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

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| **Case reference** | **:** | **CAM/26UK/LSC/2024/032** |
| **Property** | **:** | **Flat 7, 8 Oxhey Road, Watford, Hertfordshire, WD19 4QE** |
| **Applicant** | **:** | **Mr Sajan Shah**<br>**Mrs Xenia Shah** |
| **Representative** | **:** | **In person** |
| **Respondent** | **:** | **Kai Eightyeight Limited** |
| **Representative** | **:** | **Ms Dincer, solicitor** |
| **Type of application** | **:** | **For the determination of liability to pay administration charges under paragraph 5 of schedule 11 of the Commonhold and Leasehold Reform Act 2002** |
| **Tribunal members** | **:** | **First-tier Tribunal Judge K Neave**<br>**Mrs S Redmond MRICS** |
| **Venue** | **:** | **Remote hearing by CVP** |
| **Date of decision** | **:** | **25 June 2025** |

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**DECISION**

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## Decisions of the tribunal

(1) The tribunal determines that none of the administration charges in dispute in these proceedings are payable by the Applicants.

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

(3) The tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

## The application

1. By an application dated 15 May 2025, the Applicant leaseholders sought a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the reasonableness and payability of administration charges demanded of them as follows:

    (i) 27 July 2022 - £90.

    (ii) 15 June 2023 – £90.

    (iii) 30 June 2023 - £150.

    (iv) 8 August 2023 - £240.

    (v) 18 January 2024 - £90.

    (vi) 11 April 2025 - £150.

## The background

2. The background to this dispute is contained in the following bundles, which the parties confirmed contained the relevant documents and which we have considered in detail:

    (i) The application form, Applicants' statement of case dated 24 March 2025 and their reply dated 30 April 2025.

    (ii) The Respondent's statement of case dated 22 April 2025.

    (iii) The witness statement of Adrian Calver dated 22 April 2025.

3. The subject property is Flat 7, 8 Oxhey Road, Watford, Hertfordshire, WD19 4QE. Flat 7 is situated within a newly built block of 10 flats, construction of which was completed in 2021. Neither party requested an inspection of the Property and the tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

4. The Applicants hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Provision is also made for administration charges to be paid by the Applicants in certain circumstances. The specific provisions of the lease will be referred to in more detail below.

5. The Respondent has demanded various late payment administration charges of the Applicants. These charges arose because until May 2024 the Applicants had withheld some or all of their service charges due to an unresolved and persistent water leak into their flat from the common parts of the Property. They resumed payments towards their service charges, albeit under protest, from May 2024.

## The hearing

6. The Applicants attended in person. The Respondent was represented by Ms Dincer, a solicitor employed by Red Rock Estate and Property Management Limited, the managing agent instructed by the Respondent in respect of the property.

7. We heard oral evidence from the Applicants, who adopted their statement of case and reply as their evidence in chief and were cross-examined by Ms Dincer. We also heard oral evidence from Mr Adrian Calver, the managing agent of the property. He confirmed the content of his witness statement dated 22 April 2025 and was cross-examined by Mrs Shah. Both parties made submissions. We reserved our decision.

## The issues

8. It was apparent from a consideration of the papers filed in advance of the hearing that the parties had prepared for a determination of a much wider dispute relating to the disrepair of the roof above the Applicants' flat, which appears to be the cause of the water leak. Though this dispute is closely connected to this application, we did not consider that the tribunal was the appropriate forum for it to be determined. This was because:

    (i) Though in certain circumstances the tribunal may determine a dispute relating to damages for breach of covenant, its jurisdiction to do so arises only if it is

considering a defence to liability to pay service and administration charges arising by way of an equitable set-off (***Continental Property Ventures Inc v White*** [2007] L. & T.R. 4). In this case, the Applicants' lease requires all sums due under the lease to be paid without set-off (clause 9).

(ii) No such claim had been raised in the Applicants' application form and accordingly the hearing had been listed for half a day only. Neither party had contacted the tribunal to alert it to the need for a longer hearing, and half a day was in our judgment insufficient time to consider the disrepair claim in detail.

(iii) The claim was reliant on expert evidence, but no permission to rely on any expert evidence had been requested by either party.

(iv) There was no evidence before us about the value of the claim, for example evidence relating to lost rent, rack-rental value, or damage to the Applicants' belongings.

9. For all these reasons, we limited our determination to those issues identified by Judge Wayte in her directions of 27 February 2025 namely

(i) Whether the administration charges identified above are payable by the Applicants.

(ii) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of schedule 11 to the 2002 Act should be made.

(iii) Whether an order for reimbursement of application and hearing fees should be made.

10. We make it clear that we have not determined any part of the disrepair dispute between the parties.

11. Having heard the evidence and submissions from the parties and having considered all of the documents provided, the tribunal makes determinations on the various issues identified above as follows.

## **The tribunal's decision**

12. The tribunal determines that none of the administration charges identified above are payable by the Applicants.

## Reasons for the tribunal's decision

13. The Respondent's case is that it was entitled to impose administration charges under paragraph 7 of schedule 4 of the Applicants' lease which provides that the Applicants must pay "*the costs and expenses of the Landlord (including any solicitors' surveyors' or other professionals' fees, costs and expenses and any VAT on them) assessed on a full indemnity basis in connection with or in contemplation of any of the following….(a) the enforcement of any of the Tenant Covenants….*".

14. The Respondent says that the Applicants were in breach of the lease by failing to pay their service charges and therefore it was entitled to impose the administration charges listed above.

