



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

**a**

**Case reference** : **LON/00BB/LSC/2023/0184**

**Property** : **Flat 1504, Sky View Tower, 12 High Street, London E15 2GT**

**Applicants** : **(1) Kin Man Hor  
(2) Fung King Tang**

**Representative** : **In person**

**Respondents** : **Capital Towers RTM Company Limited**

**Representative** : **Ms R Ackerley of counsel**

**Type of application** : **Payability and reasonableness of an administration charge**

**Tribunal** : **Judge Simon Brilliant  
Mr S Mason FRICS**

**Date of Decision** : **27 November 2023**

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**DECISION**

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**Summary**

1. The applicants are liable to the respondent for £9,368 by way of administration charges.

**The legislation**

2. Paragraph 1 Schedule 11 Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”), where relevant, provides as follows:

**Meaning of “administration charge”**

(1) *In this Part of this Schedule “administration charge” means an amount*

*payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly— ...*

*(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease. ...*

*(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—*

*(a) specified in his lease, nor*

*(b) calculated in accordance with a formula specified in his lease. ...*

3. Paragraph 2 of the 2002 Act provides as follows:

*Reasonableness of administration charges*

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

4. Paragraph 5(1) of the 2002 Act provides as follows:

*Liability to pay administration charges*

*An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to— ...*

*(c) the amount which is payable, ...*

**Background**

5. The applicants are the long lessees of Flat 1504, Sky View Tower, 12 High Street, Stratford, London E15 2GT (“the flat”). They do not live there as they are resident in Hong Kong; it is an investment and let out. Their lease is dated 27 June 2017 (“the lease”). The respondent is the landlord. Sky View Tower (“SVT”) consists of 35 floors. The flat is on the 15th floor.

6. On or about 02 November 2018, the applicants granted a short-term sublease of the flat to a sub-tenant (“the tenant”).

7. Unfortunately, in the applicants’ words, the tenant was “a crook”. He sold drinks at large paid parties which were very noisy and disturbed the neighbours. There were drugs. There were also suggestions of sex parties.

8. As a result, the respondent employed security guards and dogs in an attempt to stop these parties continuing. The total cost of so doing was £13,350.12 (“the security charges”). In their notice of application the applicants challenged £10,368 of those charges.

9. The applicants acted responsibly at all times and tried to evict the tenant as quickly as possible. After the first party they served the requisite notices and started an action for possession of the flat against the tenant. The applicants, moreover, verbally agreed with the tenant that they would refund all the rents paid and the deposit should he move out within 2 to 3 weeks. He did not keep to this agreement. An order for possession was obtained. The tenant still did not leave the flat and it was necessary to send in bailiffs. The tenant was eventually evicted on 26 July 2019.

10. On 01 September 2023, I determined as a preliminary issue that the lease, on its true construction, permits the respondent to recover the security charges.

11. I also determined that the respondent was not entitled to recover late payment fees of £60. The respondent has charged the applicants further late payment fees. At the hearing it said it would waive them, but in fact they are not recoverable in the first place.

12. Accordingly, this is the final hearing as to whether the amount of the security charges (which are variable administration charges) is reasonable.

### **The recoverability of the security charges**

13. It may be helpful at the outset to explain why it was held that the lease does entitle the respondent to recover the security charges.

14. The following clauses in the lease are relevant as to whether the security charges are payable in principle:

(a) Clause 8(c) provides that any covenant is *'deemed to extend to an obligation to ensure that subtenants and any third parties who can be directed by the Tenant or by any of the foregoing comply therewith'*.

(b) Clause 8(d) confirms any indemnity in favour of the respondent is a full indemnity.

(c) By paragraph 2 of the Fifth Schedule the applicants covenanted to use the flat only for the purpose of private residential occupation and not for the purpose of any trade or business.

