FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AQ/LSC/2023/0465**
Property	**:**	**13 La Reve Apartments, 19 High Street, London, HA3 5FF**
Applicant	**:**	**Rasheed Ahmad**
Representative	**:**	**In person**
Respondents	**:**	**1) Avocado Developments Wealdstone Ltd** **2)Wealdstone Management Ltd**
Representative	**:**	**Mr Simon Butler of counsel (instructed under direct access)**
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	**:**	**Mr O Dowty MRICS** **Ms J Dalal**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**28 May 2024**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that all of the sums demanded are payable by the applicant in full.

(2) The tribunal does **not** make an order under section 20C of the Landlord and Tenant Act 1985; nor under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the half year demand for budgeted service charges in the period 1.8.2023 to 31.1.2024 totalling £1,543.02.

The hearing

2. The Tribunal held a face-to-face hearing in this matter on 12 April 2024. The Applicant appeared in person at the hearing and the second respondent was represented by Mr Simon Butler of counsel, accompanied by Mr Josh Williams AIRPM, of the second respondent's managing agents JFM Block & Estate Management.

The background

3. The property which is the subject of this application is a flat located within a modern mixed-use development of 27 flats and 2 commercial units in central Wealdstone, close to Harrow & Wealdstone TFL Station. The development is accessed directly off the High Street.

4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

5. The Applicant holds a long lease of the property which requires "the Management Company" (Wealdstone Management Ltd) to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

6. The second respondent, in its statement of case, clarified the nature of the respondents. It explained that the first respondent (Avocado

Developments Wealdstone Ltd) was merely the freeholder, whereas the second respondent (Wealdstone Management Ltd) is the "correct" respondent to this application as it "is a party to the lease and the person responsible for incurring service charges to manage the development in accordance with the provisions of the lease". This also appears to be the position as set out in the applicant's initial application form, which provides Wealdstone Management Ltd as the respondent, and Avocado Developments Wealdstone Ltd as the landlord.

7. Wealdstone Management Ltd is therefore added as a respondent, who had previously been included as the freeholder's representative in the Tribunal's directions dated 11 January 2024. Any reference to the respondent in the remainder of this decision is a reference to the second respondent, the first respondent having not taken part in proceedings, and not apparently having any connection with the service charge demands in dispute.

The issues

8. The tenant's application was somewhat vague as to what was being challenged, relating to the whole of the half yearly (budget) service charge demand the applicant had received for the period 1 August 2023 to 31 January 2024, totalling £1,543.02.

9. At the start of the hearing the parties clarified this, and identified the relevant issues for determination as follows:

    (i) The reasonableness in overall amount of the budgeted reserve funds, totalling £8,000 over the entire service charge year 1 August 2023 to 31 July 2024.

    (ii) The reasonableness in overall amount of the budgeted door entry maintenance, totalling £500 over the entire service charge year 1 August 2023 to 31 July 2024.

    (iii) The reasonableness in overall amount of the budgeted cleaning costs, totalling £3,896 over the entire service charge year 1 August 2023 to 31 July 2024.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Submissions

11. At the hearing, the applicant spoke a great deal about their concerns regarding the service charge in general. Since they had moved in in

2021 the service charges had "skyrocketed", and the applicant could not afford the amounts being demanded now. The applicant had sought to get to the bottom of why, but the applicant considered the responses to be unsatisfactory. Last year the service charge had increased 20% or so, and now it was increasing 30%. The applicant averred that they want an "impartial view" on how the applicant could safeguard himself in future.

12. Whilst it is sympathetic to the applicant's submissions, as the Tribunal explained at the hearing, personal circumstances are not relevant to the amount of service charge that is reasonable or payable. Similarly, it is well-established that a lessee, in challenging a service charge, must set out what their challenge to the service charge is, and why. This was referenced by the respondent in their statement of case, who quoted from paragraph 7 of the decision of Judge Elizabeth Cooke in *ASP Independent Living Ltd v Godfrey [2021] UKUT 313 (LC):*

It is well-established that where a lessee seeks to challenge the reasonableness of a service charge, they must put forward some evidence that the charges are unreasonable; they cannot simply put the landlord to proof of reasonableness.

