In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case Reference	**:**	**LON/00AE/LSC/2024/0242**
Property	**:**	**Ground Floor Flat, 91 Cobbold Road, London NW10 9SU**
Applicant	**:**	**Iram Kauser**
Representative	**:**	**Mohammad Adnan Hussain**
Respondents	**:**	**Ronny Akpom Orange** **Faye Gillian Taylor**
Type of Application	**:**	**Payability of service and administration charges**
Tribunal	**:**	**Judge Nicol** **Mr S Wheeler MCIEH CEnvH**
Date and venue of Hearing	**:**	**24th January 2025** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**27th January 2025**

DECISION

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(1) The service charges demanded by the Applicant from the Respondents are not payable, as detailed below.

(2) The Applicant may not add her costs of these proceedings to the service charge nor demand them directly from the Respondents as an administration charge.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant is the freeholder of the converted house at 91 Cobbold Road, London NW10 9SU which she lets out save for the ground floor flat which is owned by the Respondents under a long lease.

2. The Applicant has applied for a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of service charges and under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the reasonableness and payability of administration charges.

3. The case was listed for hearing on 24th January 2025. The attendees were:

- Mr Mohammad Adnan Hussain, the Applicant's brother and property manager; and
- The First Respondent, Mr Akpom.

4. The documents before the Tribunal consisted of:

- A bundle of 187 pages, compiled by the Applicant; and
- A Respondents' amended bundle of 301 pages.

5. It is a notable feature of this case that both parties have considerable property experience. Mr Hussain has a number of qualifications to support his role in managing a number of properties and belongs to the Property Redress Scheme. The Respondents have a portfolio of properties which they manage themselves. However, neither has seen fit to obtain any legal advice in relation to this dispute. Advice from any competent lawyer specialising in this area of the law would have seen at least some of the points of dispute dropped by both parties. Instead, they have wasted their own and the Tribunal's time with some clearly unmeritorious legal arguments, as considered further below. In future, both parties are urged to consult a lawyer before embarking on litigation.

Procedural issues

6. The Respondents' bundle was provided only two days before the hearing so they applied for permission to rely on it. The grounds were that it only contained material previously provided to the Applicant but not included in her bundle because she failed to consult the Respondents about the contents as directed. Mr Hussain asserted that the bundle should not be admitted.

7. The Tribunal's preliminary thoughts were that the case could be fairly determined without reference to the Respondents' bundle. Although Mr Akpom referred the Tribunal to some pages which were in his bundle but not the Applicant's, they did not add anything to the points he had already made, e.g. he referred to a photo of a drain but his verbal description was sufficient. In the event, it was not necessary to refer to the Respondents' bundle and Mr Akpom was able to make his points using the Applicant's bundle.

8. The substantive issues are considered in turn below.

Demands

9. The service charges in dispute in this matter were demanded by invoices dated 1st August 2022, 20th May 2023 and 17th June 2024, although the Respondents claim only to have received them in January 2024. By section 47 of the Landlord and Tenant Act 1987, the demands must contain the landlord's name and address. This means the landlord's actual address, not a "care of" address at which they may be contacted through an agent. However, the only address provided on the demands is "C/O Emerald Estates". Mr Hussain pointed out that his sister's address was at number 34, just 2 doors down from the address in the demands, number 30, but that makes no difference – it is still the wrong address.

10. Therefore, the demands do not comply with section 47. Further therefore, under section 47(2), the charges are not due. This is determinative of the application, subject to any costs orders, but the other points are dealt with briefly in turn below at the request of both parties.

Insurance

11. The Applicant demanded a 50% contribution to buildings insurance. However, clause 2(15) of the lease clearly places the insurance obligation on the Respondents. The Applicant claimed that the Respondents have failed to comply with the terms of clause 2(15) but such breaches cannot turn an insurance payment by the landlord into a service charge. There are legal remedies for such breaches but the Tribunal has no jurisdiction to provide them. Therefore, service charges insofar as they relate to the cost of buildings insurance would not payable by the Respondents.

12. In relation to insurance, but also in relation to management fees and interest, Mr Hussain sought to rely on clause 2(2) of the lease but this is a standard clause requiring the lessee to satisfy any liability for rates or taxes imposed in relation to the property by central or local government. It has no application to service charges. When this was put to Mr Hussain, he suggested that the sums he sought to recover constituted "charges" within the meaning of clause 2(2) but there has to be a prior liability to such a charge. A landlord cannot make up a charge for a lessee to pay and then fit it in to clause 2(2) without any other basis for liability.

Repairs and maintenance

13. The Applicant has demanded a 50% contribution to clearing the drains (£80 in 2022, £40 in 2023, £200 in 2024) and cleaning the gutters (£60 in each of 2022 and 2023 and £75 in 2024). The 2022 and 2023 charges were said to be actual costs whereas the 2024 costs were estimated sums payable in advance.

