FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LSC/2024/0183**
Property	**:**	**Flats A and B, 349A West End Lane, London, NW6 1LT**
Applicants	**:**	**Dan Willams and Helena Liaka (Flat A) Carl-Gustav Beckmann and Wan Yin Leung (Flat B)**
Representative	**:**	**Mr Williams Mr Beckmann**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Not represented at the hearing**
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 Tueje Mr R Waterhouse MA LLM FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**27th October 2024**
Date of decision	**:**	**2nd December 2024**

DECISION

Decisions of the tribunal

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

(2) The Tribunal issues Directions in respect of the applications made under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002, and in respect of costs under Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

THE APPLICATION

1. By an application dated 23rd April 2024, the Applicants sought determinations pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable in respect of the following periods:
   1.1 Certain items of the service charge expenditure for 2023/2024,
   1.1 Certain estimated costs for 2024/2025.

THE BACKGROUND

2. The Application relates to 349A West End Lane, London, NW6 1LT (the "Property"), which comprises a two bedroom first floor flat, being Flat A, 349A West End Lane, and a two bedroom flat arranged over the second and third floors, being Flat B, 349A West End Lane. Flats A and B are within a building with commercial premises on the ground floor, known as 349 West End Lane.

3. As stated, the application is dated 23rd April 2024, but there was a previous Tribunal determination dated 19th January 2024, case reference LON/00AG/LSC/2023/0237, involving the same parties.

4. In respect of this application, the Tribunal issued a directions order dated 8th March 2024, including making provision for the parties to give disclosure of documents they wish to rely on, completing the Tribunal's standard Schedule of Dispute Service Charges form, and providing witness statements. It directed that the final hearing be listed on 16th October 2024 at 10.00am.

5. In a further order made by Judge N Carr on 11th September 2024, the Respondent was debarred from further participation in these proceedings pursuant to rules 9(3)(b) and 9(3)(d) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

THE HEARING

4 The Applicants were represented by Mr Williams and Mr Beckmann, who also gave evidence in support of the application. The Respondent did not attend the hearing and was unrepresented, having been debarred from participating.

5 The Applicants prepared a 200-page electronic bundle for use at the final hearing.

THE RELEVANT LAW

6. The definition of service charges is found at section 18 of the 1985 Act, which reads:

> ***18.— Meaning of "service charge" and "relevant costs"***
> *(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.*

7. Section 19 of that Act deals with the reasonableness of service charges, it states:

> ***19.- Limitation of service charges: reasonableness***
> *(1) Relevant costs shall be taken into account in determining the amount of 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.*
>
> *(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.

8. Section 27A deals with the Tribunal's jurisdiction to determine the reasonableness of service charges. It reads:

27A Liability to pay service charges: jurisdiction
(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.

9. As to how case law has defined reasonableness, the Court of Appeal provided the following analysis in *Waaler v Hounslow London Borough Council [2017] 1 W.L.R. 2817* (see paragraph 37).

"In my judgment, therefore, whether costs have been reasonably incurred is not simply a question of process: it is also a question of outcome. That said it must always be borne in mind that where the landlord is faced with a choice between different methods of dealing with a problem in the physical fabric of a building (whether the problem arises out of a design defect or not) there may be many outcomes each of which is reasonable. … the tribunal should not simply impose its own decision. If the landlord has chosen a course of action which leads to a reasonable outcome the costs of pursuing that course of action will have been reasonably incurred, even if there was another cheaper outcome which was also reasonable.

THE ISSUES

10. As stated, the issues for determination are the payability of specified actual costs for 2023/2024, and specified budgeted costs for 2024/2025.

11. The Tribunal reached its decision after considering the Applicants' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence. We also took into account correspondence between the parties contained in the hearing bundle.

12. This determination does not refer to every matter raised in these proceedings, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised, or documents not specifically mentioned, were disregarded.

13. The Tribunal has made findings on various categories of service charges at paragraphs 15 to 58.

14. Unless otherwise stated, costs in this determination include VAT and represent the global amount for the Property, as opposed to the costs payable in respect of each flat.

THE DETERMINATION OF ACTUAL SERVICE CHARGES FOR 2023/2024

Fire, Health & Safety Testing and Repairs

15. There are various items that these charges relate to, and our decision on these is at paragraphs 16 to 26 below.

The Tribunal's decision on the call out cost

16. Our decision is that the call out cost in the invoice dated 20th March 2023 for £108 is not reasonable and is reduced to £0.

Reasons for the Decision

17. The Applicants complain that the unsubstantiated call out costs are unreasonable, and the rely on the Tribunal's earlier decision in January 2024 (see paragraph 3 above) to support this.

