



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

Tribunal Case Reference : **LON/00BA/LSC/2023/0271**

Property : **Flat 1, 195-197 Merton Road,
London SW19 1EE**

Applicant : **Alexander Landau**

Representative : **Ms Gillian Pickering**

Respondent : **Antony Senny**

Representative : **Lazarev Cleaver LLP**

Type of Application : **Payability of service charges**

Tribunal : **Judge Nicol
Ms R Kershaw**

Date and venue of Hearing : **11th November 2024
10 Alfred Place, London WC1E 7LR**

Date of Decision : **12th November 2024**

DECISION

- (1) The service charges challenged in this matter and listed in the decision below are reasonable and payable in full by the Applicant to the Respondent, save that the invoice from Metro Safety dated 21st March 2021 is reduced from £600 to £300.
- (2) The Tribunal has yet to consider the Applicant's further applications under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 which shall be dealt with in accordance with the following directions:

- (a) The Respondent shall make any written submissions by **25th November 2024**, and shall attach any further documents relied on;
 - (b) The Applicant shall make any written submissions in reply by **9th December 2024**, and shall attach any further documents relied on;
 - (c) The Respondent may make any further brief submissions in reply by **23rd December 2024**;
 - (d) The Tribunal will issue a decision on these issues as soon as practicable thereafter.
- (3) Either party may apply to the Tribunal for further directions in these proceedings in the event that the parties cannot agree the calculation of the revised service charges in the light of this decision.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant is the lessee of one of the 3 flats at the subject building, which also contains commercial premises on the ground floor. The Respondent is the freeholder.
2. The Applicant applied for a determination under section 27A of the Landlord and Tenant Act 1985 (“the Act”) as to the reasonableness and payability of certain service and administration charges. The Tribunal issued directions on 25th October 2023, updated on 26th April 2024.
3. The Tribunal heard the case on 11th November 2024. The attendees were:
 - Ms Gillian Pickering, representing the Applicant;
 - Mr Gerard Grogan, a contractor and witness for the Applicant;
 - The Respondent; and
 - Ms Amanda Gourlay, counsel for the Respondent.
4. Both parties had an additional witness, Mr William Annett for the Applicant and Mr Peter Wiggins, a facilities manager with the Respondent’s agents, Eddisons, but they did not attend. The Tribunal took account of their witness statements, albeit on the basis that they were hearsay.
5. The documents before the Tribunal consisted of:
 - (a) A bundle of 739 pages;
 - (b) A bundle of invoices totalling 251 pages; and
 - (c) Skeleton arguments from both parties’ representatives.

Procedural Issues

6. The Respondent claims that the disputed service charges were admitted when the Applicant said he would pay his arrears in a conversation in November 2021. If true, this would mean that the Applicant could not make the application in accordance with section 27A(4)(a) of the Act.

7. However, the promise to pay was not accompanied by any admission. A mere unfulfilled promise to pay, without more, is neither binding nor a conclusive admission – otherwise, the covenant to pay contained in the lease would be sufficient to defeat any challenge. Under section 27A(5), a tenant is not to be taken to have admitted any matter by reason only of having made any payment. On the Respondent’s argument, a tenant would have made such an admission if they had simply forewarned the landlord they were going to pay.

Scott Schedule

8. In accordance with the Tribunal’s directions, the parties had sought to list the items in dispute in a Schedule which was included in the hearing bundle. The Applicant and his representative had not thought to obtain legal advice and appeared to have had difficulty in understanding that every item they sought to dispute needed to be properly raised in advance of the hearing in order to give the Respondent a fair opportunity to prepare his case in response. Some items in the Schedule were so unparticularised that it would have been unfair to require the Respondent to try to answer them.
9. Further, some of the Applicant’s complaints or the remedies he sought were not within the Tribunal’s jurisdiction. He sought reviews of the management of the property and of the auditing of the accounts and, particularly through Mr Grogan, complained of a lack of maintenance. The Tribunal relies on the parties to raise issues and does not carry out inquisitorial procedures to check on how a manager or accountant is doing their job. A landlord’s failure to comply with the covenants to repair may be the subject of court proceedings but the Tribunal’s job of considering the reasonableness or payability of service charges is a different matter.
10. The Applicant’s primary complaint against the Respondent is that he has not been forthcoming when asked for information or documents which would explain the service charges. Some of that allegedly missing information was provided within these proceedings, as a result of which the Applicant withdrew some items of challenge.
11. The matters listed in the Schedule are considered in turn below.

Apportionment

12. The Applicant’s lease specifies that his share of the service charge expenditure is 20%. The Respondent’s agents had taken it on themselves to come up with a “fairer” arrangement by which the three residential lessees shared costs at one-third each for matters which exclusively related to the residential areas, rather than the commercial premises contributing to that as well.
13. However, there is no provision in the lease which permits the apportionment to be varied in this way. The Respondent had argued in their statement of case that there was an estoppel but, at the hearing, Ms

Gourlay said that the apportionment issue was conceded and the Applicant's service charge would be re-calculated accordingly. The Applicant disagreed with the Respondent's initial calculation of the refund due but, since it is simply a matter of arithmetic, the Tribunal hopes that the parties can resolve the relevant figure without further assistance from the Tribunal.

