for their application and £200 for the hearing. The Applicants have been wholly successful. The Tribunal is satisfied that it is appropriate to order the Respondent to reimburse the Applicants the total sum of £300.

(b) The Applicants sought an order under section 20C of the Landlord and Tenant Act 1985 to prohibit the Respondent from seeking to recover any costs incurred in the proceedings through the service charge. It is not clear, given their lack of participation, that the Respondent did incur any costs. In any event, given the Respondent lack of engagement in the proceedings, it would be neither just nor equitable to allow them to recover anything and so the Tribunal makes the order.

(c) Further, the Applicants sought an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from seeking to recover any costs incurred in these proceedings by direct charge to one or more of the Applicants. For the same reasons as those for the section 20C order, the Tribunal grants the order.

Name: Judge Nicol **Date:** 21st March 2024

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 20C

(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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an

administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

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

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.