FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AK/LSC/~~2024~~2025/0611**
Property	:	**Flat 123** **Dover House** **Bolton Road** **Tottenham** **London N18 1HR**
Applicant	:	**Mr Rosh Jamal**
Representative	:	**Litigant in person**
Respondent	:	**London Borough of Enfield**
Representative	:	**Mr William Richardson, Counsel** **5 Pump Court Chambers** **Temple** **London EC4Y 7AP.**
Type of application	:	**Determination of payability of a service charge**
Tribunal members	:	**Mr I B Holdsworth FRICS** **Ms Sue Coughlin MCIEH**
Date and venue of Hearing	:	**12 June 2025** **10 Alfred Place** **London WC1E 7LR**
Date of Decision	:	**7 July 2025 Corrected 11 September 2025**

(amended on 8 September 2025 pursuant to Rule 50 of the Tribunal Procedure Rules 2013)

DECISION

Decisions of the Tribunal

a. The Tribunal determines that the sum of £1,310.22 was properly demanded by the Respondent in respect of services charges for the period 1 July 2024 to 31 March 2025. These monies are now recoverable from the Applicant.

b. Since the Tribunal has no jurisdiction over County Court Costs and fees, the matter of fees should now be referred to the County Court at Edmonton under claim **No L02ED814** for determination.

1. The application

1.1 The Applicant seeks a determination pursuant to 27A of the Landlord & Tenant Act 1985 ('the 1985 Act), as to the payability of service charges by the Applicant for the service charge year 1 July 2024 to 31 March 2025 in respect of Flat 123 Dover House, Bolton Road, Tottenham, London N18 1HR (**'the Flat'**).

1.2 Proceedings were originally issued in the County Court at Edmonton under claim No L02ED814 on 7 October 2024. Deputy District Judge Welch transferred the matter for determination by the First Tier Tribunal (Property Chamber) on 14 November 2024.

1.3 Directions were prepared by Tribunal Judge Martynski on 31 January 2025. In these Directions he refers to the particulars of claim dated 23 September 2024 issued by the Applicant.

1.4 The Applicant claims that a failure by the Respondent to issue an estimated management charge before the commencement of the service charge year removed his obligation to pay the 2024/25 service charge until the reconciliation of the service charges under the relevant lease provisions. This is typically some six-months after the expiration of the service charge year.

1.5 The Respondent disputes the Applicant's assertion and is seeking payment in accordance with the terms of the lease, following the late issue of an estimated management charge or "EMC".

1.6 The reasonableness of the charge was not disputed by the Applicant.

2. The Hearing

2.1 A hearing was held on 12 June 2025; the Applicant was a litigant in person.

2.2 The Respondent was represented by William J Richardson, Counsel of Five Pump Court.

2.3 Ms Havoulla Kookalli and Malcolm Rowe, both residents of Dover House attended as observers. Ms Patricia Caceres, resident of a nearby block of flats also attended as an observer.

2.4 Ms Erica Raval, the London Borough of Enfield's Manager for recovery of rent, service charges and major works, gave witness evidence.

Supplementary Documents

2.5 The Applicant made representation at the outset of the Hearing about several additional documents he wished to submit for consideration. He asked that the Tribunal consider submission of these documents as a preliminary application prior to review of the substantive matter.

2.6 The Tribunal had been provided with four supplementary bundles late in the evening on the day prior to the Hearing. These bundles contained authorities and copies of additional correspondence between the parties. The Applicant asked for these to be included for consideration by the Tribunal.

2.7 Counsel contended the materials were not relevant to the matter in dispute.

2.8 The Tribunal heard pleadings from the Applicant about the relevance of the documents contained in the bundles and how these would support his arguments.

2.9 **Preliminary decision of the Tribunal**

2.9.1 The Tribunal determined that the bundle of statutory authorities could be included within the relevant documents, along with the legal authorities. Reference to these documents by the Applicant was restricted to relevant matters previously raised in the pleadings. Permission was given for the use of the two correspondence bundles however this was restricted to use where the correspondence was essential to support or justify matters already contained in the earlier pleadings. These constraints on use of the materials were explained to the Applicant.

