



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

**Case reference** : **LON/00AY/HTC/2024/0018  
V:CVPCOURT**

**Property** : **43 Highlands Court Highland Road  
London SE19 1DS**

**Applicant** : **Ms Beth Ransom**

**Representative** : **In person**

**Respondent** : **Ms Yun Jung Ko**

**Representative** : **In person**

**Type of application** : **For recovery of all or part of a prohibited  
payment: Tenant Fees Act 2019**

**Tribunal  
member(s)** : **Mrs E Flint FRICS  
Ms S Coughlin MCIEH**

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

**Date of decision** : **14 January 2025**

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**DECISION**

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**Description of the hearing**

This has been a remote hearing which has been not objected to by the parties. The form of remote hearing was V:CVPREMOTE. A face to face hearing was not held because all the issues could be determined in a remote hearing. The documents we were referred to are in an electronic bundle the contents of which we have recorded. The order made is described below.

## **Decision of the Tribunal**

1. The Tribunal determines that the “service charge” in the tenancy agreement is not a prohibited payment under the Act as it is part of the rent in accordance with S14(4) of the Housing Act 1988.

## **Background**

2. This is an application under section 15 of the Tenant Fees Act 2019 (The Act) for an order for the recovery of a prohibited payment, paid in respect of a tenancy of 43 Highlands Court, Highland Road, London SE19 1DS. It is alleged that the service charge payable under the tenancy agreement was a prohibited payment under the Act and should be refunded. The amount claimed was £97 x 46 months totalling £4,462.00.
3. Directions were issued on 16 August 2024 for a determination on the papers during the week commencing 28 October 2024. However, after consideration of the papers Judge Percival issued further Directions on 30 October 2024 which are set out at paragraphs 4-7 below.
4. The application raises potentially new issues of law, and (partly depending on the view taken on those issues), more factual information is required from the parties. For these reasons, it is not suitable to be decided on the basis of the papers already provided. and there must be an oral hearing. The oral hearing will, however, take place remotely using the Tribunal’s video link platform.
5. The first legal issue is whether a service charge counts as a prohibited payment under the Tenant Fees Act 2019. There has been no case before the Tribunal (so far as it is possible to check this) dealing with a service charge so far.
6. The second legal issue comes up if the answer to the first issue is that a service charge does count. That issue is whether the Tribunal has a discretion – a choice – about how much of a prohibited payment it can order to be repaid, and if it does, on what basis that discretion should be exercised.
7. The new factual information needed is, first, a copy of the full tenancy agreement(s), and any related papers. Secondly, if the financial circumstances of the parties is relevant to the exercise of the Tribunal’s discretion, information about the parties’ financial circumstances must be provided (if the party wishes the Tribunal to take their circumstances into account).

## The Tenancy Agreement

8. The tenancy agreement which was dated 27 June 2020 was for a term of twelve months from 29 July 2020 at a rent of £1475 per month plus a service charge of £97 per month which was to be paid to the landlord at the same time as the rent. The service charge remained at that fixed sum throughout the almost four years of occupation.
9. The relevant sections are as follows:

**5 THE RENT** The calendar monthly rent of£ 1475 (One thousand, four hundred and seventy five pound ) (subject as provided in the General Tenancy Conditions) clear of all deductions. Payable in advance. The first rental payment will be made minimum 3weeks prior to the start of the term due upon on the 8th July 2020. Thereafter, The rent is payable in advance and due upon on the 29th day of each rental period.

**6 SERVICE CHARGE** The calendar monthly service charges of £97(Ninety seven pound) payable at the same time of the rental payment due upon on the 29th day of each rental period. The service charge summaries of rights and obligations document will be included separately by free holder Full service charge breakdown available upon request

## The Hearing

10. Ms Ransom and Ms Ko both appeared in person and referred to their bundle of documents.
11. Ms Ransom, speaking on behalf of herself and her partner, explained that at the beginning of the tenancy they had understood that the landlord would contribute to the service charge. They had not been aware of what the service charge included.
12. They had asked if the service charge could be included in the rent when the rent was reviewed in 2022 however the landlord had refused to do so.
13. After they had decided to move out an estate agent had expressed surprise that they were paying rent and a service charge under an assured tenancy. Subsequently she had made other enquiries and was of the opinion that the service charge represented a prohibited payment under the Act.
14. They had asked the landlord to return the service charge, However, the landlord was not willing to do so. Ms Ransom had read the online guidance, the Act prohibits certain fees to be paid and service charges did not appear in the list of permitted payments. She accepted that the

landlord had paid approximately 50% of the service charge and that they were aware that there was a service charge when they signed the tenancy. The letting had been agreed between the landlord and themselves without the input from an agent. She was of the view that it was the landlord's responsibility to ensure that the contract complied with the law.

