



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

Case reference : LON/00AN/LSC/2024/0187

Property : Earl House, 464 Uxbridge Road,
London W12 0NT

Applicant : Earl House Management Ltd

Representative : Mr Alex Pritchard-Jones, counsel

Respondent : Lydia Roganovic

Representative : Mr Adam Swirsky, counsel

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 Tagliavini
Mr Stephen Mason BSc FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 10 October 2024
Date of decision : 6 November 2024

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
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The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ('the 1985 Act') as to the amount of service charges that are payable by the Respondent in respect of the service charge years 2022/2023; 2023/2024 (estimated) and 2024/2025. Subsequently, the estimated service charges for 2024/2025 were withdrawn by the Applicant and the tribunal did not determine these.

The hearing

2. At a face-to-face hearing, the Applicant was represented by Mr Alex Pritchard-Jones of counsel at the hearing and the Respondent was represented by Mr Adam Swirsky of counsel.

The background

3. The property which is the subject of this application is a self-contained flat in a converted Victorian villa which now contains six flats on three floors, the top floor being in the roof space. The Respondent is a Director of the Applicant company as well as the leaseholder of Flat 3, Earl House, 464 Uxbridge Road, London W12 0NT ('the property').
4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The Respondent holds a long lease of the property dated 23 August 1988, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

6. At the start of the hearing the parties identified the relevant issues for determination as follows:

- (i) The payability and/or reasonableness of the actual service charges for the year 2022/2023 and the estimated service charges for 2023/2024. In a Statement in Response dated 11 July 2024 the Respondent set out a large number of items she no longer disputed for 2022/2023 and 2023/2024. Consequently, the only individual items left in dispute were identified as:
 - (i) The reasonableness and payability of the legal fees incurred by the Applicant in its use of Browne-Jacobsen Solicitors. Whether they were subject to a long-term qualifying agreement and the lack of consultation with the Respondent lessee pursuant to s.20 of the Landlord and Tenant Act 1985.
 - (ii) The registration costs of the company at Companies House.
 - (iii) The administration charges for late payment.
 - (iv) The cost of the attendance of the witness at the last tribunal hearing in *LON/00AN/LSC/2022/0133*, which was settled by the parties and a Consent Order agreed and dealt with outstanding service charges up to and including 2021/2022.
 - (v) The validity of the demands for payment of service charges by the use of the Applicant's online 'Portal.'
7. Having heard evidence and submissions from the parties and considered all of the documents provided in the electronic bundle of 940 pages, much of which was not relevant for the purpose of this application, in light of the Respondent not seeking to pursue certain issues in dispute in this application. The bundle also included a witness statement dated 08/08/2024 from Mr Paul Chapman, a director of the Applicant company who also gave oral evidence to the tribunal.
8. The relevant clauses of the lease are set out in Clause 2, the Fourth Schedule and the Fifth Schedule. The service charge year runs from 24 June of one year to 23 June of the next. Service charges are payable in advance in two equal half yearly instalments on 24 June and 23 December. The Respondent is required to pay a 19% contribution to the service charges.
9. Having had regard to all of the documentary and oral evidence, the tribunal has made determinations on the various issues as follows.