18. We consider this cost is unreasonable because firstly, no information has been provided about why the London Fire Prevention company were called out. Secondly, having been called out, the company have not carried out any assessment, prepared any reports or carried out any works, which further suggests the (unexplained) call out was unreasonable. Finally, we note that fire health and safety testing is carried out almost every month, providing an opportunity to check for any defects in the fire safety equipment. To have a call out from a fire prevention company in addition to the testing, particularly taking into account that the Building only comprises two residential and one commercial unit, is excessive in our judgment.

The Tribunal's decision on the design, print, and hanging of fire safety posters

19. Our decision is that the £144.00 charge in the invoice dated 3rd April 2022 for designing, printing, and hanging fire safety posters is unreasonable and is reduced to £0.

Reasons for the Decision

20. The Applicants object to this cost on the grounds that there was already a fire safety poster on display, and the new poster did not improve fire safety.

21. The Applicants' bundle contained a photograph showing the existing fire safety poster, with the new poster displayed alongside it. While there is some additional information on the new poster, we do not consider the additional information materially improved fire safety. We also consider the existing poster was adequate for the building, making it unreasonable and disproportionate to incur the cost of a new poster.

The Tribunal's Decision on Monthly fire, health and safety testing

22. Our decision is that the invoices dated 4th April 2023 for £144.00, 14th November 2023 for £288.00 and 1st December 2023 for £48, are reasonable.

Reasons for the Decision

23. The Applicants complain that they mainly work from home but have heard no audible testing, and comment on the absence of a log to confirm when testing is carried out.

24. We note the Applicants' points, and in particular, that it would be appropriate to have a log when testing is carried out. We also note these costs relate to 10 occasions in a 12-month period that fire safety equipment was tested, at a cost of £48 each time. We consider the amount charged is reasonable, and that it is good practice to have regular testing of this equipment to safeguard occupiers, visitors and the public.

The Tribunal's decision on fire alarm inspection and servicing

25. We consider this cost of £348 is reasonable.

Reasons for the Decision

26. An annual inspection and servicing of the fire alarm is good practice, and the cost incurred by the Respondent is reasonable for this work. It's our understanding that there is no real objection from the Applicants regarding this item. But even if there was, as stated, we consider ensuring the safety of those in the building is important.

The Tribunal's Decision on the Inspection and Cleaning of Gutters and Downpipes

27. We consider the cost for two visits amounting to £588.00 is unreasonable and we reduce this cost to £294.00, which is reasonable.

Reasons for the Decision

28. The Applicants complain about cleaning guttering and downpipes twice a year, and instead consider it is reasonable to do this annually.

29. In our judgment it is reasonable to clean guttering and downpipes once a year, but in our experience, twice a year is excessive and therefore unreasonable. Accordingly, we consider the reasonable cost for this is £294.00 for one visit during the service charge year.

The Tribunal's Decision on Tying Down of Mats and Hazard Removal

30. We consider this £300 cost is unreasonable and reduce it to £75.

Reasons for the Decision

31. The Applicants object to this cost and argue if securing floor coverings was required, they would have been willing to do it themselves.

32. There is photographic evidence indicating that part of the stairs carpet needed to be secured, and it is reasonable to address this to avoid a trip hazard. We also consider it is reasonable that the Respondent arranged for a contractor to do this. However, having regard to the small section of carpet this related to, and that in our judgment securing this section of the stair carpet was straightforward and would not take long to address, so we consider the £300 cost is unreasonable and excessive.

The Tribunal's Decision on Repair of Communal Cracking

33. We consider it was unreasonable to charge the Applicants for this, and therefore reduce the cost from £390 to £0.

34. The Tribunal heard evidence from Mr Williams and Mr Beckmann that this related to repairs previously carried out unsatisfactorily, but for which the Applicants had already been invoiced. They complain that the £390 now being charged is the contractor's cost for returning to address the inadequate work.

35. We note that the Applicants' oral evidence is supported by e-mails exchanged between the parties on 22nd May 2023. In particular, there is

an e-mail sent on that day by Eagerstates, the Respondent's managing agents. In that e-mail, Eagerstates writes:

I can confirm this was the contractor returning and carrying out the works to deal with the points you raised.

They have not charged for this.

36. In light of the Applicant's oral evidence and the e-mail correspondence, we are satisfied this work was to satisfactorily complete earlier inadequate repairs. Therefore, we do not consider it is reasonable that the Applicants should be charged for the contractors to address deficiencies in work previously carried out unsatisfactorily.

The Tribunal's decision regarding the Annual BNO Inspection

37. We consider £198 for the annual BNO inspection is unreasonable, and we reduce this cost to £0.

Reasons for the Decision

38. The Applicants argued that there is no legal or regulatory requirement to carry out such an inspection, and they cite the First-tier Tribunal's earlier January 2024 decision which states (at paragraph 71):

This appeared to be yet another inspection by BNO London limited generating work to the electrical system despite the company not being appropriately registered. The applicants qualified advisors confirmed that the work was not necessary.

