FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/26UH/LSC/2021/0052**
HMCTS code (audio, video, paper)	:	**V: CVPREMOTE**
Property	:	**21a Church Lane, Stevenage, SG1 3QW**
Applicant	:	**Cindy Louise Meunier**
Representative	:	**Thomas Talbot-Ponsonby (Counsel)**
Respondent	:	**Alliance Dental Care Limited**
Type of application	:	**Liability to pay service charges**
Tribunal members	:	**Judge Aaron Walder** **Judge David Wyatt**
Date of decision	:	**4 April 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are those described in paragraph 8 below. We have noted the contents.

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Decisions of the tribunal

(1) The tribunal determines that of the sums other than ground rent demanded by the Respondent on 27 August 2020 for the period from 3 June 2016 to 31 August 2020 (in the total sum of £4,798.23, as set out in paragraph [13] below) only the following service charges were (or would have been, if a demand accompanied by the summary of the rights and obligations of tenants of dwellings in relation to service charges required by section 21B of the Landlord and Tenant Act 1985 had been served on the Applicant) payable by the Applicant:

a) 2019 Water and Sewerage – £35.95

b) 2019 Insurance – £758.51

c) 2019 Repairs to the main gate – £250

d) 2019 Repairs and maintenance to the garden – £100

e) 2020 Water and Sewerage – £27.49

f) 2020 Insurance - £517.50

(2) The tribunal orders under section 20C of the Landlord and Tenant Act 1985 (the "**1985 Act**") that the costs incurred by the Respondent 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.

(3) The tribunal makes no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**").

(4) The tribunal orders the Respondent to pay £300 to the Applicant, to reimburse the tribunal application and hearing fees paid by them.

Reasons

Applications

1. The Applicant sought determinations under section 27A of the 1985 Act as to whether certain service charges from were payable by her. Extracts from the relevant legal provisions are set out in the Appendix to this decision. The Applicant also sought orders: (a) to limit any recovery of the Respondent's costs of the proceedings through the service charge, under section 20C of the 1985 Act; (b) to reduce/extinguish their liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act; and (c) for costs , under

rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**").

Procedural history and Documents before us

2. The application was received on 19 August 2021 by the office for the Southern region of the tribunal, and transferred to the office for the Eastern region (where the Property is situated). On 5 November 2021, a procedural judge gave case management directions which required that the respondent Landlord disclosed all relevant service charge accounts and estimates for the years in dispute (audited and certified where so required by the lease), together with all demands for payment, copies of any notice(s) under section 20B of the 1985 Act, copies of any relevant consultation notices, details of any payments made and any available evidence of expenditure. The Applicant was directed to send to the Landlord a schedule setting out the charges in dispute and their case documents.

3. The directions further required the Landlord to complete certain columns of the Applicant's schedule, and file a statement setting out their case on the disputed items of service charge.

4. In fact, the Landlord did not comply with these directions at all. The Landlord has simply not engaged with these proceedings, and taken no steps to serve any evidence, or any statement setting out its position on the items in dispute.

5. There was no inspection. Neither party requested an inspection and we are satisfied that an inspection is not necessary to determine the issues in this case. There was also no relevant photographic evidence.

6. At the hearing on 24 March 2022, Mr Thomas Talbot-Ponsonby of counsel represented the Applicant. The Applicant herself attended and gave evidence. The Respondent did not attend and were not represented.

7. Insofar as it is relevant, we are satisfied that the Respondent was sufficiently aware of the hearing to attend if they so wished, but chose not to do so. All correspondence was sent to their current registered office at companies house and we were satisfied that reasonable steps had been taken to notify them of the hearing. Accordingly, Rule 34 permits us to hear the matter in the absence of one of the parties if it is in the interest of justice to do so, and we are satisfied in this case that it was so in the interests of justice to proceed.

8. The Applicant prepared a 202 page paginated hearing bundle, which contained all relevant material. Mr Talbot-Ponsonby also prepared a skeleton argument, with authorities, and a spreadsheet setting out areas of dispute, and we thank him for his assistance in that regard.

9. The bundle contained the service charge demand, as well as relevant invoices for works done supplied by the Landlord in the circumstances set out in the Applicant's witness statement.

