FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BD/LSC/2022/0099**
Property	**:**	**1 Mountstuart Court, 2 Southcott Road, Teddington, Middlesex, TW11 0BF**
Applicant	**:**	**Ms Chris Williams**
Representative	**:**	**In person**
Respondent	**:**	**Sandy Lane Residents Management Company Limited**
Representative	**:**	**Ms Aslami, Trainee Solicitor, from Allsquare Legal Limited, Solicitors**
Type of application	**:**	**Application under S.27A Landlord and Tenant Act 1985 to determine liability to pay and reasonableness of service charges**
Tribunal	**:**	**Tribunal Judge I Mohabir** **Mrs L Crane MCIEH**
Date of Decision	**:**	**17 April 2023**

DECISION

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Introduction

1. By an application dated 3 March 2022, the Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 ('the Act') as to whether various service charges are payable for the Property for the years 2021/22 and 2022/23. They also seek an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Act.

2. The Applicant is the long leaseholder of 1 Mountstuart Court, 2 Southcott Road, Teddington, Middlesex, TW11 0BF ('the property') and the Respondent is the "tenant owned" company responsible for the overall management of the building and the estate.

3. The Applicant is the leaseholder of the property pursuant to a lease dated 23 July 2008 made between (1) Linden Homes South East Limited ('the Landlord') and (2) Gold Avenue Limited ('the Tenant') and the Respondent ('the lease').

4. The substantive issues in this application were identified and limited in the Tribunal's directions dated 6 October 2022 to the following matters:

   (a) whether an invoice for £168 to remove scaffolding and/or plants is payable?
   (b) whether the Applicant is liable to pay a proportion of the legal costs incurred by the Respondent in previous proceedings in the sums of (a) £4,200 (b) 11,822.04 and (c) £28.56.

   Each of these is dealt with in turn below.

Relevant Law

5. This is set out in the Appendix annexed hereto.

Decision

6. The hearing in this case took place on 13 March 2023. The Applicant appeared in person. The Respondent was represented by Ms Aslami, a Trainee Solicitor.

7. The Tribunal heard submissions from both parties on the issues set out above.

8. The Applicant principally relied on the evidence set out in her witness statement at page 45 in the hearing bundle.

9. The Respondent relied on its Reply and the witness statement of Mr Anwar dated 15 December 2022, a Property Manager from Hazelvine Limited who is the appointed Managing Agent.

Invoice for £168

10. These costs represent the abortive costs of a visit on 4 November 2020 by contractors instructed by the Respondent to allegedly remove the Applicant's property and plants that had encroached onto the communal area located at the patio to the rear of the property. These costs fall into the 2020/21 service charge year.

11. The evidence of Mr Anwar (at paragraph 6 in his witness statement) is that the workmen were physically prevented by the Applicant from removing her belongings that had encroached onto the communal area and that she had also verbally abused them. It seems that Mr Anwar was present at the time of the visit and he instructed the workmen to withdraw.

12. Exhibited to Mr Anwar's statement is correspondence passing between the parties commencing from 13 August 2020 and continuing into 2021 regarding the same issue.

13. As evidence of the encroachment by the Applicant, Mr Anwar exhibited a copy of a plan (at page 69) with a shaded orange area showing the extent of the alleged encroachment by her. In addition, Mr Anwar exhibited photographic evidence taken on 13 August 2020 showing the presence of a bird feeding table and bird bath (at page 71). Mr Anwar also exhibited further photographic evidence taken on 4 November 2020 (at page 73) showing the same area with more of the Applicant's belonging encroaching onto the communal area with the addition to grey slabs or tiles to the patio area.

14. The Respondent submitted that the communal areas are defined in paragraph 2.5 in Chapter 2 of the lease and that the Applicant's encroachment was variously in breach of paragraph 7.6 in Chapter 7 by causing an obstruction to the common parts of the estate and/or causing a disturbance to neighbours. This included planting in the communal areas without consent.

15. The Respondent further submitted that pursuant to paragraph 9.4(c) and/or paragraph 9.5(d) in Chapter 9 of the lease, the Applicant is required to indemnify the Respondent for the abortive costs arising from the breach of her obligations under the lease.

16. The Applicant expressly denied that any encroachment had taken place outside the patio area to her flat. She asserted that the bird feeder and bird bath were on her patio in November 2020. In support of this, she relied on the photographic evidence at page 236 in the bundle, which she said was taken on 4 November 2020.

17. On balance, the Tribunal found that the Applicant's belongings shown in the photographic evidence at pages 71 and 73 in the bundle did encroach onto the communal area to the rear of the property and that this had occurred certainly since on or about August 2020. The Tribunal accepted Mr Anwar's evidence about this generally. He gave direct

evidence about what occurred on 4 November 2020 and the presence of the Applicant's bird feeder and bird bath in the communal area. His evidence was consistent with the contemporaneous photograph he took at the time and his subsequent email to the Applicant dated 11 January 2021 about this event (at page 184). The Tribunal made no finding about what plants, if any, the Applicant had planted in the communal area because no clear evidence had been adduced by the Respondent about this.