39. Primarily, we rely on our experience and expertise, based on which we consider there is no requirement to carry out this inspection. An additional consideration is that the company the Respondent has engaged, BNO London, do not appear to be suitably qualified to carry out such an inspection, even if it was reasonable to carry this out. We therefore consider this cost is unreasonable and should not be recovered from the Applicants.

40. Despite the previous Tribunal's findings that there is no BNO board at the Property and the company engaged is not qualified, the Respondent has not addressed this when corresponding with the Applicants. Therefore, we have no explanation for the continued use of these contractors, to do work which we consider is unnecessary.

The Tribunal's Decision on Application of grit to communal footpath during icy weather

41. In our judgment, £60 to apply grit to the footpath during icy weather is unreasonable, and we reduce this cost to £0.

Reasons for the decision

42. From the photograph provided, this cost relates to the application of grit to the area outside the Property's external communal front entrance. The Applicants complain that this is a public footpath, and that they do not have any communal external areas.

43. The photograph provided shows the gritted area is an area over which the public have access. Therefore, as there is no evidence to challenge the Applicants' assertion that the Respondent is responsible for maintaining that area, nor any evidence that it is entitled to recover the cost of doing so from the Applicants, we conclude this cost is not reasonable and so is unrecoverable.

The Tribunal's decision regarding the Sweep of electrics

44. We consider the cost of £102.00 for a sweep of the electrics is unreasonable and reduce it to £0

Reason for the decision

45. The Applicants' oral evidence was that the electrical installations in the communal area is the ceiling lighting and a single socket. They point out there isn't even a separate meter for the communal electricity, consequently Mr Beckmann and Ms Leung pay for communal electricity.

46. In our judgment, a sweep of the electrics is not reasonable given the Applicants' unchallenged evidence regarding the limited electrical installations in the communal area. Furthermore, on 5th July 2023, some installations were serviced, namely the emergency lighting and smoke detectors. There is nothing to indicate why a sweep of the electrics was considered appropriate six months after that servicing. Furthermore, the sweep identified no health and safety issues, which again supports the conclusion there was insufficient justification for this.

The Tribunal's Decision on the Management Fee

47. The maximum managing fee payable is 15% of the service charge total expenditure for the service charge period.

Reason for the decision

48. The Applicants rely on the terms of the lease, in particular, paragraph 1(1) of the Fifth Schedule states:

> *"Total Expenditure" means the total expenditure properly incurred by the Lessor in any Accounting Period in carrying out their obligations under Clause 5(2) of this Lease and any other costs and expenses properly incurred in connection with the Building including without prejudice to the generality of the foregoing:-*
>
> *(a) The reasonable cost of employing Managing Agents of not more than 15% of the Total Expenditure.*

49. In our judgment, this provision supports the Applicants' position. Accordingly, and allowing for the reductions we have made, the managing agent's fee cannot exceed 15% of the total service charge expenditure.

THE DETERMINATION OF ACTUAL SERVICE CHARGES FOR 2023/2024

50. We remind ourselves that the test under section 19(2) when assessing the reasonableness of payments on account, is whether the amount claimed is no more than is reasonable. We consider the actual costs provide some guidance when estimating a reasonable payment on account, with appropriate allowance for inflation.

The Tribunal's decision on Gutter Cleaning

51. The Tribunal considers £600 is a greater amount that is reasonable, therefore we substitute this with £300 for gutter cleaning.

Reasons for the Decision

52. Based on the 2023/2024 actual service charge costs, the estimated £600 relates to bi-annual gutter cleaning. However, for our reasons stated at paragraphs 27 to 29 above, we consider bi-annual cleaning is unreasonable. Therefore we have reduced this estimate to reflect the cost of one visit per annum, which we consider is reasonable.

The Tribunal's decision on Drains Service

53. The Tribunal considers £250 is a greater amount that is reasonable, therefore we substitute this with £0.

Reasons for the Decision

54. The Applicants argue there are no accessible drains. Absent any evidence challenging the Applicants' assertion that there are no accessible which the Respondent is liable to service and/or maintain, we consider the cost is not reasonable.

The Tribunal's decision on BNO Inspection

55. The Tribunal considers £200 is a greater amount that is reasonable, therefore we substitute this with £0.

Reasons for the Decision

56. For the reasons stated at paragraphs 38 and 39 above, we do not consider a BNO inspection is reasonable, therefore we do not consider the cost of this on account is payable.

The Tribunal's decision on Repair Fund

57. The Tribunal considers £2,000 is a greater amount that is reasonable, therefore we substitute this with £1,000.

Reasons for the Decision

58. We consider it is prudent to have a reserve fund, and the lease provides for this (see paragraph 1(1)(g) of the Fifth Schedule). However, having regard to the fact that this is a small block, that ongoing maintenance and repairs are carried out, and there is currently no evidence of outstanding repairs, in our judgment £1,000 is a reasonable sum.

Costs

59. The Tribunal has issued separate Directions in relation to the costs application.

Name: Judge Tueje Date: 2nd December 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).