Items 1 and 2: Management and audit fees

14. The Applicant requested that the Tribunal "reviews" the performance of the managing agent and the auditing of the service charge accounts in the light of his queries. The Tribunal explained to Ms Pickering that the Tribunal is limited to considering whether particular charges identified by the Applicant are reasonable or payable and cannot conduct a general enquiry into the work of the agents or the accountants.

Item 3: Help Desk fees

15. The Respondent's agents paid a contractor to provide a Help Desk 24 hours a day, 7 days a week, 365 days a year. According to the witness statement of Mr Wiggins, he also used the Help Desk system to log work and services at the property. Until the contractor went out of business, the service cost:

- 2017 £360
- 2018 £367.20
- 2019 £375.60
- 2020 £382.80
- 2021 £490

16. Mr Grogan complained that the Help Desk was useless as it failed to produce a response to various urgent repair works and, when he phoned it, he got no answer. Unfortunately, the Applicant failed to provide the Respondent with any dates as to when any of these events occurred and so they were unable to investigate or respond to any of the allegations.
17. On the other hand, despite records being limited due to the contractor going out of business, the Respondent was able to produce some material showing some of what the Help Desk did: reactive works records from 2021-2023, a works order from 2020 and an invoice from 2019.
18. Ms Pickering pointed out that such a service was carried out by the agents themselves on other residential sites and argued that it was an unnecessary expense. Ms Gourlay replied that it was more transparent to separate out this service and calculated what the total fee was if the Help Desk fees were added to the management fee. The total sums for each year ranged from £432 in 2017 to £467.76 in 2021. In the Tribunal's experience, this is within the range in the market for management fees for a block of this size. As with all other items, the Applicant had no alternative quotes to show otherwise.

19. The Tribunal is satisfied that the charges were incurred and a service was supplied. In the circumstances, the Tribunal is further satisfied that the charges are reasonable and payable.

Item 4: Health, Safety & Environmental Management Risk Assessments

20. The Applicant complained that the health and safety and fire risk reports were not disclosed to him until these proceedings, depriving him of an opportunity to ensure any necessary works were completed through Mr Grogan. In fact, the Respondent had the reports and, if the lessees had not withheld their service charges, would have had sufficient funds to do the requisite work himself in accordance with the lease. The Applicant withheld payment of his service charges other than a payment for insurance in 2021 and a recent amount paid “under protest” at the suggestion of the judge who made the directions. The Applicant complains of a lack of maintenance but it is difficult to see what he expects his landlord to do when he has no money for that maintenance.
21. Now that the reports have been disclosed, Ms Pickering confirmed that the Applicant had no further complaint to make about the cost of those reports or the resulting service charges. She and Mr Grogan queried why the recommendations in the reports do not appear to them to have been actioned but, without an impact on the service charges, this is not a matter for the Tribunal.

Item 5: Pest Control

22. Other than a charge of £120 in one year which had been classified in the service charge accounts under repairs and maintenance, the Respondent had not charged for any pest control work. Ms Pickering conceded that the charge of £120 would not be challenged.

Item 6: Life Safety Systems Maintenance

23. The Respondent spent £990 (inclusive of VAT) under this heading in 2021, as shown in two invoices:

- 21st March 2021 Metro Safety £600
- 27th August 2021 Peak Maintenance Ltd £390

24. Mr Grogan opined that the general maintenance was so poor that he was unable to see what the Respondent had paid any money for. In relation to these two invoices, he said they seemed to be for too much money, particularly the Metro Safety invoice.

25. The Tribunal is satisfied that the Respondent incurred this expenditure for genuine reasons. On its face, the Tribunal cannot find anything wrong or even out of the ordinary for the Peak Maintenance invoice but the Metro Safety one is different. It sets out the reported faults, the actual faults identified by them and the action they took. This amounted to replacing one smoke alarm, replacing one smoke alarm battery and testing the smoke alarms. The Tribunal cannot see how this could

possibly cost £500 plus VAT. A reasonable cost would be half that amount, £250 plus VAT.

Item 7: External Repairs and Maintenance

26. The Applicant complained in the Schedule that invoices had not been provided. Ms Gourlay said that they had been made available in 2022 but Ms Pickering said the link expired before the lessees understood how to use it. In any event, they were later disclosed in July in accordance with the Tribunal's directions.
27. Ms Pickering said various queries had been raised about this expenditure in correspondence over the years. However, if the Applicant had wanted to challenge items of this expenditure in these proceedings, they had to be specified in these proceedings. Any matter known to the Applicant prior to the issue of his application should have been in the application and/or the Schedule so that the Respondent had a fair opportunity to consider their response. In the event, specific items under this head were not challenged ahead of the hearing and so the Tribunal could not rule on them.