3. Preliminary applications

3.1 The Applicant submitted the following preliminary matters for the Tribunal's consideration prior to addressing the substantive application. They are in summary:

3.1.1 The Judicial capacity of the Tribunal and whether it was constituted as a County Court.

3.1.2 A Case reference number discrepancy in the submissions.

3.1.3 The admissibility of an amended defence statement and late witness statement from Ms Raval.

3.1.4 An application to debar the Respondent from taking part in the proceeding for alleged serious non-compliance with Tribunal Directions.

3.2 Counsel told the Tribunal these applications were unreasonable and unjustified. He apologised on behalf of his client for any failures to comply with the strict timelines provided in the amended Directions of the Tribunal and said, in the interest of justice, the Respondent should not be debarred from taking part in the hearing.

3.3 The Applicant gave written and oral submissions on his arguments for seeking to debar the Respondent from the proceedings and highlighted the series of inconsistencies identified in the submitted evidence.

3.4 **Decision of the Tribunal on the preliminary applications**

3.4.1 The Tribunal confirmed it sat as a First tier Tribunal (Property Chamber), as the matter was transferred to it by the County Court at Edmonton and it was not constituted as a County Court.

3.4.2 The minor typographical errors identified by the Applicant in the submissions had caused no prejudice to either party and posed no difficulty to the Tribunal understanding of the submissions. It is for this reason the ground for either dismissal of the application or rejection of the Respondents' submissions was refused. The evidence of the Respondent was accepted.

3.4.3 The Tribunal seek compliance with Directions for effective management of applications. It noted the comments made by the Applicant but considered the Respondent's failure to satisfy the timetable set out in the Directions had not caused significant detriment to either the Tribunal or the Applicant. The Tribunal referred to Rule 3 of the Tribunal Procedure (First-tier Tribunal (Property Chamber) Rules 2013 and Practice Directions (the "**Tribunal Rules 2013**") which states the overriding objective of the Tribunal is to deal with cases "***fairly and justly.***" The participation of the Respondent in the proceedings was necessary for this to take place. It was for these reasons the Applicants request to debar the Respondent from the proceedings was rejected.

4. Payability of service charge demand

Applicants' submissions

4.1 The Applicant relied upon his 22-page position statement in making his submission to the Tribunal. He drew the Tribunal's attention to the relevant terms of the lease, in particular, the clause governing the issue of the estate management charge ('EMC') or advance service charge Demand. He then focused on the requirements for a valid EMC demand and the implications of the year-end reconciliation at sub-clause 3(2)(e) of the lease.

4.2 The Applicant told the Tribunal that the Demand made on 18 June 2024 was invalid. He provided an analysis of the defects in the demand, which he said included: the late issue of the Demand; an incorrect Demand period, being 9 months rather than 12 months; significant deviation from a specifically prescribed payment schedule; and the improper

conflation of obligations. The Applicant also made a claim that the Demand had breached fundamental legal principles.

4.2.1 The Applicant acknowledged the lease is not clear on the next steps to be taken should the EMC be given after the service charge year had commenced. The Applicant relied upon the authority of the *Attorney General of Belize – v – Belize Telecom Ltd [2009] UKPC 1*0, where the default valuation of the management charge was zero. The Applicant inferred from this decision that if the Demand was not given in accordance with the lease the sum chargeable was zero until reconciliation. The Applicant referred Tribunal to paragraph 17 of this decision, which explains:

> *'The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The most usual inference in such a case is that nothing is to happen. If the parties had intended something to happen, the instrument would have said so. Otherwise, the express provisions of the instrument are to continue to operate undisturbed if the event has caused loss to one or other of the parties the loss lies where it falls.'*

4.2.2 The Applicant also relied upon the principle of contra proferentem, claiming as the Respondent proffered this professionally drafted lease it supported the application of the contra proferentem principle. The absence of discretionary or remedial lease provisions he argued further supports his conclusion that late issue could not be justified.

