



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/21UD/LSC/2024/0016 and
CHI/21UD/LAC/2024/0002

Property : Flat 10 St Helens, 3 – 5 The Ridge,
Hastings, East Sussex. TN34 2AA.

Applicants : Zoe Young and Colin Douglas Young

Respondent : Assethold Limited

Type of Application : Determination of the liability to pay and
reasonableness of service charges;
Sections 19 and 27A Landlord and Tenant
Act 1985 ("LTA")
Determination of the liability to pay and
reasonableness of administration charges;
Schedule 11 to the Commonhold and
Leasehold Reform Act 2002 ("CLARA")
Costs; Section 20C LTA and Paragraph 5A
of Schedule 11 to CLARA

Tribunal Members : Judge C A Rai

Date type and venue
of Hearing : 6 February 2025
Determination on the Papers without a
Hearing (Rule 31 The Tribunal Procedure
(First-tier Tribunal) (Property Chamber)
Rules 2013 (the Rules)

Date of Decision : 17 February 2025

DECISION

1. In the absence of any evidence of actual expenditure by the Respondent with regard to the service charges in 2022 the Tribunal cannot make a determination as to the reasonableness of the service charges payable for that year. Nevertheless, the tribunal finds that the Applicant made service charge payments of £7,577.88 to the Respondent between June 2018 and January 2023.

2. The tribunal finds that no certification of the Respondent's expenditure has been made for the service charge years ending in December 2018, 2019, 2020, 2020, 2021 and 2022.
3. The tribunal has not been provided with any evidence to substantiate the claim made by the Respondent, in a letter dated 12 January 2024, that the Applicant owes it £11,033.86.
4. The tribunal finds that the Respondent has consistently failed to credit payments made by the Applicant to its service charge account.
5. The tribunal finds that the Applicant is not liable to pay any administration charges to the Respondent in 2021.
6. The Tribunal has made an order requiring the Respondent to reimburse the fee paid by the Applicant to the Tribunal within 21 days.
7. The Tribunal has made an order under section 20C of the Act that no costs incurred by it in connection with this application may be regarded relevant costs and taken into account in determining service charges.
8. The Tribunal has made order under paragraph 5A of Schedule 11 to CLARA extinguishing the Applicant's liability to pay a particular administration charge in respect of litigation costs.
9. The reasons for its decisions are set out below.

Background

10. This is an application for:-
 - a. a determination of the service charges due in respect of the Property for 2021/2022.
 - b. a determination of the Applicants liability to pay an administration charge in respect of the Property for 2021/2022 alleged by the Respondent to be payable for non-payment of the service charges during the same service charge year.
 - c. Reimbursement of the fee paid to the tribunal.
 - d. Orders under section 20C of the Act and paragraph 5A of Schedule 11 to CLARA.
11. The Property is a leasehold flat within a converted block of twelve flats. The Tribunal has not inspected the Property.
12. The Applicant is the original lessee of a lease of the Property which was completed on 11 June 2018 [66]. The Lease was made between New Vision Developments Limited (1) and the Applicant(2). The Lease demised the Property , Flat 10, 3 – 5 The Ridge Hastings TN34 2A to the Applicant for a term of 125 years from 1 June 2017.
13. The Respondent is the current freeholder of the Property which was, during the periods with which these proceedings are concerned, managed by Eagerstates Limited, the managing agent, (Eagerstates). The Respondent is connected with Eagerstates and has common directors. The person who sends the demands for service charges is

Ronni Gurvits, who appears to be responsible for the management of the Property. He is the son of the directors of the freeholder.

14. On completion of the Lease the Applicant paid £350 to the Landlord "on account" of the service charges in 2018 [66]. The service charge year runs from 1 January to 31 December.
15. The Tribunal issued Directions dated 11 July 2024. Those directions stated that the application was likely to be suitable for a determination without a hearing and set out a timetable for the parties to exchange statements and documents and provide the tribunal with a determination bundle. Neither party requested a hearing. In particular paragraph 16 of the Directions required the Respondent to send to the Applicant :-
 - a. A signed and dated statement with a statement of truth (i.e. "I believe that the facts stated in this witness statement are true") which sets out each aspect of its case including a response to the points made by the Applicant. The statement of case must set out details of all administration charges that the Respondent contends are due and outstanding from the Applicants and make reference to the provisions in the lease which the Respondent relies upon to allow recovery of such charges. The statement of case must also provide a breakdown of the amount of service charge claimed by the Respondent from the Applicants for the service charge year 2021/2022.
 - b. Copies of all documents relied upon to include demands for payment of administration charges and service charges made to the Applicants and completed service charge accounts for the year 2021 /2022 together with any other relevant documents relied upon.
 - c. Any witness statements.
16. The Respondent failed to comply with the tribunal's directions.
17. On 7 August 2024 the tribunal responded to the Applicant's request for enforcement of the deadlines and alerted the Applicant to its rules and the provisions for an application for sanctions. Subsequently the Respondent was barred from participating in the proceedings.
18. The Respondent submitted a case management application to lift the bar on 27 November 2024.
19. Regional Judge Whitney considered the application and directed the Respondent to supply it with the evidence on which it wished to rely in support of its application and to explain why it had failed to comply with the tribunal directions and orders.

