



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

**Case reference** : **LON/00BK/LSC2023/0411**

**Property** : **Second Floor Flat, 3 Berners Street,  
London W1T 3LD**

**Applicant** : **3 Berners Street Limited**

**Representative** : **Ms Amanda Gourlay (Counsel)  
instructed by Lazarev Cleaver LLP**

**Respondent** : **(1) Mr Michael Edward Hammerton  
(2) Dr Helen Marmanidis**

**Representative** : **Unrepresented**

**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 J P Donegan  
Mr C P Gowman MCIEH (Professional  
Member)**

**Date of hearing** : **13 May 2014**

**Date of decision** : **15 May 2024**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines that the following service charges are payable by the respondents to the applicant:**

<b>Year ended 31 December 2014</b>	<b>£4,833.59</b>
<b>Year ended 31 December 2015</b>	<b>£3,666.00</b>
<b>Year ended 31 December 2016</b>	<b>£6,328.60</b>
<b>Year ended 31 December 2017</b>	<b>£3,939.20</b>
<b>Year ended 31 December 2018</b>	<b>£2,971.60</b>
<b>Year ended 31 December 2019</b>	<b>£3,572.20</b>
<b>Year ended 31 December 2020</b>	<b>£3,418.80</b>
<b>Year ended 31 December 2021</b>	<b>£4,394.01</b>
<b>Year ended 31 December 2022</b>	<b>£3,710.47</b>
<b>Year ended 31 December 2023</b>	<b><u>£7,037.49</u></b>
	<b>£43,871.96</b>

- (2) The Tribunal makes no determination in respect of the administration charges claimed by the applicant.**
- (3) The respondents shall reimburse the Tribunal fees paid by the applicant in the total sum of £300 (Three Hundred Pounds). The respondents must pay this sum to the applicant by 12 June 2024.**

## **The background and procedural history**

1. The applicant company is the head-lessee of 3 Berners Street, London W1T 3LD ('the Building'). The respondents are the under-lessees of the Second Floor Flat at the Building ('the Flat').
2. The applicant seeks a determination of the service charges for the Flat for the period 2014-2023, pursuant to section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act').
3. The Tribunal application is dated 06 November 2023. Directions were issued on 01 December 2023 and the case was listed for a video hearing on 13 May 2024.
4. The respondents failed to comply with paragraph 3 of the directions which required them to serve their case, including a completed schedule of disputed items, by 19 February 2024. The applicant applied for a barring order on 11 March 2024, pursuant to Rules 9(3), (7) and

(8) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules'). The Tribunal wrote to the respondents on 14 March, requesting their comments by 21 March. There was no response, and the Tribunal issued a minded-to notice on 02 April 2024. This required the respondents' written representations by 17 April. Again, there was no response.

5. On 30 April 2024, the Tribunal issued a notice barring the respondents from taking any further part in these proceedings, pursuant to Rules 9(7) and (8) of the 2013 Rules. There has been no application to lift this bar, pursuant to Rule 9(5).

### **The law**

6. The relevant legal provisions are set out in the appendix to this decision.

### **The lease**

7. The lease was granted by Findon Holdings Limited ("the Lessor") to the Friedegun Schweda ("the Tenant") on 08 April 2000 for a term of 998 years from 30 November 1998.

8. The Tenant's covenants are at clause 3 and include:

*"3.1 To pay Rents and Service Charges*

*To pay the Annual Rent yearly in advance on the date hereof and thereafter on 1 January in each year if demanded and on demand the Insurance Rent and the Tenant's 20% share of maintenance and contribution to the Lessor's expenses as further described in the Fourth Schedule to include but not limited to the costs and expenses in the maintenance, repair, management, accounts etc. and to pay the same within 20 days of the date of receipt by the Tenant of the written demand*

...

*3.4 Certain costs*

*To pay to the Lessor all costs charges and expenses including solicitor's counsels' and surveyors' costs and fees at any time during the Term reasonably incurred by the Lessor in connection with the recovery of arrears of rent or in contemplation of or any proceedings in respect of this Lease or under Sections 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof (including all such costs charges and expenses of and incidental to any inspection of the Demised Premises and the preparation of any schedule or schedules of dilapidations together with any costs in supervising or approving any works of repair) such costs charges and expenses to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court and to pay to the Lessor*

*all reasonable costs charges and expenses of an incidental to any inspection of the Demised Premises and the preparation of schedule or schedules of dilapidations made at the expiration or sooner determination of the Term together with any reasonable costs in supervising or approving any works of repair”*

