



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

**Case Reference** : LON/00BD/LSC/2023/0349

**Property** : 1 Mountstuart Court, 2 Southcott Road,  
Teddington, Middx TW11 0BF

**Applicant** : Chris Williams

**Respondent** : Sandy Lane Residents Management Co Ltd

**Type of Application** : Payability of service charges

**Tribunal** : Judge Nicol  
Mrs A Flynn MA MRICS

**Date and Venue of  
Hearing** : 29<sup>th</sup> January 2024;  
10 Alfred Place, London WC1E 7LR

**Date** : 30<sup>th</sup> January 2024

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**DECISION**

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- (1) Service charges in the amount of £1,800.22 are not payable by the Applicant in accordance with clause 11.11 of her lease.
- (2) The Tribunal makes the following directions in relation to the Applicant's applications for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and the Respondent's application for a costs order pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013:
  - (a) The Tribunal will determine the costs application on the papers, without a hearing, unless at least one party requests a hearing.
  - (b) Each party shall, **within 14 days** of this decision being sent to the parties, email to the other party and to the Tribunal their

written representations in support of their respective costs applications. The Respondent must include a statement of costs.

(c) Each party shall, **within 14 days** thereafter, email to the other party and to the Tribunal their written representations in response to those of the other party.

(d) The Tribunal will thereafter determine the costs application and provide a written decision as soon as possible.

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

## **Background**

1. The Applicant holds the long lease of a two-bedroom flat on the ground floor of a 4-storey block of 14 flats. The Respondent is the lessee-owned management company, of which the Applicant is a member.

2. The Applicant has applied to the Tribunal in accordance with section 27A of the Landlord and Tenant Act 1985. The directions issued by Judge Latham on 19<sup>th</sup> October 2023 stated:

(5) ... the Applicant seeks to raise a single point. She contends that the flat was uninhabitable between February [2021] and July [2022]\*. Pursuant to her lease, the Respondent should have waived a proportion of the insurance costs and service charges payable during this period.

(6) Clause 11.11 of her lease provides:

“If you cannot use all of your apartment because of damage caused by an insured risk then you only have to pay a fair [and reasonable] proportion of your rent, your share of insurance costs and service charge based on the extent that you can still use your apartment until the whole of your apartment can be used again.”

(7) It seems to be common ground that a serious flood was caused to the Applicant’s [flat] caused by a defective pipe. The Applicant states that this occurred in February [2021]. Between 1 November [2021] and 1 July [2022], the landlord’s insurers paid for temporary accommodation. The landlord also waived 12 months’ rent. The insurance does not extend to refunding the service charge or insurance paid by the Applicant whilst her flat was uninhabitable. It was agreed that the flood was an “insured risk” as defined by clause 11.2 of the lease. The Applicant contends that she paid service charges and insurance of £6,000 during this period. She asserts that her claim relates to the payability of her service charge and therefore falls within the jurisdiction of this tribunal.

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\* Years of claim corrected by Applicant in an email to the Tribunal dated 27<sup>th</sup> October 2023.

- (8) Whilst the landlord is responsible for insuring the building, it was agreed that any refund would be payable by the Respondent management company. The landlord therefore has no interest in these proceedings.
3. The Tribunal convened to hear the case on 29<sup>th</sup> January 2024. The attendees were:
    - The Applicant; and
    - Mr Simon Lewis, director of the Respondent
  4. The papers before the Tribunal consisted of a bundle of 424 pages, incorporating a bundle from each party.
  5. As set out by Judge Latham, it was not in dispute that the Applicant could not use all of her apartment because of damage caused by an insured risk, namely two leaking pipes. The Respondent's arguments concerned what would be a fair and reasonable proportion of the Applicant's share of insurance costs and service charge and how long it was that she could not use her apartment until the whole of it could be used again.
  6. The Tribunal informed the parties, given that they were not legally represented, as to the relevant law they would follow in interpreting the lease. In *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619 the Supreme Court reiterated that the interpretation of a contractual provision, including one as to service charges, involved identifying what the parties had meant through the eyes of a reasonable reader, and, save in a very unusual case, that meaning was most obviously to be gleaned from the language of the provision. It was further reiterated in *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; [2017] AC 1173 that this was not a literalist exercise focused solely on a parsing of the wording of a particular clause but required consideration of the contract as a whole. However, the starting point is always the words of the lease and, in most cases, the interpretation of those words ends at that point.
  7. The Respondent's first objection to the Applicant's claim was to allege that she had, in breach of the Tribunal's directions, failed to explain how she had calculated the sum of £6,090 which she said was not payable. The Applicant explained, by reference to her Statement of Account provided by the Respondent's agents, that it was made up of the following elements:
 