4.3 The Applicant then took the Tribunal through a series of arguments which rebutted the justification given by the Respondent for their actions.

Respondent's Submissions

4.4 Counsel referred to his 8-page skeleton argument with authorities. He accepted the Respondent had failed to issue the estimated service charge or **EMC** before commencement of the relevant service charge year, which commenced on 1 April 2024 in accordance with lease clause 3(2)(b). Counsel said the EMC notice was served prior to 1 July 2024 and applied to the last three-quarters of the financial year, i.e. 1 July 2024 to 31 March 2025. Counsel contended on behalf of the Respondent that this complied with the relevant lease clause, as the Respondent was entitled to pro rata the service charge for the remaining nine-months of the financial year after 1st July 2024.

4.5 Counsel then reviewed legal authorities that supported the action of the Respondent and deduced it was a reasonable and justified response to the circumstances following the accepted late submission of the EMC.

4.6 Counsel called Ms Raval to give evidence to the Tribunal following the submission of her witness statement in the bundle. She said it was a failure of a recently installed software system which had prevented

London Borough of Enfield from issuing the EMCs to the leaseholders prior to commencement of the service charge year.

4.7 She told the Tribunal under questioning that a new software programme had been adopted but this had not been live tested on a sample batch of leaseholders. The untested software had been used to issue demands, and it was soon discovered that the software exhibited a series of significant and serious deficiencies. The Authority made the decision that the new software was unable to adequately support the issue of accurate service charge demands. They deferred the issue of the Demands until after the start of the service charge year. On 31 May 2024 the Authority wrote to the leaseholders informing them of the technical issues with their system and the change to the service charge so that it would cover 9 months and not 12 months. The deficiencies with the software were rectified and the Demands were issued on or around 18 June 2024. Copies of the service charge demand and EMC were contained at pp. A14 of the bundle.

4.8 Ms Raval then told the Tribunal that the printing, collation and posting of more than 5000 demands had been outsourced to a contract printer on behalf of the London Borough of Enfield. The Demands were dated 18 June 2024, and she had authorised issue of these by 1st class mail on or around this date.

4.9 In cross examination of Ms Raval, the Applicant challenged the veracity of the issue date of the demand given by the Authority. He alleged his Demand arrived after commencement of the second quarter of the service charge year, on or around 3 July 2024. He also said the date of receipt of the EMS was corroborated by the witness statement given by Ms Kookalli who lives in Dover House and said she received her EMS on 3 July.

4.10 Ms Raval claimed this was unlikely as despatch of the Demands had been authorised to be sent by 1st class mail on or before 18 June 2024. She was unable to offer proof of posting or a copy of her authorisation statement to the outsource printer.

5. The law

5.1 The statutory provisions referred to in this decision may be consulted at https://www.legislation.gov.uk/ukpga/1985/70/section/27A

6. The lease

6.1 The lease dated 10 October 1988 between the Mayor & Burgesses of the London Borough of Enfield and Erol Feryat Murat and Penbe Murat was provided in the bundle at E.122. Clause 3(2)(b) sets out that:

> *'The lessee hereby covenants with the council as follows:*
>
> *'To pay to the council in respect of each financial year of the term or part thereof such a sum (hereinafter called the management charge) as shall be notified in writing*

to the lessee by the council's Borough Treasurer/ Director of House Services prior to the commencement of the financial year as representing the proper proportion of the estimated cost which is incurred or is intended to be incurred by the council in carrying out the common repairs and service such management charge to be paid by the lessee in four equal quarterly instalments in advance on the first day of April first day of July first day of October first day of January (hereinafter called the management charge dates) of each financial year or part of the year during the said term (or at such more frequent intervals as the council shall from time-to-time specify in writing having given three-months' notice of such change (the first of such payments being in respect of a proportion or part of the period from the date hereof to the next management charge date and to be made on the date of execution hereof.'

