FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LSC/2023/0478**
Property	**:**	**Flat 1 26 East Tenter Street London E1 8DN**
Applicant	**:**	**Elexacom Ltd**
Representative	**:**	**Ms Rini Laskar**
Respondent	**:**	**26 East Tenter Street Management Ltd**
Representative	**:**	**Property Management Legal Services Ltd**
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 O'Brien,** **Mr A Harris LLM FRICS FCIArb**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**26 June 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £3747 is payable by the Applicant in respect of the service charges for the year ending 24 December 2021.

(2) The tribunal determines that the sum of £ 3577 is payable by the Applicant in respect of the service charges for the year ending 24 December 2022.

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that no more than 50% the landlord's costs of these proceedings can be relevant costs for the purposes of the service charge payable by the applicant.

(4) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that no more than 50% of the landlord's costs of these proceedings can be recovered from the applicant as an administration charge.

(5) The tribunal does not make an order requiring the respondent to re-imburse the fees paid by the applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2021 and 2022.

The background

2. The property which is the subject of this application is a 1-bedroom lower ground floor flat in a converted Victorian building which contains 5 flats. Unusually for a building of this kind, the heating and hot water for the building and the flats situated in it is supplied via a communal heating system.

3. Photographs of the building were provided by the applicant in her hearing bundle. The applicant told us that they were taken this year. 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.

4. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their

costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The hearing

5. The Applicant appeared in person and the Respondent was represented by counsel Ms Cattermole. We additionally heard evidence from a Mr Graham Bennett who is an employee of the Respondent's appointed managing agent, Managed Exit Limited. This company trades under the name HAUS Management.

6. The tribunal had one bundle prepared by the Applicant and one prepared by the Respondent. In addition, we had the benefit of reading skeleton arguments filed by both Ms Cattermole and Ms Laskar. Unfortunately, Ms Laskar did not have a copy of the bundle prepared by the respondent for the hearing although she had been served copies of all the documents in it. The respondent maintained it had been sent electronically but it may be that it was not received by the Applicant due to its size. She was supplied with an electronic copy of the Respondent's bundle in the course of the hearing.

7. In her initial application Ms Laskar indicated that she additionally wanted to challenge service charges for the years ending December 2023 and December 2024 however, in her statement of case she only supplied a completed Scott schedule in relation to the year 2022. She served a further Scott schedule relating to the year ending 2021 as part of her reply to the Respondent's statement of case. At the start of the hearing we indicated that we would only consider years in respect of which the Applicant had compiled a schedule of disputed charges, and we would only consider the items set out in those schedules. A composite Scott schedule covering the years 2021 and 2022 has been prepared by the Respondent and is included in its bundle at pages 168 to 184.

Preliminary Issues

8. It was agreed by Ms Cattermole and Ms Laskar that the correct applicant should be the registered owner of the leasehold title namely Elexacom Ltd and not Ms Laskar who is presently named as applicant. Ms Laskar is the sole director of that company. References to the Applicant in this decision are to both Elexacom Ltd and to Ms Laskar unless stated otherwise.

9. The tribunal considered that it would expedite the hearing if the matters in dispute could be narrowed at the start, particularly as regards the questions raised by Ms Laskar as to the validity of the service charge demands relating to the years ending 24 December 2021 and 24 December 2022. In her statement of case, Ms Laskar asserted

that the demands for both years were invalid, firstly because they failed to comply with s.47 of the Landlord and Tenant Act 1987, and secondly because the demands had not been issued in 2 equal instalments as required by her lease. She argued that because no valid demand had been served within 18 months of the relevant costs being incurred the respondent could no longer recover those costs pursuant to s20B of the 1985 Act.

10. Section 47 of the Landlord and Tenant Act 1987 provides;

> *(1) Where any written demand is given to a tenant of premises to which this Part applies the demand must contain the following information, namely-*
>
> *(a) the name and address of the landlord, and …*
>
> *(2) Where at tenant of any such premises is given such a demand but it does not contain the information required to be contained in it by virtue of subsection (1) then … any part of that demand which consists of a service charge or an administration charge shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.*

11. Section 20B of the 1985 Act provides:

> *(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before demand for payment of the service charges is served on the tenant then, subject to subsection 2, the tenant shall not be liable to pay so much of the service charge as reflects the cost so incurred*

12. Both demands carry a statement in bold that the landlords' address for the purposes of sections 47 and 48 of the Landlord and Tenant Act 1987 (LTA 1987) is 26 Tenter Street London E1 8DN. At the material time the registered address of the company was 226 Kingsland Road, London E8 4D8. Ms Laskar argued that there had been a failure to comply with s.47 of the 1987 Act because the address for service on the respondent on the face of the demands was 26 Tenter Street London E1 8DN and not the registered company address. She further argued that because the entirety of 26 Tenter Street had been converted into flats it no longer existed as a proper postal address.