• 1 Jan 2021	Half yearly service charge in advance	£853.68
• 1 July 2021	Half yearly service charge in advance	£853.68
• 5 Aug 2021	Roof works	£3,375.50
• 21 Sep 2021	Late Payment Admin Fee	£39
• 30 Nov 2021	Interest on Account Service Charges	£45.48
• 1 Jan 2022	Half yearly service charge in advance	£922.66
  8. In the light of the explanation, Mr Lewis withdrew the first objection but moved on to the second, namely that the Applicant had breached clause

5.2 of her lease which required her to keep the apartment clean, well decorated and in good repair. Clause 2.8 defined the apartment as including conduits and facilities that are within it and exclusively serve it and plumbing.

9. As the Applicant explained, the cause of the severe water leak into her flat was defective pipes embedded in the walls behind each of her two toilets. She accepts now, following advice from LEASE (the Leasehold Advisory Service), that it is her responsibility to keep those pipes in repair. However, in 2021 when the problem arose, she sought to get the Respondent's agents to deal with the problem. Her argument was that the pipes came within the buildings insurance and so the Respondent should be investigating and remedying the problem.
10. Clause 11.2 of the lease provides that the buildings insurance should include the bursting and overflowing of pipes and both parties accept that this means that the insurance arranged by the landlord correctly covered the Applicant's severe water leaks. While it is unusual for a problem within the lessee's repairing covenant to come within the insurance arranged by the landlord, there is nothing necessarily wrong with such an arrangement. In this case, it led the Applicant to misunderstand the parties' respective obligations under the lease. The Respondent sought to suggest, and Mr Lewis pressed at the hearing, that the Applicant deliberately and dishonestly misrepresented the position but there is no evidence that her error arose from anything other than a genuine belief.
11. In any event, the Respondent asserted that the Applicant delayed addressing the problem of the leaks while fruitlessly asserting that the Respondent should be doing so. While the Applicant claimed that she first noticed that there was an issue before Christmas in 2020 and that it first became significant in February 2021, Mr Lewis pointed out that there were no documents demonstrating action until July when the Applicant reported the problem to the Respondent's then agents, Hazelvine, and in August when a plumber she had instructed reported on what the problem was and quoted for a remedy.
12. The Applicant asserted that between February and July 2021 she spent considerable time, in the midst of the COVID restrictions, trying to find someone to investigate the issue and then dealing with the builders she brought in who were unable to identify the cause of the leaks. She also said she had to deal with two insurers, McLarens for the landlord's buildings insurance and Privilege for her home contents insurance. Unfortunately, she had no explanation as to why there was no documentary evidence which could be expected to exist if her account were correct. Also, she could not explain the emails and letters from her, Hazelvine and the landlord's agents, E&J Estates, which all strongly suggested that she first reported the problem in July, her plumber first investigated in August and the loss adjusters first visited in September.