(d) By paragraph 1(a) of the Fifth Schedule the applicants covenanted *'against doing, permitting to be done, or suffering to be done anything which may cause damage or inconvenience or be or become a nuisance or annoyance'*, and in particular:

i. *not to deposit rubbish otherwise than in the communal refuse-bins (paragraph 4 of the Fifth Schedule);*

ii. *not to use a radio, television set, musical instrument, amplifier, loudspeaker or electric tool or to sing in such a way as to become a nuisance or annoyance (paragraph 5 of the Fifth Schedule);*

iii. *not to use the roof terrace for the purpose of, amongst other things, parties or for the playing of music (paragraph 19 of the Fifth Schedule);*

iv. *to ensure all guests and other invitees or licensees of the applicants while in the Building and Estate conform to all the stipulations and regulations of the Fifth Schedule (paragraphs 8 and 9 of the Fifth Schedule).*

15. Most importantly, paragraph 16(b) of the Fourth Schedule provides that the applicants must *at all times hereafter ... indemnify the Landlord from and against all actions proceedings costs losses expenses claims and demands arising out of ... non-compliance with any of the provisions herein contained in general ...*

### **The hearing**

16. The hearing was conducted remotely. The applicants represented themselves and gave oral evidence. The respondent was represented by Ms Ackerley. Oral evidence was given by Ms Sara Coelho, an Assistant Property

Manager at Kinleigh Folkard & Hayward, who are the managing agents (“the managing agents”). She had no personal knowledge of the relevant events, but exhibited a number of contemporaneous and critical emails. We have no reason to doubt the veracity of the contents of those emails, and find that their contents are true.

### **The layout of the development**

17. SVT does not stand in isolation. It is part of a wider development (“the development”) constructed about six years ago.

18. At the suggestion of the tribunal, at the start of the hearing we were given a description of the layout of the development.

19. The development consists of two blocks. Looking from the street SVT is on the right-hand side. To the left is a lower block, City West Tower (“CWT”).

20. The blocks are connected on the third, fourth and fifth floors by a car park which serves and covers both blocks. Entrance to the car park is by a lift situated on a side road off the High Street called Cook’s Road, which lies to the right of SVT. There is also a cargo lift on Cook’s Road.

21. Both blocks have their own entrance from the High Street. SVT has a 24 hour concierge at the front entrance. CWT does not. The ground floor is commercial, so the flats begin on the sixth floor above the car park. Behind the development then is a canal.

22. In all, there are around six entrances by which access can be gained to SVT. Fobs are required both for these entrances and for the lift (apart from the front entrances to the blocks and the bin store which requires a fire brigade key). These entrances can be accessed by those inside opening them or operating the lift.

23. It is clear on the evidence that the organisers were absolutely determined and would stop at nothing to allow the partygoers to gain access to SVT and the flat.

24. It is convenient to mention at this juncture that part of the applicants’ case is that, apart from the main entrances, all the other entrances should have been kept locked. We reject this argument. This would have unlawfully hindered access from the outside by those entitled to use those entrances and would not have complied with health and safety requirements. Another argument we reject is that the concierge would have provided sufficient security. That person alone would not have done.

### **The security charges**

25. The security firm employed by the managing agents was Serjeant Security Ltd (“Serjeant”). The security personnel engaged by Serjeant consisted of guards and handlers with dogs.

26. The charge out rates were £15 per hour including VAT for a static guard and £20 per hour including VAT for a dog handler. There was no challenge to the reasonableness of the charge out rates, and we consider that they were modest and reasonable.

27. The security personnel were stationed at the various entrances as described above.

28. The charges which are the subject of these proceedings are as follows:

23 February 2019	1 x 5 guards and 2 dogs	£1,224
02 March 2019 - 22 March 2019	7 x 4 guards	£6,048
06 July 2019	1 x 5 guards and 4 dogs	£1,368
12 July 2019	1 x 3 guards and 3 dogs	£864
13 July 2019	1 x 3 guards and 3 dogs	£864
Total		£10,368

29. The unchallenged evidence of the managing agents was that they relied upon the expertise of Serjeant to provide what was considered to be the necessary level and type of security personnel required for each occasion. No alternative evidence was provided by the applicants as to what would be a reasonable level and type of security personnel on any given occasion.