20. The Respondent replied but the Regional Judge decided, on 18 December 2024, that the Respondent had put forward no good reason to lift the bar and that it was just fair and proportionate having regard to the full procedural history for the Respondent to be barred from taking any further part in the proceedings.
21. The tribunal has received a determination bundle containing 61 pages from the Applicant. References to a number in square brackets is to the page number of a document in the bundle.
22. The tribunal has read and considered all the information and submissions provided to it by the Applicant prior to making this decision and made determinations on the various issues identified. Having regard to its overriding objective (Rule 3) it has not elaborated at length on its reasoning or every issue of law. It has sought to provide a decision that is proportionate both the resources of the tribunal and the significance and complexity of the issues identified in the application.

The Applicant's submissions and evidence

23. The Applicant said that since it bought the Property (June 2018) the invoices received from the Respondent refer to "balance brought forward" or "Debit from 2021/22".
24. The last invoice received from the Respondent dated May 2023 [31] refers to a debt from December 2021/2022 of £5,635.75. There is no breakdown of the amount.
25. The Applicant says that it has sent many emails to Ronni Gurvits requesting a breakdown of the alleged debt. It has not received a reply. Its request for correspondence from Eagerstates to be sent by email was ignored. Instead, correspondence was sent by post to a relative's address.
26. The last letter received from Eagerstates, dated 12 January 2024, [32] alleged that the Applicant had "failed to make payment of its outstanding account with this firm" [32]. That letter stated that Eagerstates had no choice but to begin proceedings for a "Possession judgement". It also claimed that the lease entitled the landlord to recover all costs in relation to the proceedings and that its initial costs of arranging the file for its solicitors was detailed below. The letter demanded payment of £11,033.86, stated to be a previous amount due of £10,883.86 and £150 costs. No explanation was provided to explain why the alleged debt had risen from £5,635.74 in May 2021/22 to £11,033.86 in January 2024.
27. The Applicant has produced a reconciliation of the payments made to the Respondent between June 2020 and January 2024 which it says records every payment made since it purchased the Property in June 2018 [68].

28. The Applicant also submitted that money paid on account of service charges on completion of its purchase of the Property was not credited to its service charge account. It has disclosed an exchange of emails between Zoe Young and Ronni Gurvits between 2 December 2019 and 6 January 2020 which records that it paid £350 [67]. The bundle contains a copy of the email received from the Applicant's solicitor [66] which records that an email was received from the seller's solicitor dated 31 May 2018 (presumably demanding this amount on completion of the lease).
29. The Applicant has submitted that it attempted to sell the Property in 2022 but that the sale did not proceed because the Respondent refused to send it a management pack until it settled the alleged debt of £8,000. The Applicant stated that it paid £155,000 for the Property and a sale was agreed for £197,000. The Applicant said that it has lost £42,000 "because of Eagerstate's unlawful actions and extortion tactics". It also says that delay pushed the sale back by years as the potential sale was agreed just prior to the Covid-19 pandemic.
30. The Applicant submits that the Respondent still owes it and the other leaseholders money from the previous tribunal settlement which is still being pursued in the County Court as a debt [65].
31. The Applicant seeks a determination from the tribunal whether it owes Eagerstates money. It has referred in the application to the service charge year 2021/2022. Since the lease refers to a financial year which is the same as a calendar year the Tribunal assumes this is January 1 – 31 December 2022. The only copy of a service charge demand provided relates to this year (albeit that the demand is not dated and was sent to the Applicant in 2023).
32. The Applicant also seeks guidance from the Tribunal as to the failure of the Respondent to invoice ground rent and its tactic of relying on the non-payment of ground rent as a ground for repossession of the Property [65].
33. The Applicant also has also said (albeit as a note on the reconciliation statement) that, following the leaseholders' successful Right to Manage claim in August 2023, Eagerstates should transfer the reserve fund to the RTM company [68].