13. Ms Cattermole argued that the address of 26 Tenter Street was a valid address as it was a place where the landlord carried on its

business. The respondent is a company wholly owned by the leaseholders of 2 flats in the building. Both parties referred us to the case of *Beviov Properties v Martin [2012] UKUT 133(LC) the* Upper Tribunal considered (para 11) that for the purposes of s.47 of the 1987 Act the address of a landlord company should be an address where the landlord is to be found. This can be, in the case of a company, either its registered address or the address where it carries on its business. There may be more than one such address and in those circumstances it may be that any of them will do.

14. In our view the address of 26 Tenter Street is sufficiently closely connected to the respondent company to constitute a place of business and consequently a proper address for service at the material time for the purposes of s47 LTA 1987. The only purpose of the company is to own and manage the building, and the directors of that company were leaseholders of flats in that building.

15. Furthermore in the case of *Johnson v County Bideford [2012] UKUT 457 (LC)* the Upper Tribunal held that the service of fresh demand with the correct address could retrospectively validate the demand for payment for the purposes of s20B LTA 1985. By analogy the service of a subsequent s.47 notice would also operate to retrospectively validate the prior demands for payment for the purposes of s20B. It is not disputed that the demands for the years 2023 contained a notice for the purposes of s47, and that a correct address for service was given on that notice being the company's then registered address.

16. Ms Laskar also argued that the demands were not valid because they had failed to send out demands for payments in 2 equal instalment each year as required by the lease. However she conceded that she had assumed this to be a requirement of the lease because Schedule 4 paragraph 2.1 of her lease required the *tenant* to pay the estimated service charge for each service charge year in two equal instalments. It had been the practice of the respondent to send out only one estimate service charge bill for each year at the material time. However the tribunal noted that there was no mirror image obligation of the tenant's obligation to pay in two equal instalments in the landlord's covenants which would require the latter to demand estimated service charges in two equal instalments annually. In the circumstances we considered that this argument was misconceived.

17. Finally Ms Laskar sought to argue in her skeleton argument that 6 items on her summary of service charges were subject to the statutory consultation mechanism provided by s.20 LTA 1985 and in respect of which she either had not received any consultation notice or had no recall of any such notice. These items are listed in her skeleton argument as;

a. Gas contract
b. Boiler maintenance
c. Cleaning contract
d. Management fees
e. Building insurance

18. She had not raised this issue before she had filed and served her skeleton argument and explained that this was due to late disclosure of relevant invoices on the part of the Respondent.

19. There is some dispute between the parties as to when the Respondent complied with its disclosure obligations, and to what extent any late disclosure was due to the Applicant's failure to properly set out all the items she wished to challenge in her initial Scott schedule. It is clear however that the Applicant had at least some of the invoices relevant to this particular point since September 2023. The tribunal considered that it was far too late to seek to raise this issue and we declined to permit the applicant to raise it.

20. The applicant also sought an order appointing a new manager. We cannot deal with such an application under s27A of the 1985 Act however if the applicant wishes to make such an application to this tribunal it remains open to her to do so.

The issues

21. Having determined those matters the parties agreed that the only remaining matter for the tribunal to determine was whether the service charges for the years 2021 and 2022 were reasonably incurred and reasonable in amount. The applicant did not seek to argue that any of them were not payable under the terms of the lease.

22. It is apparent that much of the challenge being brought by the applicant is due to firstly her view that the common parts of 26 Tenter Street are in a dilapidated and shabby state and secondly due to an alleged failure on the part of the managing agent to supply full copies of invoices when requested. The correspondence indicates that the applicant first requested invoices covering the years in dispute by letter dated September 2022. This was repeated in correspondence in October 2022, May 2023 and in an email dated 16 August 2023. There appears to have been partial compliance with this request in October 2023. The respondent accepts that it served the invoices relating to the year ending 2022 in April 2024 in accordance with the tribunal's directions. However the invoices from 2021 were not served until 5 June 2024, less than 2 weeks before this hearing.

