



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

**Case reference** : **LON/00BK/LSC/2024/0250**

**Property** : **17C Saltram Crescent, Maida Vale,  
London W9 3JR**

**Applicant** : **David James Lee**

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

**Respondent** : **Rocktaste Limited**

**Representative** : **Dr Mukadam**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A of  
the Landlord and Tenant Act 1985**

**Tribunal members** : **Tribunal Judge I Mohabir  
Mr c Gowman MCIEH MCMI BSc**

**Venue** : **Remote hearing**

**Date of decision** : **10 February 2025**

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**DECISION**

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## **Background**

1. Unless stated otherwise, the page references in brackets are to the pages in the hearing bundle.
2. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years for 17C Saltram Crescent, Maida Vale, London W9 3JR (“the property”).
3. The service charges claimed by the Respondent are as follows.

	2019	2020	2021	2022	2023
Managing Agent’s fees	1,350	1,450	1,450	1,450	1,550
Accountant’s fees	850	975	1,000	1,000	1,000
Cleaning of common parts	600	600	620	735	780
Bank charges	90	90	90	90	90

4. The Applicant challenged his liability to pay and/or the reasonableness the service charges in respect of all the relevant years. These are set out in greater detail in the parties’ submissions below.

## **Procedural**

5. As part of his case, the Applicant claimed a set off in the sum of £5,450, being the cost incurred by him in carrying out remedial roof repairs between July 2021 to April 2022 [47]. Similarly, the Applicant also claimed a set off in the sum of £9,016 in respect of window repairs carried out by him in 2023 [52].

6. The Tribunal was satisfied that it could not deal with the issue of the set off claimed because it is an equitable remedy, and it does not have an equitable jurisdiction. Its jurisdiction is entirely statutory. These are in effect a potential claim in damages for the Respondent's alleged breach of its repairing obligation under the lease. Such a claim has to be brought in the County Court. These allegations are only relevant to the extent that they go to the reasonableness of the managing agents fees claimed and the alleged failure to deal with the repairs.

### **The Lease**

7. The Applicant is the current long leaseholder of the property pursuant to a lease 5 September 2008 made between Crossier Properties Limited and Abdul Mobeen Amin ("the lease"). The Respondent is the current freeholder.
8. The Applicant does not dispute that the service charges claimed by the Respondent for the relevant years are recoverable as service charge expenditure under the lease nor his contractual liability to pay a third share of any such costs. It is, therefore, not necessary to set out in detail the relevant service charge provisions in the lease.

### ***Relevant Law***

9. This is set out in the Appendix annexed hereto.

### **The hearing**

10. The remote video hearing took place on 9 December 2024. The Applicant appeared in person and the Respondent appeared was represented by Dr Mukadam.
11. Immediately prior to the hearing the Respondent filed further documents, namely photographs of the common parts in the building, for which the Tribunal gave permission for it to rely on.
12. It was agreed with the parties that the Tribunal would deal with the issues on the basis of the submissions made by them.

### **Managing Agent's Fees**

13. The relevant documents relating to these costs can variously be found at [549] to [584] in the bundle. Somewhat confusingly, they are initially comprised of invoices issued by "Marching Elephants Limited" to "Marching Elephants". Thereafter, they appear as part of the overall annual service charges demanded by Marching Elephants Limited from

the Applicant. Marching Elephants is a related company to the Respondent.

14. The Applicant's broad submissions were, firstly, the invoices from Marching Elephants Limited are not from a third party and, as such, cannot be said to have been costs incurred by the Respondent. Therefore, the management fees are not recoverable.
15. Secondly, in the alternative, the Applicant submitted that the management fees were not reasonable because of the Respondent's alleged breach of its repairing obligations by failing to carry out general maintenance to the building and the low level and chaotic nature of the management services provided. The Applicant pointed out that the amounts claimed by the Respondent were that recommended AMRA fees and not for the actual services provided. He submitted that a total management fee of £200 in respect of the entire building for all years was reasonable, although there was no evidence to support this figure.
16. Dr Mukadam submitted that the Applicant lives abroad and was not aware of the management services provided. For example, this included the preparation and service of the section 20 notices in respect of proposed major works in 2021.
17. However, Dr Mukadam conceded that the Applicant had in fact carried out the roof and window repairs above and not the Respondent. The explanation given for this was that a surveyor had been instructed to carry out an inspection but was unable to do so because of the lockdown restrictions imposed by the Covid-19 pandemic in 2023.