30. Looking at the evidence in the round, we find no reason to depart from the advice given by Serjeant. The applicants argue that because the number of security personnel were different from party to party, it must mean that it was unreasonable to provide more than the lowest amount which was provided. We do not accept that argument; it was a matter for the security company in conjunction with the managing agents to decide what was appropriate for any given party. In addition, the appropriate department of the London Borough of Newham (“the local authority”) and police were involved in these decisions.

### **The application**

31. The application made by the applicants was in the wrong form. It was an application relating to service charges, rather than to administration charges. Permission was given for it to be treated as the correct application.

### **Factual narrative**

32. On 02 November 2018, the tenant moved into the flat having been granted an AST by the applicants.

#### **The first party**

33. On 27 November 2018, the tenant held the first paid party. The concierge received complaints about the noise from other residents in the building. Police were called and stopped the party.

#### **The second party**

34. On 31 December 2018, the tenant held the second paid party. Photographs show damage to the common parts as a result.

35. The seriousness of what was happening is illustrated by the following

email sent by the local authority to the managing agents on 31 January 2019:

*I am writing in relation to a block which your company manages – Sky View Tower, 12 High Street, Stratford, London, E15 2GT. The council have recently received complaints regarding an event that occurred on New year’s eve 2018 included over 100 people attending the party and that drugs and alcohol were used at the event.*

*As a result, this caused nuisance to the neighbouring residents who were contacted and confirmed they felt intimidated and were left with litter and vomit outside their flats, in the lifts and stairwell areas. Our intel indicates the event was linked to flat No. 1504 and tickets are being sold online for customers to purchase.*

*The council have received intel of a future event that is scheduled to take place at the same location on Valentine’s day 2019, commencing around 22:00hrs. Could you advise how this will be addressed by the managing group and what measures will be put in place to prevent any future events taking place. I would also strongly suggest the landlord of the property is contacted and made aware of the events and implications involved. Also, if the concierge / any security staff could be briefed to help prevent any unwanted guest entering the building to deter any untoward activities. The council could possibly help with taking enforcement action / involving the police to help deal with issues on the day of the event.*

*I have attached mobile footages received by a resident which had been recorded from the received by a resident which had been recorded from the previous event I look forward to hearing from you in the near future.*

### The third party

36. On Saturday 16 February 2019, the tenant held the third paid party.

37. At this juncture the managing agents were aware of the party in advance and decided to engage security personnel. There were 6 guards and 2 dog handlers. The guards and dogs were positioned at all the entrances to SVT, not just on the actual floor of the flat. In the light of the email set out above it was clearly reasonable for Serjeant to engage security personnel.

38. The cost of £1,440 was charged to and paid by the applicants. There was no challenge to this payment in the application to the tribunal, but it was said hearing that they were prepared to pay £864, but wanted a refund of the difference, being £576.

39. Again, the seriousness of the situation is illustrated by the following email sent by the local authority to the managing agents on 18 February 2019:

*Please be advised of the outcome from the event on Saturday 16th February 2019 at Sky View Towers, Stratford, E15. Our Enforcement team attended the location around 00:30hrs and saw approximately over 70 individuals outside the location with several more persons arriving by vehicle and public transport. There was a large security presence involving K9 units and private security officers around the vicinity of the building. Enforcement officers engaged with security who were on site.*

Officers were approached by a .... male who asked why there was so much security and asked why persons were not allowed to enter the building. The male who refused to provide details, stated that it was a private party and that it was not an advertised event. The male was provided with verbal evidence reference dates, times, etc. Enforcement officers stated that they knew it was an advertised event.

