FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AF/LSC/2024/0055**
Property	:	**Northlands (Flats 1-25), 165 Widmore Road, Bromley BR1 3AN**
Applicants	:	**The long leaseholders of Flats 6, 8, 9, 10, 14, 19, 20, 23 and 25 Northlands**
Representative	:	**Prime Property Management**
Respondent	:	**Trinity (Estates) Property Management Ltd**
Representative	:	**Tara Taylor (In house solicitor)**
Type of application	:	**An application under section 27A Landlord and Tenant Act 1985**
Tribunal	:	**Judge Robert Latham**
Venue	:	**10 Alfred Place, London, WC1E 7LR**
Date of decision	:	**17 September 2024**

DECISION

Decisions of the tribunal

(1) The Tribunal determines that the service charges challenged in this application are both payable and reasonable.

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

(3) The Tribunal makes no order for the refund of the tribunal fees which have been paid by the Applicants.

The Application

1. By an application dated 29 January 2024, the Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. The service charges in dispute are described as

> "Rental agreement for gates, intercom, and TV system. Contract entered into by Trinity from 2002. Trinity ceased management in 2020 and the RTM was able to end the contract in 2022."

2. The total cost of the contract was £157,000.00. Although the contract ran from 2002-2022, due to the Limitation Act 1980 and Trinity ceasing management of the flats in 2020, this claim is for the unreasonableness of charges between 2018-2020. Total cost of the claim was £21,800, broken down as "£2,180 per applicant paid between 2018-2020."

3. On 5 March 2024, the Tribunal gave Directions which were amended on 7 March. By 26 March, the Respondent was directed to disclose copies of all relevant service charge accounts and estimates for the years in dispute, all demands for payment of service charges and details of any payments made together with copies of the invoices for the disputed rental charges. The Respondent complied with this Direction and the extensive documentation which they disclosed is at p.21-156 of the Trial Bundle which extends to 247 pages.

4. By 23 April 2024, the Applicant were directed to provide full particulars of their case. This was to include (i) a Scott Schedule; (ii) Copies of any alternative quotes; (iii) any documents upon which they seek to rely; (iv) a statement of case setting out the relevant provisions in the lease and any legal submissions; and (v) any witness statements.

5. The Applicants did not comply with this Direction. Rather, on 19 April, they served a Scott Schedule (at p.157-158). The Schedule stated that the Applicants were now reducing their claim to a total of £1,365.13 over the three years 2018 to 2020. However, the ground of challenge was merely stated as "fee not reasonably incurred". No further material was provided. The Tribunal is satisfied Applicants were obliged to set out their case in full, so that the Respondent understood the case that they were required to answer. There was no pleaded case as to why the sums payable under the rental agreement were not service charges which were payable pursuant to the terms of their lease. In so far as it was suggested that the charges were unreasonable, there was no pleaded case as to why they were considered to be unreasonable, or what would have been a reasonable charge. No alternative quotes were provided.

6. It would have been open to the Respondent to apply to strike out the application at this stage. It did not do so. Rather, on 21 May, the Respondent served its response to the Scott Schedule, a Statement of Case (at p.163-168) and the documents on which it seeks to rely (at p.170-243).

7. The Directions permitted the Applicants to file a "brief supplementary reply" by 4 June. On 11 June, the Applicants served their "Applicants' Statement of Case" (at p.159-162). For the first time, the Applicants identified the nature of their challenge namely (i) that the sums are not payable pursuant to the terms of their leases; and (ii) that the rental agreement for the building intercom system, the vehicle gates to the car park and the building TV system were a capital item which should have been born by the landlord and not passed onto to the tenants through the service charge. The Applicants refer to the "perverse nature of the charges". The total amount payable by the leaseholders over the disputed years are: 2018: £10,805.50; 2019: £10,622.00; and 2020: £11,336.00.

8. On 11 June, the Applicants served a Bundle of Documents for the hearing which had been fixed for 15 July. On 26 June, the Respondents first complained to the Tribunal that the Applicants had not complied with the Directions. The Tribunal sought an explanation was to why the Respondent was contending the Applicants' Statement of Case should be excluded. On 28 June, Judge Nicol issued the Notice that the Tribunal was minded to Strike Out the Application. On 3 July, Ms Bowers concluded that the Tribunal had no option but to vacate the hearing fixed for 15 July, until the Strike Out application had been determined. The matter was therefore set down for a CMH before Judge Latham, sitting as a procedural judge.

9. On 30 July 2024, Judge Latham determined the strike out application. Mr Stephen Wiles, from Prime Property Management, appeared for the Applicant. Mr Lorenzo Leoni (Counsel) appeared for the Respondent. The Tribunal to the decision of the Upper Tribunal in *Liam Philip Spender v FIT Nominee Limited* [2024] UKUT 175 (LC).