The Law and the Lease

34. The Applicant has provided the tribunal with undated copy of the lease of the Property.
35. The Lease is for a term of 125 years from 1 June 2017. It was made between New Vision Developments UK Limited and the Applicant. The Tribunal has not been given any information with regard to the transfer of ownership of the freehold and the appointment of Eagerstates, but it appears that this was not disputed by the Respondent, before it was barred from participating in these proceedings.

36. Service charges are payable on account on 10 January and 1 July. The financial year runs from 1 January until 31 December. Within two months of the end of each financial year the landlord is required to provide an account showing the actual service charges incurred certified by its auditor to the tenants whereupon it can recover any balance due.
37. Clause 6 of the Lease contains a definition of "total expenditure" which provides for the landlord to demand a reserve fund contribution. The landlord is obliged to estimate service charge expenditure before the beginning of each financial year.
38. Section 18 of the LTA defines service charges. 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.
39. Section 19 of the LTA provides that relevant costs are only payable by a tenant to the extent that they are reasonably incurred and are in respect of work carried out to a reasonable standard and the amount payable shall be limited accordingly.
40. Section 42 of the Landlord and Tenant Act 1987 requires that any amount demanded by a landlord in respect of reserve payments must be kept in a separate interest bearing account and held on trust for the tenants.
41. The Tribunal does not have jurisdiction to make any determination with regard to the payment of ground rent, but tenants are entitled to receive a written demand. Section 166 of CLARA 2002 contains a requirement for landlords to give notice in a specified form of any rent payments due. A tenant is not liable to make a payment of rent under the lease unless the tenant has been given notice in accordance with that provision.
42. Extracts from the relevant legislation are contained in the Appendix to this decision.
43. The Applicant has been referred to two previous decisions relating to the building within which the Property is located. The Tribunal has identified CHI/21UD/LSC/2022/0028 which was a decision dated 7 December 2022, relating to service charges and administration charges between 2017 and 2022 made by Regional Judge Whitney and others, and CHI/21UD/LRM/2022/0004, a decision dated 18 April 2023, made by Judge Dovar, which related to the Right to Manage pursuant to section 84 of CLARA. The RTM company acquired the right to manage on 11 December 2022.
44. The Tribunal cannot make another service charge determination for a year for which a previous decision was made. However, it would appear that the Judge Whitney determined only the reasonableness of "on account" charges for 2022. The decision is dated before 31 December, the end of the 2022 service charge year. Therefore, this tribunal can make a determination with regard to the actual service charges for 2022

and in relation to the administration charges identified and demanded in 2023.

Decision and reasons

45. The Applicant has included one service charge demand in the bundle. It appears to be a partly completed draft demand. It is not addressed to the Applicant or any other tenant, but the Applicant has added the words "May 2023 from Respondents to Applicant via email" at the top of it. The demand is headed "statement of account" and identifies the Property. The first item dated 5/12/2022 is described as "a debit from, December 2021/2022 for £5,535.75". Other sums itemised on the demand are listed below:-

GR Jan/Dec 2023	200.00	
SVC Jan/June 2023	1158.73	
Reserve Fund	100.00	
Outstanding Reserve Fund	400.00	
10.01.23 Payment received		1,458.73
03.05.23 notice of proceedings	120.00	
15.05.23 DRA Referral fee	243.00	
DRA Correspondence File	474.00	
admin costs	480.00	
23.05.23 DRA pre legal correspondence	630.00	
Total due	9,441.48	
Total left outstanding		7,982.75

46. The Applicant has asked for a determination of the service charges due in 2021/2022 (2022). The Tribunal believes that the 2023 invoice was only provided as evidence of the alleged "debit from December 2022" .
47. The Applicant's list of payments shows that it paid the Respondent £912.80 on account of service charges for January – December 2022 [68].
48. The Tribunal cannot tell from the information with which it has been provided why the 2023 demand refers to a debit in excess of £5,000. It is however almost certain that demands for service charges did not distinguish between payments of actual service charge expenditure and ground rent.
49. Relying on the Applicant's list the Tribunal finds that it has paid a total of £7,577.88 as service charges and that it deducted £468.37 (part of which is likely to have been ground rent) from the demand received for Jan – Dec 2019. This deduction, in part, takes account of the £350 paid by the Applicant in 2018 when it completed the purchase of the Property. Mr Gurvits referred to this credit in his email dated 6 January 2020 [67].
50. In 2020 the Respondent demanded payment for January to June and for January to December, effectively for 18 months not 12 months.
51. Assuming that £100 of the initial £350 paid was for ground rent the total paid by Applicant towards service charges is £7,477.88 which exceeds the alleged debt. [See Schedule]

