FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BE/LSC/2024/0207**
Property	**:**	**Flat 1 Mission Court, 1a Crystal Palace Road, London SE22 9EX**
Applicants	**:**	**Jose Da Cruz Gomez**
Respondent	**:**	**Peabody Trust**
Type of Application	**:**	**Liability to pay service charges**
Tribunal	**:**	**Judge Nicol** **Mrs A Flynn MA MRICS**
Date and Venue of Hearing	**:**	**24th March 2025** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**25th March 2025**

DECISION

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(1) The Applicant's service charges as challenged in these proceedings are reasonable and payable only to the following extent:

(i) Grounds maintenance reduced to £2 per week
(ii) Cleaning reduced to £3 per week
(iii) Water reduced by 25%
(iv) Administration/management fee reduced by 15% of the above reductions and a further 50%.

(2) The Applicant seeks an order that the Respondent pay his legal costs in accordance with rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, for which the Tribunal makes the following directions:

(a) The Applicant shall, by **25th April 2025**, email to the Tribunal and to the Respondent submissions in writing setting out why the Tribunal should make the order sought, including a Schedule of his claimed costs;

(b) The Respondent shall, by **23rd May 2025**, email to the Tribunal and to the Applicant any submissions in writing opposing the costs application;
(c) The Tribunal will thereafter determine the costs application on the papers, without a hearing. Either party may request a hearing, following which the Tribunal will issue further directions.

Relevant legislative provisions are set out in Appendix 1 to this decision.

Reasons

1. The Applicant is an assured tenant of a flat in a block of 6, managed and owned by the Respondent. The Applicant challenges the reasonableness of a number of service charges under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act").

2. The application was heard on 24th March 2025. The participants were:

- The Applicant; and
- Ms Sarah Chatfield, representing the Respondent.

Bundle

3. At the start of the hearing, the Tribunal did not have the usual bundle of relevant documents. The Respondent had been directed to produce the bundle by 28th February 2025. They did send on that date what purported to be the bundle but, in breach of the directions, it was in multiple parts. They were directed to re-file it as one document and purported to do so. Unfortunately, the link expired shortly after having been provided and so the Tribunal could not access it.

4. The Respondent did not find out about the Tribunal's inability to access the bundle until the Friday before the Monday hearing. They then didn't try to re-file it again on the basis that the file transfer system they used only worked for 2-factor authentication with the case officer's mobile number. There are plenty of file transfer services which do not have such problems but Ms Chatfield could not explain why they were not used.

5. The Applicant wanted the Respondent to be barred from further participation in the proceedings for their failings in respect of the bundle but the Tribunal would then not have had the material with which to make a decision. Each party had their own copy of the bundle and Ms Chatfield had a spare paper copy for the Tribunal's use. In the circumstances, the Tribunal decided to proceed with the hearing.

The Service Charges

6. The application was originally brought jointly with another tenant, Mr Laurence Gaved (Flat 3). However, on 6th November 2024 Judge Donegan ruled that The service charges for Flat 3 are fixed and do not come within section 18(1) of the 1985 Act so that the Tribunal had no jurisdiction.

7. The Applicant's tenancy is different and the Respondent now accepts that his service charges are variable and so do come within the Tribunal's jurisdiction. However, this acceptance only came recently. Up to that time, the Respondent had been treating the Applicant's service charges as fixed. As a result, they had not been keeping records which would show the charges to which the Applicant was required to contribute or how his total charge was calculated. Therefore, the bundle was short on evidence for most of the charges.

8. Further, the tenancy agreement provided that service charge categories could only be added if a certain consultation procedure was followed. The Respondent conceded that they had never followed this procedure and so there were some charges which they had been purporting to levy but for which the Applicant could not be liable.

9. To compound matters, the Respondent no longer had a copy of the Applicant's tenancy agreement. A copy was in the bundle but that had been provided by the Applicant. The service charge categories for which he was liable should have been set out in a Schedule. The Applicant claimed to have a copy of the Schedule but he hadn't brought it with him and Ms Chatfield said it hadn't been included in the Applicant's disclosure. However, the Applicant conceded, and the Respondent accepted, that the Schedule contained the following categories:

    a. Grounds maintenance
    b. Cleaning
    c. Electricity
    d. Water
    e. Administration/management fee

10. Therefore, these were the remaining categories in dispute for the years 2019-2025 inclusive. Due to the error in relation to the charges being variable or fixed, the Respondent had no accounts for this period. Instead, Ms Chatfield carried out a reconciliation exercise with the material she had and came up with the following table showing how much the Applicant had been charged in each category, compared to what he should have been charged:

