In the FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Tribunal Case reference	**:**	**LON/00AW/LSC/2024/0100**
Property	**:**	**Flat E, 5 Kensington Court, W8 5DL**
Applicant	**:**	**5 Kensington Court RTM Company Limited**
Respondent	**:**	**Gloria Akhoundoff**
Type of application	**:**	**Transfer from County Court – Service Charges**
Tribunal	**:**	**Judge Martyński** **Ms S Phillips MRICS**
Date of hearing	**:**	**21 June 2024**
Date of decision	**:**	**26 June 2024**

DECISION

Decision summary

1. The Service Charges claimed in the County Court proceedings amounting to £22,334.63 are reasonable in amount and are payable by the Respondent.

2. If the Applicant wishes to pursue a claim for costs pursuant to Rule 13(1)(b), it must deliver (by email) a Statement of Case and costs summary to the Respondent and to the tribunal by no later than **5 July 2024**.

3. In the event that the Applicant makes an application pursuant to paragraph 2 above, the Respondent may deliver (by email) to the Applicant and the tribunal a Statement of Case in response by no later than **19 July 2024**.

4. Any application for costs will be dealt with on the papers alone, without a hearing unless either party requests a hearing.

Background

5. 5 Kensington Court ('the Building') is a terraced building containing seven flats. At all material times, the Applicant has had the Right to Manage the Building.

6. The Respondent is the long leasehold owner of Flat E.

7. The Applicant issued proceedings in the County Court on 26 January 2023 making a claim for Service Charges amounting to £22,334.63. That sum breaks down as follows:

£21,354.65	Major works demand 14 September 2022
£489.99	Quarterly Service Charge September 2022
£489.99	Quarterly Service Charge December 2022

8. On 15 November 2023, Deputy District Judge Wright made an order transferring the matter to the tribunal.

9. The major works demand was in respect of the replacement of the roof to the Building and other external repairs and decorations. That work was completed in June 2023. The Applicant states that the work came in under budget and that the leaseholders (who paid the interim demand for those works) would be credited in due course.

The lease

10. The Respondent's lease is dated 18 April 1983. It is for a term of 99 years from 29 September 1982.

11. The lease defines the Service Charge year as running from 29th September each year to the 28th September in the following year.

12. The Fifth Schedule to the lease contains the following Lessee's covenants;

- (2) To pay to The Lessor a Maintenance Charge being that percentage specified in Paragraph 9 of the Particulars of the expense which the Lessor shall in relation to The Property reasonably and properly incur in each Maintenance Year and which are authorised by the Eighth Schedule hereto (including the provision for future expenditure therein mentioned) the amount of such Maintenance Charge to be certified by The Lessor's Managing Agent or Accountant acting as an expert and not as an arbitrator as soon as conveniently possible after the expiry of each Maintenance Year and FURTHER on the Twenty fifth day of March and the Twenty ninth day of September in each Maintenance Year or within twenty one days of the Lessor requiring payment of the same to pay in advance on account of The Lessee's liability under the Clause The Interim Maintenance Charge

13. The lessee's percentage of the Maintenance Charge is set out in the lease as either 9.6% or a percentage based on rateable values while the Building and all parts of it are separately rated in the Rating and Valuation List.

The demands

14. The demand for the roof works in the sum of £21,354.65 is dated 14 September 2022 and a copy of it was shown to the tribunal.

15. The demands for Quarterly Service Charges for September and December 2022 were not disputed (or not disputed on any coherent grounds) by the Respondent.

The parties' respective cases in the tribunal

16. The Respondent's Statement of Case, filed in accordance with the tribunal's directions raised the following issues with the following responses from the Applicant (only issues relevant to the tribunal are included):

    (a) *Issue*: Requests to allow our FRICS surveyor to examine conditions were deliberately delayed until it was too late to ascertain necessary works
    Response: This is denied

    (b) *Issue*: Access was denied to agent of defendant to examine roof
    Response: This is denied. On 22 May 2023 (in correspondence which is arguable without prejudice, so it is not attached) the company's agent stated "The scaffold as of last week is now fully erected and we have no objection to your surveyor meeting with James Froud"

    (c) *Issue*: the Directors, solicitor, ma. And their own surveyor acted in harmony to avoid any resolution
    Response: This is denied

    (d) *Issue*: From the outset the defendant had opposed the building works as leaseholder
    Response: This is denied. No response was sent to the section 20 consultation notices and the first complaint was in December 2022 when the company's agents threatened proceedings because the tenant had filed to pay the demand for their share of the major works raised in September 2024

    (e) *Issue*: the company, plaintiff went ahead regardless. Defendant argues that as leaseholder is not part of the company, provision are there in law to protect the leaseholders when they are excluded in the process.
    Response: All the statutory requirements were complied with

    (f) *Issue*: In March 2023 defendant asked the court to suspend building works temporarily to allow FRICS surveyor of defendant to survey the building and propose a reasonable scheme for essential works only

Response: No such request was received . In any event would have been refused since by that time the contractors had been instructed and everyone else had paid and wanted the works to go ahead