### **Decision and Reasons**

18. As a general point, the Tribunal was faced with a hearing bundle comprised of 612 pages with unhelpful pagination that was not easy to navigate. In addition, the Respondent's evidence appeared in the bundle in a somewhat haphazard way. Nevertheless, the Tribunal did its best in the circumstances.
19. On the basis of the evidence before it, the Tribunal found that the only management services provided by the Respondent was the placing of the buildings insurance [563] and some cleaning of the common parts [574] for which there appeared to be third party invoices. The Tribunal attached no weight to the invoices from "Marching Elephants Limited" because it appears this company was invoicing itself.
20. Indeed, Dr Mukadam conceded that the Applicant had in fact carried out roof and window repairs in relation to his flat from 2021 to 2023. There was no evidence that the Respondent had carried out any other repairs or maintenance to the buildings.

21. Therefore, the Tribunal found that the management fees claimed for all of the relevant years was not reasonable. Using its own expert knowledge and experience, the Tribunal concluded that a reasonable management fee for the limited services provided by the Respondent was £300 in total for all years, being £100 per flat per year.

### **Accountant's Fees**

22. The Applicant submitted that these costs were not reasonable because the only work carried out was the preparation of the service charge accounts and some bookkeeping, which amounted to no more than 2 hours work. There was no complication and could have been carried out by the managing agent. He submitted that a reasonable amount was £250 plus VAT for each of the relevant years.
23. Dr Mukadam simply submitted that the accountant's fees represented no more than the actual costs incurred.

### **Decision and Reasons**

24. The service charge accounts before the Tribunal were no more than spreadsheets and were not certified. The expectation is that if they had been prepared by a firm of accountants, more formal accounts would have been prepared and properly certified by them. That was not the case here. It follows, the Tribunal found that the relatively large sums charge for the preparation of what is a relatively straightforward document representing the service charge accounts was unreasonable.
25. In the absence of any independent evidence about what lower figure might be reasonable and doing the best it can, the Tribunal found that an accounts fee of £350 plus VAT for each of the service charge years was reasonable.

### **Cleaning**

26. The Applicant submitted that there was limited evidence of cleaning being carried out and/or to a reasonable standard. He contended that a figure of half the amount being claimed was reasonable, although there was no evidence for this.
27. Dr Mukadam said that the cleaning charges amounted to £60 per month and that the common parts were cleaned every fortnight.

### **Decision and Reasons**

28. There was clear evidence that the cleaning of the common parts was being provided on a monthly basis by the contractor, OTM UK Services

Limited at £60 per month. From the limited photographic evidence provided by the Respondent, the common parts appear to be relatively small in size. There was no clear evidence from the Applicant that the common parts were not being cleaned to a reasonable standard. This was based on his mere assertion in those terms, and it was difficult for the Tribunal to see how he could maintain this given that he resides in the Cayman Islands. On balance, the Tribunal was prepared to draw an inference that the common parts were being cleaned to a reasonable standard. The Tribunal also found the sum of £60 per month was reasonable especially when the contractor's travel and equipment costs were included in this figure.

29. Therefore, the Tribunal concluded that the cleaning costs claimed for each of the relevant years was reasonable.

### **Bank Charges**

30. The Applicant simply submitted that there was no evidence for these charges and, therefore, they had not been incurred by the Respondent. Furthermore, he submitted that they cannot be the same for each year and that Starling Bank does not levy bank charges on business accounts.
31. Dr Mukadam stated that Santander Bank does impose bank charges, but he had not conceded that he had not provided any evidence of this.

