



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

Case reference : **LON/00AY/LSC/2024/0166**

Property : **Ground Floor Flat, 54a Morrish Road,
Brixton, SW2 4EG**

Applicant : **Rebecca Miller**

Representative : **n/a**

Respondent : **Yellow Camel Ltd**

Representative : **Ayoub Karim (Director)**

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 N O'Brien, Mr Kevin Ridgeway
MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Hearing : **15 November 2024**

Date of decision : **26 November 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sums set out in paragraphs 14, 17 and 19 below are payable by the Applicant in respect of the service charges for the years 2021/2022, 2022/2023, 2023/2024 and 2024/2025
- (2) The Tribunal makes orders under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the Respondent's costs of the tribunal proceedings may be passed to the Applicant through any service charge or as an administration charge.
- (3) The Tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

Introduction

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("LTA 1985") as to the amount of service charges payable by the Applicant in respect of the 4 service charge years 2021/2022 to 2024/2025.
2. The property which is the subject of this application is a 3-bedroom ground floor flat in a converted terraced house containing 3 flats in total. The Applicant is the leasehold owner pursuant to a lease for a term of 125 years from 25 March 2015. The copy of the lease included in the bundle bears no date but appears to have been entered into by the Applicant and the Respondent in 2020. The Respondent is the owner of the top floor flat and the intermediate flat is also subject to a long lease held by a Ms Uma Patel.

The Proceedings

3. The application was sent to the Tribunal on 21 April 2024 and the Tribunal issued standard directions on 23 May 2024. Those directions required the Respondent to send the Applicant copies of all relevant service charge accounts demands and relevant estimates by 8 July 2024. The Respondent did not comply with this direction and the Applicant applied to the Tribunal for a debarring order. Subsequently the Respondent complied on 27 July 2024. The directions further required the Respondent to complete the Applicant's schedule of disputed charges and to disclose all relevant invoices and a statement of case by 23 September 2024. The Respondent did not comply with that direction and on 9 October 2024 the Tribunal notified the Parties that it was minded to debar the Respondent from further participation in the

proceedings. No response was received and on 22nd October 2024 a debarring order was made by Judge Nicols barring the Respondent from participating further in the proceedings. The Respondent's director Mr Karim subsequently applied to lift the debarring order via email sent to the Tribunal on 12 November 2024.

The hearing

4. The Applicant appeared in person and was assisted by Mr Leo Cutler. The Respondent was represented by Mr Ayoub Karim.
5. At the start of the hearing we considered Mr Karim's application to lift the debarring order. In his email Mr Karim accepted that he had failed to keep abreast of the directions due to oversight. He stated he would fully comply with any future directions and that the outcome of the proceedings would have a significant impact on his business. At the hearing he further explained that he was having treatment for a kidney condition. He accepted that if the debarring order were to be lifted and he were to be given a further chance to put his case, that the hearing would inevitably have to be adjourned to a future date. He also told us that he was out of the country in July which explained his late compliance with the initial disclosure obligations. He said he did not agree with the case presented by the Applicant. He could not explain why he waited until 12 November 2024 to apply to set aside the debarring order. He informed us that it was his intention to sell the Respondent's freehold interest in the near future.
6. Ms Miller opposed the application. She informed us that she had paid the disputed sums under protest when they were demanded and that she did not want to wait any longer for the matter to be determined. She stated that she had taken a days' annual leave to attend the Tribunal and she had no faith in Mr Karim's assurances that he would comply with any further directions, noting that he had breached every single direction to date.
7. In *BPP Holdings v HMRC [2017] UKSC 55* the Supreme Court confirmed that tribunals should follow the three-stage approach set out in *Denton v TH White Ltd* when considering applications for relief from the consequences of a breach of the rules or of a direction or order such as this. This requires us to firstly to assess the seriousness of the relevant failure to comply; secondly to consider whether there was a good reason for that failure and thirdly to evaluate all the relevant circumstances to enable us to deal fairly and justly with the case.
8. We refused the application to lift the debarring order. Clearly the breaches are serious and significant; there was a wholesale failure on the part of the Respondent to set out his case and to disclose relevant documents as ordered. The reality is that if permission were granted to lift the debarring order, the hearing would have to be adjourned. No

good reason has been given for the Respondent's failures. Mr Karim maintained that it was in part due to his ill health but no medical evidence was put before the tribunal or disclosed to the Applicant in support of this. Oversight is not a good reason. As regards the relevant circumstances of the case we shared Ms Miller's scepticism as to whether there would be compliance with any further directions. We noted that Ms Miller has been potentially out of pocket now for some years and has waited some time for this hearing. The Tribunal (First Tier Tribunal) (Property Chamber) Rules 2013 require us to deal with the application in a fair and just manner. In our view it would not be fair to the Applicant if the debarring order were to be lifted and we refused the Respondent's application.