9. Detailed service charge provisions are to be found in the Fourth Schedule. The “Accounting Year” is defined as “*the period of 1 January to 31 December in each year...*” and “*the Service Charge*” is defined as “*20% of the Expenses in respect of the Building...*”.
10. Paragraph 4 of the Fourth Schedule provides:  
*“As soon as reasonably practicable after the end of each Accounting Year the Lessor shall furnish to the Tenant an account of the Expenses and the Service Charge payable for that Accounting Year such account to be certified by the Lessor’s auditors and to contain a summary of the expenses incurred during the Accounting Year to which it relates and the relevant details and figures forming part of the Service Charge.”*

### **The hearing**

11. The hearing took place by video on 13 May 2024. The applicant was represented by Ms Gourlay who was accompanied (remotely) by Mr Lazarev and Ms Van Zyl of her instructing solicitors. Ms Greentree of Urang Property Management also attended for the applicant.
12. The respondents did not attend and were not represented. We proceeded with the hearing, as the respondents had been notified of the hearing and it was in the interests of justice to do so (Rule 34 of the 2013 Rules).
13. Although the respondents did not comply with the directions or the minded-to notice, they sent numerous emails to the Tribunal case officer and were clearly aware of the proceedings and the hearing.
14. The applicant filed a hearing bundle in accordance with the directions. This ran to 214 pages and included copies of the Tribunal application, directions and notices together with various service charge accounts and demands and helpful submissions from the applicant’s solicitors.
15. At my request, Ms Gourlay took the Tribunal through the relevant lease provisions and service charge documents. She asked the Tribunal to determine the respondents are liable to pay 20% of the total service charge expenditure shown in each set of accounts. The applicant also claims administration charges totalling £1,140.

16. Ms Gourlay invited the Tribunal to determine the administration charges, pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002, relying on clause 3.4 of the lease. There was no written application for such a determination, but the directions did mention administration charges, as well as service charges.

### **The Tribunal's decision**

17. The service charges claimed by applicant, totalling £43,871.96, are payable by the respondents in full. This figure is broken down as follows:

Year ended 31 December 2014	£4,833.59
Year ended 31 December 2015	£3,666.00
Year ended 31 December 2016	£6,328.60
Year ended 31 December 2017	£3,939.20
Year ended 31 December 2018	£2,971.60
Year ended 31 December 2019	£3,572.20
Year ended 31 December 2020	£3,418.80
Year ended 31 December 2021	£4,394.01
Year ended 31 December 2022	£3,710.47
Year ended 31 December 2023	<u>£7,037.49</u>
	£43,871.96

18. The Tribunal makes no determination in respect of the administration charges claimed by the applicant.

### **Reasons for the Tribunal's decision**

19. The barring order dated 30 April 2024 means we can summarily determine all issues against the respondents, pursuant to Rule 9(8) of the 2013 Rules.
20. The respondents have not advanced any grounds for challenging the service charges and having considered the lease terms and the various accounts and demands, we allow the charges in full.
21. We make no determination in respect of the administration charges, as there was no written application to determine these charges and the respondents would be prejudiced by such a determination. Further, we are unable to determine the 'payability' of these charges under clause 3.1 of the lease without witness evidence from the applicant and detailed legal submissions. It remains open to the applicant (or the respondents) to make a written application to determine these charges under Schedule 11 to the 2002 Act.

22. At the end of the hearing, Ms Gourlay requested a refund of the application and hearing fees paid to the Tribunal. Given the outcome of the case, the Tribunal orders reimbursement of these fees pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules. These total £300 and must be reimbursed within 28 days of this decision.

**Name:** Tribunal Judge Donegan

**Date:** 15 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).

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18            Meaning of “service charge” and “relevant costs”**

- (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            Limitation of service charges: reasonableness**

- (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            Liability to pay service charges: jurisdiction**

- (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**

#### **Part 1**

#### **Reasonableness of Administration Charges**

#### ***Meaning of “administration charges”***

- 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.

***Reasonableness of administration charges***

- 2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

...

**The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

**Striking out a party’s case**

9. - (1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.
- (2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal –
- (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and
  - (b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.
- (3) The Tribunal must strike out the whole or part of the proceedings or case if -
- a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the

direction could lead to the striking out of the proceedings or case or that part of it;

- (b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;
  - (c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;
  - (d) the Tribunal considers the proceedings or case (or part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or
  - (e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.
- (4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph 3(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.
- (5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.
- (6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.
- (7) This rule applies to a respondent as it applies to an applicant except that –
- (a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and
  - (b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings; or part of them.
- (8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

...

### **Orders for costs, reimbursement of fees and interest on costs**

- 13.-** (1) The Tribunal may make an order in respect of costs only –
- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
  - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
    - (i) an agricultural and land drainage case,
    - (ii) a residential property case, or
    - (iii) a leasehold case; or
  - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

...

#### **Hearings in a party's absence**

- 34.** If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal –
- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
  - (b) considers that it is in the interests of justice to proceed with the hearing.