13. At the start of the hearing, the applicant had identified three budgeted charges which he challenged. These were the contributions to the reserve funds at the property (which in fact are two separate charges, one an "external reserve" of £5,000, and another an "internal reserve" of £3,000), the door entry maintenance budget and the cleaning budget.

14. The reserve funds, the applicant averred, had increased too much, too quickly. The tenant was concerned as to where the increases would end. There had not been any reserve fund to start with, and now it had increased significantly when it should have been charged from the start. There were also separate general repairs and maintenance budgets, and this appeared - the tenant said - to be double counting. The tenant did not know what level of reserve fund would be appropriate.

15. The door entry maintenance cost, the tenant said, was too high. The front door/gate (properly a gate, as it leads to an internal courtyard area, but referred to interchangeably as a door or gate by both parties) has been repaired a number of times; and at some point that indicates the repairs were not good enough. The tenant asked rhetorically at what point that was. The tenant did not know what level of cost would be reasonable in relation to door entry maintenance.

16. As regards cleaning, the tenant averred that the standard of cleaning was low for the price paid. There had been a few issues, including rats in the outside area. That price had increased significantly, from £3,000

per year until two years ago to £3,896 now. The cost of £3,000 per year for the block had been reasonable, but the cost now was not.

17. The respondent responded to these points, particularly by the provision of oral evidence from Mr Josh Williams AIRPM - the property manager from the managing agents of the development JFM. The Tribunal considered that Mr Williams was a compelling and straightforward witness, who provided clear answers to all of the questions asked of him by his own counsel, the applicant and the Tribunal.

18. In terms of the reserve fund, Mr Williams said that it was his experience that new build properties often did not charge leaseholders for reserve funds initially. Buildings when first constructed benefit from guarantees and the like, which means there is less to accrue for. Mr Williams had taken over management of the block in 2022 (albeit his firm had been instructed since the completion of the building), and he explained that he was firmly of the view reserve funds were something that should be collected. Roof works would eventually be needed, not now - but in the future; plasterwork would require maintenance; etcetera. Funds would be needed to carry out those works. If anything, Mr Williams averred, the reserve that had been provided for was a little low given the size of the development.

19. Mr Williams provided a detailed explanation of the door/gate maintenance issue. The gate was secured by magnetic locks, and there had been repeated break-ins (something that had also been referred to, and complained of, by the applicant). Whilst magnetic locks are sturdy, they are often little match for groups of people pulling against them. The development is located directly onto the High Street, in a busy area of Harrow which has crime and nuisance issues. The managing agent had tried various things to stop the doors from being broken into. The magnets were strengthened repeatedly, an extra hinge was added - and eventually the mechanism was changed away from a hinged approach altogether in favour of an arm (this had not been the original design, as the hinge approach was considered to be more aesthetically pleasing).

20. As regards the cleaning cost, Mr Williams initially said that it had not increased, before qualifying that statement when asked about it by the Tribunal to mean it had not increased dramatically. The increase was likely explained, Mr Williams averred, by inflation - and in addition there had been a change to how the bins were put out for collection. Whilst the bins were put out every week, the property was only cleaned once every two weeks. Previously, on the alternate weeks when cleaning took place, the cleaners would place the bins out in the morning on the basis the council should have collected them by the time they were finished cleaning the development - however the council had not been reliable. Instead, it was now deemed necessary to have the cleaners return the following morning to put the bins away due to the council's failure to collect them at a predictable time.

21. As regards the standard of cleaning, Mr Williams explained that the property is only cleaned once every two weeks specifically to reduce costs to the leaseholders, and – regarding the applicant's complaints of rats – observed that the property is located in a busy area next to several takeaways.

