



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

Case reference : **LON/00AD/LSC/2022/0179**

HMCTS code : **Hybrid: In Person; V: CVPREMOTE**

Property : **Flat 2, 46 West Heath Road, Abbey Wood, London, SE2 0RX**

Applicant : **Mrs Lynn Goldsmith**

Representative : **In person**

Respondent : **Conshurst Investments Ltd**

Representative : **Mr Stephen Davies**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge Robert Latham
Ms Alison Flynn FRICS**

Date and Venue of Hearing : **21 February 2023 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **3 April 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a hybrid hearing. The Tribunal listed this case as a face-to-face hearing. However, the following joined remotely by CVPREMOTE: Mrs Lynn Goldsmith (from Thailand), Miss Lucy Goldsmith (from Bangkok) and Mr Stephen Davies (from Somerset). The following attended in person: Miss Jean Goldsmith (a second daughter) and Ms Kate McMakin from the managing agents. The parties have provided a Bundle of 223 pages to which reference is made in this decision.

Decisions of the tribunal

- (1) The Respondent conceded that the lease makes no provision for a reserve fund and agreed to refund the sums that have been paid by the Applicant.
- (2) The Tribunal determines that the service charges demanded for the years 2020/21, 2021/22 and 2022/23 are payable.
- (3) The Tribunal determines that the administration charges totalling £394 (including VAT) are payable.
- (4) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (5) The Tribunal determines that the Respondent shall pay the Applicant £150 within 28 days of this Decision, in respect of the reimbursement of 50% of the tribunal fees which she has paid.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 2020/21 to 2022/23.
2. The application relates to Flat 2, 46 West Heath Road, Abbey Wood, London, SE2 0RX ("the Flat"). 46 West Heath Road is a Victorian building which has been converted to create four flats. The Flat is on the upper ground floor. It has two bedrooms. The Applicant is a Buy to Let landlord who lives in Eltham. She spends a considerable amount of time in New Zealand. The flat has been empty for some 18 months. The Applicant is seeking to sell the Flat and has issued the current application to determine the outstanding service charges that she is required to pay.
3. The Applicant issued her application against Stephen Davis who is a director of Conshurst Investments Limited, the freeholder/landlord. On

14 September 2022, a Procedural Judge substituted Conshurst Investments Limited as the appropriate respondent. Since 1 March 2019, the building has been managed by Bowood Commercial ("Bowood"). The Applicant complains that since Bowood have taken over the management of the building from Caxtons, the service charges have increased significantly and the quality of the service has been poor.

4. On 25 August 2022, the Tribunal gave Directions pursuant to which the parties have produced a Scott Schedule (at p.48-51) and their Statements of Case (at p.32-46).

The Hearing

5. The Applicant joined the hearing remotely from Thailand. We had a short adjournment to confirm that we could receive evidence from Thailand. The Applicant gave evidence. She stated that her hearing and sight were impaired and that she had recently had a cataract operation. She was assisted by her two daughters, Miss Lucy Goldsmith who joined remotely from Bangkok and Miss Jean Goldsmith who attended in person. The Tribunal is satisfied that the Applicant had no difficulty in following the proceedings.
6. The Respondent was represented by Mr Stephen Davies, a director. He joined the hearing remotely from Somerset. Ms Kate McMakin who has managed the property on behalf of Bowood, attended in person. Both Mr Davies and Ms McMakin gave evidence.

The Lease

7. The Applicant holds the Flat pursuant to a lease, dated 16 June 1974 (at p.58-81). The lease was initially for a term of 99 years from 25 March 1973. There were two deeds of variation dated 11 February 1981 and 21 March 1997. On 26 June 2007, there was a surrender and regrant on the same terms as the original lease. The new lease is for a term of 99 years from 25 March 2007 at an annual rent of £200 (p.52-57).
8. In its Statement of Case, the Respondent concedes that the lease does not permit the landlord to collect funds towards a Reserve Fund. It agreed to refund the sums that the Applicant has paid. It is therefore not necessary for the Tribunal to consider this issue further.
9. The Second Schedule specifies the rights of the Lessee. By paragraph 3(b), there is "the right to use the entry phone serving the Building".
10. By Clause 5(2), the Landlord covenants to keep the common parts of the building in a good state of repair and decoration.