6.2 The lease also defines the financial year at clause 1(a)(xiii) as:

'The period from the first day of April in any year to the last day of March in the following year.'

6.3 A reddendum states:

'And also paying to the council on demand the management charge provided for in clause 3(2)(b) hereof such management charge to be paid at the times and in the manner specifically mentioned therein.'

6.4 Clause 1(a)(vii) defines the *'common repairs and services'* as those specified in the Fourth Schedule and clause 1(a)(xv) defines an *'estimated cost'* as:

'The estimated cost of providing the common repairs and services calculated in accordance with the Fifth Schedule.'

6.5 At clause 3(d) the reconciliation of any over or under payment is addressed by the lease. The lease states:

'To pay to the council on demand in respect of each financial year of the term the amount (if any) by which the proper proportion of the actual cost exceeds the proper proportion of the estimated cost for that financial year.'

6.6 Further at clause 3(e) that:

'If the proper proportion of the estimated cost shall exceed the proper proportion of the actual cost in any financial year of the term the excess so paid shall be carried forward by the council to be credited to the account of the lessee in respect of the management charge for the financial year following.'

7 Issues

7.1 The Tribunal has considered the bundle submitted by the Respondent and the supplementary documents provided by the Applicant, together with the detailed submissions made by the Applicant.

7..2 The Tribunal is asked to determine only whether the sum demanded of the Applicant amounting to £1,310.22 was properly demanded by the Respondent for advance services charges for the period 1 July 2024 to 31 March 2025. The reasonableness of this Demand is not challenged.

Discussion

6.6.1 It is not disputed by either party that the EMC was issued after the 1 April 2024.

6.6.2 The date of the EMC and Service Charge demand of 18 June is not in dispute however there is a dispute over the date of receipt. The Applicant and Ms Kookalli also of Dover House, claim they received the EMC after the start of the second quarter of the service charge year around 3rd July 2024.

6.6.3 The Respondent's evidence was that it signed off the issue of all Demands on or before 18 June 2024 and has relied upon the CPR deemed service rules, implying the EMC was served at the latest by 20 June 2024.

6.6.4 They also rely upon the wording of the lease which is that service of the management charge notice or EMC is as per the date of the notice and thus in this case was 18 June 2024.

6.6.5 The Tribunal therefore conclude the notice was given prior to 1 July 2024, namely the commencement of the second quarter in the financial year.

6.6.6 The next issue for the Tribunal to address is whether time is of the essence when giving the EMC and that strict adherence to the timetable and relevant terms specified in the lease was essential. It is accepted by the Respondent the EMC was not given to the leaseholders before the start of the service charge year. A linked point is that it is common ground between the parties that the lease says nothing about what is to happen if an EMC is served after the date specified in the lease.

6.6.7 The Applicant maintains time was of the essence in giving the interim notice of service charges. He goes on to claim that because the lease was silent on the ramifications of late issue of the EMC, it was unnecessary for a lessee to pay any service charge until the reconciliation date and to this end he had relied upon the premiss that the Applicant should not apply any action if not explicit in the lease.

6.6.8 The Tribunal give little weight to the contra proferentem argument presented by the Applicant as it is designed to remedy minor errors and not to be relied upon as a basis of lease interpretation. The authority

Attorney General of Belize – v – Belize Telecom Ltd [2009] UKPC 10 referred to by the Applicant as a basis for his "no action premiss". The findings of this authority are considered by the Tribunal but given less weight following the review of more relevant authorities cited in this decision.

6.6.9 Counsel for the Respondent said a failure to issue the EMC within the timescale set out at lease clause 3(2) (b) was not fatal. He contended that it had been an extraordinary situation in which the Respondent had found itself unable due to technical failures to issue the EMC prior to 1 April 2024. Counsel submitted time was not of the essence and authorities lent guidance in support of the Respondent's late issue of the EMC notice.

