



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

Case reference : **LON/00AP/LSC/2022/0347**

Property : **21 Cromberdale Court
Spencer Road
Tottenham
London N17 9UX**

Applicant : **Mr Jonathan Malka**

Representative : **None**

Respondent : **Standor Limited**

Representative : **Mr K I Triantafyllides**

Type of application : **Determination of the reasonableness
and payability of service charges
pursuant to s.27A of the Landlord &
Tenant Act 1985**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb
Mr Stephen Mason FRICS**

**Date and venue of
Hearing** : **8 November 2023
10 Alfred Place, London WC1E 7LR**

Date of Decision : **22 November 2023**

DECISION

Decisions of the Tribunal

- a. The Tribunal determines **£5,529.56** is payable to the Respondent for service charges incurred for the years 2016-2022.
- b. No order is made under Section 20 C or paragraph 5(a) of Schedule 11 to restrict the service charges payable by the Applicant arising from this application.
- c. The application and hearing fee are not to be refunded by the Respondent.

1. The Application

- 1.1 The Applicant sought a determination pursuant to s.27A of the Landlord & Tenant Act 1985 ('**the 1985 Act**') and schedule 11 to the Commonhold & Leasehold Reform Act 2002 ('**the 2002 Act**'), as to the payability of service charges for years 2016-2022 for Flat 21 Cromberdale Court, Spencer Road, Tottenham, N17 9UX ("**the Property**").
- 1.2 The Applicant made an application to Tribunal dated 15 November 2022. Directions were subsequently issued and these identified that the Applicant was disputing service charges amounting to £6,047.04 for the years 2014-2022.
- 1.3 The Applicant also sought an Order under s.20C of the 1985 Act and paragraph 5 (a) of schedule 11 to the 2002 Act.
- 1.4 A request was made for reimbursement of the application and hearing fees.

2. The Hearing

- 2.1 A hearing was held on 8 November 2023. Mr Malka, the Applicant represented himself and Standor Limited, the Respondent was represented by Mr Triantafyllides.
- 2.2 The Applicant and Respondent each prepared and submitted separate trial bundles. The Respondent submitted a Skelton argument to Tribunal.
- 2.3 Both parties answered questions posed by the Tribunal.

3. Matters in dispute

- 3.1 At the opening of the hearing the Applicant confirmed he did not dispute the reasonableness of the service charges. The dispute is the validity of the service charge demands for service charge years 2014-2022 and the payability of the charges.
- 3.2 Mr Malka said the management company had failed to issue Section 20 b notices under the 1985 Act for the disputed service charges except for year 2018. He contended this was material to the service charge payability.
- 3.3 The Applicant confirmed at the hearing the sum in dispute remained at £6,047.04.

4. **The Property**

- 4.1 Cromberdale Court comprises a block of 24 maisonettes built over three storeys, situated on a corner plot between Spencer Road and Lansdowne Road. The property includes self-contained garages that serve the flats. The premises are surrounded by established residential dwellings of mixed ages and types.

5. **The Law**

- 5.1 The relevant legal provisions are set out in the Appendix to this decision.

6. **The Lease provisions**

- 6.1 A copy of a lease dated 22 July 1966 between Cromberdale Properties Limited, Mr William J Rees and Cromberdale Court (Management) Ltd was provided for Flat 21 at Respondents Bundle page 80 (RP p80).

- 6.2 It was explained that the Respondent is the freeholder of the premises but they were managed until 2016 by a resident owned service company called Cromberdale Court (Management) Limited. This arrangement ceased in the final quarter of 2016 when the service company was dissolved, and a commercial property management company known as PBM Limited was appointed to manage the property.

- 6.3 The Parties referred the Tribunal to **Clause 4(2) (iv) (a)**, this states:

‘To pay to the company 1/24th of all the sums expended by it as more particularly set-out in the Third Schedule hereto within 14-days after being required so to do’

- 6.4 Further in **Clause 4(2)(iv) (b)**:

‘To deposit with the company on the execution hereof the sum of £25 the receipt whereof is hereby acknowledged and to permit the company to retain the same during the term hereby granted as a reserve towards making good any default by the lessee in paying any monies hereby covenanted to be paid to the company in respect of the costs charges and expenses incurred by the company in performing its obligations hereunder all such payments shall be payable in full notwithstanding such deposit which or the unexpended part of which shall be repayable without interest to the lessee at the end or sooner determination of the term hereby granted’