10. At the outset of the hearing the Applicant made a request to bar the Respondent from taking any further part in the proceedings and to determine all issues against it pursuant to rules 9(7) and (8) of the Rules. We have taken that application to in fact be made under rule 9(3). Given that the Respondent did not attend the hearing, and did not present any evidence to the Tribunal, we consider that it is unnecessary to determine that application, since there is, in effect, no case before us to bar.

Lease

11. The Applicant has a first-floor flat in a two-storey building, with a dental practice underneath. The Applicant holds the flat pursuant to a lease dated 11 August 2011 and made between (1) National Westminster Bank PLC and (2) Richard Hodson and Peter Angus Rob MacDonald. The lease is for a term of 125 years from 11 August 2003.

12. The following summary refers to relevant terms dealing with service charges:

"Particulars

Property	21A Church Lane, Stevenage on the first floor of the Building as shown edged in red on the plan number 1 annexed hereto and more particularly described in clause 1.1.5
Building	37 High Street Stevenage the location of which is shown edged green on the plans numbered 1 and 2 annexed hereto
Service Rent Accounting Date	The first day in January in every year or such other date as the Landlord may from time to time nominate
Provisional Service Rent	Four Hundred Pounds per annum subject to variation as provided in Schedule 4
Service Percentage	50% subject to variation as provided in schedule 4

1 Definitions

1.1.1 "Building" includes [...] any car park refuse area or pavements within the curtilage of the building

1.1.2 "Common Parts" means internal and external common parts

1.1.5 "Property" means an internal only demise, including non structural walls, floorboards and plaster finish to the ceilings
1.1.6 "Service Rent" means the rent calculated in accordance with Schedule 4
1.1.8 "Structure" means the roofs and foundations, external and loadbearing walls, beams, joists and other loadbearing structures

2 (Grant and rent)

2.1.2 Reservation as rent of the sums the Landlord spends each year during the term to insure the Property as required by this Lease ("Insurance Rent")
2.1.3 Reservation of the Service Rent as rent

3 Tenant's covenants

3.2 To pay the Insurance Rent on receipt of written demand
3.3 To pay the Service Rent on the dates and in the manner specified in schedule 4

4 Landlord's covenants

4.2 To insure the Building
4.5 To use reasonable endeavours to maintain and repair the Retained Parts, the Structure, the outer half of non loadbearing walls separating the Property from other parts of the Building, Conduits and Plant and windows and window frames

Schedule 4 Service Rent

1 Definitions

Landlord's Services

(a) Maintenance and repair of the Structure and Retained Parts
(b) Maintenance and repair of Conduits and Plant other than those that are the tenant's responsibility
(c) Maintenance and repair and (as necessary) renewal and replacement of walls fences and other surrounding structures
(d) Decoration of the exterior of the Building
(e) Cleaning decorating and lighting such of the Retained Parts as the Landlord considers necessary
(f) provision of a lift (if there is one)
(g) tending of any gardens
(h) carrying out improvements if in the landlord's reasonable opinion these are likely to reduce future maintenance
(i) any other service the landlord chooses to provide Retained Parts The Common Parts and other areas from time to time not let

Service Cost

(a) The cost incurred by the landlord of:

(i) complying with the landlord's obligations in clause 4.5
(ii) providing the Landlord's Services
(iii) maintenance of party structures
(iv) employing porters caretakers etc
(v) entering into service or maintenance contracts
(vi) compliance with statute
(vii) employing managing agents
(viii) employing auditors of the service charge

(b) If the landlord performs any of the above itself, a reasonable sum for the services provided
(c) rates and taxes for the Retained Parts or the Building
(d) provision for future maintenance

4 Payment

4.1 Tenant to pay the Provisional Service Rent in quarterly instalments in advance
4.2,
4.4 Landlord may give notice to vary the Provisional Service Rent

5.1 As soon as practicable after each Service Rent Accounting Date, the Landlord is to serve a certificate of the Service Cost for that Service Rent Accounting Period and a statement of whether there is a shortfall in payment by the tenant or an overpayment