6.6.10 The Tribunal has had regard for the authority ***Kensquare Ltd – v – Boakye [2021] EWCA Civ 1725*** when considering the proposition that time was in fact of the essence when it came to a clause relating to giving interim service charges. This Court of Appeal authority was relied upon by both parties in this dispute.

6.6.11 In paragraph 36 of this decision it states:

> *'In short, it seems to me that the presumption against time being of the essence is displaced with clause 4(2/x) the terms of this lease taken in their context clearly indicate that the landlord must serve any notice under clause 4(2/x) not less than one-month prior to the commencement of that financial year if it is to have effect as Peter Gibson LJ noted in* Starmark *the Court has to be seek to discern* ***the intention of the parties*** *viewed objectively with the aid of the presumption in the present case to adapt words of Lord Wilberforce in Bunge 'the circumstances of the case indicate { that requiring precise compliance} would fulfil the intention of the parties'.'*

6.6.12 The *Kensquare* decision places emphasis on the "intention *of parties*", and this direction is considered in conjunction with the guidance from the authority ***Arnold v Briton [2015] UKSC 36*** on the interpretation of lease terms. This Court of Appeal decision directed parties to read leases as written and not seek to make inferences. The emphasis is on the need to identify the parties intention by reference to what *a reasonable person having all the relevant background knowledge would understand the term to reason*.

6.6.13 This First tier Tribunal recognises that it was not the purpose of the Court of Appeal to set a precedent in the *Kensquare* findings that time is of the essence when it comes to all clauses relating to interim service charges. Cases involving interpretation of leases are fact specific and little help is derived from comparing cases with different leases. This Tribunal are unable to identify any specific lease clause in the subject lease which is designed to satisfy an intention between the parties that time is of the essence in giving interim service charges.

6.6.14 The Tribunal note that the EMC when issued was based upon a 9-month period rather than the 12-month period specified in the lease. The Tribunal recognise this calculation method contravened the lease terms. They also appreciate it was done to avoid seeking monies retrospectively from the leaseholders without warning of the likely costs.

6.6.15 The Tribunal referred to the guidance offered in the decision of the Upper Tribunal ***London Borough of Southwark – v – Woelke [2013] UKUT 0349,*** which provided a helpful discussion on the purpose of lease clauses:

> *'... in considering each of those matters it is not appropriate to adopt a technical or legalistic approach; the service charge provision of leases* ***are practical arrangements which should be interpreted and applied in a business-like way.*** *On the other hand, precisely because the payment of service charges is a matter of routine, a businesslike approach to construction is unlikely to permit very much deviation from the relatively simple and readily understandable structure of annual accounting, regular payments on account and final balancing calculations with which residential leaseholders are familiar. When entering into a long lease the parties must be taken to intend that the service charge will be operated in accordance with the terms they have agreed leaseholders should be able to work out for themselves whether a sum is due to be paid by reading the lease and comparing the process it describes with the information provided in support of the demand by the landlord without the involvement of lawyers or other advisors.'*

6.6.16 It is the opinion of the Tribunal the Local Authority interpreted the relevant lease clauses when adjusting the EMC issue date and charge period in a *"practical …and business-like way"*. It responded to the unusual circumstances and made appropriate changes to the EMC calculation. This aligns with the Upper Tribunal guidance.

6.6.17 The Applicants claims the deviation from the specifically prescribed payment schedule makes the EMC and Demand invalid. The Tribunal note the charges are made over 3 periods rather than two which benefits the leaseholders. Further legal issues raised by the Applicant about the Demand include:

- That it breaches fundamental legal principles of contractual performance by failing to comply with the lease's strict requirements on the issue of the EMC; and

- The Demand fails to adhere to the rules of strict contract compliance, and the Demand represents a request for non-contractual performance

The Tribunal rely upon the purpose of the service charge clauses as guided by the Upper Tribunal in *Woelke* and adopt the same *"practical…. and business like* "purpose in consideration of the actions

of the Respondent. The Tribunal do not find the Upper Tribunal or Upper Courts sought in these decisions to apply a strict legal interpretation to lease clauses relating to service charges. This Tribunal has followed their lead and interpreted the natural meaning of the terms with the parties intention in plain sight.