10. Having regard to the Overriding Objectives, Judge Latham was not willing to strike out the application under either rule 9(3)(a) or (e) of the Tribunal Rules. He was satisfied that the Applicant should be allowed to rely on its Statement of Case, albeit that it was served late. It did not raise any new issues of fact, but rather the legal arguments that the Applicants would have wished to have advance. The hearing could have proceeded on 15 July, but for the Respondent's application to the Tribunal. The Tribunal was satisfied that this was an application that should be determined on its merits and not at a CMH on a Strike Out application. However, the Tribunal was not willing to afford the Applicants a third opportunity to formulate their case. Neither party had served any witness statements and it was now too late to do so. The Tribunal was satisfied that the application raises issues of law and the interpretation of the leases which should be fully considered.

11. On 2 August 2024, Judge Latham issued further Directions. These provided for Judge Latham to determine the application on the papers, unless either party requested an oral hearing. Neither party has done so. The Judge gave the parties the opportunity to make further written representations, if they so wished. He noted that the parties had fully

argued their respective cases at the CMH. In this decision, the Tribunal refers to the arguments raised by Mr Wiles and Mr Leoni at the CMH.

12. Pursuant to these Directions, the Respondent has filed further submissions, dated 6 August. No further submissions have been filed by the Applicants.

13. At the CMH, Mr Wiles informed the Tribunal that Flat 7 should no longer be included as a party to the application. The Tribunal removes this tenant as a party to this application.

The Background

14. The Applicants occupy their flats pursuant to tripartite leases between (a) Bravestable Limited ("the Lessor"); (b) Trinity (Estates) Property Management Limited ("the Management Company") and (c) "the Lessee".

15. The dispute relates to a contract, dated 16 August 2002, between the Management Company and Octopus Multi-Systems Limited (at p.245-247). The rental agreement is for a term of twenty years and Octopus agree to provide, let, and maintain a range of equipment which includes a video door entry system; a TV/FM digital satellite system; and vehicle/pedestrian gates including hydraulic ramps. Although Clause 11 of the Agreement prescribed a right of early termination, this was conditional upon payment of a capital sum equal to all the rentals that due to be paid under the Agreement if allowed to run the full initial term subject to the discounts and limit set out in Cluse 11.

16. The first lease was granted on 15 May 2003. Thus the contract pre-dated any of the leases. The Tribunal has been provided with a copy of the lease for Flat 6 which is dated 29 August 2023.

17. On 1 January 2021, the tenants acquired the Statutory Right to Manage. The RTM Company allowed the rental agreement to run, taking the view that it was more cost effective to permit the agreement to run its course, than to incur the cost of cancelling it and arranging for alternative provision. The term of 20 years ran from 31 December of the year in which the installation was installed. It is unclear when the installation was installed. However, it sems that the term has now expired.

18. The Applicant seeks to argue that the sums demand in the service charge years 2018 to 2020 were not reasonably incurred in that (a) the sums are not payable pursuant to the terms of the leases; and (b) the rental agreement was for capital items which should have been born by the landlord and not passed onto to the tenants through the service charge.

The Leases

19. The Tribunal has been provided with a copy of the lease for Flat 6. The Ninth Schedule defines those "expenses and obligations and other heads of expenditure" which the Applicants are required to pay by way of the

Service Charge. The Respondent referred the Tribunal to Paragraph 6(a) which provides that the cost of the service charge extends to the cost:

> "at the Management Company's discretion any and all services contracts for the entrance door control system fire alarm system emergency lighting system TV aerial system and any other system installation now installed or to be installed".

The Law

20. The Applicant seeks to argue that for rental agreements to be permissible and chargeable, the outright purchase of the item must have been permitted and chargeable under the lease. The Tribunal does not accept this.

21. The Respondent contends that the facts of the current application are similar to those considered by the Upper Tribunal ("UT"), Judge Cooke, in *Liam Philip Spender and 103 Others v FIT Nominee Limited* [2024] UKUT 175 (LC). The leaseholders had challenged the amount of service charge in respect of estate insurance and security services. The payments for rental and maintenance of the estate security system had been made pursuant to a 20-year contract entered into in 2000 by the landlords' predecessor. The leaseholders challenged those costs on the basis that they were about half the cost of buying a new system. The FTT held that the costs for security services were not reasonably incurred because the bad deal made in 2000 was still a bad deal.