13. In the circumstances, based on the available evidence, the Tribunal cannot be satisfied that the Applicant's use of her flat was affected by the water leaks any earlier than July 2021 (this is *not* a finding that she lied about it). Having said that, there is equally no evidence that the Applicant delayed matters so as to cause the problem to be worse than it otherwise would have been. If the Applicant had been in breach of clause 5.2 of her lease so as to cause the leaks to be as significant as they were, it is likely that the insurers' loss adjusters would have raised the issue but there is no evidence that it concerned them at any time.
14. Mr Lewis further submitted that the period for which the Applicant could argue that her use of her flat was limited by the leaks should run from no earlier than 1<sup>st</sup> November 2021 when the insurers first paid for her to have alternative accommodation at a hotel. However, the insurers paid for that accommodation following an investigation which the Tribunal accepts, on the Applicant's account, was very difficult as the problems were hidden behind the flat walls. The evidence shows, and the insurers clearly accepted, that the flat was in such a state as to require the Applicant to be decanted to alternative accommodation from some time before that accommodation was actually secured. In the circumstances, the Tribunal accepts that the Applicant could not fully use her flat from July onwards.
15. Clause 11.11 of the lease requires that the Applicant's service charges be restricted to a fair and reasonable proportion for the period when her flat is out of use. What is "fair and reasonable" is not expressly defined. The wording of clause 11.11 makes it clear that there must be an apportionment if only part of the flat is out of use but provides no guidance beyond that.
16. The Respondent argued that the Applicant should continue to be liable for her share of the maintenance of the estate and the building since she benefits from the results on her return. However, this argument would appear to extend to nearly all, if not all, the service charges, rendering clause 11.11 otiose insofar as it relates to service charges.
17. In the Tribunal's opinion, the wording of clause 11.11 clearly envisages that a lessee should be relieved of obligations to pay service charges which relate to a period when their property is out of use. Regular annual service charges would come within such obligations. To carry out further analysis of such service charges to find out how the benefit of each arrives to the lessee over time is to require the clause to bear a more detailed meaning than its simple wording would suggest.
18. Having said that, the roof works are an example of long-term capital expenditure which provide for a period of maintenance considerably in excess of the period of the Applicant's claim. The regularity of major work to the roof is something which would normally be measured in decades, not months or years. The works were apparently still going on when the Applicant returned. She cannot be entitled to reimbursement simply because the bill for major roof works happened to land in the

parties' laps coincidentally when the flat was out of use. The Tribunal is satisfied that it would not be fair or reasonable to relieve the Applicant of the cost of the roof works.

19. Mr Lewis challenged whether the "Late Payment Admin Fee" should be included within the Applicant's claim. On the face of it, the fee would appear to have been incurred when the Applicant initially failed to pay the half-yearly advance service charge on 1<sup>st</sup> July 2021 (she later paid the service charges so as to stop a county court claim that the Respondent had brought, albeit without prejudice to her claim before the Tribunal). The Respondent would have had access to the relevant documents and, therefore, had the opportunity to refute this implication but Mr Lewis was unable to do so.

20. Mr Lewis pointed out that the Applicant had benefited from a credit of £15.12 for the balancing charge at the end of the service charge year 2021. The Tribunal accepts that this sum should be deducted from the amount of the Applicant's claim.

21. As for the interest of £45.48, this would appear to arise mostly, if not entirely, from the balance on the Applicant's account prior to July 2021. It would not appear to be fair or reasonable to attribute it to the period when her flat was out of use.

22. In the light of the above matters, the Tribunal concludes that the relevant service charges which fall within clause 11.11 for the period July 2021 to the end of June 2022 consist of the following:

• 1 July 2021	Half yearly service charge in advance	£853.68
• 21 Sep 2021	Late Payment Admin Fee	£39
• 1 Jan 2022	Half yearly service charge in advance	£922.66
	<i>less</i>	
• 31 Dec 2021	Balancing Adjustment	-£15.12
	Total	<u>£1,800.22</u>

23. The Applicant's flat was not partially, but entirely, out of use for that period. Therefore, the Tribunal has concluded that the Applicant is not liable to pay the whole of the sum of £1,800.22 in respect of her service charges for the period July 2021 to June 2022 inclusive.

24. In her application, the Applicant sought orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from recovering their costs of these proceedings through the service charge or direct from the Applicant. For its part, the Respondent sought a costs order against the Applicant pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. These applications would benefit from the parties having seen this decision by the Tribunal. It may be that, having read it, one or both

parties may no longer wish to pursue their applications but, if they do, the Tribunal has made directions above for their determination.

**Name:** Judge Nicol

**Date:** 30<sup>th</sup> January 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).

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **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.

### **Section 27A**

- (1) An application may be made to the appropriate tribunal for a determination whether a service 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) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) 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.

### **Commonhold and Leasehold Reform Act 2002**

#### **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.

<b><i>Proceedings to which costs relate</i></b>	<b><i>“The relevant court or tribunal”</i></b>
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.