6.6.18 A recent example of this approach is found in ***LB Southwark v Akhtar and Stel LLC (2017) UKUT 0150 (LC***), where the Upper Tribunal found a Notice could be validly served after the date given in the lease but not 'after the expiry of the financial year to which it relates". This decision illustrates the principle of lease interpretation through the intent of the parties and undermines the assertions made by the Applicant for the need for strict contract adherence to the service charge clauses. This decision also provides a helpful discussion at para 40 on lease clauses and contract construction and particularly "*whether a contract lays down a process giving one party the right to trigger a liability of the other party".*

6.6.19 In their consideration of the intent of the parties the Tribunal has identified the lease clauses offer a structured payment regime, giving the leaseholder an opportunity for budgeting, by providing information as to their likely costs ahead of being incurred. The information in the EMC gives some reasonable certainty as to their obligations prior to commencement of a financial year. These outcomes were still satisfied in part by the late issue of the EMC albeit later than is preferrable.

6.6.20 The Respondent delivered the EMC late but in the opinion of the Tribunal still satisfied the key functions of clause 3(2) (b) and associated clauses. The Tribunal accepts this action did not hold fast to the lease terms, but despite this are unable to identify any prejudice or detriment caused to the parties. The Tribunal notes the first quarter service charge collections were waived by the Respondent until the reconciliation date. This action is perceived as a further attempt to mitigate any inconvenience or loss to the leaseholders by late issue of the EMC.

6.6.21 There is no evidence of detriment to either party caused by the late issue of the advice on service charges with recovery of some monies deferred to a post service charge date. The leaseholder Applicant has held an interest in Dover House for many years, and it would have been of no surprise to him that service charges were payable for the year 2024/25. It is of note that Mr Jamal contacted the Local Authority on 2 April 2024 observing that the EMC notice had not been served and disputing his obligation to pay but offering to pay at a 14% discount monthly.

6.6.22 It is for these reasons the Tribunal conclude that the failure to serve the Demand before the start of the financial year was not a fatal flaw in the EMC service and subsequent issue of the Demand. The intent of the parties as expressed in the lease terms was satisfied by the Local Authority actions.

6.7 **Decision of the Tribunal**

6.7.1 After careful consideration the Tribunal has determined that the Demand for the 9 months of the service charge year made prior to commencement of the second quarter of the service charge year 1 April 2024 in the sum of £1,310.22 was properly demanded.

6.7.2 It is for this reason the Tribunal determines that the service charges for the period 1 July 2024 to 31 March 2025 are now payable.

6.7.3 The Tribunal concluded that the giving late of the EMC and service charge Demand for 9 months remedied any failure to issue the Demand prior to commencement of the service charge year and by the waiver of the first quarter's charges until reconciliation mitigated any detriment that may have been caused to the leaseholders.

6.7.4 The Applicant had not disputed the reasonableness of the service charge Demand.

6.7.5 Since the Tribunal has no jurisdiction over County Court Costs and fees, the matter of court fees should now be referred to the County Court at Edmonton under claim **No L02ED814** for determination

7. **s.20 Order**

7.1 At the hearing the Applicant made an oral application for a s.20 Order.

7.2 It was agreed written submission on this matter would be made to the Tribunal, following the issue of the substantive decision, and the parties should make any costs' representations within **28-days of the date of the decision. This will only relate to costs incurred in bring the Tribunal application.**

Name: Ian B Holdsworth **Date:** 7 July 2025 Corrected 11 September 2025

Valuer Chairman

RIGHTS OF APPEAL

1 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.

2 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.

3 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.

4 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.