(g) *Issue*: plaintiff did not provide measure for a sinking fund prior to works, and surprised leaseholder with a large demand. Normally and professional managing agents should provide this procedure. This confirms the allegation that plaintiff had no desire to save money and was bent on maximising profits for themselves. Other allegation will be dealt separately by a separate court as ordered by this Hon Court
Response: The company's directors never instructed the agents to budget for a sinking fund

(h) *Issue*: The plaintiff has claimed commission by the surveyor and the managing agent at the same time, doubling this cost in effect
Response: The managing agents and surveyor have different roles. It is reasonable for managing agents to make a charge because of the extra work involved in coordinating the project and liaising with the lessees's

(i) Issue: correspondence early on before the works clearly shows amicable stance taken by leaseholder and denied by plaintiff to resolve matters reasonably
Response: The company is not aware of any such correspondence

(j) *Issue*: Copious correspondence between us and the plaintiff are available for inspection by the Hon Court if required
Response: No such correspondence has been disclosed although it is accepted there has been without prejudice correspondence which not be [sic] disclosed.

(k) Issue: legal and reasonable solution was offered that leaseholder would be willing to pay an estimate amount for the essential works as leaseholder is not part of the company and had reflected the scope of the inflated works
Response: The company has no assets other than service charges. If the tenant fails to pay her total liability then, unless the other lessees voluntarily agree to pay the shortfall, the company would be insolvent and the building could not be managed

(l) *Issue*: this was approximately a third of the total claim. This was rejected without examination by plaintiff
Response: There has been without prejudice correspondence in an effort to resolve the is matter but it would not be appropriate to refer to it

(m) *Issue*: The plaintiff has and did conceal the alleged defects from all, prior to starting their scheme.
Response: This is denied. No substantial work has been carried out to the building for some 20 years. The condition of the building would have been obvious to the defendant

(n) *Issue*: Even photos from front elevation before and after prove the point that works, including elevational works were not essential
Response: The surveyor's advice was that the roofs should be replaced

(o) *Issue*: Plaintiff has again increase service charge demands
Response: Yes, this is because of inflation

Evidence

17. The Applicant produced a witness statement and exhibits from Mr Leigh Olive, a Director of the management company for the building, Homes Property Management. In that statement and exhibit, Mr Olive confirmed the responses to the issues raised by the Respondent set out by the Applicant in its Statement of Case.

18. The Respondent did not produce any further evidence following on from her Statement of Case.

The hearing

19. The Respondent did not attend the hearing. Shortly before the hearing, the Respondent made an application to adjourn the proceedings. The grounds of the application were put as follows:

> The plaintiff has disclosed crucial without prejudice correspondence and payment offers etc in bundle rendering the defence impossible, against all protocol and court rules. The case should be adjourned, and a fresh procedure started to make trial fair and safe.
>
> As stated above case is unfair and prejudiced agains[t] defendant by disclosure of plaintiff

20. We dismissed the Respondent's application. The Respondent did not identify what she considered to be without prejudice documents in the bundle. The bundle provided by the Applicant did not contain without prejudice correspondence and there was nothing in the bundle that would otherwise unfairly prejudice the Respondent. There did not appear to be any other reason to adjourn the hearing.

21. Mr Olive, who had made a witness statement in the proceedings, attended the hearing to confirm his statement and to answer questions from the tribunal.

Decision

22. Taking the Respondent's issues as set out above and using the same letting, we comment as follows:

(a) No evidence was supplied by the Respondent to support this assertion

(b) No evidence was supplied by the Respondent to support this assertion

(c) This is too vague an assertion to make any ruling on

(d) No evidence was supplied by the Respondent to support this assertion

(e) The Applicant provided evidence which confirmed that it followed the necessary statutory consultation regulations. There was no evidence that the Respondent responded to the statutory notices regarding the works

(f) No evidence was supplied by the Respondent to support this assertion

(g) We were told by Mr Olive that the company had decided against a provision for a sinking fund. We consider that this decision and its effect, which was that leaseholders were asked to make a payment on account of Service Charges in the sum of £21,122 was, given the nature and urgency of the roof works and the nature of the building and value of the property, a reasonable one in the circumstances.

(h) The charging of fees by surveyors and managing agents in respect of major works is standard practice and there was nothing unreasonable in the charges made regarding the works in question

(i) No evidence was supplied by the Respondent to support this assertion but in any event, given our findings above, this point is likely to have been irrelevant in any event

(j) No evidence was supplied by the Respondent to support this assertion

(k) No evidence was supplied by the Respondent to support this assertion. In particular, the Respondent did not provide any detail to her allegation that the cost of the roof works was unreasonable and provided no evidence of alternative costings.

(l) It is impossible to make a ruling on this statement as it does not contain a coherent challenge

(m) No evidence was supplied by the Respondent to support this assertion. As stated by Mr Olive, the building had not undergone any major works for many years

(n) No photographic evidence was supplied by the Respondent to support this assertion. The Applicant produced details of the inspection carried out prior to the works and full details of the works themselves.

(o) This in itself is not a ground of challenge without grounds to show that charges were unreasonable.

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).