



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

Case reference : **LON/00AF/LSC/2024/0016**

Property : **Brookbury House,
2 Blackbrook Lane
Bromley, BR2 8AY**

Applicant : **Brookbury House RTM Co. Ltd.**

Representative : **None**

Respondents : **Assethold Ltd.**

Representatives : **Eagerstates Ltd. (Agent)**

Determination. : **Determination of reasonableness
and liability to pay a service charge
S.27A L&T 1985. And Orders under
S.20C and Para.5a Schedule 11**

Tribunal members : **Mr N. Martindale FRICS**

**Date of Hearing
and venue** : **24 July 2023 (Papers)
10 Alfred Place, London WC1E 7LR**

Date of decision : **24 July 2024**

DECISION

Decision

1. The Tribunal determines that none of the items and corresponding sums that had been prior claimed by the respondent landlord, for services charges in respect of services, provided under the 6No. long leaseholds of the 6No. flats at the Property for the calendar year 2023, are reasonable and payable.
2. The Tribunal makes Orders under S.20C Landlord and Tenant Act 1985 and under Para.5a Schedule 11 Commonhold and Leasehold Reform Act 2002. These are to prevent the respondent from seeking to recharge its costs in this matter, whether under the collective service charge provisions and/or the individual administration costs provisions (if any) in these 6No. long leaseholds at the Property.
3. The applicant's remedies for costs recovery under any past and present Tribunal Orders, lie with it making applications at the County Court for judgment and if required, enforcement.

Background

4. The applicant is the Right To Manage company at the Property. It took control of estate management at the Property from the respondent freeholder and agent on 30 January 2024. The respondent should have provided, but was reported as having chronically neglected to provide, a "handover pack" to the applicant RTM Co.. This should have set out, among other matters, services and service charges arising in respect of communal areas at the Property. It has reportedly still failed to do so, even on request from the RTM Co's new estate manager BBPM Ltd..
5. Despite this the respondent sought to charge the leaseholders at the Property for the costs and/or estimated costs of services allegedly provided to the common areas, for the whole of calendar year 2023. This is despite its losing control of estate management to the RTM Co., after 29 January 2023.
6. The applicant states that *"...Without proper evidence, we question the validity of the works carried out by Eagerstates Ltd. during the one month they managed the property between 1st January 2023 to 29 January 2023."*

Directions

7. On 21 February 2024, the Tribunal, through Valuer Chair Ian Holdsworth FRICS, issued standard Directions for the parties to follow for the Tribunal to consider the matter. The applicant essentially complied: The respondent did not. Crucial among this was the full and timely disclosure by the respondent of services and service charges claimed. The respondent did not provide these to the applicant or Tribunal.

8. On 30 April 2024, the Tribunal, through Deputy Regional Judge Mark Martynski, issued an “Unless” Order for compliance with the disclosure requirements under the initial Directions, by the respondent. The respondent did not provide these to the applicant or Tribunal.
9. On 20 June 2024, the Tribunal, through Deputy Regional Judge Mark Martynski, in accord with the earlier Order, debarred the respondent from taking further part in the application. This was because the respondent had ignored the two earlier Tribunal Directions to provide same.

Applicant’s Representations

10. The Tribunal could only consider the matter on evidence and representations from the applicant. The applicant provided what appears to be a standard response schedule. It deals with 11 No. items of service said by them to have been asserted by the respondent as relevant before the application was even made. It was undated.
11. The schedule of 11 items appears to be in respect of the Property and only for the calendar year 2023. They are unable to provide more than brief details of the service and service charge as these were not provided to them, nor to the Tribunal by the respondent. These are set out in full below with the corresponding sum in respect of the whole Property against each item. These are followed by the applicant’s comment on each.
12. **Item 1: Insurance £127.14.** *“Insurance policy renewal date is 1st February 2024. Insurance was previously paid in full in the previous service charge year, therefore not applicable...”*
13. **Item 2: Common parts cleaning & gardening £1009.44.** *“No evidence of invoice of works carried out. Within our service charge with BBPM the cleaning fee for the whole year is £800 or £66.66 a month. Gardening is £1050 for the years or £87.50.*
14. **Item 3: Window Cleaning £319.03** *“No evidence or invoice of works carried out. Requires access to Flats 1 & 2 to carry out the works.”*
15. **Item 4: Fire Health & Safety £1290.00** *“No evidence or invoice of works carried out. New managing agent carried out a fire health & safety inspection (appendix 2) and found out all emergency lights failed tests showing no previous inspection was carried out by Eagerstates Ltd. Evidence attached from J B Fire Systems Ltd..”*
16. **Item 5: Drains £228.00** *“No evidence or invoice of works carried out.”*

17. **Item 6: Gutter Cleaning £288.00** *“No evidence or invoice of works carried out. Requires access to Flats 1 & 2 to carry out the works.”*
18. **Item 7: Drone Survey £300.00** *“No evidence or invoice of works carried out and rational as to why we require a drone survey.”*
19. **Item 8: Bins £122.93** *“Bin hire if £150 for the year and £12.50 per month. No evidence of payment.”*
20. **Item 9: Handover Fee £720.00** *“Eagerstates Ltd are yet to send a handover pack to our new managing agent Bromley Beckenham Property Management Ltd.. Leaseholders have asked multiple times for Eagerstates to send the handover pack and even offered to collect in person but met with silence...”*
21. **Item 10: Accounts Fee £360.00** *“Leaseholders are yet to receive up to date statements of account including the order to repay unreasonable services charges from previous years.”*
22. **Item 11: Management Fee £484.20** *“Management fee for one month’s worth of service charge of which no works have been carried out.”*

Respondent’s Representations

23. This party was debarred from any further involvement with the application or its consideration by the Tribunal, by Order of the Tribunal issued on 20 June 2024. The Tribunal did not receive any application from the respondent to have this bar removed. It therefore played no role in the consideration.

Decision

24. The Tribunal was unable to make any finding that any of the 11 listed and billed services provided by the respondent to the applicant before this application, had been commenced, or provided to the Property.
25. The Tribunal was also unable to make any finding that any of the 11 listed services were of sufficient quality and quantity to justify all or any of the service charges levied at the 6No. leasehold interests of the 6No. flats at the Property.
26. At best the 11 Items of service charge listed and priced amount to an aspiration by the respondent and their agent, to procure and provide, monitor charge and recover the allocated charges in each case. Although the sample lease provides the possibility of an estimated service charge being levied, management having passed to the new estate manager under the RTM’s control well over a year earlier, the only charges that might now be considered reasonable would be ones demonstrably provided for one month (January 2023); to a reasonable

standard; at a reasonable cost; invoiced and paid. No evidence was received by the Tribunal to show that this was the case for any of the 11 items. The lease does not provide for landlord aspirations to provide services at the Property, to be recoverable.

27. The respondent having failed to secure any payments being found reasonable and payable the Tribunal, issues an Order under S.20C Landlord and Tenant Act 1985 (regarding communal service charges) and an Order under Paragraph 5a Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (regarding individual administration charges). The landlord respondent will not be able to seek to recover any costs it says it incurred in responding to this application by those means, if such costs provisions are to be found in the standard long lease here.

Name: N Martindale FRICS Date: 24 July 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).

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (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—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (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.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate Tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).