11. By Clause 3(16), the Lessee covenants to make good all damage caused through their act or default.
12. Clause 6 makes provision for the payment of a service charge. An interim service charge is payable on the usual quarter days, namely 25 March, 24 June, 29 September and 25 December. Any service charge contributions are to be maintained in a reserve fund. The service charge year runs to 24 March. If the expenditure exceeds the budgeted expenditure, the Landlord may serve a notice on the Lessee requiring payment of the shortfall. Any surplus is to be accumulated in the reserve fund to be applied towards future expenditure. If during the year, any unbudgeted expenditure is to be incurred, the Landlord is entitled to demand payment of the same. The Landlord covenants to use their best endeavours to maintain the service charge expenditure at "the lowest reasonable figure consistent with due performance and observation of their obligations" under the lease.
13. Any interim service charge cannot exceed 110% of the expenditure in the previous year. The Applicant has raised this as a further reason for not paying the sums demanded for the reserve fund. Since it is conceded that these sums cannot be demanded, this is no longer a live issue.
14. By Clause 3(8)(a), the Lessee covenants to pay to the Landlord all costs, charges and expenses (including legal costs) incurred by the Landlord in or in contemplation of any proceedings under Section 146 of the Law of Property Act 1925.

The Law

15. Section 18 of the Landlord and Tenant Act 1985 defines "service charge":
 - (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."
16. Section 19 gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:
 - (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.”

17. By Paragraph 2 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, a variable administration charge is only payable to the extent that the amount is reasonable.

The Tribunal's Determination

The Service Charge Year 2020/21

Administration Charges of £48, 96 and £250

18. The Applicant challenges three administration charges of £48, £96 and £250. She contends that these charges are not reasonable. She states that the quarterly service charges were not demanded in accordance with the lease. She was subsequently sent multiple final demands for the entire year. The landlord resorted prematurely to legal action whilst she was stranded in New Zealand due to the worldwide Covid pandemic.
19. The Respondent contends that these administration charges are reasonable and payable. It is conceded that Bowood issued the demands late. However, this did not excuse the Applicant from her duty to pay them. Bowood's late payment charges are set out at p.136: (i) £40 + VAT is payable for an arrears letter; (ii) £80 + VAT is charged for the cost of instructing solicitors to enforce payment; and (iii) legal cost which will then become payable.
20. On 1 March 2019, Bowood took over the management of the building. Prior to the handover, Caxtons had issued a demand for an interim service charge for 2018/9. On 4 March 2019 (p.131-4), Bowood informed lessees of their appointment. They stated that they were still awaiting the handover of service charge information from Caxtons. On 30 January 2020 (p.132), Bowood issued the service charge accounts for 2018/9 and the budget for 2019/20. They also issued a demand to the Applicant for £2,313.52. This included the outstanding interim service charge of £859.20 from 2018/9; a balancing charge of £154.32 for 2018/9 and four quarterly interim service charges of £325 for 2019/20. The first demand for an interim service charge should have been made on 25 March 2019. The demand was not made until 20 January 2020. Bowood sent the demand to the Respondent at her Eltham address. The Tribunal satisfied that these sums were payable, albeit that they were demanded late.