A .... female then stated that there was nothing advertised on the flyers that were distributed which confirmed to officers that it was a advertised event. Officers overheard unknown individuals stating that they had paid for a range of tickets from £10 - £17 - £27 pound to be part of the event and that they wanted refunds. It was explained to the male that in light of what officers had heard and knew, the event was not to take place as no temporary event notice was in place or approved.

It was also explained that the event was not going to take place as the building was a residential building and that there were health and safety concerns. Officers explained that a section 80 abatement notice would be issued and that if any music was turned on then officers would contact the police.

The male was informed that if the event was deemed a rave then the male stood to be fined and or prosecuted and seizure of equipment would take place. The male was quite amenable and decided to cooperate with officers. The male decided to cancel the event and advised persons over the phone of the situation.

Enforcement officers patrolled and stayed at the location while the large groups of persons were continuing to loiter and after a period of time the group started to become smaller and smaller as people realised the event was not going to take place and they began to leave the area.

Officers completed a final patrol of the location, liaised with security and gave additional advice before leaving the location. officers advised security that should there need to be any further interventions then please contact the tasking team through the out of hours council number.

**I would like to thank you for arranging security presence on the day, as the measures implemented by you and also our Enforcement teams attendance was proven to be productive and effective which helped prevent the planned event from going ahead (our emphasis). Moving forward, I understand you have already advised in the email below regarding the offenders tenancy agreement not being renewed.**

Would there be any more information on what is expected to happen and when the tenancy will be reviewed? I appreciate your assistance throughout this whole investigation and really hope that the information provided above would be of sufficient help to contribute towards the reasons to not renew the tenancy agreement. The tenant proceeded with his attempt to progress the party despite stating the party would not go ahead. Any update from yourself or the landlord would be much appreciated.

40. The concierge's log is as follows:

*At 8:10, received a call from apt 1503 that there are people are fighting in apt 1504. I went up and saw 2 girls were fighting and 1 ... male guy was trying to push 1 of those girls out of the apt. The girls didn't want to leave but he forcefully dragged 1 of the girl out of the apt into the passenger lift. 1 of the girls had already called the police as well as ambulance.*

*1 of the girls was really drunk and was swearing, screaming, and shouting and crying loudly and didn't want to leave the apt. So, both the girls came down to the ground floor and sat just outside the middle lift of SVT.*

*4 police officers arrived on site including a medical officer and took care of all the situation. Later on, police took the drunk lady of the building & went out of site.*

*The fourth party.*

41. The next party was scheduled for the following Saturday, 23 February 2019.

42. On 19 February 2019, the local authority emailed the managing agents:

*Thank you for your email below. Could I ask how you were made aware of the next event? **I would kindly advise that you arrange the same measures (Security, K9 units, etc.) to be put in place on the next anticipated event date as this has proven to be an effective way of deterring the event from taking place** (our emphasis).*

*I assume you would be referring to this Saturday 23rd February for the next potential event date. Would you kindly advise of what time the event is anticipated to occur. Once I receive further details from yourself, I will then pass on information to my senior to arrange for the necessary team to attend.*

*As you can appreciate, the night enforcement team operate borough wide and have a lot of tasks to go through during their shift, so they will only be able to attend for a reasonable period of time to help show presence and hopefully prevent any events from taking place. I await your response in relation to the time of the next event. Thank you.*

43. The managing agents then informed the applicants that another party had been advertised to be held on 23 February 2019. The applicants told the managing agents that they would not pay for any more security because:

- (a) it had no deterrent effect;
- (b) it was too expensive;
- (c) calling the police would be a better deterrent;
- (d) the security was an annoyance to residents in the SVT.

44. On 20 February 2019, the managing agents informed the local authority that the same security would be provided for 23 February 2019 as had been the previous Saturday.

