FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LSC/2023/0337**
Property	**:**	**Flat 2, Burlington Court, Fenwick Road, London SE15 4HS**
Applicant	**:**	**Marthe Mostervik**
Representative	**:**	**Mr. Corker - Counsel**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Mr. Beetson - Counsel**
Type of application	**:**	**Payability and reasonableness of Service Charges (Section 27A Landlord and Tenant Act 1985)**
Tribunal members	**:**	**Judge Sarah McKeown** **Mrs. A. Flynn MA MRICS**
Date and Venue of hearing	**:**	**7 March 2024 at** **10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**11 March 2024**

DECISION

Decisions of the tribunal

(1) The Tribunal finds that (subject to other necessary requirements being met, which were not raised in the course of this application), the works of redecoration to the hallway carried out in about October 2023, for which the Applicant was charged £885 were lawful and reasonable.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The Tribunal does not make an order as against the Respondent for a refund of the tribunal fees paid by the Applicant.

References are to page numbers in the bundle provided for the hearing.

The Application – p.41

1. The Applicant is the leaseholder of Flat 2, Burlington Court, Fenwick Road, London SE15 4HS ("the Property").

2. The Property is one of four flats in a purpose-built block of flats.

3. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") whether administration charges are payable and reasonable, but no such issue has been pursued before the Tribunal. She also seeks an order pursuant to Section 20C of the Landlord and Tenant Act 1985.

4. On 29 September 2023 (p.53) the Tribunal gave directions. The order noted that the amount in dispute, at that time, was £5,140 and identified the issues in dispute, as being:
(a) Service charge years 2021, 2022, and 2023;
(b) For 2023, painting of communal/hallway and Bin cleaning - issues whether s.20 process adhered to, and quality of management service;
(c) whether the landlord has complied with the consultation requirement under s.20 of the 1985 Act;
(e) whether the cost of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee;
(h) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 of the 2002 Act should be made;
(i) whether an order for reimbursement of application/hearing fees should be made.

Documentation

5. The Applicant provided a bundle of documents comprising a total of 91 pages. The Respondent provided a Statement of Case and, at the hearing, some additional documents (which had apparently been attached to its Statement of Case). The Applicant has also provided a Skeleton Argument.

The Hearing

6. The Applicant attended the hearing, with her partner, Mr. Kerr. She was represented by Mr. Corker of Counsel. Nobody from the Respondent attended, but it was represented by Mr. Beetson of Counsel.

7. At the commencement of the hearing, the parties raised the issue of the name of the Respondent, stating that the correct Respondent was Assethold Limited, the freeholder. The Applicant did not object to the Respondent being substituted to Assethold Limited and the Tribunal agreed to this.

8. The Tribunal was told that the Respondent had asked, in its Statement of Case, to strike out the application, but that this application was not pursued.

9. The Applicant confirmed that one of the issues raised in the application, of bin cleaning, was no longer pursued and that no issue was taken in respect of years other than 2023. The only issue in dispute, therefore, was the painting of the communal/hallway in or about October 2023.

10. The points made by the parties during the hearing are set out below.

The Lease – p.2

11. The Lease is dated 21 July 1988 and is between Overstrand Property Development Limited (Lessor) and Ms. Bochel (Lessee). There is no dispute that the Applicant hold her interest on the terms of this Lease. It defines the following:

Flat:	No. 2 on the Ground Floor
The Property:	Burlington Court, Fenwick Road, London SE15

Interim Maintenance Charge:

Lessee's share of Maintenance Fund: One quarter of whole

12. It states, among other things, that the Lessor will pay "yearly during the said term, the rents specified in Paragraph 7 of the Particulars such rents to be paid in advance without any deduction (save as authorised or required by law) by yearly payments on 1st January in every year the first proportionate payment thereof in respect of the period from the date hereof to the date for payment of rent next following to be made on the execution hereof…".

