



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

**Case reference** : LON/00AH/LSC/0444

**Property** : Flat 5 Homesdale Road, South Norwood  
London SE25 5PP

**Applicant** : Ms Julia Man

**Representative** : n/a

**Respondent** : Bowlwonder Ltd

**Representative** : n/a

**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 N O'Brien, Mr O Dowty MRICS

**Venue** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 9 May 2024

---

**DECISION**

---

**Decisions of the tribunal**

- (1) The tribunal determines that the sums claimed by way of a service charge for the year 2021-2022 for pest control, and remedial works to the electrics in Flat 8 for damage caused by vermin are not payable by the applicant under the terms of her lease.
- (2) The tribunal determines that the sum claimed as a service charge for the year ending 2023 for repairs to 6 plug sockets and partial rewiring to repair damage by rodents is not payable by the applicant under the terms of her lease.

- (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 Applicant through a service charge.
- (4) The tribunal makes an order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act so that none of the landlord's costs of the tribunal proceedings may be passed on to the Applicant as an administration charge.
- (5) The tribunal determines that the respondent shall pay the applicant £300 within 28 days of this Decision, in respect of the tribunal fees.

### **The application**

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of various items which were demanded by the Respondent as part of service charges sought from the Applicant in respect of the service charge years 2020-2021, 2021-2022 and 2022-2023 .

### **The hearing**

2. The Applicant did not attend the hearing. On the day before the hearing she emailed the case officer to request that her application be dealt with as a paper determination. Her request was forwarded to Judge Carr who declined it in view of the lateness of the request, however it is possible that the applicant was not aware of this as she has limited access to her emails. On the morning of the hearing a Mr Clacy, a director of the respondent company, emailed the tribunal to request that he attend the hearing remotely as he lives in Newcastle Upon Tyne. His email indicated that the respondent accepted that the costs which were the subject matter of the complaint should ordinarily have been the subject of an insurance claim, and that there had been a lack of communication with the applicant in relation to this. He requested that he attend remotely. The tribunal was able to switch to a hybrid hearing and Mr Clacy was able to take part. He confirmed that the address provided by the applicant for the respondent was correct, and he thought that he must have missed correspondence relating to these proceedings. He stated that he had only learned of the existence of these proceedings yesterday. He had a copy of the hearing bundle prepared by the applicant.
3. The tribunal considered that it would be in keeping with the overriding objective to proceed in the Applicant's absence. The sums involved are not large and it would have been disproportionate to the sums in issue not to proceed, particularly in the light of the respondent's concessions as set out in Mr Clacy's email.

### **The background**

4. The property which is the subject of this application is a first floor studio flat in a building containing 9 flats. According to the application part of the building was originally a Victorian villa. Flats 1-6 are located in what was the original house. Flats 7-9 are located in an extension to the original house which was added in the 1990s.
5. 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.
6. The Applicant holds a long lease of the property 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.

### **The issues**

7. At the start of the hearing the tribunal identified the relevant issues for determination as follows:
  - (i) The payability of service charges for pest control and repairs to the electrical installations in flat 8 claimed from the Applicant as a service charge in the year 2021-2022. The sums claimed from the applicant were £35.50 and £134.50 respectively.
  - (ii) The payability of the service charge levied in the service charge year 2022-2023 for 6 sockets and rewiring due to rodent damage. The sum claimed from the applicant was £55.50.
8. In her original application the Applicant additionally sought to challenge an item demanded in the year ending 2022 described as 'balance brought forward from demand dated 13 October 2022'. However it is not clear what this relates to or whether the tribunal has jurisdiction to determine it. She also sought to raise an issue with the allocation of a payment made in respect of ground rent for the year 2022/2023 but issues relating to ground rent are outside the tribunal's jurisdiction. The tribunal has no jurisdiction to determine disputes relating to allocation of payments.

### **The lease**

9. Paragraph 1A of the 3rd schedule to the lease specifies the costs towards which the lessee is to contribute by way of a variable service charge.

*The Lessee is to contribute towards the expense of maintaining repairing and renewing:*

  - (A) *the gutters down pipes and rainwater pipes of the flats on the estate and the sewers and drains gas and water courses and electrical cables and wires in under or on the state and enjoyed or used by the lessee in common with the owners of the lessees of other flats.*

- (B) *The boundary and screening walls gates and fences and garden ground driveway and parking spaces of the estate*
- (C) *the roofs foundations and main walls of the building*

10. Mr Clacy confirmed that he accepted on behalf of the respondent that the sums claimed as set out in paragraph 7(i) and (ii) above were not in fact strictly speaking payable by the applicant under the terms of her lease. He explained that the costs of remedying the infestation of vermin and the consequent damage to the electrical installation in Flat 8 were claimed from the leaseholders as a service charge rather than making a claim against the buildings insurance. He stated that there was a claims history in respect of this building and the respondent was concerned that making a further claim would either increase the premiums or increase the excess payable in respect of any claim. He explained that any additional insurance costs would have been claimed from the lessees as a service charge. The respondent concluded it would not be cost effective to make a claim against the insurance as this would be more expensive for the lessees. He accepted that this had not been very well explained to the lessees.

### **The tribunal's decision**

11. In the light of Mr Clacy's acceptance that the three disputed charges did not relate to items which were properly recoverable as a service charge from the applicant, the applicant succeeds in relation to those three items set out in paragraph 7 (i) and (ii) above. None of these 3 charges are payable by her under the terms of her lease.

### **Application under s.20C and refund of fees**

12. At the end of the hearing the tribunal asked Mr Clacy if he had any objection to the Applicant's claim for the reimbursement of the tribunal fees. He indicated he did not. Additionally he indicated he had no objection to the applications made by the applicant pursuant to section 20C of the 1985 Act and paragraph 5A of schedule 11 to the 2002 Act. The tribunal orders the respondent to refund the hearing fee of £200 and the application fee of £100 within 28 days of the date of this decision. The tribunal also makes orders under section 20C of the 1985 Act and Paragraph 5A of Schedule 11 to the 2002 Act so that the respondent may not pass on any of its costs incurred in connection with the proceedings before the tribunal through the service charges or as an administration charge.

**Name:** Judge O'Brien

**Date:** 3 May 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).