5.2 The tenant must make up any shortfall within 14 days

5.3 Any overpayment is credited towards the next payment due from the tenant"

Service charges in dispute

13. The Applicant states that the only service charge demand they have received since 2016 was sent by e-mail on 27 August 2020 relating to the period from 3 June 2016 to 31 August 2020. This gave no breakdown by period and demanded the disputed charges totalling £4,798.23 as follows:

"Service charge ... £1,664.47"
"Admin charge ... £291.28"
"Building insurance – June 2016 to August 2020 ... £2,372"
"Water rates – June 16 to 31 March 20 ... £470.48"

14. The Applicant accepts she is responsible for paying 50% of the costs of the building insurance for 2019 (£1,517.01) and 2020 (£1,035). She also accepts she is responsible for paying 50% of the water and sewerage rates for 2019 (£71.89) and 2020 (£54.98).

15. The Applicant also makes the following general points:

a) By virtue of section 20 of the 1985 Act and the Service Charges (Consultation Requirements) Regulations 2003, the landlord must consult with the tenant prior to carrying out any works that will result in a contribution from the tenant in excess of £250.
b) By virtue of section 20B of the 1985 Act, if any relevant costs were incurred more than 18 months before a demand for payment is made, unless within that period the tenant was notified that the costs had been incurred and would be demanded, the tenant is not liable to contribute towards those costs.
c) Pursuant to section 21B of the 1985 Act, a tenant may withhold payment of a service charge if the demand was not accompanied by a statement of the tenant's rights in the form prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.

Sums due prior to 27 February 2019

16. The Applicant correctly set out the effect of section 20B of the Act. The first demand for payment was made on 27 August 2020. We accept the evidence of the Applicant that no other demands were made, and she was not notified that the costs had been incurred and would be demanded.

17. As such, the Applicant has no liability for any costs incurred by the landlord prior to 27 February 2019. We are satisfied that all the costs shown in the copy invoices disclosed by the landlord for 2016, 2017 and 2018 were incurred before then, so the Applicant is not liable to contribute towards those costs.

Repairs to the Main Gate (2019 £750)

18. The Applicant challenged costs for 2019 of £750 which was allegedly for works done to the main gate. At p.158 of the Bundle, there is an invoice from a Lukas Daugmaudis, which simply states it is for "repair main gate". It is dated 13.04.2019 and is for £750.

19. The Applicant relies on the fact that there was no consultation under section 20C of the Act, and says this causes any liability to be limited to £250. She further suggests that the invoice contains no detail, and to her recollection all that was done was the replacement of one gate post.

20. In order for section 20 to apply, the works must be qualifying works. At the hearing, we reminded ourselves of the guidance in *Paddington Walk Management Ltd v Peabody Trust* [2010] L & TR 6 where HHJ Marshall QC noted

"Works on a building comprise matters that one would naturally regard as being 'building works' and it does not seem to me that window cleaning naturally falls within that concept."

21. In our assessment, the works of repair to a gate do not constitute 'building works', and are not qualifying works for the purposes of section 20. We therefore reject the argument that the costs are limited because of a lack of consultation.

22. However, there is simply no positive evidence from the Landlord as to what the works amounted to. We are therefore bound to accept the evidence of the Applicant that

"the repairs were limited to a single oak fence post being replaced. The remainder of the gate was untouched"

23. In our assessment, the sum of £250, as volunteered by the Applicant, is a reasonable sum to pay for these works.

Repair and Maintenance to the Garden (2019 £680)

24. The Applicants challenged costs for 2019 of £680 which was allegedly for works done to the garden. At p.160 of the Bundle, there is another invoice from Lukas Daugmaudis, which this time states it is for "repair and maintenance to garden". It is dated 10.05.2019 and is for £680.

25. The Applicant again relies on the fact that there was no consultation under section 20 of the Act, and says this causes any liability to be limited to £250. She further suggests that the property does not in fact have a garden. In her evidence she states

"There is no garden at the property. There is a car park which I suppose could have been weeded, but I am unaware of these works and if that is what the invoice relates to, at a price of £680.00 I am of the view that it is excessive in comparison to any works that may have been undertaken."

