



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

Case reference : **LON/00AU/LSC/2024/0306**

Property : **Flat 3, 64 Blackstock Road, London,
N4 2DW**

Applicant : **Siobhan McKenna and Benjamin
Kelly**

Representative : **N/A**

Respondent : **Assethold Limited**

Representative : **Mr Joshua Cullen**

Type of application : **An application under section 27A
Landlord and Tenant Act 1985**

Tribunal members : **Judge N O'Brien, Tribunal Member
S Johnson MRICS**

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

Date of hearing : **14 January 2025**

Date of Decision : **27 January 2025**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that none of the sums demanded by the Respondent as either a service charge or as an administration charge relating to the years 2022-2023 and 2023-2024 are payable by the Applicants.
- (2) The Tribunal determines that no service charge in respect of the cost of building insurance is payable by the Applicants to the Respondent for the year 2024-2025.
- (3) The Tribunal makes the determinations as set out under the various headings in this decision
- (4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5 A of the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge or as an administration charge.
- (5) The Tribunal determines that the Respondent shall pay the Applicant £330 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The application

1. The Applicants are the leasehold owners of Flat 3 64 Blackstock Road London N4 2DW. The First Applicant is the secretary of 64 Blackstock Road RTM Company Ltd which acquired the right to manage 64 Blackstock Road on 30 March 2022. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether they owe service charges and administration charges which were demanded by the Respondent in respect of the service charge years 2022-2023 and 2023-2024. They also seek a determination in relation to the current year. The Application was received by the Tribunal on 30 July 2024. All the disputed charges relate to building insurance in respect of 64 Blackstock Road.

The hearing

2. The Applicants appeared in person. Ms McKenna was assisted by a Ms Oscroft and the Respondent was represented by Mr Cullen of counsel. There was no personal attendance by anyone on behalf of either the freeholder or its managing agent Eagerstates Ltd.

The background

3. 64 Blackstock Road is a converted 4 storey Victorian building with 3 flats on the upper floors and commercial premises on the ground floor which are currently occupied by a barber shop. It consists of a single building. Neither party requested an inspection and the Tribunal did not consider that one was necessary to resolve the matters in dispute.
4. The RTM company acquired the right to manage 64 Blackstock Road on 30 March 2022. The dispute centres around a series of demands which the Respondent has made in relation to building insurance for the whole building relating to the years 2022-2023 and 2023-2024.
5. In her statement of case the First Applicant states that the Respondent's agent first demanded payment £3218.2 by a letter dated 30 May 2024. The letter is exhibited to her statement of case. The letter indicates that the sum related to building insurance and asserts that payment was overdue. Ms McKenna responded by email on 10 June 2024 pointing out no prior demand had been received and that the responsibility to insure the building passed to the RTM company on the acquisition of the right to manage. On 11 June 2024 Eagerstates responded by again demanding payment. They did not engage with any of the points raised by Ms McKenna, but attached two letters headed 'Insurance Renewal Notice' which were dated 14 June 2022 and 27 June 2023 respectively. The former was a demand for £1624.24 including brokers fees and management fee, and the latter was a demand for £1534.03. Ms McKenna is adamant that she did not receive either of these demands until the email of 11th June 2024. Eagerstates wrote again on 17th June 2024 threatening to initiate possession proceedings if the sum of £3218 plus additional costs of £150 was not paid. Again, they did not engage in any substantive way with the points raised by Ms McKenna in her email dated 10 June 2024. Subsequently the Respondent has sought payment of additional sums totalling £1197 in costs and fees which it claims were payable due to non-payment of the demands.
6. The Applicants' case is that the sums demanded in relation to building insurance for the years in dispute are not recoverable from the leaseholders by way of a service charge as the responsibility for insuring the entire building was transferred to the RTM company on 20 March 2022 on the acquisition of the right to manage. The Applicants have exhibited to their statement of case a schedule of insurance for each year in dispute showing that the RTM company has insured the entire building from 6 June 2022 to date. The premiums paid range from £704 for the year 2022-2023, £810 for the year 2023/2024 and to £1424 for the year 2024/2025. They further argue that the demand relating to the premium in respect of the year 6 June 2022 to 5 June 2023 was sent outside the 18-month time limited provided by s20B of the 1985 Act and so is not payable. Ms McKenna has exhibited letters from the leasehold owners of flats 1 and 2 which confirm that they did not receive any demand for payment in respect of building insurance from the Respondent prior to May 2024. The Applicants further submit that the sums demanded are not reasonable.