### **Decision and Reasons**

32. The Tribunal found that that there was no evidence from the Respondent of bank charges having been incurred. Therefore, the charges in relation to each of the relevant years is not payable by the Applicant.

### **Administration Charges**

33. In addition to the service charges claimed, the Respondent also claimed the administration charges below arising from the Applicant's service charge arrears. These fall to be considered by the Tribunal under Schedule 11 of the 2002 Act. The statutory test in paragraph 2 to the Schedule is that any administration charge must be reasonable.

### **Legal Fees**

34. The Respondent seeks to recover legal cost of £927.60 incurred in seeking legal advice for the recovery of the Applicant's service charge arrears that are the subject matter of this application [586-587]. The demand for the costs can be found at [251].

35. The Respondent argues that the legal advice was necessary because of the Applicant's historic service charge arrears that remained outstanding even though Dr Mukadam had provided all of the necessary disclosure requested by him. He submitted, therefore, that the costs had been reasonably incurred.
36. The Applicant submitted that the costs are not payable because they had not been reasonably incurred. He appeared to suggest that his main reason for withholding payment of his outstanding service charges was the Respondent's failure to carry out repairs and maintenance to the building and failing to respond to his claim for a set off for the repairs carried out by him. He submitted that the unilateral demand sent by the Respondent was unnecessary and it should have allowed the Tribunal to decide the matter.
37. The Tribunal was mindful of the fact the Applicant's service charge arrears went back to 2019. The Applicant's failure to pay the service charges demanded was based on the Respondent's alleged failure to carry out any necessary repairs and maintenance to the building and to address his claim for a set off for the repairs carried out by him until 2023.
38. The Applicant did not challenge the fact that Dr Mukadam had provided him with copies of the relevant invoices relating to the disputed service charges. It was open to the Applicant to bring a claim for the Respondent's alleged breach of its repairing obligations and any claim by him for a set off. The Applicant took no such steps. His belief that the Tribunal was able to resolve these matters was misconceived. His application to the Tribunal dated 3 June 2024 only appears to have been triggered by the demand sent by the Respondent's solicitors dated 7 May 2024 and for no other reason.
39. The Tribunal was, therefore, satisfied that the legal costs incurred by the Respondent are reasonable and were allowed as claimed.

### **Default Charges**

40. Default charges of £89 is claimed by the Respondent for each of the years from 2019 to 2023 [583-584]. They simply appear on the Applicant's service charge demands. However, Dr Mukadam conceded that there were no invoices or any explanation about how the default charges has been calculated. In the absence of any such evidence, the Tribunal found that all of the default charges claimed were unreasonable, as there was no basis on which it could make such a finding.

## **Interest**

41. Contractual interest is claimed by the Respondent on the Applicant's service charge arrears pursuant to paragraph 14 in Schedule 4 in the lease. Clause 1.2.5 defines the interest rate as being 4% per year above the base rate for Barclays Bank. The interest rates applied by the Respondent to the Applicant's service charge arrears were 4.75%, 4.25%, 5.75% until 2023 and 8% from 3 February 2024.
42. These rates were not challenged by the Applicant. The Tribunal was satisfied that the Respondent is contractually permitted under the lease to claim interest on any service charge arrears owed by the Applicant. It follows that the service charges allowed above by the Tribunal allowed for each year will be subject to the payment of interest at the rates applied by the Respondent. The parties will, therefore, need to carry out this recalculation and agree it.

## **Application under s.20C and refund of fees**

43. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund 80% of any fees paid by the Applicant within 28 days of the date of issue this decision.
4. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. 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, so that the Respondent may not pass 80% of any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Tribunal Judge I Mohabir

**Date:** 10 February 2025

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013



### **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).

## **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 27A**

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

### **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.

### **Commonhold and Leasehold Reform Act 2002**

#### **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) ...

### **Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

#### **Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).