9. Mr Karim left the hearing room following our refusal of the Respondent's application.

The issues

10. Pursuant to the directions the Applicant has served and filed a schedule of items in dispute. The schedule identifies the relevant issues for determination as the payability and/or reasonableness of service charges for each year relating to;
 - Maintenance Costs
 - Insurance and
 - Management fees

The lease

11. Clause 4(3) of the lease requires the Applicant to pay the service charge percentage of the costs incurred by the Respondent in complying with its obligations under Clause 5(3) of the lease. The particulars of the lease define the Service Charge Percentage as 33%.
12. Clause 5(3)(a) to (g) of the lease contains all the usual obligations placed on landlords to maintain and insure their building. By clause 5(3)(f)(iii) of the lease the Landlord may recover its cost of managing the building. However the costs recoverable from the tenant are capped at 15% of the total costs incurred in complying with Clause 5(3)a to 5(3)g of the lease.

Maintenance Charges

13. The Applicant complains that there has been a lack of transparency as to how the maintenance costs have been charged. For the first year in dispute she was charge the sum of £600 for maintenance charges. For the remaining 3 years she has been charged the sum of £800. The Respondent has produced invoices which on their face are from a person or company named 'Barry Hall' in support of these charges. The

Applicant has doubts as to the legitimacy of these invoices. She notes that the invoices display the same misspelling of 'received' as previous emails she has been sent by Mr Karim. Additionally she noted that the email address saved on the Respondent's email account for 'Barry Hall' is ayoubkarim768@yahoo.co.uk. She has been unable to find any trace of this business on-line.

14. The invoices from 'Barry Hall' for the years 2021-2024 are in the sum of £2400 for each year. There is no invoice for 2024-2025 as this is an estimated charge. In her schedule of disputed costs the Applicant has submitted what in her view would be a reasonable charge for her share of the relevant costs of maintenance. She did this by reference to comparable hourly rates for the work shown on the invoices. She submits that the following would be reasonable sums to pay for the work shown on the invoices disclosed by the Respondent.

- (i) £107 for 2021/2022
- (ii) £64 for 2022/2023
- (iii) £64 for the 2023/2024; and
- (iv) £64 (estimated) for the year 2024/2025.

15. As the Respondent has been debarred from participating in the proceedings we summarily assess the sums due from the Applicant for maintenance as per the sums set out in the Applicant's schedule. As we accept the Applicant's case as to what would have been the reasonable cost of the work reasonably was required to maintain the building for each year, we have not made any finding as to whether the invoices from 'Barry Hall' are authentic.

Insurance

16. The Applicant also takes issue with the sums claimed in respect of buildings insurance for the years in dispute. She has never been supplied with any invoices or any documentation in relation to insurance. She has obtained a comparable quote from AXA to insure the building in the sum of £670 in August 2024. She was content to use that figure for each of the years in dispute, notwithstanding the fact that insurance premiums are far higher in 2024 than they were in 2021. Based on that quote her share of the reasonable insurance costs would be £223 per year.
17. As the Respondent has been debarred from participating in the proceedings we summarily assess the recoverable charge for insurance as £223 for each year in dispute.

Management Fee

18. For each of the years in question the Respondent has demanded the sum of £300 as a management fee. However Clause 5(3) (f)(i) of her lease permits the Respondent to recover a management fee which is capped at 15% of the annual costs incurred by the Respondent for the maintenance, repair and for insuring the building. She calculates that the correct charge for the years in dispute were;

- (i) £16 for 2021/2022
- (ii) £11 for 2022/2023
- (iii) £11 for 2023/2024
- (iv) £11 for 2024/2025

19. The Applicant's calculations are based on the recoverable maintenance costs only. However Clause 5(3)(f) also permits the Respondent to recover 15% of the cost of insurance. This will mean additional £33.45 for each year. We calculate the recoverable management charge as follows;

- (i) £49.45 for 2021/2022;
- (ii) £44.45 for 2022/2023;
- (iii) £44.45 for 2023/2024; and
- (iv) £44.45 for 2024/2025.

Application under s.20C and refund of fees

20. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application and hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

21. In her application form and again at the hearing, the Applicant applied for an order under section 20C of the LTA 1985 and Paragraph 5A of Schedule 11 to CLRA 2002. Having heard the submissions from the Applicant and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the LTA 1985 and paragraph 5A of Schedule 11 to the CLRA 2002, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge or as an administration charge

Name: Judge N O'Brien

Date: 26 November 2024

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

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).