Item 8: Buildings Insurance

28. The Applicant again complained that information about buildings insurance had been provided later than it should have been. In the event, Ms Pickering had queries about the inclusion of contents and loss of rent but had not raised them before the hearing. In any event, in the Tribunal's experience, these are standard items for buildings insurance and there is nothing apparent for this item which might give the Tribunal pause.

Item 9: Reserve Fund

29. The service charges include a Reserve Fund for large, non-annual items of expenditure. The Applicant was concerned about where the Fund was held and how it was used but had not raised any specific examples. His principal point was to query whether the lease allowed the Respondent to provide for a Reserve Fund.
30. The lease does not contain an express provision for a Reserve Fund. However, paragraph 1 of the Third Schedule defines "Service Costs", "Final Service Charge" and "Interim Service Charge Instalment" without any limit as to the time period so that service charges may be collected for periods beyond just one year. Therefore, there may be a Reserve Fund for costs to be incurred on a non-annual basis.
31. This approach was confirmed in *Leicester City Council v Master* (2008) LRX/175/2007 where HHJ Huskinson stated at paragraph 33 of his judgment in the Lands Tribunal:

Obviously the ability to set up a reserve fund could have been made clearer by the introduction of an express provision, ...

However the mere fact that the matter could have been made clearer is not of itself a justification for concluding that the clause as it stands is insufficiently clear to permit the Appellant to set up a reserve fund.

32. Further, the Applicant's lease contains a broad "sweeper" clause at paragraph 13 of the Fourth Schedule permitting the Respondent to incur expenditure on "Such other services as the Lessor shall reasonably deem necessary for the better enjoyment of the Building by the occupiers of it from time to time." The provision of a Reserve Fund is good practice and is more than arguably necessary for the better enjoyment of the building.
33. Ms Pickering did not feel able to make any legal submissions and left the matter of lease interpretation to the Tribunal. For the above reasons, the Tribunal is satisfied that the lease permits the Respondent to collect for a Reserve Fund.

Items 10 and 11: Electricity and Electricity Procurement

34. The Applicant did not challenge the cost of the actual supply of electricity but queried two matters:
 - (a) Having seen the invoices, Ms Pickering noted that there were some charges said to relate to debt collection and queried why the lessees should be paying them rather than the Respondent. However, this point had not been raised prior to the hearing and there was no evidence that the charges were incurred due to the Respondent's default rather than that of the lessees in not paying their service charges. It would not be fair on the Respondent for the Tribunal to rule on these charges in the circumstances.
 - (b) In 2017 and 2018, the Respondent had used a contractor to procure the electricity supply contract. Such an arrangement is understandable for a large building but, in this case, the charge appeared to be more than could possibly have been saved. Over the lunch break, the parties settled this issue with the Respondent covering £200 of the charges.

Item 12: Cleaning

35. The common areas of the building consisted of an L-shaped hallway, two sets of stairs and a half-landing. The Respondent employed Endersham Ltd to provide cleaning to these areas at a cost of £45 per hour from 13th November 2017 until 30th September 2021. For most of that time, the service consisted of one hour per month, down from one per week at the lessees' request. By agreement between the parties, the lessees now arrange the cleaning themselves.
36. Mr Grogan said the cleaning was so poor that he had never noticed that any had ever been done. However, the Applicant provided no evidence from any resident in the building who would have had more regular insight into the cleaning. There is no doubt that Endersham invoiced for the cleaning. There was an attendance sheet kept, recording the cleaners' visits, but that disappeared from time to time.

37. Even with a building of this size, with low foot traffic in the common areas, the cleaning service was fairly minimal. Mr Grogan's experience is not necessarily inconsistent with such a service being provided. In the Tribunal's opinion, the Applicant has failed to establish that the cleaning charges were unreasonable.

Remaining matters in the Schedule

38. Items 13 to 16 in the Schedule repeated matters already dealt with above. The remainder of the Schedule provided more details of expenditure for each of the years in dispute, 2017 to 2021 inclusive, but did not add to the issues in dispute.

Costs

39. In their application, the Applicants sought two orders in relation to costs:
- (a) Under section 20C of the Landlord and Tenant Act 1985 to prohibit the Respondent from seeking to recover any costs incurred in the proceedings through the service charge.
 - (b) Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from seeking to recover any costs incurred in these proceedings by direct charge to the Applicant. This is the Respondent's preferred method of recovering his costs.
40. Ms Gourlay asked for these matters to be dealt with after the parties had seen the Tribunal's written decision. Ms Pickering did not object. Suitable directions for their determination are set out above.

Name: Judge Nicol

Date: 12th 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

- (3) In this paragraph—
- (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

<i>Proceedings to which costs relate</i>	<i>“The relevant court or tribunal”</i>
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.