13. Schedule 1 defines "the Maintenance Year" as a period commencing on 1st January in each year and ending on the 31st day of December in the following year.

14. "The Maintenance Charge" is defined as the amount(s) from time to time payable under cl. (2) of Part 1 of the Fifth Schedule and shall include any VAT payable.

15. "The Interim Maintenance Charge" is defined as the sum specified in para. 8 of the Particulars or one half of the Maintenance Charge for the immediately preceding Maintenance Year, whichever is the greater.

16. "The Maintenance Fund" is the amount from time to time unexpended from the payments of Maintenance Charge made to the Lessor by the Lessee and the lessees of the other flats in the Property.

17. "The Common Parts" are defined as all those parts of the Property nor exclusively enjoyed by the lease licence or otherwise by only one of the occupiers of the Property.

18. By clause 3, the Lessee covenants to observe and perform the obligations and requirements in Part 1 of the Fifth Schedule and in the Ninth Schedule. Part 1 of the Fifth Schedule includes the following covenants:

(1) To pay the reserved rents at the time and in the manner aforesaid;

(2) To pay to the Lessor a Maintenance Charge being that percentage specified in Paragraph 9 of the Particulars of the expenses which the Lessor shall in relation to the Property reasonably and properly incur in each Maintenance Year and which are authorised by the Eighth Schedule hereto (including the provision for future expenditure therein mentioned) the amount of such payment to be certified by the Lessor's Managing Agent or Accountant acting as

an expert and not as an arbitrator as soon as conveniently possible after the expiry of each Maintenance Year and FURTHER on the 1st January in each Maintenance Year ("the payment date") to pay in advance on account of the Lessee's liability under this Clause the Interim Maintenance Charge the first proportionate payment thereof in respect of the period from the date hereof to the next following payment date to be made on the execution hereof PROVIDED THAT upon the Lessor's Managing Agents' or Accountants' certificate being given as aforesaid there shall be paid by the Lessee any difference between the Interim Maintenance Charge and the Maintenance Charge so certified.

19. By clause 4, the Lessor covenants to observe and perform the obligations and provisions in the Sixth Schedule.

20. The Sixth Schedule includes the following:

(1) Subject to the payment by the Lessee of the rents the Maintenance Charge and the Interim Maintenance Charge herein mentioned and provided that the Lessee has complied with all the covenants agreements and obligations on his part to be performed and observed to keep in good repair and decoration (and to renew and improve as and when the Lessor may from time to time in its absolute discretion consider necessary)

...

(c) The Common Parts

...

(e) All other parts of the Property not included in the foregoing sub-Paragraphs (a) (b) (c) (d) and (e) hereof.

...

21. The Lessee and the Lessor agreed the provisions set out in the Seventh Schedule.

22. The Eighth Schedule sets out the costs and expenses charged upon the Maintenance Fund and they include such of the following costs and expenses as may from time to time be incurred in connection with the Property and the Lessor has the power to incur expenses if it considers the same are necessary or desirable in the general interests of the lessees or occupiers of the Property or in the interests of good estate management. The costs and expenses include those incurred in complying with Part 1 of the Sixth Schedule, the "cost of covering the floors of cleaning the passages landing staircases and other parts of the Property enjoyed or used by the Lessee in common with others and of keeping the other parts of the Property used by the Lessee in common as

aforesaid and not otherwise specifically referred to in this Schedule in good repair and condition.

The Law

Service charges

23. Section 18 of the Landlord and Tenant Act 1985 provides:

> "(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 service, 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 estimate 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.

24. Section 19 of the 1985 Act provides:

> "(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 provision 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"

25. Section 27A provides:

"(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

26. In *Waaler v Hounslow LBC* [2017] EWCA Civ 45 the Court of Appeal said that "reasonableness" has to be determined by reference to an objective standard, not the lower standard of rationality.