45. This time the tenant outwitted the managing agents, the local authority and the police, as explained by this email sent by the local authority on the early hours of 23 February 2019:



*This event was brought forward 24 hours and took place on Friday evening, consequently there was no security arrangements in place to prevent it occurring. We received a noise complaint via Delta 1 at 00.42 hours on Saturday morning, we went straight to the location arriving at 00.56.*

*The concierge stated that he had received several complaints about loud music emanating from flat 1504. We attended 2 complainant addresses in order to make an assessment as to whether the noise constituted a statutory nuisance, unfortunately the occupants did not answer the door despite repeated knocking therefore we were unable to make an assessment.*

*While at the location a further noise complaint was received from the occupant of 1301 City West Tower, a neighbouring building. We attended the address straight away but the noise was barely audible inside the property and could not be deemed a nuisance.*

*We spoke with the tenant of flat 1504, Kingsley Nsiah, 16/08/1994, telephone number 07535836745. **He stated the he and his brother rent the flat and he intends to have a weekly party in the property** (our emphasis). He was given strong advice of the consequences, the likelihood of a S.80 notice being issued followed by seizure of his equipment should a nuisance occur, he was quite amenable and agreed to keep the music to an acceptable level.*

*The concierge then informed us that he had received another complaint from flat 1605, we attended the property but no noise was audible. We remained at the location until 02.20 hours to ensure no further complaints were received, while at the property large amounts of people left the premises and got into waiting taxis. We will be attending on Saturday evening as requested below. Sergeant Martin, if possible please could we have some EPT support if your officers are free, we will be there from 22.30.*

46. All relevant parties were concerned that another event would still go ahead the following day, as originally planned. Given the seriousness of what by now had been happening, we do not regard that as unreasonable.

47. Accordingly, on 23 February 2019 there were engaged 5 guards and 2 dog handlers. This was at a cost of £1,224. The evidence from this email is that all the parties considered there should be a security attendance that evening. In any event, the cost had probably been incurred by that late stage.

#### March 2019 weekends

48. Security was provided on the Friday 01 March, Saturday 02 March, Friday 08 March, Saturday 09 March, Friday 15 March, Saturday 16 March and Friday 22 March. A total of 7 times. 4 guards were employed on each occasion, totalling £6,048 in all.

49. No parties but one were in fact held in March 2019, but the managing agents and others concerned relied upon the tenant having said that he intended to hold weekly parties. There was a concern that those parties might be held on a Friday or Saturday.

#### The fifth party

50. A fifth party was held in March 2019, which was not on a day that security was present.

*The sixth party*

51. A sixth party was held on 06 July 2019. Security was provided on this occasion, namely 5 guards and 4 dogs at a cost of £1,368. The security was successful in preventing the party taking place.

52. Security was also provided on 12 July and 13 July 2019. On both of these occasions 3 guards and 3 dogs were present, at a total cost of £864. No parties took place thereafter.

**The applicants' case**

53. This is what the applicants say:

- (a) there was no need to have guards at all the entrances, guards were only needed on the 15th floor;
- (b) the managing agents were asked to close all the entrances to SVT, except for the one where the concierge was situated;
- (c) all the doors could be opened from the inside, so there would be no fire safety issues;
- (d) there was no need for security from 7.0pm to 7.0am: the concierge could have refused entry after 12.0am;
- (e) the concierge was responsible for security; it was not reasonable to expect the applicants to pay for more security;
- (f) the managing agents should have installed better resident entry control systems and CCTV systems;
- (g) the amount and cost of the security provided was excessive;
- (h) the amount claimed (£10,368) is 5 times the annual service charge so cannot be reasonable;
- (i) why did the guards fail to prevent cannabis being smoked and/or obscene photographs being taken and/or prostitution taking place?
- (j) it had no deterrent effect;
- (k) it was too expensive;
- (l) calling the police would have been a better deterrent;
- (m) the security was an annoyance to residents in the SVT.

**Discussion**

54. We deal with each of these matters in turn.

*There was no need to have guards at all the entrances, guards were only needed on the 15th floor.*

55. We reject this. The evidence above clearly demonstrates otherwise.

*The managing agents were asked to close all the entrances to SVT, except for the one where the concierge was situated.*

56. We reject this. It was essential to have all the entrances covered to prevent the guests from entering the building.

*All the doors could be opened from the inside, so there would be no fire safety issues*

57. We reject this. Residents were lawfully entitled to open doors from the outside, so the doors could not be closed to them. There would be health and safety issues.