	2019/20		2020/21		2021/22		2022/23		2023/24		2024/25	
	Charged	Actual	Charged	Actual	Charged	Actual	Charged	Actual	Charged	Actual	Charged	Actual
a	139.88		143	144.08	144.56	144.62	151.84	150.22	159.64	157.20	166.92	
b	160.68		165.88	190.02	167.96	192.78	176.28	206.85	189.28	224.68	207.48	
c	19.24		19.24	18.32	19.24	18.19	20.28	26.47	44.20		48.88	
d	22.88		23.40	5.52	23.40		24.44		24.44		24.96	
e	54.08		55.64	55.64	53.04	53.04	55.64	55.64	62.40	62.40	67.08	

11. The gaps in the table show where the Respondent had no evidence at all, save in the final year where actual expenditure figures are no longer available.

12. Ms Chatfield had also calculated what amounts were due to be credited to the Applicant. The Applicant says he has not seen any credit or refund to date. Ms

Chatfield said they would be credited to his rent account and, if that resulted in a positive balance, the Applicant would be entitled to request a refund.

13. Despite these adjustments, the Applicant maintained his challenge to each of these categories of service charge and they are considered in turn below.

Grounds Maintenance

14. The Respondent uses a contractor, Ginkgo Gardens, to maintain grounds on a number of its estates. For the subject property, there was a lawn, two small shrubbery beds and paved areas, to the front, back and a path in between. The Applicant had provided a number of photos purporting to show the condition of these areas. Ms Chatfield purported to rely on them to show that the contractor had done a good job. They did not:

    a. The paved areas were supposed to be jetwashed twice a year. The Applicant asserted that they had only been jetwashed twice in total, once in 2016 and again in 2022, both in response to complaints by him and both by the cleaning contractor, Wetton, not Ginkgo Gardens. The Tribunal is inclined to believe him. The photos show the paths covered in lichen and mould. The path between the front and rear had a layer of green, punctuated by a few scratches which showed the natural white/grey colour of the paving underneath, which the Tribunal took to be a potentially slippery layer of moss or mould. The Applicant said that, with the help of his own CCTV front and back, he knew that no jetwashing had been done. The likelihood is that he would have seen a significant difference if it had been done but he did not.
    b. The pictures showed weeds and several bald patches in the lawn area. This is despite the lawn having been relaid in 2022 and having remedial weeding and re-planting in 2024. The Applicant said that this was the result of the contractor cutting the grass too low, presumably to reduce the number of visits they would need to make. Again, the Tribunal is inclined to believe him. The lawn should not be in the condition shown in the photos that soon after being relaid. Of course, the Applicant cannot expect a high standard of service for the price paid but that is not an excuse for providing a service which makes the garden worse than it was before the gardening was undertaken.

15. Ms Chatfield relied on reports arising from inspections by colleagues which should be undertaken quarterly. However, the reports mostly only provided a binary indication as to whether certain areas were or were not "in good condition". The fact is that the condition of the lawn, for example, varied over its full area and could not be reduced to a binary description. Moreover, the Applicant was able to point to a couple of reports which indicated that the grounds maintenance was not adequate and only achieved the 3rd out of 4 levels (Silver).

16. If the work were done properly, the Tribunal would probably be satisfied that the grounds maintenance charge were reasonable in amount but it is not satisfied that the standard of the work has been adequate in the years under challenge. The Tribunal agrees with the Applicant that his charges for grounds maintenance to date should be reduced to £2 per week or £104 per year. He is

entitled to a credit or refund for the difference between that figure and the charges recorded in the table above.

Cleaning

17. Two cleaners from Wettons are supposed to attend weekly to clean the communal staircase, landings and the glass in the front door. Again, Ms Chatfield relied on the Applicant's own photos to show that the cleaning was adequate. The problem on this issue was that the photos were mostly more ambiguous. There were some bits on the floor but nothing significant. There were patches which could have been dirt but which could also have been some kind of permanent marking which normal cleaning would not be expected to shift.

18. More helpfully, the Applicant relied on a time when he and his then housing officer, Ms Simone Nelson, were able to question the cleaners as to what they were doing. They appeared to be mopping the laminate flooring with dirty water. When asked what detergent or cleaning fluids they had in the water, they said none. Ms Chatfield queried whether, assuming this account to be true, this would have been applicable on all of the cleaners' visits. However, there is corroboration with the photos of the front door glass which show streaks of dirt consistent with someone having wiped them using only a damp cloth without any cleaning fluids.