27. In *Nogueira v Westminster LBC* [2014] UKUT 327 (LC) it was said that where the Tribunal is satisfied that there are significant defects in the standard of works, it would be almost certainly wrong in principle for it to make no limitation on service charges under s.19(1)(b).

Administration charges

28. Paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides as follows-

(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.

29. Paragraph 2 of Schedule 11 to the Act provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

30. Paragraph 5 of Schedule 11 to the Act provides as follows-

(1) An application may be made…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) …

(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) …

S.20 Landlord and Tenant Act 1985

31. The consultation requirements apply to qualifying works and qualifying long term agreements. The provisions apply where a landlord intends after 31 October 2023 either to enter into a qualifying long term agreement or to carry out qualifying works.

32. The basic principle of recoverability under section 20 is that the consultation requirements must be complied with, and if they are not complied with, or if compliance has not been dispensed with by the Tribunal, the amount of the relevant costs incurred on carrying out the works or under the agreement which

may be recovered through the service charge is limited to the "appropriate amount".

33. The application of the provisions is regulated by the *Service Charges (Consultation Requirements)(England) Regulations 2003 – SI 2003 No.1987.*

"The appropriate amount" is –

- in respect of a qualifying long term agreement, an amount which results in the relevant contribution of any tenant in respect of any accounting period exceeding £100 or
- in respect of qualifying works, an amount which results in the relevant contribution of any tenant exceeding £250.

34. The "relevant contribution" is the amount that the tenant may be required under the terms of the lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

35. Section 20ZA(2) provides the following definitions:

- "Qualifying works" are "works on a building or other premises".

- "Qualifying long term agreement" is an agreement entered into by or on behalf of the landlord or a superior landlord for a term of more than twelve months, subject to any exceptions prescribed by the Secretary of State. There are a number of exceptions set out in para. 3 of the Regulations.

36. The requirements for qualifying works (for which a public note is not necessary) are, in summary, as follows:

- Notice of intention to enter into agreement to be given to each tenant and any recognised tenants' association, describing, in general terms, the relevant matters or specifying a place and hours at which a description may be inspected free of charge (which arrangements must be reasonable)
- state the reasons why the agreement or works are necessary
- invite written observations and give address to which they may be sent, state period for delivery (which is 30 days from date of notice) and date when that period ends
- invite nomination of a person from whom the landlord should try to obtain an estimate
- Landlord must have regard to any observations made and must try to obtain an estimate from nominated persons (or some of them)

- Landlord must then prepare at least two proposals for provision of the goods or services or works, at least one from a person wholly unconnected with him and including any estimate received from a nominated person
- Landlord must give notice to each tenant and recognised tenants' association specifying time and place where all the estimates can be inspected and invite observations as above and must have regard to any observations made
- on entering into a contract for the carrying out of the qualifying works, the landlord must give notice to the tenants and any recognised tenants' association as above.

37. "Have regard to" means that the landlord is not bound by any observations made but he cannot simply ignore them, he must consider them in good faith and give them such weight as he thinks fit. *Woodfall* considers that "as long as he comes to a conclusion to which a reasonable landlord in his position could have come, he will have complied with the requirement even though a reasonable landlord might equally well have reached a different conclusion". There is no express requirement to accept the lowest estimate: *Wandsworth LBC v Griffin* [2000] 26 EG 147, LT .

Service Charges – p.66

38. Under the terms of the Lease, the service charges are paid in advance (by way of interim maintenance charge), being half of the maintenance charge for the preceding year, with the "balancing" payment due for the current year. It is to be paid on 1 January each year.

2023

Painting of communal area/hallway:

39. The Applicant raised three issues:

(1) Charges not lawful:

40. *Applicant:* The Applicant does not dispute that redecoration of the hallway could fall within these terms of the Lease, but states that the particular costs are not lawful, as there was no disrepair to the common parts when the works were instigated or begun. It was said that works had been undertaken in March 2022 and there was no need for the additional works to be carried out. She relied on photographs taken on 10 October 2023 (p.69-76) and it was said these showed the lack of need for the works. In summary, her position was that the covenant

to redecorate was not engaged and so there was no obligation on her to pay anything.