14. The Tribunal queried with Mr Hussain whether the lease permits advance service charges. He pointed to clause 2(9) which contains the Respondents' obligation to contribute one half of the maintenance costs for the building. However, the wording clearly envisages the contribution being towards actual costs already incurred, rather than putative costs

yet to be incurred. Mr Hussain said the costs had been incurred since the commencement of the proceedings but they were not included in the proceedings. Therefore, the estimated 2024 costs so far demanded are not payable but the actual costs may be so in due course once demanded.

15. The Respondents had a number of objections to the costs for all 3 years:

(a) The Respondents accepted that clause 5(4) of the lease places the obligation to repair and maintain the gutters on the Applicant, but not the drains. The wording of clause 5(4) is wide enough to include drains, even without express reference, because it refers to structures, pipes and watercourses. However, the Respondents point to clause 2(3) which obliges the lessee to maintain drains "solely belonging" to the demise. The drains in question, both to the front and to the rear, are accessible only on or through the Respondents' demise. However, the drains actually serve the whole property, not least by receiving any discharge from the communal gutters. Therefore, the drains come within clause 5(4), not 2(3).

(b) Clause 5(4) begins with the words, "Subject to prior payment by the Lessee of one half of the cost thereof". The Respondents argued that this was an important requirement because, although non-payment did not relieve the Applicant of her maintenance obligations, compliance meant having advance notice of works. However, the Tribunal has already held that costs cannot be demanded in advance of works. The proviso does not mean that the Applicant is obliged to inform the Respondents of any works before they are carried out.

(c) The Respondents alleged that the service charges for 2022 were demanded more than 18 months after the works were carried out so that they would not be payable pursuant to section 20B of the 1985 Act. The Respondents have succeeded on this point now that the demands have been held to be invalid but whether section 20B applies further would have to be determined if and when the Applicant serves valid demands.

16. Mr Akpom explained that his relationship with Mr Hussain started out reasonably but deteriorated due to Mr Hussain's failure to address leaks coming from the flat above his. Mr Akpom alleged that this has happened at least 3 times a year and even several times since the start of the Tribunal proceedings but Mr Hussain has put insufficient effort into fixing them. As a result, Mr Akpom believes that Mr Hussain is an inveterate liar who happily resorts to criminal fraud in order to extort relatively small amounts of money from the Respondents.

17. Unfortunately, Mr Akpom's beliefs, whether well-founded or not, have led him to see criminal fraud and conspiracy where the application of a little common sense would lead him to different conclusions and to demand levels of proof which, if applied to criminal trials, would see most defendants acquitted. The Tribunal tried to explain to Mr Akpom that it was only necessary for it to be satisfied that it is more likely than not that the relevant costs were incurred when considering all the evidence as a whole but he continued to insist that it was for Mr Hussain

to provide sufficient evidence to answer every single one of his queries to his satisfaction.

18. In relation to the drainage works, the Applicant has demanded £120 over two years to deal with drains which, on the Respondents' own case, frequently overflow. Mr Akpom alleged that the drainage issues were caused by Mr Hussain having a new kitchen installed in the flat above but not improving the drains to take account of the additional flow of water or waste. If that were true, the Respondents may well have a remedy in the county court but it is irrelevant to the service charges – if the Applicant was obliged to address the drains and did so, then a service charge for the costs incurred is payable irrespective of such complaints.

19. Further, Mr Hussain has provided invoices and a witness statement from the contractor who generated them to attest to their validity. Common sense would suggest that this constitutes more than sufficient evidence to establish that it is more likely than not that the Applicant incurred a liability for drainage works which results in a charge of £120 to the Respondents.

20. When this was put to Mr Akpom, he found it distressing. He said that he knew the works had not been carried out. When pressed as to the basis of his knowledge, his first response was that he did not need to give it because it was for Mr Hussain to prove his case. This is to misunderstand the process – Mr Akpom had asserted that he had knowledge as to a relevant fact, in which case it is for him to produce evidence to support the conclusion that his asserted fact is true.