21. Bowood made further demands for this sum on (i) 3 February 2020 (p.176); (ii) 10 March (p.178); (iii) 26 March (p.180); (iv) 28 April (p.181); and (v) 5 May (p.182). The Demand of 5 May, included an administration fee of £40 + VAT (p.183-185). On 27 May, the Respondent to instruct solicitors to commence enforcement action. On 3 June, the SLC wrote to the Applicant demanding payment of the outstanding arrears together with the additional administration fees of £96 and £250 (both including VAT). On 4 June, Jean Goldsmith wrote to Bowoods in response to the letter. She queried the sums charged for insurance and electricity. She stated that the Applicant was stranded in New Zealand due to the Covid restrictions. On 8 June, Ms McMakin responded, referring Jean to the solicitors. On 10 July, the outstanding sum of £2,685.82 was credited to the Respondent's service charge account. The Respondent would have made the payment to the solicitors some days earlier.
22. The Respondent stated that she had gone to New Zealand in January 2020. She was unable to return until August 2020 due to Covid restrictions. On 23 March 2020, the first lockdown was imposed in the UK. Strict restrictions were imposed in New Zealand shortly thereafter. The Respondent stated that no post could be sent to New Zealand. Jean was living on a houseboat. She stated that she was unable to visit the Respondent's home.
23. The Tribunal recognises the real problems created by the Covid-19 pandemic. However, the Tribunal is satisfied that the Respondent should have made contact with the managing agents. There was a period of three months between the first demand of 30 January and the sixth demand on 5 May. The Respondent had let the Flat and would have been receiving rent during this period. The Tribunal notes that Jean responded promptly once the matter had been put in the hands of the *solicitors. Against this background, the Tribunal is satisfied that these administration charges are reasonable and payable.

The Service Charge Year 2021/22

Interim Service Charge of £1,500 for Repairs

24. The budget for 2021/2 is at p.108. This includes provision of £1,500 for "repairs/maintenance". The Applicant contends that this is caught by the Section 20 statutory duty to consult as each lessee will be required to contribute more than £250.
25. The Respondent states that this repairs and maintenance contingency is no more than an estimate for the year. It is set at a reasonable level based on Bowood's experience of managing properties of this size, age and condition. The Section 20 provisions are not applicable to this contingency. We agree. The 2021/2 service charge accounts are at p.115. In the event, only £75 was expended on repairs and maintenance.

Demand of £5,613.58 for Major Works

26. On 13 October 2021 (at p.171), Bowood issued a demand for £5,613.58 in respect of proposed major works. Neither the Applicant or the lessee of Flat 3 have paid this sum. As a result, the works have not yet been executed.
27. On 10 March 2020 (at p.138-40), Bowood served a Notice of Intention to carry out refurbishment of the internal common parts and fire safety works. The Applicant did not respond to this notice. Bowood obtained three estimates for the works, the lowest quote being £18,235 (+ VAT) from Platinum Gold. The quote from Platinum Gold is at p.150-163. This includes a contingency of £4,000. The quote includes two Options for the internal decorations (at p.158). The Respondent has elected to go for Option B, the more extensive and expensive at £2,310. On 28 June 2021 (at p.141-4), Bowood served a Notice of Estimates. On 13 October 2021, Bowood served a Notice of Reasons, explaining why they had elected to select Platinum Grade. One reason was that they had provided the lowest estimate for the Option B works. They were also known to the surveyor who was supervising the works.
28. The Applicant disputes her liability to pay for some of these works. First, she identifies three items relating to redecoration works (Option B: £2,310) and communal decorations (£380 and £370). She states that the works are only required because of water penetration from Flat 3. The Respondent should compel this lessee to carry out the works.
29. The Respondent accepts that there has been a problem of water penetration from Flat 3. There have been ongoing problems with this tenant would currently has arrears of some £8,000. The landlord has the responsibility under Clause 5(2) to keep the common parts repaired and decorated. Internal decorations are required. The extent to which any water penetration has increased the cost of these repairs is far from clear. Ms McMakin suggested that the contribution would be small. The Respondent does not consider that it would be cost effective to seek any contribution from the lessee of Flat 3. The Tribunal asked the Applicant whether the cost of pursuing this lessee would be a reasonable cost to charge to the service charge. She stated that it would not. She added that she was only too aware of the problems created by this lessee. When the previous freeholder was considering selling their interest, the Applicant had considered acquiring it. However, she had then decided against it largely because of the problems which would arise from dealing with this tenant. The Tribunal is satisfied that these works fall within the landlord's covenant. Further, the cost of the proposed works is reasonable. The Respondent is entitled to conclude that it would not be cost effective to seek any contribution from this tenant.
30. The Applicant challenges the provision of £170 for works the handrail and balustrading. The Applicant contends that the handrail and

balustrade are in a sound condition and that this work is not necessary. The Tribunal is satisfied that the surveyor who is supervising these works considers this work is required. It is a modest provisional sum for "one man day". This sum is therefore payable.