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

Service charges for 2021

24. There has been some confusion as to whether the applicant wished to challenge the figures in the budget for this year or the figures in the audited accounts. We have considered the figures in the audited accounts which have been included in the applicant's bundle at page 104. In the course of the hearing the applicant abandoned her challenges to the following items; electricity, fire alarm and fire safety, gas, water hygiene, building insurance, Director and Officer insurance, Engineering insurance. Our determinations in relation to the remaining items under challenge are as follows;

(i) Accountancy and audit fees £520

The applicant challenged this on the grounds that there was no need to have the accounts audited by an external accountant. It is a term of her lease that they are professionally audited and we consider that the sum claimed is reasonably incurred and reasonable in amount

(ii) Account preparation £187

This is an additional cost charged by the managing agent for internal accounting costs. We consider that this fee to be reasonably incurred and reasonable in amount. This could have been included in the managing agent's fee which, in Mr Bennet's view would be in the top quartile of the market, and we have taken this into account when considering that fee (see viii below).

(iii) Boiler Contract £1191

This cost is necessary due to the communal heating system. The applicant challenges it as being too high, but it does not appear to be particularly high in the light of the comparable quotes she obtained which were in the region of £1,000. We consider that the sum sought was reasonable.

(iv) Internal Cleaning£2,022

Mr Bennett explained that this covered the cost of 2 cleaners attending the property once a fortnight at a cost of £85 per hour. He considered that this was about average for commercial cleaning in central London and we note that it is not very much more than the cheapest alternative quote obtained by the applicant of £1,500 per annum. We consider that this cost is reasonable. We have considered the photos of the communal areas and while we agree that they do seem 'tired' we do not consider that they are dirty. The photos of the exterior yard indicate a lack of

maintenance to the outside, but we note that these photos were taken in 2024. There is no separate charge for garden maintenance.

(v) Pest Control £660

The applicant complained that a lack of maintenance and cleaning had led to the presence of rodents in the building. Mr Bennett stated that the contract was to supply and regularly check bait boxes in the communal areas and that this was a preventative measure. No comparable has been supplied by the applicant and we consider that this item is reasonable and payable.

(vi) Gutter Maintenance £714

The lowest quotation obtained by the applicant was £500. The respondent states that a competitive tender exercise was carried out in 2020. We do not consider this sum to be unreasonable.

(viii) Management Fees £2,600

We consider that this fee is somewhat high, particularly given that the manager charges a separate fee for company secretarial work and for block accounting. The applicant has obtained a complete quote from another agent for an annual fee of £1,500. in our view as an expert tribunal we consider that the sum of £2200 would have been reasonable for this item bearing in mind the nature of the building and its location. We also bear in mind the agent's failure to provide invoices when requested by the tenant. This is not indicative of the level of service one might expect from a company whose charges fall into the top quartile of the market.

(ix) Company Secretarial £462

We accept that this is generally charged separately where such services are part of the management agreement, and we consider that it is reasonable.

(x) Repairs and Maintenance £5950

The applicant's only challenge to this item relates to the lack of invoices. The invoices supplied for maintenance to the building by the respondent total £4394 for this year. Mr Bennett was unable to explain why there was an apparent discrepancy between the sum in the accounts and the total for the supplied invoices. We consider that, particularly as the issue of missing invoices has played a large part in the applicant's dissatisfaction, this sum should be reduced to £4394.

We have disallowed the cost of repairs to a shower sealant as this is not a chargeable cost.

25. The applicant's liability is to pay 20% of the total costs incurred. With the above reductions the sum she is liable to pay by way of a service charge for the year ending December 2021 is reduced by £391.20

Service charges for 2022

26. The only items which the applicant wished to challenge for this year were the cost of internal cleaning of £1894, the management fees of £2671, the accountancy fees of £520, the additional fee for internal account preparation of £187, the cost of the boiler maintenance contract of £1091 and the cost of pest control of £660. For the reasons set out above we would not reduce any of these challenged items save for the management fee which again is high given that accounts preparation is charged separately and given the issues with the disclosure of invoices. We consider that a fee of £2,200 would be reasonable for this building. This will reduce her liability for the service charge year 2022 by £80.

Application under s.20C and refund of fees

27. In the application form and in her statement of case and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act to limit the ability of the respondent to recover its costs. It is not entirely clear whether the applicant's lease permits the recovery of legal costs via the service charge. The respondent's counsel indicated that the respondent wished to reserve its position in relation to this point. The applicant proceeded on the assumption that such costs were recoverable under the service charge provisions of her lease. We do not make any finding as to whether such costs are recoverable as a service charge, and expressly leave that question open.