26. In order for section 20 to apply, the works must be qualifying works. For the same reasons discussed above in paragraphs 20 and 21, in our assessment, the works of repair and maintenance to a garden do not constitute 'building works', and are not qualifying works for the purposes of section 20. We therefore reject the argument that the costs are limited because of a lack of consultation.

27. Mr Talbot-Ponsonby advocated that the Tribunal should not allow anything for this element of the claimed service charge. He argued that as there is no garden, no work could have been undertaken. Further, he argued that the Landlord had ample time to explain what this invoice

related to, but had chosen not to take part in these proceedings, and thus should be allowed nothing.

28. We feel we must respectfully disagree with these submissions. In her evidence, the Applicant notes that the work could relate to the car park and made no suggestion that the car park was not being weeded or maintained. Further, no photographic evidence was provided to illustrate exactly what outside space existed at the property. As such, we are not prepared to allow nothing simply because there is no garden. Further, the lack of explanation for the invoice is not enough to simply discount it. There is no suggestion it is falsified, or somehow does not relate to this property; we are satisfied that the Landlord has incurred this cost. As such the Tribunal consider it likely that some work was done.

29. Having said that, without evidence from the Landlord it is difficult to know what that work was. When we asked about this, Mr Talbot-Ponsonby suggested the amount the Applicant should have to pay for any weeding would be £100 at the most. Given we accept some work was done, and the Applicant concedes that the car park could have been weeded, we are prepared to allow the sum of £100 for this invoice, but nothing more.

Service Charge and Admin Charge

30. Other than those two sums above, and the water and sewage and the insurance that the Applicant accepts are due, we accept the Applicant's case that none of the other charges set out in the relevant demand are payable.

31. The documents prepared by the Applicant's solicitors indicated that she had paid the entire sum demanded (under protest) and invited us to order the Respondent to refund the balance. We cannot, because in these proceedings we do not have jurisdiction to do so.

Section 20C, paragraph 5A, reimbursement of tribunal fees and costs

32. None of the parties could point to any administration charge which might under the terms of the lease be made in respect of the costs of these proceedings. Accordingly, we make no order under paragraph 5A of Schedule 11 to the 2002 Act.

33. We have decided that it would be just and equitable to make an order under section 20C of the 1985 Act. Much of the sums demanded have been reduced, either because they are not in fact payable as a matter of law, or because we have not considered them reasonable. It would be

unjust for the Applicant to have to pay the costs of the proceedings through her service charge in the future.

34. Mr Talbot-Ponsonby made two applications in relation to costs. He said the £300 tribunal fees (the application fee of £100 and the hearing fee of £200) paid by the Applicant should be reimbursed by the Respondent. He also argued that the conduct of the Respondent was such as to render it unreasonable, so that the Tribunal should order full legal costs against it. He contended that the Respondent had treated the tenant and the Tribunal in a manner that suggested it believed the Rules and the Law did not apply to it. There was nothing to suggest its behaviour would improve in the future, and a costs order would be justifiably punitive to hopefully change its behaviour.

35. Under Rule 13, we have a general discretion to order reimbursement of tribunal fees. We have no power to make any other order in respect of costs unless this is for wasted costs or a party has acted unreasonably in bringing, conducting or defending the proceedings.

36. In the circumstances, we have decided to order the Respondent to reimburse the tribunal fees paid by the Applicants. The Respondent should have done more to examine and seek to narrow or agree the issues, and should have at least expressed the fact they did not wish to take part in the proceedings. The Applicant has been successful in relation to the majority of her claim, and has been reasonable in admitting those amounts she accepts are due. Had the Respondent engaged, these proceedings may well have been avoided.

37. However, we are not satisfied that a simple lack of engagement is enough to warrant a wasted costs order or constitute unreasonable conduct. We consider that in the circumstances of this case there would need to be some positive act, more than mere lack of engagement, to conclude that the behaviour of the Respondent was unreasonable. Even if their conduct was unreasonable, we would not make a costs order in this case. As such we do not agree to make any other costs order other than in relation to the tribunal fees.

Name: Judge Aaron Walder **Date:** 4 April 2022

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 (extracts)

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 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.