- 6.5 At **Section 1** (RP p83) states leaseholders are:

‘Also paying by way of additional rent a proportionate part of the premium from time-to-time paid by the lessor for insuring the building of which the flat comprised in the demised premises forms part ... and all other risks usually described as property owner’s liability which said additional rent shall be paid with the next half-yearly payments of rent due after the payment of the said

premium by the lessor and shall be recoverable as rent in arrear'

6.6 At **Clause 4(4)** (RP p89), it states:

'All monies paid to or deposited with the company pursuant to clause 2 (iv) (b) hereof and all necessary books of accounts shall be kept by the secretary of the company who shall at all times be a chartered accountant the secretary shall prepare half-yearly accounts and the accounts stated thereof as due from each of the lessees shall be final and binding on the company and the lessees unless there shall be a manifest error therein which attention of the secretary shall be drawn in writing within 14 days of the delivery of the said accounts'

7. **The Applicant's submission**

- 7.1 The Applicant told Tribunal he purchased Flat 21 in or around 1999. He does not reside at the flat, this being let on an assured shorthold tenancy ('AST').
- 7.2 The Applicant said that from his purchase until the 2016 service charge demands, he had paid all service charges in advance on a quarterly basis. The three demands were made approximately on a quarterly basis through the year, each in the sum of £80 . Over the 16 or so years this had provided sufficient funds to pay the management, repair and maintenance costs. The Applicant said he was also asked to make an annual contribution of around £140 pa for insurance of the Property. This he did in the knowledge the contribution was in advance of paying the insurance premium.
- 7.3 The Applicant confirmed that he paid these charges on a regular basis and did not query the operation of the service charge billing procedure.
- 7.4 In or around 2016, Mr Dryden and Mr Morrison the two residents who had operated the resident's management company relinquished their roles. The Respondent appointed PBM Limited a property management company to manage Cromberdale Court.
- 7.5 The Applicant alleges that his service charge demands from the date PBM took over management of the Property was sent to the wrong address. He did not receive any of the service charge demands until this was corrected. The Applicant told the Tribunal that the first occasion on which he received correspondence about the Property after the appointment of PBM was 6 June 2018 from SLC Solicitors.
- 7.6 The Applicant acknowledged he had not paid any service charges from 2016 to 2018 as he did not receive any demands. The Applicant explained that after receipt of a demand for the outstanding charges he did not pay and entered into dispute with the Respondent. It was not clear to Tribunal why he disputed the service charges at that time, except that he was unclear about the basis of the charges.

- 7.7 The dispute with the Respondent led to the appointment of solicitors to recover the monies. The Applicant's service charge account was suspended for a further two-years and he alleged he received no further demands during this period.
- 7.8 The Applicant referred Tribunal to an e-mail dated 18 May 2023, addressed to PBM Limited (included in the RP p.382) in which he requested:

'... could you point me to the clause in my lease requiring such payments to be made quarterly in advance.'

He contended that the lease did not provide for service charges in advance to be paid in January, May and September as had been the custom and practice. He said they were payable 14 days in arrears in accordance with Clause 4(2) (iv) (a) after receipt of twice yearly accounts prepared by a Chartered Accountant. This to accord with Clause 4(4). The Applicant said service charges for insurance premiums were payable as a supplementary rent six-months in arrear see Clause 1(1). After questioning by Tribunal, he said these failures to comply with lease provisions when making demands were the reason for non-payment of service charges demanded.

- 7.9 Tribunal confirmed with the Applicant that he had paid service charges for around 16-years on the established charging basis and that he failed to explain to the Landlord why he stopped paying charges in 2016.
- 7.10 Tribunal also asked whether the Applicant had suffered detriment as a consequence of the advanced charging, given the modest costs associated with this property. The Applicant said he had not suffered any detriment.