22. The UT held that section 19(1)(a) of the 1985 Act was aimed at the incurring of costs in the broader sense of a landlord taking on a liability; the mischief at which it aimed was the landlord committing to too high a price, and therefore it required an examination of the background to the presentation of an invoice. The question was whether it was reasonable, in the sense of producing a reasonable outcome for the landlord and the leaseholders, for the landlord to have incurred the costs by entering a contractual commitment and thereby making itself liable to incur the costs. The UT concluded that the FTT's conclusion on the costs of the security system had not been open to it on the evidence, not because it had been wrong to look at the arrangements made in 2000, but because there was no evidence before it to justify its conclusion that it had been a bad deal in 2000. Its decision was set aside and substituted with a decision that the costs had been reasonably incurred.

23. The Respondent refers us to the following passages of the judgement:

> "74. I think the approach of the FTT and the Tribunal to a challenge under section 19(1)(a) in respect of costs incurred under a contract should be to ask whether the cost was reasonably incurred in the sense that the landlord acted reasonably in taking on the commitment and thereby making it inevitable that it would incur the cost when the invoice was presented (whether that is going to happen once, or repeatedly throughout the contractual term)....

75. The FTT was therefore right to look at what happened in 2000, and to ask whether it was reasonable for the developer/landlord to enter into the contracts with Countryside at that date, on the information then available.

76. The present situation is not analogous to the "historic neglect" situation, because the failure to do work in the past is not part of the incurring of the cost.

77. So far as the taking on of the contractual commitment in 2000 is concerned, that was of course not done by the present landlord; but for the reasons I have explained the appeal has to be approached on the basis that it is bound by those contracts. Section 19 of the 1985 Act requires that the cost be reasonably incurred, regardless of who incurred it. There has been some argument about whether the original leaseholders were aware of the rental agreements with Countryside when they purchased, and the FTT seems to have regarded that as problematic but I do not see the relevance of that. The issue is whether it has been shown that the contracts made in 2000 were, as the FTT called them, "a bad deal."

78. I agree with Mr Allison that in saying "the bad deal made in 2000 was still a bad deal in 2018", the FTT went beyond the evidence about the circumstances in 2000. There was no evidence whatsoever that the contract was a bad deal in 2000. Mr Spender did not suggest that. I have read the leaseholders' arguments in the FTT and there is no suggestion and no evidence that the developer could have done better in 2000. The challenge is only to the three years 2018, 2019 and 2020 and all the evidence relates to available prices for rental, purchase and maintenance at that date. The problem seems to be that the price of the relevant technology has gone down so much that the price set by the contract (even as modified by agreement in 2008) has become too high, but no-one could have foreseen that. Criticism of the deal in 2000 rests only on hindsight.

79. By the time the costs in 2018, 2019 and 2020 were actually incurred, when the invoices were presented, the landlord had no choice but to pay them; it had no choice because it was bound by contracts made in 2000 which it could not now escape, and the then landlord's decision to enter those contracts has not been shown to have been unreasonable (in the sense required by section 19(1)(a) as explained in *Waaler v Hounslow*).

80. Accordingly I take the view that the FTT's conclusion was not open to it on the evidence, not because it was wrong to look at the arrangements made in 2000 but because there was no evidence before it to justify the judgment that it made about those arrangements; its decision is set aside."

The Tribunal's Determination

24. The Tribunal is satisfied that the Applicant's case must fail for the reasons stated by the Respondent. The UT decision in *Liam Philip Spender* is directly on this point. The Applicants have been unable to distinguish it.

25. The Tribunal is therefore satisfied that the service charges demanded arising for the rental agreement for the gates, intercom, and TV system for the years 2020 to 2022 are payable and reasonable:

    (i) These are services for which provision is made in the Ninth Schedule of the leases.

    (ii) There is no evidence that this agreement was a bad deal when it was made in 2002.

    (iii) They are not capital items, as there is an annual charge under the agreement.

    (iv) As the RTM recognised when it acquired the management of the flats, it made commercial sense to commit the agreements to run come to an end in 2022. The same conclusion would have been reached for the years 2020 to 2022. Indeed, there is no evidence that these services could have been provided at a lower cost by an alternative provider.

    (v) A further factor in this case is that the agreement was entered into before any of the leases were granted. The Applicant argues that in 2002, the Respondent failed to comply with the statutory procedures to consult. This can have no relevance since the contract was signed both before the leases were granted and before the Service Charge (Consultation Requirements) (England) Regulations 2003 came into effect.

Application under s.20C and refund of fees

26. The Tribunal does not make any order for the repayment of the tribunal fees paid by the Applicants as their application has failed. Neither does it make any order pursuant to section 20C of the Act. However, this is likely to be academic as the RTM Company is now managing the flats and is responsible for the service charge accounts.

Judge Robert Latham
17 September 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).