41. *Respondent:* The Respondent said that the works in March 2022 were cosmetic only whereas the later works were a fundamental overhaul of the common areas. It relied on the terms of the Lease, particularly the Sixth Schedule, para. 1(c) which imposes an obligation to decorate the common parts (which includes the hallway, as defined as at cl. 1(xiii)). It is said that the obligation is to "keep in good repair and decoration (and to renew and improve as and when the Lessor may from time to time in its absolute discretion consider necessary)". It was said that the covenant did not require there to be disrepair for it to be engaged: the requirement was to keep the hallway in good repair and decoration as well as to renew and improve. It was also said that the covenant gave the Respondent a discretion and it had a wide margin of appreciation. In any event, it was said that the Applicant's photographs did show marks on the walls and some discolouration.

42. *Tribunal findings:* The Tribunal finds that the material works fall within the terms of the Lease: the Lease does give the Respondent a discretion as to when to carry out the works. The discretion does need to be exercised reasonably and in line with the covenant, which is to keep the common parts in good repair (which is more onerous than simply keeping it in repair) and decoration, as well as renewing and improving. Whilst there may have been some works carried out in March 2022, on the information before the Tribunal, it finds that it was within the realm of the discretion of the Respondent to carry out the works in about October 2023. The Tribunal has considered the photographs provided, the submissions on those photographs and the fact that none of the other leaseholders raised an issue about the works.

(2) S.20 Landlord and Tenant Act 1985:

43. *Applicant:* The Applicant also contends that the s.20 consultation process was not followed. The Applicant accepts receipt of the Statement of Estimates (p.61), but asserts that she did not receive the Notice of Intention (provided at the hearing).

44. *Respondent:* The Respondent does not dispute that s.20 1985 Act was engaged, but states that the consultation process was followed. It was said that the Notice of Intention dated 30 March 2023 was sent to the Applicant as well as the other leaseholders (as evidenced by p. 79 and the fact that the other leaseholders received their copies). The Respondent relies on the terms of the Lease, Seventh Schedule, para. 7(a)-(b) which provides:

> (a) Any notice in writing… or other documents required or authorised to be given or served hereunder… shall

be sufficiently given or served if it is left at the last known place or abode or business of the Lessee…

(b) Any such notice in writing… shall also be sufficiently given or served if it is sent by ordinary post in a prepaid letter addressed to the person to or upon whom it is to be given or served by name at the aforesaid place of abode or business and if the same is not returned through the Post Office within seven days of posting it shall be deemed to have been received or served at the time at which it would in the ordinary course have been delivered.

45. It was said that the Notice of Intention was a notice required to be authorised or given or served under the Lease and the Respondent relied on *Southwark v Akhtar* [2017] UKUT 150 (LC), in which the Upper Tribunal held that a contractual incorporation of s.196 Law of Property Act 1925 applied to a notice under s.20B Landlord and Tenant Act 1985 as it enabled the landlord to do something prescribed by the lease, namely to recover service charges. Further, the Respondent relied on the case of *Akorita v 36 Gensing Road Ltd* LRX/16/2008 Lands Tribunal, in which the lease included a deemed service provision which provided that notices could be served on the tenant by leaving them at her last know business or residential address (among other things) and that notices were to be treated as served even though the tenant might not receive them. The Lease also provided that notices could be sent by ordinary post in a prepaid envelope addressed to the tenant at her last known business or residential address and that such notices were to. be treated as served unless the Post Office returned them undelivered. The material term was as follows:

"(a) ANY notice in writing certificate or other document required or authorised to be given or served hereunder shall be sufficient although only addressed to the Lessees without his name or generally to the person interested without any name… and shall be sufficiently given or served if it is left at the last known place of abode or business of the Lessees or other person to or upon whom it is to be given or served or is affixed or left on the Demised Premises

(b) Any such notice in writing certificate or other document as aforesaid shall also be sufficiently given or served if it is sent by ordinary post in a prepared letter addressed to the person to or upon whom it is to be given or served by name at the aforesaid place or abode or business and if the same is no returned through the Post Office within seven days of posting it shall be deemed to have been received or served at the time at which it would in the ordinary course have been delivered".

