



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

Case reference : **LON/00AK/LSC/2023/0347**

Property : **27 Eaton Park Road, London N13 4ED**

Applicant : **Dr Zohreh Bahrami Mandich**

Representative : **In person**

Respondent : **Georgina Georgiou**

Representative : **N/A**

Type of application : **Service charge determination**

Tribunal members : **Judge Tagliavini
Mr S Wheeler MCIEH CEnvH**

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

Date of hearing : **2 May 2024**
Date of decision : **14 May 2024**

DECISION

The tribunal's decision

1. The following sums are payable by the respondent to the applicant:
 - (i) A sum of £270 in respect of the surveyor's fee.
 - (ii) A sum of £100 in respect of the repair to the porch.
 - (iii) No other sums are payable by the respondent to the applicant for the reasons detailed below.
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The application

2. The Tribunal has received an application for determination of the respondent tenant's liability to pay service charges in the service charge years 2020-21 (surveyor's fee £540), 2021-22 (porch repair £200) and 2022-23 (insurance £932.20).
3. The subject property comprises a ground floor flat in a converted house comprising of two flats. The applicant is the freeholder and the long leaseholder of the upper first floor flat. By clause 1 of the lease dated 8th April 1982, the foundations and the main entrance door and common entrance (porch) were included in the demise of the ground floor flat.

The background

4. The subject property comprises a ground floor flat in a converted house comprising of two flats, of which the applicant is the freeholder and the long leaseholder of the upper first floor flat. Directions were given by the tribunal dated 19 September 2023 and amended on 11 October 2023. A hearing was held on 27 February 2024, which had to be adjourned due to the applicant's failure to provide a bundle of documents. Consequently, further directions were given which identified the issues as:
 - (a) Whether the following charges are payable:
 - (i) Building Insurance (£414.16 said to be due from the Respondent, being 50% of the total cost of £828.32) for July 2021-July 2022;
 - (ii) Building Insurance (£496.10 said to be due from the Respondent, being 50% of the total cost of £992.20) for July 2022-July 2023;
 - (iii) Survey fees (£260 said to be due from the Respondent, being 50% of the total cost of £540);
 - (iv) Ground rent (£150) for 2022;

- (v) Maintenance of porch area (£100 said to be due from the Respondent, being 50% of the total cost of £200);
- (vi) Solicitors' fees of £1,000;
- (vii) Solicitors' fees of £2,643.
- (viii) Whether the Tribunal has jurisdiction to determine the issue in respect of the Ground Rent (the Tribunal takes the provision view that it does not, but will hear from the parties on the issue at the hearing) and the effect, if any, of the fact that the Respondent states that she will pay for this;
- (ix) Whether the building insurance items fall within the terms of the Lease and are payable as a service charge, including whether the Respondent was entitled to insure the Property and to charge the Applicant for that insurance; Whether the survey fee falls within the terms of the Lease and is payable as a service charge, and the effect, if any, of the fact that the Respondent states that she will pay for this;
- (x) Whether the costs in respect of the porch fall within the terms of the Lease;
- (xi) Whether there has been compliance with the requirements of the Lease;
- (xii) Whether the solicitors' costs are payable under the Lease and as a service charge;
- (xiii) Whether any demands for service charges have been served and is so, whether they comply with statutory requirements (including s.47 Landlord and Tenant Act 1987, s.48 Landlord and Tenant Act 1987, s.21B Landlord and Tenant Act 1985);
- (xiv) Whether an order for reimbursement of the Tribunal fees of £200 ought to be made.

The hearing

5. At the oral face to face hearing held on 1 May 2024, the applicant attended in person accompanied by her daughter. The respondent did not appear and was not represented. The applicant provided the tribunal with a digital bundle of documents comprising of 226 pages and gave oral evidence to the tribunal. This bundle included a Schedule of the Service Charges disputed by the respondent alleging unreasonable behaviour on the part of the applicant and damage to her property by the applicant's tenants. No further details were provided.

Reasons for the tribunal's decision

Ground rent

6. The tribunal has no jurisdiction to hear issues of ground rent, irrespective of whether the respondent has previously stated she would pay any ground rent owed to the applicant.

Demands for payment

7. The tribunal finds that none of the demands for payment prior to the demand dated 17 March 2024 complied with the provisions of ss. 47 and 48 of the Landlord and Tenant Act 1987 or s.21B of the Landlord and Tenant Act 1985 i.e. after this application was made to the tribunal. Consequently all of the sums demanded prior to 17 March 2024 were not payable by the respondent at the date the application was made. However, since 17 March 2024 the only sums payable by the respondent are those detailed below.

Survey fee

8. The tribunal finds the sum of £540 was paid to OCK Chartered Surveyors on 14 August 2020 for 'Taking client's instructions, inspecting property and preparing insurance valuation report.' The tribunal finds this sum can properly be included as part of the insurance premium. The tribunal finds the respondent is liable to pay 50% (£270) of the sum incurred when it is validly demanded.

Insurance – 2021/2022 and 2022/2023

9. Clause 3(16) of the lease requires the respondent:

To keep the lower flat insured against fire in the joint names of the Landlord and Tenant from loss damage by fire storm tempest and any other comprehensively insurable risk.....Provided Always that the Landlord shall have power to insure in default and to recover the premium as rent in arrear

10. The tribunal finds the respondent is required to take out an insurance policy in respect of the ground floor flat and include the applicant's name on the schedule of insurance. In default, the tribunal finds the applicant is entitled to take out insurance for the whole of the property but is required to include the respondent's name on the Schedule of Insurance. The tribunal finds the applicant has failed to include the respondent's name on the insurance schedules for 2021/22 and 2022/2023 as

required in default and therefore finds a 50% contribution to the premiums is not payable by the respondent.

Maintenance of the porch

11. The tribunal finds the porch forms part of the demise granted to the respondent. However, clause 5 (b) of the lease makes provision for the applicant landlord to carry out repairs and the respondent to contribute 50% of the cost of them. The tribunal finds that the respondent is liable for £100.

Solicitor's fees of £1,000 and £2,643

12. The tribunal finds the only provision in the lease to legal/solicitor's costs in clause 3(14) of the lease makes reference to costs incurred as:

'To pay all expenses including Solicitors costs and Surveyors fees incurred by the Landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.

13. In a letter dated 14 July 2022, the applicant's solicitors Peter Brown & Co wrote to the respondent stating:

Please note that this letter is written in contemplation of litigation due to the continued breach of your lease covenant, in particular your failure to pay your half share of the Landlords costs incurred in maintaining the property, as such pursuant to Paragraph 3 subsection (15)(sic) of the Lease our client is entitled to payment of legal costs incurred and our client's legal costs to date in this matter are £1,300 plus VAT plus disbursements.

14. The tribunal finds these sums have not in fact been incurred incidental to the service of a notice. "Incidental to" does not have the same meaning as "in contemplation of" a notice. These costs are far too remote to be considered as incidental to the service of a notice. The tribunal also finds that the sums were incurred to claim service charges that were not yet payable (as discussed above) and so are not reasonably incurred.

Reimbursement of fees

15. The tribunal does not consider it is reasonable to direct the respondent reimburse the applicant's fees of the application/hearing in light of the decisions made above.

Name: Judge Tagliavini

Date: 14 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).