8. Respondent's submission

- 8.1 The Respondent confirmed the procedure adopted for collecting service charges was as described by the Applicant. He accepted this did not comply with the lease provisions.
- 8.2 Mr Triantafyllides said that all lessees, save for the Applicant, had paid and continued to pay the charges on this basis without challenge to the legality of the procedure.
- 8.3 After the appointment of PBM Limited, the charging procedure was reviewed by a consultant solicitor. They confirmed the established charging procedure failed to comply with the terms of the lease but advised the existing practice to be continued because it worked efficiently.
- 8.4 Mr Triantafyllides then referred to a number of authorities to support the Respondent's assertion that estoppel by convention was created by the actions of the Applicant over the 16 or so years he had held the lease of No 21 Cromberdale Court:

- 8.5 He referred to three authorities *Bucklitsch –v– Merchant Exchange [2016] UKUT 527 (LC)* {"Bucklitsch"}, *Jetha & another –v– Basildon Court Residents Company Limited [2017] UKUT 58 (LC)* ["Jetha"] and *Admiralty Park Management Company Limited –v– Ojo [2016] UKUT 421 (LC)* {"Admiralty Park"}. He argued the findings of these three Upper Tribunal Authorities support his assertion of the establishment of estoppel by convention. He points to the behaviour of the Applicant prior to the dispute of the liability to pay being made known.
- 8.6 The Tribunal reviewed the findings of these Upper Tribunal decisions. In both *Bucklitsch* and *Jetha* the original determinations of the First tier Tribunal (FTT) of estoppel by convention was rejected an Appeal by the Upper Tribunal. The requirements for estoppel were not satisfied. In contrast the Upper Tribunal found in favour of the FTT decision in *Admiralty Park*. The tenant was "estopped" or prevented from relying upon the failure by the landlord to follow the contractual scheme in the collection of service charges to justify non-payment of their liabilities.
- 8.7 Mr Triantafyllides argued that estoppel by convention had been established through the behaviour of the Applicant and it was unreasonable for him to decide in May 2023 that, after more than 23 years, the liability he had incurred and accepted for so many years was inconsistent with the terms of the lease.

9. **Tribunal Decision**

- 9.1 The Tribunal has reviewed the terms of the lease and concurs with the parties that:
- the service charges are payable in arrears.
 - there is a requirement to provide regular certificates by a chartered accountant, to confirm any monies held on account (referred to in 2 (iv) (b)) are done so in accordance with appropriate procedures; and
 - it was necessary to provide accounts on a six-monthly basis.
- 9.2 The Tribunal identifies the Applicant did not refer to the failure to comply with the terms of the lease as his reason in his application to the Tribunal. The application dated 15 November 2022 made no mention of this as a ground for the dispute.
- 9.3 The Tribunal is also unable to identify any detriment to the Applicant caused by the current practice of demanding advance payment of this modest service charge sum.
- 9.4 The Tribunal has had regard to the submissions made on relevant authorities by the parties. The Tribunal prefers the guidance afforded by the legal test for estoppel by convention provided in the authority

Republic of India –v– India Steam Ship Company Limited (No 2 1998 AC 878), Lord Steyn stated at 913 E–G:

'It is settled that estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both, or made by one and acquiesced by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law, if it would have been unjust to allow him to go back on the assumption ... it is not enough that each of the two parties act on assumption not communicated to the other, but it was rightly accepted by Counsel for both parties that a concluded agreement is not requirement for an estoppel by convention.'

9.5 More recently in *Blindley Heath Investments Ltd –v– Bass* [2015] EWCA Civ 1023, Hilliard, J state at paragraph 73:

'Estoppel by convention is not founded on an unilateral representation but, rather, on mutually manifest conduct by the parties based on a common but mistaken assumption of law or facts: its basis is consensual, its effect is to bind the parties to their shared, even though mistaken, understanding or assumption of the law or fact on which their rights are to be determined (as in the case of estoppel by representation) rather than to provide a cause of action (as in the case of promissory estoppel and proprietary estoppel) ... if and when the common assumption is revealed to be mistaken the parties may nevertheless be estopped from departing from it for the purposes of regulating their rights inter se for so long as it would be unconscionable for the party seeking to repudiate the assumption to be permitted to do so ...'

9.6 Accordingly, it is necessary to show: -

- i. a common assumption (a shared assumption of facts or law communicated or acquiesced between the parties);
- ii. detrimental reliance upon the same; and
- iii. that it is unconscionable for the Defendant to now seek to alter that common assumption.

9.7 It is not disputed by the Applicant that he paid the service charges in respect of No 21 Cromberdale Court on a quarterly basis in advance for 16 or more years. There was no request for six-monthly account to comply with the terms of the lease.

9.8 The Respondent was unaware of the grounds for non-payment of the service charges since 2016 until May 2023 when they were advised by e-mail from the Applicant to the managing agent.