46. HHJ Huskinson did not find good service, as the landlord had not used the last known address, but it was accepted that the landlord could rely on the provisions as to service in the Lease in relation to a s.20 notice.

47. *Additional issue:* There was one issued that the Applicant sought to rely on at the hearing: it was submitted that there had been an agreement between the Applicant and Mr. Gurvits that documents would be served on her by post and by email and, she had not received any email containing the Notice of Intention. This is not something that had been raised prior to the hearing and it was acknowledged that the Applicant did not have any evidence (beyond the assertion made at the hearing that there was such an agreement) as to this at the hearing.

48. *Tribunal findings:* The Tribunal finds that the Respondent is entitled to rely on para. 7 of the Seventh Schedule and if the Tribunal is satisfied that the Notice of Intention was sent in the post, addressed to the Applicant at the Property, it was deemed served (regardless of whether it was actually received by her). The Applicant acknowledged that she could not say whether the notice was posted or not, just that she had not received it and the Tribunal does find that the Notice of Intention was posted as:

(a) The Notice of Intention provided by the Respondent is addressed to the Applicant (and Mr. Kerr) at the Property;

(b) Mr. Gurvits (from the managing agent) said in an email dated 8 June 2023 that the documents were sent out by post (p.79);

(c) As stated in that email, and acknowledged by the Applicant, the other leaseholders did receive the Notice of Intention.

49. The Tribunal does not find that there was, as a matter of fact or law, a valid and lawful variation of the terms of the Lease, particularly para. 7(a)-(b) of the Seventh Schedule, to require any valid service to be by post and email. The Tribunal notes that, as stated above, on 8 June 2023, in response to a request by the Applicant that correspondence is sent to her by email, Mr. Gurvits did not agree to this, stating that email correspondence is not guaranteed and would not be "service" but in any event, has no basis on which it could find a lawful variation to the terms of the Lease.

50. The Notice of Intention was therefore served, and the relevant consultation requirements were met. The Applicant's contribution is not therefore limited pursuant to s.20 Landlord and Tenant Act 1985.

(3) Reasonableness:

51. The final point taken by the Applicant was that the costs were not reasonable. The Applicant asserts, as above, that there was no need for the works. The Tribunal has dealt with this issue above. The other submissions made were as follows:

52. *Applicant:* It was said that the Applicant obtained a quote (p.65) and this was for £700 (no VAT was charged but it did not include the management fee of 15% which was charged on works and included in the £885). When asked by the Tribunal, it was confirmed that the contractor did inspect the Property. It was said that this quote was roughly in line with the works in March 2022 (which cost £1,000), which also included mould removal. The Applicant submitted that her quotation referred to the hallway and it would be unusual for the ceiling to be excluded from that.

53. *Respondent:* The Respondent said that it obtained two quotes, from independent companies, which were similar in amount. It picked the lowest quote. It was also said that the Applicant's quote did not state that the necessary insurance was in place (the Applicant's response to this was that there was no evidence either way, but that most tradesman have public liability insurance, there is no reason the contractor would not have the insurance, but if it did not, it could have been easily obtained online).

54. The Respondent stated that the Applicant's quote did not state that it provided for filling cracks and the Applicant's quote did not refer to painting of the ceiling and it was, therefore, not "like for like". It was said that it had obtained two independent quotes and the odds of the two quotes, which were similar in amount, being outside the market norm, were low.