7. The Respondent's case is that the responsibility to insure the building did not pass to the RTM company due to the existence of the separate commercial premises on the ground floor. The Respondent relies on the case of *First Port Property Services Ltd v Settlers Court RTM Company [2022] UKSC 1; [2022] 1 W.L.R. 519* which it submits establishes that the right to manage does not transfer to an RTM company where services in question are shared with other premises, in this case a commercial unit. It submits that as the responsibility to insure the commercial unit did not transfer to the RTM company, the freeholder was required to 'step in' and insure the whole building and consequently it was entitled to recoup the costs from the leaseholders as a service charge.

The issues

8. At the start of the hearing the Tribunal, with the assistance of Ms McKenna and Mr Cullen, identified the relevant issues for determination as follows:
 - (i) Whether the sums demanded in relation to insurance were payable as a service charge
 - (ii) Whether the sums demanded were reasonable
 - (iii) whether the demand for the year 2022/2023 is barred by virtue of s20B of the LTA 1985
 - (iv) Whether any of the various late payment fees and charges were payable.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Legal Framework - Right to Manage

10. Part 1 of Chapter 2 to the Commonhold and Leasehold Reform Act provides a statutory mechanism by which qualifying leaseholders can acquire the right to manage their building via a Right to Manage (RTM) company without having to prove any default on the part of the landlord. The right applies to residential buildings and also to mixed use buildings where the floor area of the non-residential units does not exceed 25% of the whole. Section 71 introduces the chapter and provides;

(1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company)

Section 72 defines the premises to which the Chapter applies

- (1) *This Chapter applies to premises if—*
- (a) *they consist of a self-contained building or part of a building, with or without appurtenant property,*
 - (b) *they contain two or more flats held by qualifying tenants, and*
 - (c) *the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.*
- (2) *A building is a self-contained building if it is structurally detached.*
- (3) *A part of a building is a self-contained part of the building if—*
- (a) *it constitutes a vertical division of the building,*
 - (b) *the structure of the building is such that it could be redeveloped independently of the rest of the building, and*
 - (c) *subsection (4) applies in relation to it.*
- (4) *This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—*
- (a) *are provided independently of the relevant services provided for occupiers of the rest of the building, or*
 - (b) *could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.*

11. Section 96 of the 2002 Act provides

- (1) *This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.*
- (2) *Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.*
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- (5) *“Management functions” are functions with respect to services, repairs, maintenance, improvements, insurance and management.*
- (6) *But this section does not apply in relation to—*
- (a) *functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or*
 - (b) *functions relating to re-entry or forfeiture.*