18. The Tribunal attached no weight to the photograph taken by the Applicant on 4 November 2020 about the position of her garden furniture, bird feeder and bird bath because the Applicant was, on her own case, not aware in advance of the visit on 4 November 2020. It was, therefore, highly improbable she would have had any reason to take a photograph of her patio on that particular day. It is more likely that the photograph was either taken after the visit on 4 November 2020 had taken place or on some other occasion.

19. The Tribunal, therefore, concluded that the Applicant had certainly encroached onto the communal area to the rear of the property beyond the extent of the patio as defined in paragraph 2.5 in Chapter 2 of the lease and, in so doing, had breached paragraph 7.6 in Chapter 7 by causing an obstruction to the communal area. The Tribunal was satisfied that the encroachment did not cause any disturbance to the Applicant's neighbours because no evidence had been presented by the Respondent about this.

19. The Tribunal was satisfied that the Applicant was contractually liable under paragraphs 9.4(c) and/or 9.5(d) in Chapter 9 of the lease to provide the Respondent with a full indemnity for these costs. In other words, the reasonableness of the costs incurred does not arise. In any event, the Applicant did not contend that the cost were unreasonable and did not provide any evidence in this regard.

20. Accordingly, the Applicant is liable for the sum of £168.

Applicant's Liability for Legal Costs

21. The costs of £4,200 and £11,822.04 were incurred by the Respondent in the first and second set of proceedings between the parties. The service charge contribution claimed by the Respondent from the Applicant is £234.70 and £57.11 respectively.

22. The Tribunal's earlier decision dated 9 March 2020, at page 85 in the bundle, deals with these costs in part. The decision helpfully sets out the long and acrimonious relationship between the parties.

23. At paragraph 27 of the decision, the Tribunal concluded that the costs of £4,200 were not payable by the Applicant personally as an administration charge. However, the costs are now being claimed through the service charge account, which is a different basis for claiming them.

24. At the hearing, the Applicant agreed to pay her service charge contribution for the costs of £4,200. Therefore, by reason of the Applicant's agreement, the Tribunal no longer had jurisdiction to make any determination about these costs. The only dispute between the parties was whether the Applicant had in fact paid her service charge contribution for the costs. The Tribunal was not presented with any evidence and could not make a finding of fact about this. In any event this is not a factually difficult matter for the parties to resolve themselves. If the Applicant has in fact paid her service charge contribution, she has discharged her liability. If not, the Respondent is entitled to enforce payment against her.

25. The costs of £11,822.04 are touched on in paragraphs 31 and 32 in the earlier decision. The Tribunal made no determination in respect of these costs.

26. The costs are the costs the Respondent had incurred in the last proceedings. Put simply, the Applicant's case was that the Respondent had not provided her with a detailed breakdown of the costs she had requested. She calculated that, for a 2 day hearing, the costs are £2,323.60 plus VAT or, in the alternative, £7,429.38 plus VAT. Therefore, she submitted that the costs are not reasonable.

27. The Tribunal was satisfied that the Applicant's calculation of the costs simply based on the attendance for a 2 day hearing was incorrect. The costs claimed included all of the costs incurred not only for the attendance at the hearing, but also the preparatory work carried out by the Respondent's solicitors. Moreover, the Tribunal was told that the costs incurred were greater than the sum being claimed because it was an agreed fixed fee and did not include the additional work carried out for the attempted mediation.

28. The Tribunal accepted this explanation. It is neither proportionate nor necessary for the Respondent to provide a forensic explanation about how each and every item of costs was incurred. This was especially so given that this is the approach taken by the Applicant historically to any service charge costs claimed by the Respondent. Having regard to the long and acrimonious relationship between the parties and the extent of the issues raised in the last proceedings, the Tribunal had little difficulty in concluding that the Respondent's solicitor would have been required to carry out extensive work and, therefore, the costs claimed did not strike the Tribunal as being excessive.

29. No other challenge was made by the Applicant about the reasonableness of the costs. Therefore, the Tribunal found that the costs are reasonable.

30. The Tribunal was told that the sum of £28.56 was a sum claimed directly from each of the lessees as a member of the Respondent company. The Tribunal ruled that, as such, it was a matter of company governance and outside the scope of the service charge provisions in the lease and, therefore, the Tribunal's jurisdiction.

Costs

31. As the application has not succeeded on any of the issues, the Tribunal did not consider it just or equitable to make an order under section 20C of the Act.

32. For the same reasons, the Tribunal made no order requiring the Respondent to reimburse the Applicant any fees she has paid to have the application issued and heard.

33. At the conclusion of the hearing, the Respondent made an oral application for the Applicant to pay the costs of these proceedings under either paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act or Rule 13 of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013.

34. However, the Tribunal was not prepared to entertain these application because the Respondent had no indicated, when the Tribunal gave directions or subsequently, that it was going to make the applications for costs at the conclusion of the hearing. Therefore, the Tribunal did not consider it procedurally fair to the Applicant to be "ambushed" in this way. If the Respondent is minded to pursue the application, then it will have to be made in the usual way with case management directions given.

Name: Tribunal Judge I Mohabir **Date:** 17 April 2023

<u>Rights of appeal</u>

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 27A

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

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 a leasehold valuation 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 a leasehold valuation 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) …

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).