31. The Applicant challenges the provisional sum of £1,500 to supply and fit a new entry phone system to be linked to the four flats. The Applicant argues that this item is not chargeable under the lease as it is an improvement. There are photographs of the current door bells at p.175. It seems that some years ago, the two upper flats installed a basic intercom system for their flats. There is a separate bell for the Applicant's Flat.
32. The Respondent contends that the replacement of the defective entry phone system does not constitute an improvement. There are no management records about the origin of the system, but the lease terms suggest a system was originally provided by the freeholder.
33. The Second Schedule of the Applicant's lease specifies the rights of the tenant. By paragraph 3(b), there is "the right to use the entry phone serving the Building". It seems that all the leases are similar. Thus, each lessee has the right to use an entry phone system. It is the responsibility of the landlord to provide and maintain this. The Tribunal is therefore satisfied that this would be properly charged to the service charge account.
34. The Applicant challenges the provision of £1,075 for a new carpet in the communal parts. She argues that the existing carpet is in a sound condition, with no stains or areas of wear. There are photographs at p.119-124.
35. The estimate for the new carpet is at p.167. The existing carpet is some five years old. The Surveyor is satisfied that it is appropriate to replace it as part of the programme of internal repairs and decorations. The Tribunal is satisfied that this is a matter which is within the discretion of the landlord. The decision cannot be considered to be unreasonable. The Tribunal is therefore satisfied that this would be properly charged to the service charge account.

The Service Charge Year 2022/23

Interim Service Charge of £200 for Electricity

36. During the hearing, Bowood provided the budget for 2022/3 which totals £8,445. This includes £200 for electricity. This Applicant argues that this provision is unreasonable as the previous year's electricity bill was £51.34.

37. The Respondent contends that the projected amount is entirely reasonable for a landlord's lighting supply. The certified amount of electricity charges includes various accounting adjustments (accruals) as a result of the irregular and erratic billing over the last few years submitted by SEE the supplier. Several electricity bills are based on estimated readings due to difficulties in obtaining meter readings from leaseholders or their sub-tenants. In March 2022, SSE issued an invoice for £352.37 (p.186). During the hearing, Bowoods provided details of the bills submitted over the past three years.
38. The Applicant stated that the former lessee of flat 4 used to provide electricity meter readings to Bowood. The Respondent noted that there had been an electric heater in the common parts which could be on for 24 hours a day. Bowoods had removed this as a health and safety hazard. There is currently no timer for the lights in the hallway. At some stage, this had been removed.
39. The Tribunal is satisfied that the standing charge could be some £100 per annum. This is the consequence of a landlord providing a separate supply for the common parts. The figure of £200 is only an estimate. The Tribunal is satisfied that this is reasonable given the irregular and erratic billing. The final accounts for the year will be based on the sum actually expended.

Interim Service Charge of £1,500 for Repairs

40. The budget includes provision of £1,500 for "repairs/maintenance". For the reasons stated at [24] to [25] above, the Tribunal is satisfied that this is reasonable and payable.

Application under s.20C and refund of fees

41. At the end of the hearing, the Applicant made an application for a refund of the tribunal fees of £300 that she had paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Applicant has succeeded on one point, namely the absence of any provision for a reserve fund. The Respondent conceded this in their Statement of Case. However, it was necessary for the Applicant to issue her application in order to secure this concession. The Tribunal therefore orders the Respondent to refund her £150 (50%) of the tribunal fees that she has paid.
42. In her application form, the Applicant applies for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal declines to make such an order. The Applicant has failed on all the challenges that she has raised at the hearing.

Judge Robert Latham
3 April 2023

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).