28. In *The Tenants of Langford Court (Sherbani) v Doren Ltd LRX/37/2000* HH Judge Rich QC set out the principles upon which the s20C discretion should be exercised:

> 31. *In my judgement the primary consideration that the LVT should keep in mind is the power to make an order under section 20C should only be used in order to ensure that the right claim costs as part of service charge is not used in circumstances that make its use unjust. Excessive costs unreasonably incurred will not in any event be recoverable by*

reason of section 19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a tribunal which has heard the litigation giving rise to the costs can avoid arguments under section 19 but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably and properly incurred by the landlord, it would be unjust that the tenants, or some particular tenant, should have to pay them.

29. In *Re SCMLLA (Freehold) Ltd [2014]UKUT 58 (LC)* Martin Roger QC sitting in the Upper tribunal observed:

> *An order under section 20C interferes with the parties' contractual rights and obligations and for that reason or not to be made lightly or as a matter of course but only after considering the consequences of the order for all those affected by it and all other relevant circumstances.*

30. The importance of considering the consequences of the order was reinforced in *Conway v Jam Factory Freehold Limited [2013] UKUT592* (LC) where it was emphasised that in any application for section 20C it is essential to consider what will be the practical and financial consequences for all of those who will be affected by the order and to bear those consequences in mind when deciding on the just and equitable order to make.

30. In *Church Commissioners v Derdabi [2010] UKUT 380 (LC*) HHJ Gerald considered the approach which the Tribunal should take in cases where the tenant has partially succeeded, and the tribunal is considering reducing the costs recoverable by the landlord;

> *22. Where the landlord is to be prevented from recovering part only of his costs via the service charge, it should be expressed as a percentage of the costs recoverable. The tenant will still of course be able to challenge the reasonableness of the amount of the cost recoverable, but provided the amount is expressed as a percentage it should avoid the need for a detailed assessment or analysis of the costs associated with any particular issue.*
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> *23. In determining the percentage it is not intended that the tribunal conducts some sort of mini taxation exercise rather, a robust, broad brush approach should be adopted based upon the material before the tribunal and taking into account all relevant factors and circumstances including the complexity of matters an issue and the evidence presented and relied in respect of them, the time occupied by the tribunal and any other pertinent matters. It would be a rare case where the appropriate percentage is not clear. It is*

the tribunal seized with resolving the substantial issues which is best placed determined all of these matters.

31. We consider that it would be just and equitable to make a partial order under s20C. We bear in mind that the application has only resulted in modest reductions in the total demanded for the years 2021 and 2022. Additionally the challenges which the applicant has made to the validity of the demands has failed. However it is the view of the tribunal that it is likely that these proceedings might have been avoided and/or the issues considerably narrowed if the respondent had properly responded to the Applicant's numerous requests that they supply her with copy invoices when asked to do so. Not only is there a statutory obligation to comply with any such request made within 6 months of the relevant demand, but it was also a term of the applicants lease that the landlord would permit the applicant to inspect all such invoices (paragraph 4.3 of Schedule 6). We note that the first request was made in September 2022. No substantive response was received until October 2023 when the respondent partially disclosed relevant invoices for 2021 and 2022. The 2022 invoices were disclosed in accordance with the directions, but the respondent did not disclose invoices for 2021 until 5 June 2024, 12 days before the final hearing. Further we note that the respondent does not appear to have responded to the applicant's invitation set out in an open letter dated 2 February 2024 (page 26 of the applicant's bundle) and repeated on 10 February 2024 (page 28 of the applicant's bundle) to engage with the mediation service offered by this tribunal. In the circumstances the tribunal determines, taking a broad-brush approach, that it is just and equitable for a partial order to be made under section 20C of the 1985 Act so that no more than 50% of the costs incurred in connection with the proceedings before the tribunal can be considered relevant costs for the purpose of the applicant's liability to pay service charge.

32. We have been invited by the applicant to exercise our power to reduce or extinguish her liability to pay such costs pursuant to paragraph 5A of Schedule 11 to the 2002 Act. It is clear that the legal costs of these proceedings would be in principle recoverable under paragraphs 7 and 15 of Schedule 4 to the applicant's lease. We consider that the applicant's liability to pay such costs should be reduced for the same reasons we have set out above. Consequently we direct that the respondent may only seek to recover 50% of the legal costs incurred in these proceedings as an administration charge.

33. In light of the fact that the reductions are modest, we do not order the respondent to reimburse the applicant in respect of the fees paid to the tribunal.

Name: Judge O'Brien **Date:** 26 June 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).