22. The applicant questioned Mr Williams as to why there were separate charges for general repairs and the reserve fund. Mr Williams explained that general repairs covers repairs to things like walls, fire doors and a large number of other items – whereas the reserve fund looks towards the future.

Service Charge Provisions in the Lease

23. Whilst the applicant did not dispute payability under the lease, the Tribunal was keen to establish the lease provisions which allowed for the service charge demands.

24. Paragraph 2 of Schedule 3 of the lease provides that the tenant is to pay the Tenant's proportion of the Estate Service Charge Costs and Insurance Costs. The Estate Service Charges Costs are defined on page 7 of the lease as:

"… the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Landlord at all times during the Term in carrying out the obligations specified in Schedule Eleven"

25. Schedule 11 of the lease details the "Services to be provided and obligations to be discharged by the Management Company" (the second respondent being the Management Company as defined on page 6 of the lease). Schedule 11 is broken down into Part A (Estate Costs), Part B (Block Costs) and Part C (Parking Costs). The tenant's proportion of those costs is provided on page 5 of the lease, as 3.65% of the Estate Costs in Part A of Schedule 11; 4.90% of the Block Costs in Part B of that Schedule; and 5.88% of the Parking Costs in Part C.

26. Paragraph 7 of Part A of Schedule 11 provides for a reserve fund for Estate Costs (which appears to relate to the "external reserve fund" in the budget), and paragraph 1.12 of Part B provides for a reserve fund for Block Costs (which appears to relate to the "internal reserve fund" in the budget).

27. Part B also provides that the Management Company is "to maintain renew replace and keep in good and substantial repair and condition (save in so far as damage has been caused by a risk against which the Landlord is liable to insure and insurance monies are irrecoverable by any act or default of the Tenant):

…

1.2 All doors and window frames not forming part of the demise of any of the Dwellings in the Block

…

1.6 So far as practicable to keep clean and reasonably well lit the Internal Common Parts of the Block as appropriate and to maintain any entry system

1.7 To clean the internal and external surfaces of the windows of the Internal Common Parts of the Block

…

1.9 the cost of maintaining replacing and keeping in good working order any gate(s) or lift serving the Block

…

28. The Tribunal observed at the hearing that no copy of the relevant service charge demand had been provided in evidence, however the applicant accepted that they had received it (and the required associated summary of rights and obligations) – and the Tribunal was shown a copy of that demand by the respondent at the hearing.

The Tribunal's Decisions

Reserve fund – total cost £8,000

29. The tribunal determines that the budgeted cost totalling £8,000 for the service charge year 1st August 2023 – 31 July 2024 is reasonable, and the applicant's proportion of it for the period 1 August 2023 to 31 January 2024 is payable in full.

Reasons for the tribunal's decision

30. In terms of the reserve fund, the applicant's challenge was vague and – the Tribunal considered – not made out.

31. The Tribunal notes (relevantly to the other disputed items as well) that the applicant submits that the responses he had received regarding his service charge queries were unsatisfactory, and that communication

had been poor and lacked transparency, but the Tribunal does not agree. The managing agents provided budgets, an explanatory note for those budgets and appear to have engaged with the applicant regarding his queries as best they could.

32. The reserve fund amounts budgeted have certainly increased significantly, the external fund increasing from £1,000 in 2022-23 to £5,000 in 2023-24 and the internal fund increasing from £2,000 to £3,000. The applicant himself averred that a reserve fund should have been collected "from the beginning", however, as the Tribunal observed at the hearing, just because an amount should have been collected before does not mean it is unreasonable now.

33. The tribunal heard from Mr Williams in detail on this point. Mr Williams' clear and credible evidence demonstrated that the managing agent (on behalf of the respondent) had given the matter some considerable thought. Nothing which Mr Williams said by way of explaining the reserve fund charges appeared unreasonable to the Tribunal – and the Tribunal did not consider that the reserve funds payments were excessive for a development of this size.

34. As regards the applicant's suggestion that there is some form of double counting between the general repairs, maintenance and reserve fund budgets, the Tribunal considered this was not made out. These are separate heads of cost, which are entirely typical in service charge budgets, and relate to different – albeit conceptually related – things.