19. The evidence is nowhere near as full as the Tribunal would like. On the Applicant's part, it would be expected that the evidence he could collect is unlikely to be comprehensive. On the available material, the Tribunal would again be satisfied that, if the cleaning were done properly in the time available, the charge would be reasonable in amount but the Tribunal is not satisfied as to the standard of the cleaning for the years in dispute. Again, the Tribunal agrees with the Applicant that his charges for cleaning to date should be reduced to £3 per week or £156 per year relative to the amounts in the table above.

Electricity

20. The electricity supply for the communal areas of the building is for the lighting, the entryphone system and other occasional uses such as vacuum cleaning by the cleaners. The Respondent had been unable to produce any invoices although the Applicant claimed they had been able to do so for a mediation which they had in 2017.

21. Unlike for other services, the Tribunal can at least be sure that electricity has been supplied and used. The Applicant sought to compare the figures with his own consumption in his flat. However, quite apart from the fact that he had no evidence of such consumption or what it was for, such figures are not remotely comparable. The Applicant suggested using a figure of 30 pence per week but this would not even cover a standing charge.

22. Based on its own experience and knowledge, and doing the best it can with the paucity of evidence, the Tribunal is not satisfied that the element of the service

charge relating to electricity is unreasonable. The amount claimed by the Respondent is, therefore, payable.

Water

23. The Respondent was able to produce a few water bills, from Castle Water, showing the following charges for the following months:

- February 2020 £7.30
- March 2020 £7.80
- April 2020 £8.86
- May 2020 £9.16

24. Maintained at the same rate across the year, these bills are less than the amount charged in the table above, although not by much. Ms Chatfield was unable to explain where the £5.52 figure came from. The Applicant argued that the £5.52 figure should be applied to all years but, in the absence of any explanation for that amount, the Tribunal cannot be satisfied what the basis for it is. The invoices themselves do not provide any breakdown or other details.

25. The Tribunal is not satisfied that the evidence justifies the amounts charged. In order to ensure that the Applicant is not being overcharged, and doing the best it can in the circumstances with the available material, the Tribunal determines that a reasonable figure for water would be 25% less than the amount charged to the Applicant.

Administration/Management

26. The Respondent charges 15% of the other costs to reflect the costs of managing the property, including arranging and supervising contractors and responding to tenant complaints. The reductions determined by the Tribunal above will accordingly result in a reduction in the management fee but the Tribunal has to consider whether this is sufficient.

27. The Applicant has made allegations of bullying, racism and harassment but was unable to produce the evidence at the hearing. However, the Tribunal does not believe this is necessary to produce the outcome he should achieve in relation to the Respondent's administration/management fee. The fact is that the Respondent's management of the Applicant's service charges has been seriously deficient in the ways described in paragraphs 7-9 above, in addition to their failures in supervising the contractors whose work has been deficient as described above.

28. The Respondent is responsible for the terms and conditions of their tenancies which are presented to putative tenants on a take-it-or-leave-it basis. The Respondent's raison d'être is to provide housing services for people disadvantaged economically and also possibly by language, disability or other circumstances so that they are less likely to be able to read and understand those terms and conditions. In those circumstances, they have a fundamental obligation to ensure that they themselves have actually read the terms of their tenants' tenancies and implemented them correctly. The Respondent has failed

in this fundamental obligation and subjected the Applicant to legally unjustified charges for many years.

29. In the circumstances, as well as the proportionate reduction to take account of the above findings, the Tribunal has determined that the Respondent's administration/management fee for the years in dispute should be reduced by a further 50%.

Costs

30. The Applicant wishes to make an application for his legal costs on the basis that the Respondent has acted unreasonably, in accordance with rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal was unaware of this until after the hearing had ended and Ms Chatfield had left when the Applicant raised it on his way out. In any event, any submissions on such a costs application should be made in the light of the Tribunal's decision. Further, the Tribunal is unaware of any details of such costs from the Applicant – the Tribunal cannot determine such a costs application without a schedule of his relevant costs from the Applicant.

31. Following receipt of this decision, the Applicant may, within 28 days, file an application for his costs, setting out the basis for a costs order and a schedule of the costs themselves. The Respondent will have 28 days to respond in writing and the Tribunal will then determine the issue on the papers, without a further hearing.

Name: Judge Nicol **Date:** 25th March 2025

Appendix 1 – Relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.