Legal fees of Browne-Jacobsen solicitors

10. The Respondent did not seek to assert legal costs were not in principle payable, as these are made recoverable under the terms of the lease (Fifth Schedule). The Respondent sought to challenge whether these costs were the subject of a long-term agreement entered into by the Applicant with its solicitors. The Respondent asserted the Applicant had failed to produce client care letters in respect of each piece of work, for which they had been engaged by the Applicant and this failure indicate a LTQA had been entered into. The Respondent also challenged the amount of these legal costs and asserted there was a lack of transparency as to how they had been incurred.
11. The tribunal accepts the Applicant's evidence on this issue and is satisfied that these costs are not subject to a long-term qualifying agreement. The tribunal accepts the legal costs were incurred by the Applicant on an 'ad hoc,' as and when needed basis, rather than under a continuous agreement for services. Despite the Respondent's assertion that these solicitors have 'worked for' the Applicant for more than 12 months, the tribunal finds it is not unusual for a party to have their preferred solicitors to whom they repeatedly return when the need arises and does not indicate that a LTQA has been entered into.
12. In considering the reasonableness of these costs, the tribunal has also taken into account the protracted correspondence the Respondent has sent to the Applicant and its solicitors, querying a wide range of matters, the majority of which, do not appear to be in issue in this application, thereby adding to their amount. The tribunal finds the reasons for these costs have been adequately described and would not expect a detailed Schedule of Costs to be provided for each and every time the services of these legal advisors are engaged.
13. The tribunal accepts the evidence of Paul Chapman who explained to the tribunal the Applicant's reasons for choosing and continuing to use these legal advisors. The tribunal also considers the costs charged are within the range of reasonableness for the services provided by these legal advisors.
14. However, the tribunal finds the costs incurred by these solicitors should be limited to the costs incurred from the service charge year beginning 24/06/2022 in view of the Consent Order that was previously agreed between the parties, in respect of the service charges up to and including 23/6/2022.

Company House administration costs

15. The tribunal finds these costs are part of parcel of the Applicant carrying out its management and running of the building pursuant to clause 6 of the lease and are reasonable and payable by the Respondent. In this instance they relate to the sale of Flat 2 in the building and an update to the director's details at Companies House was subsequently required. Therefore, the tribunal finds the Respondent is liable to contribute towards these costs.

Late payment fees

16. The tribunal finds there is no provision in the lease that allows for late payment fees to be charged. The tribunal finds these sums do not form part of the managing agent's fees under paragraph 6 of the Fifth Schedule as submitted by the Applicant. In any event, the sum of £75.00 per letter is excessive and unreasonable. Therefore the tribunal disallows this sum for all the service charges years in dispute in the current application.

Cost of witness attendance in LON/00AN/LSC/2022/0133

17. The Applicant claimed costs in the sum of £756.50 that were said to have been incurred in respect of the attendance by Lisa Soultana, a fellow leaseholder and director of the Applicant company, as a witness at the tribunal in the previous application.
18. The tribunal finds these costs are unreasonable in that a director of the Applicant company would be expected to attend and represent its interests, with no expectation of being remunerated either by the Applicant company or by the Respondent. The tribunal also finds it was not clearly explained how these costs had been incurred by this witness or what losses had been suffered in attending the tribunal.
19. In any event, the tribunal finds these costs were (or should have been), included in the settlement agreed between the parties in the previous application *LON/00AN/LSC/2022/0133* to which these costs related. Therefore, the tribunal determines these costs are not reasonable payable by the Respondent.

Demands by online 'Portal'

20. The tribunal determines the demands for payment of service charges are not Notices within the meaning of clause 5(4) of the lease. The tribunal accepts the submission made by the Applicant, that paragraph 2(d) of the Fourth Schedule of the lease, requires only that the Respondent be provided with a sufficient statement of account, after which she has 14 days to pay the account having received a demand for payment. The Applicant asserted and the tribunal accepts, the

Respondent accessed the demands for payment sent via the Portal, in addition to having received hard copies.

21. The tribunal determines that demands for payment have been validly made and are payable by the Respondent, subject only to any reductions that have been determined by the tribunal in this decision.
22. The tribunal was somewhat surprised by the Respondent's apparent lack of willingness to use the Portal, as a means of receiving all of the information she has repeatedly sought from the Applicant. It appeared to the tribunal that the use of the Portal was an easy and effective means of accessing information demanded by the Respondent, who accepted she had the computer skills to do so.
23. At the end of the hearing the Applicant indicated it may wish to make an application for costs pursuant to rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and produced a Schedule of Costs in support. If such an application is to be made, it should be made by way of a formal application on notice to the tribunal so that directions can be given. It can then be allocated to this tribunal for determination.

Name: Judge Tagliavini

Date: 6 November 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).