15. However, the Respondent produced very little evidence to support these charges. Though Mr Calver referred briefly in his witness statement to reminder letters being sent to the Applicants, and to internal credit control procedures and a pre-action letter, no further detail was given about what work was involved in producing these letters nor complying with these processes, and who carried out this work. No copy of the letter before action was produced to us. The statement of account and the invoices provided by the Respondent refer to the demands simply as "managing agent charges" with no detail about what specific work was done in support of the charge, such that the tribunal does not know, because it has not been told, what charges relate to which letters or other action taken by the Respondent, nor exactly what work was done and by whom. In the circumstances, it is not at all clear to us what work has actually been carried out by the Respondent in this case.

16. Further, paragraph 7 of schedule 4 of the Applicants' lease makes it clear that the Respondent is only able to pass on to the Applicants its costs incurred in connection with or contemplation of the enforcement of the tenant covenants in the lease. There was no evidence that the landlord had in fact incurred any of these costs that it sought to demand as administration charges. This point was not addressed in the Respondent's statement of case or evidence at all.

17. Nor was there any clear evidence that the letters were sent and/or action taken *in connection with or in contemplation of enforcement of the Applicants' obligation to pay service charges*, as required by the lease. The purpose of the letters was not addressed clearly by Mr Calver in his statement. Ms Dincer told us that though she was not initially aware of the dispute between the parties about the repair of the roof above Flat 10 (because it arose before her employment with the managing agent began) once she was aware of the dispute, she stopped all action because it would not in her view have been fair or reasonable to enforce the

obligation to pay service charges until the dispute was resolved. There was no evidence of the views of her predecessor on this point, nor reason to suppose that they were different to the position taken by Ms Dincer. There was no evidence about the Respondent's intentions about enforcement of the covenants at all.

18. For all these reasons, in our judgment the administration charges demanded of the Applicants are not payable under the Applicants' lease.

19. If we are wrong about that, as set out above, there was very little evidence before us of what work was done in order to justify the administration charges demanded. We do not know, because we have not been told, how long each letter took to draft, who drafted the letters, nor what other processes were followed by the Respondent, what work was involved, nor who carried out this work.

20. In our judgment, the sums demanded are on their face relatively high for what ought to be routine account management work for experienced managing agents. It is for the Respondent to explain how it came to impose the charges in dispute in the amounts that it did. In view of the paucity of evidence produced by the Respondent about how the charges are made up and what work was carried out in order to justify them, we do not consider that the sums charged are reasonable. Neither is there any sufficient information before us upon which we are able to form a view about what administration fee(s) might be reasonable in the circumstances. The Applicants invite us therefore to find that none of the sums demanded are payable and we do so.

21. Further, on Ms Dincer's own case, it was not reasonable for the Respondent to pursue the Applicants in the manner that it did when it knew that there was a dispute between the parties about the leaks into the flat. The Applicants' unchallenged evidence, which we accept, was that the Respondent knew that they were withholding service charges due to the issues with the roof as early as 2 March 2023.

22. In those circumstances, the purpose of the Respondent in sending repeated letters and complying with credit control processes is in our view wholly unclear. The Respondent knew the Applicants' position in early 2023. It ought either to have taken action then (and risk an immediate counter-claim for damages for disrepair being made against it) or (as Ms Dincer later did) halt any action until the issues were resolved.

23. Instead, the Respondent appears, on the evidence of Mr Calver, to have spent the years between 2022 (when the issue with the roof was first identified) to early 2025 (when certain repair works were carried out) attempting to avoid its obligations to carry out repairs and to blame others, including the Applicants themselves, for the delay in resolving the leak into the Applicants' flat. Despite the lease providing at

paragraph 4.1 of schedule 6 that the landlord is obliged to provide the "services" which include, by paragraph 1 of part 1 of schedule 7 of the lease, maintaining (etc.) the retained parts and remedying any inherent defect, Mr Calver stridently maintained in his evidence that the responsibility to carry out the work remained with the developer of the block (which was in any event dissolved in or around 2023), and/or that the Applicants should have made claims under various insurance policies relating to defects in the roof themselves.

24. We found Mr Culver's evidence on this point unsatisfactory. Though the Respondent may have been entitled to pursue the developer for the cost of any repair work required to the roof, or may have been able to obtain compensation under the terms of an insurance policy, this does not in our judgment justify the Respondent's failure to take steps to resolve the issue for over two years, still less its insistence that it was for the Applicants to resolve the issues and/or that it was not obliged to carry out any services at the property as the Applicants had withheld their service charges. Nor was it acceptable in our view for the Respondent to leave the Applicants to deal with persistent leaks into their flat for several years without an adequate plan to resolve the problem. Mr Culver could not tell us when the Respondent first carried out an intrusive survey about the condition of the roof. Nor could he provide any information about the longevity of the works that have now been carried out.

25. In our judgment it was in these circumstances wholly unreasonable for the Respondent to continue to send reminder letters to the Applicants or otherwise exhaust the Respondent's credit control processes without taking any sufficient steps to address the underlying issues with the roof of which the Respondent was well aware. For this further reason, in our judgment, the amounts demanded by way of administration charges were not reasonable. A reasonable landlord would not have imposed any administration fee in these circumstances.

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

26. The Applicants asked the tribunal to order the Respondent to refund the fees that they have paid in respect of the application and hearing. In light of our findings set out above about the Respondent's conduct and given that the Applicants have been the successful party in this application we determine that the Respondent should reimburse the Applicants the sum of £300 in respect of their application and hearing fees within 28 days of the date of this decision.

27. The Applicants also applied for an order under section 20C of the 1985 Act. Ms Dincer accepted that the Applicants' lease does not permit the Respondent to recover its legal costs incurred in connection with these proceedings through the service charge. Even if this were not the case, for the avoidance of doubt, in light of our findings set out above about the Respondent's conduct and given that the Applicants have been the

successful party in this application, the tribunal would have determined that it was just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent could not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge K Neave **Date:** 25 June 2025

## 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).