*There was no need for security from 7.0pm to 7.0am: the concierge could have refused entry after 12.0am*

58. It would be unrealistic to have expected the concierge alone to have managed the large number of guests. Given that these were nightlong parties there was every reason for security to continue until 7.0am. We do think, however, that security need not have begun as early as 7.0pm.<sup>1</sup> We think it could have begun an hour later and we reduce the costs recoverable accordingly. The deduction is £1,000 as set out in the appendix.

*The concierge was responsible for security; it was not reasonable to expect the applicants to pay for more security*

59. We reject this. All the evidence points the other way.

*The managing agents should have installed better resident entry control systems and CCTV systems*

60. We reject this. No evidence was led by the applicants as to what better systems, if any, might be installed. The partygoers were determined to get to the parties and the CCTV might have done nothing to deter them. It is our experience of hearing cases about such parties as these that the camera can easily be disabled or taped over.

*The amount and cost of security provided was excessive*

61. We reject this, save as set out in paragraph 58 above. We accept that it was reasonable for the managing agents to have relied upon Serjeant to advise upon the necessary numbers of guards and dog handlers. The amount of security was considered necessary by the local authority. The applicants called no evidence suggesting that a different level of security would be reasonable. As we understand it, there was no challenge to the actual amount charged per hour. In any event, we find the charges reasonable.

*The amount claimed (£10,368) is 5 times the annual service charge so cannot be reasonable*

62. We reject this. If the costs were reasonably incurred (which is our view

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<sup>1</sup> John Betjeman talks of “And cool the verandah that welcomes us in, To the six o'clock news and a lime juice and gin”. The drinks at the parties in our case were served at a considerably later time of day.

save as is set out above), then the ratio to the annual service charge is irrelevant.

*Why did the guards fail to prevent cannabis being smoked and/or obscene photographs being taken and/or prostitution taking place?*

63. We reject this. The security personnel were used to prevent access to the flat. They could not be held responsible for activities within the flat itself.

*It had no deterrent effect*

64. We reject this. There was only one party held in March 2019, and none in the April, May or June 2019.

*Calling the police would be a better deterrent*

65. We reject this. The police would not provide security in advance of a party. Calling them after a problem had arisen would be like shutting the stable door after the horses had bolted. Even then, it could not be guaranteed that they would attend as this would depend on their resources on any given day.

*The security was an annoyance to residents in the SVT*

66. We reject this. It was quite the opposite, it was the partygoers who were the annoyance to the residents.

*Legal costs*

67. The respondent has indicated that it proposes to claim the cost of these proceedings directly against the applicants under the terms of the lease. Should there be such a power, and should the applicants seek to challenge the reasonableness of those charges, then they will need to make the appropriate application on the appropriate form to the tribunal.

68. If this matter comes before the tribunal, it may wish to take into account the fact that at the first hearing the respondent was unable to produce a copy of the lease, so the preliminary point could not be dealt with at that time.

**Name: Simon Brilliant**

**Date: 27 November 2023**

### Appendix

16 February 2019	1 x 4 guards and 2 dogs	4 x £15 = £60 2 x £20 = £40	£100
23 February 2019	1 x 5 guards and 2 dogs	5 x £15 = £75 2 x £20 = £40	£115
02 March 2019 - 22 March 2019	7 x 4 guards	7 x 4 x £15 = £420	£420
06 July 2019	1 x 5 guards and 4 dogs	5 x £15 = £75	£155

		4 x £20 = £80	
12 July 2019	1 x 3 guards and 3 dogs	3 x £15 + £45 3 x £20 = £60	£105
13 July 2019	1 x 3 guards and 3 dogs	3 x £15 + £45 3 x £20 = £60	£105
Total			£1,000

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.