55. *Tribunal's findings:* The proper approach to assessing reasonableness is set out in *Plough investments Ltd v Manchester City Council* [1989] 1 EGLR 244. Three points emerge from the judgement:

(a) As a general rule, where there is more than one way of executing repairs, the choice of the method of repair rests with the party under the obligation to repair;
(b) Provided the works of repair are reasonable, a tenant under an obligation to reimburse the cost to the landlord cannot insist upon cheaper or more limited remedial works or a minimum standard of repair;
(c) A test as to whether works carried out by a landlord and reimbursed by a tenant are reasonable is whether the landlord would have chosen that method of repair if he had to bear the cost himself."

56. In *Forcelux Ltd v Sweetman* [2001] 2 EGLR 173 it was stated that there is a two-stage test:

(i) Was the decision-making process reasonable?
(ii) Is the sum to be charged reasonable in the light of market evidence?

57. The Respondent does not need to show that the cost of the works was the cheapest price for which the works or services could have been obtained. It is necessary to show that the cost falls within the range of reasonable prices for the same works.

58. The Tribunal finds that the works of Entremark (the contractor used by the Respondent) were within the range of reasonable prices for the works: none of the other three leaseholders provided any nominations; the Respondent obtained two independent quotes, which were similar in amount; the Applicant's quote is lower but the Respondent does not need to show that it obtained the cheapest price. Further, the Notice of Intention states that:

"Nominations of your choice of contractor(s) must be submitted, in writing, within the notice period and a prerequisite for their inclusion will be the satisfactory submission by them of the following:-

- Public Liability Insurance providing a minimum cover of £2,000,000.00 up to a contract value of £20,000 and £5,000,000.00 for contracts over £20,000.00

…".

59. There is no evidence that Entremark have the requisite insurance.

60. In addition, the works to be carried out were those stated in the Notice of Intention (and the Entremark quotation):

"Adequately protect floor with roll on floor protector from entrance door

Set aside all signage and wall fixtures for re instatement on completion

Sand down, fill cracks & make good all walls/ceilings

Apply stain blocker to any water marked or stained areas

Prepare walls and ceiling for painting

Apply 2x coat of colour matched emulsion to wall/ceiling

Make good and prepare woodwork for painting

Apply 1x undercoat to woodwork

Apply 1x topcoat to woodwork

Remove all protection, cart away rubbish and clean"

61. It is not clear that the Applicant's quotation did cover filling in cracks. It is accepted that, on the balance of probabilities it did cover painting the ceiling, but overall, the Tribunal does not find that the quotation was "like for like" compared to the works done.

Additional issue

62. There is one final point. The Tribunal has seen the Notice of Estimate which states that the Applicant would be charged £885 and she accepted at the hearing that she had been charged this amount. In the documentation before the Tribunal, however, there was no service charge demand to this effect. The only reference to the charge was at p.77. The only service charge demand was at p.66 which was for a different Property and did not contain this charge. The Tribunal raised this at the hearing, and the Respondent's position was that this had never been raised as an issue. That is true, and so the Tribunal does not make any determination as to the other legal requirements for a service charge demand to be valid and lawful. The Tribunal only rules on the issues raised. The Tribunal's findings, that the charges of £885 were valid and reasonable are, however, subject to all other requirements being met.

Costs

63. Section 20C of the Landlord and Tenant Act 1985 provides as follows:

"(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.... the First-tier Tribunal... 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".

64. When faced with such an application, the Tribunal may make such order as it considers just and equitable in the circumstances.

65. The relevant part of paragraph 5A of Schedule 11 to the 2002 Act reads as follows:

"A tenant of a dwelling in England may apply to the relevant... tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs'.

66. The Tribunal has not found in favour of the Applicant and it is therefore not just and equitable to make an order under s.20C. Further, no order un para. 5A is made.

67. The Applicant has made an application for a refund of the fees that she had paid in respect of her application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In view of our findings above, we do not make such an order.

Judge Sarah McKeown
11 March 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).