35. Accordingly, the Tribunal finds that the reserve fund amount is reasonably incurred and the applicant's proportion of it is payable in full.

Door entry maintenance – total cost £500

36. The tribunal determines that the budgeted cost of £500 for the service charge year 1st August 2023 – 31 July 2024 is reasonable, and the applicant's proportion of it for the period 1 August 2023 to 31 January 2024 is payable in full.

Reasons for the tribunal's decision

37. The applicant's challenge to the door entry maintenance figure was again vague and not made out fully – based on the simple assertion that the repeated repairs indicated a failing in previous ones. The applicant did not indicate how much he thought would be an appropriate amount for door entry maintenance.

38. Mr Williams again provided detailed evidence regarding this point, and the fact there had been a number of break ins. The managing agent had

tried a number of different approaches to stop this from happening, and had – they believed – now succeeded in doing so, at the apparent expense of some of the aesthetic value of the development. There is no one size fits all approach to securing a property, and the Tribunal considered it was reasonable that, in a relatively new development, it might take some time to arrive at a satisfactory outcome which balances security and amenity.

39. Accordingly, the Tribunal finds that the door entry maintenance charge is reasonably incurred and the applicant's proportion of it is payable in full.

Cleaning – total cost £3,896

40. The tribunal determines that the budgeted cost totalling £3,896 for the service charge year 1st August 2023 – 31 July 2024 is reasonable, and the applicant's proportion of it for the period 1 August 2023 to 31 January 2024 is payable in full.

Reasons for the tribunal's decision

41. As regards the cleaning, the applicant's challenge was more fleshed out. An amount of £3,000 had been charged before and the applicant felt the increase to the £3,896 demanded now was too steep. However, the tenant did not provide any alternative quotes for the Tribunal to consider.

42. Whilst this is an increase of around 30%, it is not an increase without explanation. As is common knowledge, inflation in recent times has been significant - and Mr Williams said in evidence that there has been a change in approach to taking the bins out for collection. As minor as that might appear at first sight, given the overall small size of the cleaning cost at the property (equating even at £3,896 in total to approximately £150 per fortnight for the entire Block), such a change is likely to have had a noticeable percentage impact.

43. As regards the criticism of the quality of the cleaning, there was no real evidence provided of this, but Mr Williams in his evidence referred to the fact the property was only cleaned fortnightly as the landlord wished to keep the costs to the leaseholders as low as possible.

44. The Tribunal considered that the leaseholders at the building benefitted from paying a lower amount for cleaning, it only being conducted once a fortnight; and that the necessary consequence of this is that the cleaning would be of a lower standard than if it were carried out more often. In the Tribunal's experience, the amount claimed for cleaning was a low one – appearing therefore to tally with Mr Williams evidence that the landlord had sought to keep the costs low for the leaseholders.

45. Accordingly, the Tribunal finds that the cleaning charge is reasonably incurred and payable in full.

The subject demand

46. The Tribunal has found that all of the disputed charges are payable in full by the applicant. Accordingly, neither party having disputed the accuracy of the calculation of the demand, the Tribunal determines that the amount payable by the applicant in relation to the budgeted service charge demand for the period 1 August 2023 to 31 January 2024 is the full amount of that demand - £1,543.02.

Applications under s.20C and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

47. In their application form, the Applicant applied for orders under section 20C of the 1985 Act and under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 which would limit the payment of the respondent's costs and any administration charge in respect of litigation costs respectively.

48. The applicant did not have any oral submissions to offer in regard to this, and appeared somewhat confused by the Tribunal's reference to the applications. The respondent, for their part, indicated that they opposed the applications as – whilst they were hopeful that their costs would be covered by an insurance claim – they wished to ensure that they would be able to recover any 'surplus' that might be left.

49. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not consider that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, nor under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Accordingly, the Tribunal makes no such orders.

Name: Mr O Dowty MRICS **Date:** 28 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).