15. Ms Ransom confirmed that there had only been one rent increase since they had moved into the flat, in August 2022 when the rent was increased to £1580 plus £97 service charge. The total amount was paid as one sum to the landlord each month.
16. Ms Ransom said that she considered the rent to be the price for the privilege of living in the flat whereas the service charge benefits the landlord. They had paid for the utilities they used within the flat. By paying the service charge they had saved the landlord a considerable sum.
17. Ms Ko said that she agreed with most of Ms Ransom's evidence. She explained that she had shown the service charge separately for transparency. She had been a tenant herself in the past and considered transparency between landlord and tenant to be important. She was an accidental landlord. She would have rewritten the contract if she had known that by showing the service charge separately that she would be asking for a prohibited payment.
18. She confirmed that she paid the total service charge to the freeholder whereas in the past the freeholder collected the service charge direct from a previous tenant. The service charge had increased each year however she had not increased the service charge payable by the tenant. Ms Ko confirmed that she had always paid part of the service charge relating to the reserve fund.

### **Decision of the Tribunal**

19. The Tribunal determines that the fixed service charge forms part of the rent payable and therefore is not a prohibited payment under the Act.

### **Reasons for the Tribunal's decision**

20. We found both witnesses to be credible. They had obviously had a good relationship throughout the tenancy and the question of whether the service charge was a prohibited payment only arose after the tenants decided to move out with a view to purchasing their own home.
21. This is an application under S15 of the Act, which is set out in the appendix to this decision.

22. By Section 1 (1) of the Act “A landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy of housing in England.”

23. Section 3 of the Act which is headed **Prohibited and permitted payments** states

(1) *For the purposes of this Act a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1.*

Schedule 1 paragraph 1 states: “A payment of rent under a tenancy is a permitted payment.

The remaining sections of the Schedule are not relevant to the application before us.

24. The Act does not define rent, nor does it mention service charge as either a permitted payment or otherwise. However, rent is defined in S14(4) Housing Act 1988 which states: ““rent” does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture, in respect of council tax or for any of the matters referred to in subsection (1)(a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements.”

25. Section 18(1)(a) Landlord and Tenant Act 1985 states: “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(1) (a) *which is payable, directly or indirectly, for services, repairs, maintenance improvements or insurance or the landlord’s costs of management and*

(2) (b) *the whole or part of which varies or may vary according to the relevant costs.*

26. The service charge in this instance does not vary from year to year, depending upon the costs incurred but has been fixed at the same amount throughout the tenancy. Therefore S18(1) does not apply as the amount of the service charge did not vary depending upon the costs of the services. Consequently, it is a fixed service charge which under S14(4) of the Housing Act 1988 forms part of the rent.

27. We determined that if Parliament had intended to amend the definition of rent in the Housing Act 1988, the Tenant Fees Act would have included clear words to that effect. There are no references to

service charge in the Tenant Fees Act 2019 nor a definition of rent which would support such an amendment.

Evelyn Flint

14 January 2025

## **Appendix**

### **Tenant Fees Act 2019**

#### **15 Recovery by relevant person of amount paid**

(1) Subsection (3) applies where—

(a) a landlord or a letting agent breaches section 1 or 2, as a result of which the landlord or letting agent, or a third party, receives a prohibited payment from a relevant person, and

(b) all or part of the prohibited payment has not been repaid to the relevant person.

(2) Subsection (3) also applies where—

(a) a landlord or letting agent breaches Schedule 2 in relation to a holding deposit paid by a relevant person, and

(b) all or part of the holding deposit has not been repaid to the relevant person.

(3) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of—

(a) if none of the prohibited payment or holding deposit has been repaid to the relevant person, the amount of the prohibited payment or holding deposit;

(b) if part of the prohibited payment or holding deposit has been repaid to the relevant person, the remaining part of the prohibited payment or holding deposit.

(4) Subsection (5) applies where—

(a) a landlord or letting agent breaches section 1 or 2, as a result of which a relevant person enters into a contract with a third party, and

(b) the relevant person has made a payment or payments under the contract.

(5) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made.

(6) Subsection (3) does not apply in relation to a prohibited payment or holding deposit if or to the extent that, with the consent of the relevant person—

(a) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or

(b) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy.

(7) Subsection (3) or (5) does not apply where an enforcement authority has commenced criminal proceedings against the landlord or the letting agent for the same breach.

(8) Subsection (3) or (5) does not apply where an enforcement authority has required the landlord or letting agent to pay to the relevant person all or part of the amount or (as the case may be) the aggregate amount referred to in that subsection.

(9) On an application under subsection (3) or (5), the First-tier Tribunal may order the landlord or the letting agent to pay all or any part of the amount or (as the case may be) the aggregate amount referred to in that subsection to the relevant person within the period specified in the order.

(10) A period specified under subsection (9) must be a period of at least 7 days but not more than 14 days beginning with the day after that on which the order is made.

(11) An order of the First-tier Tribunal under this section is enforceable by order of the county court as if the amount payable under the order were payable under an order of that court.