



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

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**Case Reference** : CAM/00MX/LSC/2023/0017

**Property** : 23 Millgate, Wycombe Retail Park, High Wycombe HP11 1GL

**Applicant** : Richard Pierce  
**Represented by** : In person

**Respondent** : Metropolitan Thames Valley Housing Association  
**Represented by** : Nadeem Hussain (in-house solicitor for the respondent)

**Application** : Application, pursuant to s27A of the Landlord & Tenant Act 1985, to determine the liability to pay and reasonableness of service charges.

**Tribunal Members** : Judge Stephen Reeder

**Date of hearing** : 3 June 2024 convened remotely by CVP platform  
**Date of Decision** : 3 June 2024  
**Date Written** : 3 June 2024

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**DECISION**

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## DECISION

- A. The tribunal determines that the tenancy imposes liability to pay a variable service charge which includes a management charge.
- B. The respondent has withdrawn the management charge for the financial year 2023/2024 in the sum of £245.30 and has refunded the same by applying a credit to the applicant's rent and service charge account. The applicant has accepted that outcome. Accordingly, the tribunal does not make any determination as to the reasonableness of that sum.
- C. The applicant has paid both an issue fee of £100 and a hearing fee of £200. Having regard to *Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013* and to the parties' conduct and to the outcome of the proceedings, the tribunal makes an order directing the respondent to re-imburse those costs to the applicant.
- D. Having regard to section 20C of the Landlord & Tenant Act 1985 and to the parties' conduct and to the outcome of the proceedings the tribunal considers that it is just and equitable to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs payable as a service charge payable by the applicant.
- E. In considering whether to exercise its power to make any party costs order the tribunal has careful regard to *section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013* read against the overriding objective in Rule 3 of the 2013 Rules and the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*. Having regard to the parties' conduct and to the outcome of the proceedings the tribunal does not make any party costs order.

## REASONS

### **The application, the property & the parties**

- 1. The application is brought pursuant to s27A of the Landlord & Tenant Act 1985 to determine the liability to pay and the reasonableness of service charges and administration charges demanded in respect of 23 Millgate, Wycombe Retail Park, High Wycombe HP11 1GL ('the property').
- 2. The application was received on 29 April 2024 and relates to the 2023/2024 accounting year only. In section 7 of the pro-forma leasehold 3 form the applicant does not identify any earlier year as subject to challenge. The application seeks a determination of "management charge £5 p/w", and poses the question "is there a management charge or not?".
- 3. The applicant and tenant of the property is Richard Pierce (hereafter 'the applicant').
- 4. The respondent landlord demanding the relevant service charges is Metropolitan Thames Valley Housing Association (hereafter 'the respondent').

## **The procedural history**

5. The application was commenced by pro forma leasehold 3 form received on 29 April 2024. A case management hearing was held on 12 December 2023 and both parties attended. As directed by and after that hearing the respondent wrote to the applicant on 3 January 2024 providing an explanation of the management charge. This is stated to be 15% the combined and apportioned estate and block charges. The 38 property estate charge totals £28,172.99 and is apportioned at 1/38<sup>th</sup> to equal £741.39. The 10 property block charge totals £8,939.48 and is apportioned at 1/10<sup>th</sup> to equal £893.94. The combined individual estate and block charge is £1,635.33. The management charge calculated at 15% of that individual estate and block charge is £245.30.
6. Judge Hardman made a directions order on 19 February 2024. This directed the applicant to serve a schedule identifying the items and amounts in dispute, why that is, and what reasonable amount should be payable. A schedule has been filed which confirms the sole item in dispute to be the management charge. The applicant has not complied with the direction to identify a reasonable sum he will pay.
7. In response to Judge Harman's directions order dated 19 February 2024 the tribunal has been provided with an indexed documents bundle which is not paginated, a schedule of disputed service charges, and a statement dated 17 April 2024 from Tunde Odukoya (service charge team manager for the respondent) with four documentary exhibits.
8. At 16.10 hours on Friday 31 May 2024 Nadeem Hussain for the respondent emailed the tribunal office to attach correspondence sent to the applicant "withdrawing the disputed service charges, which are the subject matter of the Hearing scheduled for Monday" [3 June 2024].
9. The attached email to the applicant states as follows –

*"Dear Mr Pierce,*

*Management fee Cancellation - 1st April 2023 – 31st March 2024.*

*Upon review of your case scheduled for the Tribunal on June 3, 2024, we have decided to cancel the management fee previously levied for the financial year 2023/2024. Please note that the sum of £245.30 has been refunded and applied as a credit to your rent and service charge account. Should you have any further question, please do not hesitate to contact me via our Hub.*

*Yours Sincerely,*

*Tunde Odukoya  
Service Charge Team Manager"*

10. The tribunal convened a remote video hearing by CVP (cloud video platform) on 3 June 2024. Neither party requested an in-person hearing in response to the directions order. Having regard to the issues raised and evidence and information filed on the application the tribunal is satisfied that the remote video hearing is an appropriate and proportionate procedure to determine these proceedings. Neither party requested an inspection of the property or the building in which it is located. The tribunal is satisfied that an inspection was not necessary in order to determine the issues raised in the application. The tribunal made its determinations on 3 June 2024.

### **The matters in issue**

11. The application was received on 29 April 2024 and relates to the 2023/2024 accounting year only. In section 7 of the pro-forma leasehold 3 form the applicant does not identify any earlier year as subject to challenge. The application seeks a determination of “management charge £5 p/w”, and poses the question “is there a management charge or not?”. He states “I raised the same issue in 2015.
12. The tribunal interprets this as a challenge to the liability to pay a management charge and to the reasonableness of the charge of £245.30 for the accounting year 2023/2024.