9.9 The longstanding payment of the service charges by the Applicant and lack of notification that a dispute had arisen over the assumptions on

which these were paid formed a reasonable common assumption between the parties.

- 9.10 The Applicant's failure to pay the £6,042 caused detriment to the Respondent, whilst the Applicant accepted this has caused him no detriment. The Respondent relies on the collection of service charge funds to pay for works at the Property and as such had to fund the shortfall. The Applicant's failure to pay the insurance rent could have potentially undermined the security of the Respondent's property interest and of all other leaseholders at the Property. This is identified as significant detriment to the Respondent. The Tribunal conclude detrimental reliance is proven.
- 9.11 The Applicant's failure to provide any notification of the reason for non-payment from 2016-23 undermines the validity of the reasoning proffered by the Applicant. A copy of the lease was available to the Applicant since his ownership in or around 1999. He would have known the basis upon which he was making the payments and had these been in dispute, for the reasons now presented, he could have advised the Respondent. This was not done. It is unconscionable for the Applicant to now seek to alter the common assumption.
- 9.12 The Tribunal relies upon the listing of the expenses payable in the Respondent's bundle at p63 dated 14 September 2022 as the authoritative listing of monies outstanding. The Applicant confirmed he had not paid the sum of £6,047.04 outstanding on his service charge account. This includes three sums for legal charges amounting to £348.00.

Legal charges on account dated 14 September 2022		
06/09/2020	case preparation	£144.00
15/11/2018	case preparation	£144.00
02/09/2022	Final Notice Fee	£60.00
		£348.00

The Tribunal is not provided with evidence that these legal costs were solely to satisfy the costs of a s.146 Order to repossess the flat following failure to pay service charges.

- 9.13 The Upper Tribunal guidance on such administrative costs is that the intention to repossess a property due to failure to satisfy lease covenants must be clearly stated in any correspondence with the tenant. This was not done and as a result the Tribunal does not allow these costs.

20 B Notice

- 9.14 The Arrears Schedule sent under cover letter dated 8 June 2018 by SLC solicitors to the Applicant is not intended as a section 20 b Notice. The purpose was to seek payment of the outstanding charges. It is not

disputed by either party that it informs the Applicant of incurred expenditure from 1st December 2016 to July 2018. The Tribunal determine the Applicant was made aware of incurred and relevant service charge expenditure during this period on this date.

- 9.15 The alleged breakdown in postal communication between Applicant and PBM Limited managing agent from the last quarter 2016 to July 2018 is accepted.
- 9.15 A sum of £164.58 was incurred more than 18 months from the service of the 8 July 2018 demand. This amount is deducted from the sum payable.

Sums Payable

- 9.16 Accordingly, Tribunal determines that estoppel by convention is established by the action of the tenant Applicant and the service charge for years 2016-2022 was correctly demanded.
- 9.17 From the sum of £6,042.14 correctly demanded is deducted the disallowed legal charges of £348 and the £164.58 service charge advised 18 months or more after the expenditure was incurred.
- 9.18 The total sum payable by the Applicant is **£5529.56**

11 20c Order

- 11.1 The Tribunal has found in favour of the Respondent on the majority of disputed items. It is not just or equitable to make a s.20C Order to prevent the recovery of any costs arising from this application should this be permitted under the lease terms. Accordingly, no order is made.

12. Recovery of application and hearing costs

- 12.1 The Tribunal determine that these costs should not be recoverable by the Applicant given the findings in this Application.

Name: Ian B Holdsworth **Date:** 22 November 2023
Valuer Chairman

Appendix A

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix B Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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

- (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

- (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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either:-
- (a) complied with in relation to the works or agreement; or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.
- (2) In this section 'relevant contribution', in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement: -
- (a) if relevant costs incurred under the agreement exceed an appropriate amount; or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount: -
- (a) an amount prescribed by, or determined in accordance with, the regulations; and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20B

- (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 a demand for payment of the service charge 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 costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an Order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made: -
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such Order on the application as it considers just and equitable in the circumstances.

Section 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007

Regulation 3 relates to the 'Form and Content of Summary of Rights and Obligation'. Where these Regulations apply, the summary of rights and obligations which must accompany a demand for the payment of a service charge must be legible in a typewritten or printed form of at least 10 point, and must contain (a) the title "Service Charges – Summary of tenants' rights and obligations"; and (b) the statement set out in subparagraph (b).