



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

Case Reference : **MAN/00FA/LSC/2022/0101**

Property : **Flat 2, 106 Coltman Street, Hull HU3 2SF**

Applicant : **Dale Bahadur**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of Application : **Landlord and Tenant Act 1985 – s 27A
Landlord and Tenant Act 1985 – s 20C
Commonhold and Leasehold Reform Act
2002 – Schedule 11 (5) and Schedule 11 (5)(a)**

Tribunal Chairman : **J A Platt FRICS FTPI
P Mountain**

Date of Directions : **27 February 2025**

DECISION

BACKGROUND

1. By application dated 7 November 2022, the Applicant sought a determination under Section 27A Landlord and Tenant Act 1985 (“the Act”) on the payability of sums demanded in respect of work (undertaken or to be undertaken) to the chimney at 106 Coltman Road, Hull (“the Property”).
2. The application also sought an order under Section 20C of the Act that no costs incurred by the Respondent in connection with these proceedings are recoverable as a service charge and an order under Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (“para 5A”) to reduce or extinguish any Administration Charges otherwise payable by the Applicant in respect of a failure to make a payment by the due date to the landlord and in respect of litigation costs.
3. The Applicant challenged the payability and reasonableness of a number of service charges demanded on account on 5 December 2022. Specifically:
 - a. Chimney works estimated cost £5,436
 - b. Management Fee £ 978.48

SECTION 20 CONSULTATION

4. The proposed works had been subject to consultation under Section 20 of the Act by Notice of Intention dated 19 June 2022 and Statement of Estimates dated 22 July 2022 (but emailed to the Applicant on 26 July 2022).
5. In response to the Statement of Estimates dated 26 July 2022, the Applicant made observations to the effect that there was no evidence that significant works were required to the chimney and, in any case, the cost estimates obtained from two ‘persons’ based in London, were exorbitant.
6. Despite further communications and, in particular, the Applicant obtaining (and providing to the Respondent) his own report on the condition of the chimney, it is unclear how the Respondent had regard to those observations to satisfy the requirements of Section 20 or to satisfy the contractual requirements of 1.2 Schedule 6 to the lease (to consider any objection by the lessee to costs being reasonable).
7. The Applicant has not specifically challenged the consultation process and for reasons which will become apparent, it is not necessary for the Tribunal to consider compliance with the consultation requirements or Schedule 6 in any detail.

EVIDENCE

8. The Applicant provided a statement of case in response to directions issued by the Tribunal on 18 May 2023.

9. Despite significant correspondence from the tribunal, over a long period of time, culminating in a case management hearing which the Respondent did not attend, the Respondent has provided no evidence and has been barred, by Order dated 11 February 2025, from taking any further part in the proceedings.
10. The Applicant was content for the tribunal to make a decision based on the papers without a hearing. The tribunal met remotely on 12 February 2025 to consider the papers submitted by the Applicant.

DECISION

11. The Tribunal has regard to the Upper Tribunal decision in *Sameer Rana & Jesal Vishnuram v Assehold Limited* 23 January 2025 LC-2024-677 (“Rana”). The facts of that case are very similar to this case in that the leaseholders presented a prima facie case that works were not required or costs were not reasonably incurred, and the landlord provided no counter evidence.
12. The evidential burden was summed up by Judge Cooke:

When the FTT’s jurisdiction under section 27A is invoked by leaseholders, they must raise a prima facie case that indicates that a cost was not reasonably incurred, or that an estimated charge was not reasonable. Once they have done so the evidential burden shifts to the landlord to show that the expenditure, or the charge (as the case might be), was reasonable.
13. Judge Cooke found in Rana that:

The leaseholders’ responsibility was not to prove that the cost was unreasonably incurred but to raise a prima facie case that there was a problem. There was certainly no reason why they should have produced “independent” evidence; more fundamentally there was no reason for the FTT to disagree with what Mr Rana said about the necessity for the work was incorrect. It did not even need to make a finding of fact that Mr Rana was right; the position was simply that the leaseholders had raised a prima facie case that the work was unnecessary (or, if the work was necessary, that the cost was unreasonable); the landlord had produced no evidence in response, not even a witness statement from its managing agent; it was therefore not open to the FTT to find that the cost was reasonably incurred.
14. In this case, the Applicant has raised a prima facie case that works were unnecessary, that the estimated costs were unreasonable and that any work which was undertaken was minimal and at an unreasonable cost. The landlord has produced no evidence in response, not even a witness statement from its managing agent nor an invoice for works undertaken.
15. The Tribunal therefore finds that neither the estimated charges nor any actual costs (of which no evidence has been received from the Respondent) were reasonably incurred.

16. The amounts recoverable as both on account service charges in advance and actual service charges is accordingly limited to:

| | |
|------------------------------|------|
| Chimney works estimated cost | £Nil |
| Management Fee | £Nil |

17. The application also sought orders under Section 20C of the Act and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (“para 5A”).
18. The tribunal has determined that both the on account charges and the actual costs in dispute were not reasonably incurred. The Respondent has failed to assist the tribunal and was ultimately barred from adducing any evidence. In the circumstances, the Tribunal considers it just and equitable to order, and hereby orders, under Section 20C, that all costs incurred by the landlord in connection with these 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 Applicant.
19. The Respondent issued a demand for payment of the on account service charges on 5 December 2022 with payment required by 24 December 2022. The lease does not provide any contractual ability for the landlord to demand payment of on account service charges on 24 December.
20. In any event, the Tribunal has also determined that those charges were not reasonably incurred and are not recoverable from the Applicant. The tribunal therefore considers it just and equitable to make an order, under para 5A, extinguishing the tenant's liability to pay any administration charge in respect of a failure by the tenant to make a payment by the due date to the landlord and any administration charge otherwise payable by the Applicant in respect of litigation costs.
21. Specifically (but not necessarily exclusively), the tribunal orders that the following administration charges are extinguished:
- Notice of proceedings 9 February 2023 £120
 - DRA Referral Fee 20 February 2023 £243
 - DRA Correspondence Fee 20 February 2023 £480
 - Admin costs 20 February 2023 £360
22. Should the Respondent have levied (or intends to levy) any further administration charges in respect of non-payment of the sums in dispute they are also, by order, extinguished.

COSTS

23. Under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”):

13.—(1) *Subject to paragraph (1ZA), the Tribunal may make an order in respect of costs only—*

...
(b) *if a person has acted unreasonably in bringing, defending or conducting proceedings...;*

(2) *The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*

(3) *The Tribunal may make an order under this rule on an application or on its own initiative.*

(6) *The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.*

24. The Tribunal is minded, on its initiative, to consider an order for costs against the Respondent on the basis that the Respondent has acted unreasonably in defending or conducting proceedings.
25. Both parties may make representations on the tribunals proposal to consider making a costs order under Rule 13. The Applicant is also invited to submit details of all costs he has incurred in conducting proceedings since the application was made. All representations must be received by the tribunal within 14 days of the date of this decision.
26. Having found entirely for the Applicant, the tribunal considers it just and equitable to make an order under Rule 13(2) and hereby orders that the Respondent reimburse the Applicant, the application fee of £100.