### **The hearing**

13. The applicant, Richard Pierce, has represented himself. The Respondent has been represented by Nadeem Hussain, solicitor for the in-house legal service of the respondent.
14. In response to Judge Harman’s directions order dated 19 February 2024 the tribunal has been provided with a documents bundle which is not paginated. The tribunal has had careful regard to the documents filed in that bundle including the application in pro forma leasehold 3 form received on 29 April 2024, the assured periodic tenancy agreement which commenced on 8 December 2006, the statement of Tunde Odukoya (service charge team manager for the respondent) dated 17 April 2024, the estimated service charge statement (identifying the relevant services and component costs) for April 2023 to March 2024 resulting in a weekly service charge of £36.17, the final service charge statement for the same period resulting in a weekly service charge of £35.48, a letter from the respondent to the applicant dated 10 March 2023 confirming a weekly service charge of £35.48, and the letter dated 3 January 2024 setting out the calculation of the estate and block charges and apportionment and the resulting service charge. The documents bundle also includes a previous decision of the tribunal made on 26 January 2015 which considered, amongst other issues, the payability and reasonableness of the service charge at that time having regard to the services at that time.

### **The tenancy**

15. The tribunal is provided with a copy of the assured periodic tenancy in respect of the property. The preamble on the first addresses ‘payment for the premises’ and expressly states a sum of £5 as the service charge due as payment for services provided under the agreement. Clause 1.2 provides that the service charge may be varied in accordance with Schedule 1 to the tenancy. That schedule particularises the service charge components and addresses apportionment and management costs.
16. In respect of apportionment, it states that “the costs are split equally by the number of properties and are calculated on actual costs incurred which are outstanding for the last accounting period”.
17. In respect of management costs, it states that “these are the [respondent’s] costs of administering and supervising the provision of services to your estate and are calculated as a percentage of the actual service charge costs”.

## **The law**

18. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 (hereafter 'the LTA 1985') sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows –

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 is payable.

19. Section 18 sets out the meanings of 'service charge' and 'relevant costs'.

20. Section 19 sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.

21. Section 20C LTA 1985 sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides jurisdiction for the Tribunal to make an order to reduce or extinguish the tenant's' liability to pay an administration charge in respect of litigation costs.

22. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 (hereafter 'CLARA 2002') sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. Section 5(1) of Part 1 to Schedule 11 provides –

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.

23. Section 1 provides a definition of 'administration charge'. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

## **Discussion and determinations**

24. The tribunal addresses the applicant's question "is there a management charge or not?" as a challenge to the liability to pay a management charge. The assured periodic tenancy granted to the applicant expressly imposes a liability to pay a variable service charge which itself expressly includes a charge in respect of management costs described as "the [respondent's] costs of administering and supervising the provision of services to your estate and are calculated as a percentage of the actual service charge costs". The tribunal determines that the tenancy imposes liability to pay a management charge.
25. Insofar as the applicant relies upon a previous decision of the tribunal in 2015 with his averment that "I raised the same issue in 2015" as supporting his argument that no management charge is payable, a reading of the tribunal decision of 26 January 2015 confirms that it recognised liability to pay a variable service charge including a management charge.
26. Insofar as the applicant relies upon the figure of zero for the total management fee in the service charge statement for 2023/2024, the tribunal accepts Mr Hussain's explanation that this is a merely an anomaly in a computer-generated document. Moreover, the existence of a management fee is confirmed by that document itself when the adjacent columns identify the applicant's apportioned share of the total management fee and identify the resulting weekly cost.
27. The tribunal does not make any determination as to the reasonableness of the charge of £245.30 for the accounting year 2023/2024 as this charge was withdrawn by the respondent prior to the hearing and the applicant confirmed at the hearing that he accepted that outcome.
28. During the hearing Mr Hussain stated that he understood why the applicant may be confused by the service charge documents provided and further understood why the applicant made the application to the tribunal. He accepted that the respondent could and should provide more detailed explanatory information to the applicant as a precursor to serving a service charge demand (including the management charge) and would ensure this was provided within 2 weeks of the tribunal hearing.

## **Fees and Costs**

29. The applicant has paid both an issue fee of £100 and a hearing fee of £200. Having regard to *Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013* and to the parties' conduct and to the outcome of the proceedings, the tribunal makes an order directing the respondent to re-imburse those costs to the applicant. It was only at 16.10 hours on Friday 31 May 2024 (ie. after office hours on the last working day before the hearing) that Nadeem Hussain for the respondent emailed the tribunal office to attach correspondence sent to the applicant withdrawing the disputed management charge. Further, Mr Hussain fairly stated in the hearing that he understood why the applicant may be confused by the service charge documents provided and further understood why the applicant made the application to the tribunal.
30. Having regard to section 20C of the Landlord & Tenant Act 1985 and to the parties' conduct and to the outcome of the proceedings the tribunal considers that it is just and equitable to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs payable as a service charge payable by the applicant. During the hearing Mr Hussain confirmed that no such charge would be levied. This order ensures that position remains.

31. In considering whether to exercise its power to make any party costs order the tribunal has careful regard to *section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013* read against the overriding objective in Rule 3 of the 2013 Rules and the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*. Having regard to the parties' conduct and to the outcome of the proceedings the tribunal does not make any party costs order.



**Stephen Reeder**  
**Judge of the First Tier Tribunal, Property Chamber**  
**4 June 2024**

#### **ANNEX - RIGHTS OF APPEAL**

- a. This annex notifies the parties of any right of appeal pursuant to Rule 36(2) of the (First-tier Tribunal) (Property Chamber) Rules 2013.
- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. If the tribunal refuses permission to appeal then a further application for permission may be made to the Upper Tribunal (Lands Chamber).