52. A credit of £1,458.35 is shown on the 2023 demand. £1,158.73 was demanded on account of service charges for January to June 2023. That amount is not due to the Respondent because the Right to Manage was granted to the RTM Co in December 2022. (The difference of £300 is £200 ground rent and a £100 reserve fund contribution).
53. In the absence of any further information the Tribunal cannot make a more detailed determination or decide if the charges are reasonable or recoverable by the Respondent.
54. The administration fees listed on the 2023 service charge demand are unreasonable. The Respondent has failed to credit any payments which the Applicant made to its "service charge account" so its calculation of the sum it allegedly due is questionable. It appears to the Tribunal that if the payments made by the Respondent had been credited to its service charge account, it would not be in arrears.
55. The Applicant has not disclosed that it received any demands for the administration charges.
56. The tribunal therefore suspects that that the administration charges were not properly demanded. Even if proper demands had been made the if finds that the amounts referred to on the 2023 demand are unreasonable. The descriptions are misleading, repetitive and provide no actual explanation as to what sums the Respondent has allegedly paid or what service it has allegedly received.
57. The Tribunal is satisfied on the basis of the Applicant's statement that it supplied all the information it has received.
58. The Respondent has failed to provide the Applicant and the Tribunal with any evidence or information in response to the application. It is not helpful to speculate on its reasons. However, there is no evidence that the Respondent has ever made any efforts to comply with the provisions of the Lease by producing annual audited or certificated statement evidencing actual service charge expenditure.

Application for refund of fees and orders under section 20C LTA and paragraph 5A CLARA

59. The Applicant applied for a refund of the application fee paid to the tribunal and for the tribunal to make the two orders referred to below. The Respondent did not initially respond to those applications. Subsequently it was barred from participating in the proceedings.
60. The Tribunal finds it just and equitable to make the following orders because of the Respondent and its managing agent have both failed to co-operate with the Respondent and the Tribunal.
61. The Tribunal orders the Respondent to pay the sum of £100 (the application fee) within 14 days of the date of this decision.
62. The Tribunal makes an order under section 20C of the LTA that any costs incurred by the Respondent in connection with these proceedings are not relevant costs and cannot be recovered as service charges.

63. The Tribunal makes an order under paragraph 5A of Schedule 11 of CLARA extinguishing the tenant's liability to pay a particular

Judge C A Rai

SCHEDULE

Flat 10 St Helens 3 - 5 The Ridge Hastings East Sussex TN34 2AA
 CHI/21UD/LSC/2024/0016 and chi/21UD/Lac/2024/0002

Year	Date of Payment	Ground rent	Other sums	Narrative
2018	Jun-18	100.00	250.00	Paid on completion of lease
		256.06		S/C Jun - Dec 2018
2019	22.11.22	497.12		S/C Jan - Dec 2019 (net sum paid) (£468.37 deducted)
	04.11.22		200.00	GR
2020	22.11.22	1,037.19		S/C Jan - Dec 2020
	02.06.20	504.28		S/C Jun - Dec 2020
	04.11.22		200.00	GR
2021	22.11.22	1,739.55		S/C Jan - Jun 2021
	01.06.21	742.82		S/C Jun - Dec 2021
	29.04.21	339.25		Rear elevation works
	16.06.21	290.08		Additional rear elevation works
	04.11.22		200.00	GR
2022	22.11.22	912.80		S/C Jan - Dec 2022
	22.11.22		200.00	GR
2023	10.01.23	1,158.73		Jan - Jun 2023
	10.01.23	100.00		Reserve Fund
	22.01.23		200.00	GR
		<u>7,577.88</u>		

Appendix

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal]² 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]² 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or
- (b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on [the appropriate tribunal]² in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter. [...] ³

¹

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]¹ as part of or in addition to the rent—

- (a) which is payable, directly or indirectly, for services, repairs, maintenance [, improvements]² 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.

19.— Limitation of service charges: reasonableness.

(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 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.

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

20C Limitation of service charges: costs of proceedings.

(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 leasehold valuation tribunal [or the First-tier 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 persons or persons specified in the application

(2)

(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

Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Paras 1 – 2

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) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of

the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(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

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4

of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered

as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge

payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

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."

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.