21. It turned out that Mr Akpom had no personal knowledge as to whether the work had been done or not. He does not live at the property and cannot contribute any evidence from his own personal observations. Instead, despite the absolute certainty with which he expressed himself, his so-called knowledge was a surmise from a number of issues:

    a. A number of invoices purported to come from a contractor called "Fernando Gutters and Drains". This was supported by a statement from a man called Fernando Nelson Rodrigues. However, in a Scott Schedule compiled during the proceedings, Mr Hussain had referred to the relevant contractor as Fernando Balzanel. From this discrepancy in the surname, and without seeking an explanation from Mr Hussain, Mr Akpom leapt to the conclusion that they were completely different contractors and that Mr Hussain was lying in order to commit a fraud. The rather more obvious possibility that Mr Hussain just got the surname wrong does not appear to have occurred to Mr Akpom.
    b. The invoices were handwritten, had no details of the contractor such as their address or phone number and first appeared in 2024. The Tribunal cannot see how, by themselves or combined with Mr Akpom's other complaints, they call into question the validity of the invoices.
    c. Mr Hussain had handwritten on the invoices themselves that they had been paid. Mr Akpom discerned differences between the squiggles on each invoice which were obviously intended as signatures. As far as the

Tribunal was able to tell, they were written by the same person but, even if they weren't, the Tribunal was unable to identify any significance. Mr Akpom seemed to think that Mr Hussain was obliged to provide definitive forensic proof that each invoice had actually been paid and seemed to have difficulty accepting that evidence of the Applicant's liability was sufficient to say relevant costs had been incurred.

d. Mr Akpom pointed out that, at both the front and the rear of the property, the drains and gutters could only be accessed over his demise and Mr Hussain had not sought his permission. The Tribunal explained that, if the works involved trespass, he may have a legal remedy in the courts but it would be irrelevant to the validity of any resulting service charges. The fact that such access might constitute trespass was also not evidence that the Applicant's contractors did not access the relevant area.
e. Access to the rear was either through the Respondents' property or from a neighbouring property. Mr Akpom seemed to think it was impossible for anyone to access the rear of his property from neighbouring land, despite the fact that the only barrier was a fence. In any event, a neighbouring property owner, Mr Hewer, provided a witness statement saying that he gave permission to go through his land to a gate between the properties and that he personally had observed this route being used. Mr Akpom alleged that another person involved in the same neighbouring business and one of his tenants had said they were unaware of works being carried out on the dates of the invoices but this does not refute Mr Hewer's evidence.
f. The invoices referred to jet-washing the drains whereas Mr Rodriguez said in his statement that he used a pole system. Mr Akpom asserted that the two methods were mutually exclusive but, even if that were the case, Mr Rodriguez specifically identified each invoice by number as representing his legitimate work. The invoice is obviously not meant to provide a comprehensive description and the possible inaccuracy is far more likely to be an infelicitous abbreviation than a criminal conspiracy chasing such a small sum.
g. Mr Akpom said he looked at the gutters with a camera in June 2024 and could conclude from that that they had not been cleaned in 2022 or 2023. He did not explain how the observation led to that conclusion.

22. Taken as a whole, Mr Akpom's points may raise legitimate questions but, even if they are all assumed to be true, do not dislodge the common sense conclusion that it is more likely than not that the drain and gutter charges were incurred. His alternative explanation of criminal conspiracy and fraud is patently ridiculous, particularly when measured by the sum of money involved.

Management fees

23. The Applicant demanded annual management fees of £950. This is an unreasonably high sum, out of line with both the market and the relatively minimal service provided. However, more significant is the fact that the lease does not provide for the Applicant to be able to incur management fees. As mentioned above, the Applicant sought to rely on

clause 2(2) but that does not assist him. Therefore, the service charges arising from management fees are not payable.

Interest

24. The Applicant has charged interest each year, presumably on the sums allegedly owed by the Respondents, and again relies on clause 2(2). For the same reasons, clause 2(2) does not entitle the Applicant to charge interest. Interest on late payments may well be recoverable by other means but not under the lease. Therefore, the interest charges are not payable.

25. In any event, since the Tribunal has held that the service charges are not payable due to the invalidity of the demands, interest cannot be charged on such sums.

Administration charges

26. The Applicant has demanded administration charges for pursuing the Respondents for their alleged debt: £350 for each of a court issue fee, Tribunal fees and writing to the Respondents' mortgagees. Since the larger part of the Respondents' alleged debt has been held not to be owing, the Tribunal has concluded that the administration charges are not reasonable and, therefore, are not payable.

Costs

27. The Respondents sought 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 that the Applicant should not recover any costs incurred in the Tribunal proceedings from them, whether via the service charge or an administration charge. Mr Hussain indicated that the Applicant had no interest in doing this but the Respondents are still entitled to seek the protection of such orders.

28. The Tribunal is not limited in the factors which are relevant to such orders but the fact that the Applicant has been entirely unsuccessful, and would have been mostly unsuccessful even if the demands had been valid, weighs heavily in the Respondents' favour. Therefore, the Tribunal grants the orders.

Name: Judge Nicol **Date:** 27th January 2025

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(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.

Section 19

(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 provisions 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.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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 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 person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Section 27A

(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.

(3) An application may also be made to the appropriate tribunal 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(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.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).

Schedule 11, 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.

Proceedings to which costs relate	***"The relevant court or tribunal"***
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.