Insurance Costs

12. Mr Cullen on behalf of the Respondent correctly conceded that 64 Blackstock Road is a self-contained building as defined by s72(2) of the 2002 Act. He did not seek to argue that the residential part of the building fulfilled the definition of 'self-contained part of the building' as it did not fulfil any of the criteria set out in s.72(3) of the 2002 Act. Mr Cullen accepted that the responsibility to insure the premises is a management function within the meaning of s.96. He submitted that the obligation to insure the building did not pass in this instance due to the fact that the right to manage did not apply to the commercial unit on the ground floor. He relies on the decision of the Supreme Court in *First Port Property Services Ltd v Settlers Court RTM Company* [2022] UKSC 1; [2022] 1 W.L.R. 519. That case concerned a large residential development on the Isle of Dogs consisting of multiple apartment blocks, houses and leisure facilities. The leaseholders of a single block acquired the right to manage in respect of their block. The issue in the case was whether the right to manage extended to the shared parts of the estate which the leaseholders had the right to use in common with other occupants of the estate. The Supreme Court held that the right to manage did not extend to property which is appurtenant to the building unless the occupants of that building had the exclusive right to use the appurtenant property to the exclusion of other occupants of the estate. Mr Cullen argued that because the qualifying leaseholders of 64 Blackstock Road did not have any right to use the commercial premises, none of the management functions in relation to the commercial premises passed to the RTM company. Thus as the obligation to insure the building included that part of the building containing the commercial premises, he argued that the obligation to insure the building also did not pass to the RTM company.
13. We consider that this argument is misconceived. Firstly the commercial premises is not property which is appurtenant to 64 Blackstock Road; it is part of 64 Blackstock Road in that the commercial unit and the flats form part of the same self-contained premises. Secondly while section 96(6)a prevents management functions which relate to parts of the premises not owned by qualifying tenants from passing to the RTM company, this only applies to functions which *solely* relate to such premises. The obligation to insure however relates to the whole building.
14. As Ms McKenna pointed out s.97(3) preserves the right of the freeholder to insure the building at its own expense should it so wish. However the obligation to insure 64 Blackstock Road, and the correlated right to demand payment from the leaseholders, has passed to the RTM company.
15. As we have determined that the cost of buildings insurance is not payable as a service charge we do not have to consider issues (ii) and (iii). However we record that we accept Ms McKenna's evidence in respect of the date of receipt of the demand for 2022/2023. No one from Eagerstates attended to give evidence on the point, and Ms McKenna's evidence is consistent with the letters written by the other leaseholders. Consequently the sum demanded for building insurance covering the period June 2022 to June 2023 was served 2 years after the cost was incurred and is not recoverable by virtue of s20B of the 1985 Act.

16. Had any of the costs been in principle recoverable we would have found that they were not reasonable as the premiums paid for the years 2022/2023 and 2023/2024 were significantly higher than the premiums paid by the Applicants for the same years and we would have assessed the reasonable cost at the same cost paid by the Applicants for those years. Mr Cullen submitted that we could not be sure that we were comparing 'like with like'. Unfortunately the relevant policies were not disclosed by the Respondent in accordance with the tribunal's directions and are not in the agreed bundle. However the sums paid by the Applicants are within the range of cost we would expect to see for insuring a building such as this.

Administration Charges

17. Paragraph 5 of Schedule 14 to the 2002 Act provides;

(1)An application may be made to the appropriate tribunal for a determination whether an administration 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*

Administration charges are defined by paragraph 1 of Schedule 5 to the 2002 Act

1(1)In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

- (a)....,*
- (b)....*
- (c)in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or*

18. The sums demanded by the Respondent in addition to the insurance costs are thus administration charges within the meaning of the 2002 Act. Paragraph 8 of the 4th Schedule to the lease obliges the Tenant to pay;

All proper costs charges and expenses (including solicitors costs and architects and surveyors fees) incurred by the landlord for the purposes of or incidental to the preparation service or enforcement (whether by

proceedings or otherwise) of ... the payment of any arrears of the rent interim charge or service charge or interest payable thereon.

In this case there were no arrears of service charge and thus no obligation to pay the landlord's cost of seeking payment. Consequently those costs are not payable by the Applicants.

Application under s.20C and refund of fees

19. At the end of the hearing Ms McKenna applied for an order for the reimbursement of fees paid by the Applicants in connection with these proceedings. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund all fees paid by the Applicants in connection with these proceedings within 28 days of the date of this decision.
20. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985 Act and under paragraph 5A of Schedule 14 to the 2002 Act preventing the Respondent from recovering any of its legal costs of these proceedings either as a service charge or as an administration charge from any of the leaseholders. A list of all current leaseholders is attached to the Application notice. Having heard the submissions from the parties 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 1985 Act and under paragraph 5A of the 2002 Act, 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: 23 January 2025

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).