FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LSC/2020/0299**
HMCTS code:	**:**	**V:VIDEOREMOTE**
Property	**:**	**Flat 2, 237 Rye Lane, London SE15 4TP**
Applicant	**:**	**Mr Nicholas Cooper**
Representative	**:**	**In person**
Respondent	**:**	**Metropolitan Housing Trust Limited**
Representative	**:**	**Mr Beresford, counsel**
Type of application	**:**	**Liability to pay service charges and/or administration charges**
Tribunal members	**:**	**Judge Tagliavini** **Mrs J Mann MCIEH**
Venue & date of hearing.	**:**	**10 Alfred Place, London WC1E 7LR (VIDEOREMOTE)** **12 March 2021**
Date of decision	**:**	**24 March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: VIDEOREMOTE.** A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that the tribunal was referred to are in an applicants' bundle pages 1 to 102 and the respondent's bundles numbered 1 to 239 and 1 to 21, the contents of which, the tribunal has noted. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

The tribunal finds in respect of the service charge years 2018/19; 2019/20 and 2020/21 the following:

(i) The tribunal finds that the applicant's premises form part of the Building which is defined in the lease as 237 and 247 Rye Lane, London SE15 4TP.

(ii) The tribunal finds that all heads of service charge disputed by the applicant in respect of the Building and the Estate are payable under the terms of the lease.

(iii) The tribunal finds that the standard and cost of the service charges is reasonable although the cost of the management fee is reduced to £150 per annum.

(iv) The tribunal finds that valid demands for payment of service charges have been made by the respondent to the applicant.

(v) The tribunal finds, as conceded by the respondent that the percentage of service charges apportioned to the applicant failed to make any apportionment to the two commercial ground floor units. Therefore, the actual service charges demanded for 2018/19 and 2019/2020 require a further adjustment to be determined by the respondent. The estimated service charges for 2020/2021 are reasonable and payable by the applicant although the final service charge account should reflect any new percentage payable by the applicant.

(vi) The tribunal makes an order under section 20C of the 1985 Act and schedule 11, para 5 of the 2002 Act limiting the respondent's costs in respect of the application to 80% of the total sum incurred.

(vii) No order is made for the reimbursement of the applicant's application and hearing fee.

The application

1. This is an application seeking a determination on the tribunal under sections 27A of the Landlord and Tenant Act 1985 as to the reasonableness and

payability of service charge. The applicant also seeks a determination of the tribunal under Schedule 11, para 5 of the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable.

Background

2. The subject premises are defined in Schedule 1 of the applicant's lease as Plot 2, at Flat 2, 237 Rye Lane, London SE15 4TP ('the Premises') and comprise a three bedroom flat on the first floor of a newly built block of flats above two commercial premises one of which is currently used as a gym. The Premises form part of a building comprising flats 1 to 4, 237 Rye Lane and are said to be structurally joined to 247 Rye Lane. The subject Premises from part of an Estate comprising both 237 and 241 Rye Lane in which parking space 2 is allocated to the applicant under the terms of the lease.

3. Under a lease dated 29th June 2018 made between the applicant lessee and the respondent landlord, the applicant is the tenant under a shared ownership scheme of the subject premises of which the respondent is the freehold owner. The applicant is the leasehold owner of a 25% share of the Premises and is liable to pay service charges for the accounting period commencing 1 April and ending 31 March of each year.

The issues

4. In the application, the applicant disputed the payability and reasonableness of service charges for the service charge years 2018/2019, 2019/2020 and 2020/2021. The applicant specifically challenged the charges for:

    - Internal Cleaning
    - External Cleaning
    - Door Entry Systems
    - Building Repairs and Maintenance
    - Statutory Testing and Servicing
    - Building Insurance
    - Reserve and/or Sinking Fund
    - Management Fee
    - Audit Fee

5. The applicant also asserted that the respondent had incorrectly charged for these heads of service charges as it had treated them as being part of the service charges for the next door building, a 25 unit building at 243 Rye Lane. The applicant asserted,

> *I live at 237. My contract is for flat 2, 237 Rye Lane and no part of my lease/contract with Met mentions or denotes any financial obligation or any liability for 243 Rye lane; a neighbouring building where I do not even reside.*

Preliminary matters

6. In the application the applicant raised a further issue and alleged that for a period of 20 months he had suffered from noise nuisance emanating from the gym below the property. Consequently, the applicant sought to raise a set-off for damages against any service charge liability in respect of this alleged nuisance. In the Directions of Judge Shaw dated 2 November 2020 the tribunal determined that this issue was outside the tribunal's usual expertise, which is in respect of service charge assessment, rather than fixing damages for a self-contained noise nuisance issue. Therefore, the tribunal declined jurisdiction for this part of the claim, which it determined was better pursued in the County Court. The tribunal also directed that the applicant could apply to the tribunal and seek a review of this jurisdictional determination by way of a separate oral case management hearing. However, no application for a review was made by the applicant and therefore, this issue was not considered by the tribunal at the final hearing.

7. At the commencement of the hearing, the respondent conceded that the percentage of services charged to the applicant had been calculated incorrectly as it had failed to apportion certain heads of service charge to the commercial units on the ground floor. Mr Beresford accepted that the respondent would need to recalculate the service charges apportioned to the applicant but that they were unlikely to vary significantly as only a small proportion of the heads of service charges were also attributable to the commercial units.

The applicant's case

8. In support of the application the applicant provided the tribunal with an index to the applicant's bundle numbered 1 to 102, although the documents referred to were not presented in a digital, indexed and paginated bundle as directed by the tribunal and were presented in a piecemeal fashion and omitted the respondent's documents. The applicant's documents included a position statement and a further statement dated 14 January 2021 together with a Schedule of the disputed service charges. Although the applicant did not differentiate between the service charge years in dispute, the Schedule indicated that the applicant disputed:

    (i) A liability to pay his percentage of the buildings insurance in any amount under the terms of the lease;

    (ii) The cost of external cleaning in any amount or alternatively only in so far as it relates to the building in which the Premises are situate and not in the adjoining building or in respect of the commercial premises on the ground floor;

    (iii) The management fee;

(iv) The cost of the internal cleaning or alternatively only in so far as it relates to the building in which the Premises are situate and not in the adjoining building or in respect of the commercial premises on the ground floor;

(v) The buildings repairs and maintenance as they include costs for buildings other than the applicant's own building.

(vi) Whether the above charges have been correctly demanded.

9. The applicant did not provide a signed witness statement with a statement of truth from either himself or any other witness statement from any other person in support of his application. In a Statement dated 14 January 2021 Mr Cooper asserted that the service charges had been increased year on year without notice to himself and had 'lumped' the service charges for 237 with those of 247 Rye Lane. Mr Cooper asserted that his windows had never been cleaned by the respondent and that the communal decking was dirty, slippery and dangerous. Mr Cooper also made various allegations in respect of the noise nuisance from the gym but which did not form part of the application to be decided by the tribunal in accordance with its earlier Directions of Judge Shaw dated 2 November 2020.

10. In his Position Statement (undated) Mr Cooper asserted that the respondent could not refer to any part of the lease that requires him to contribute to the service charges incurred by the landlord in respect of both 237 and 247.In oral evidence to the tribunal the applicant repeated the assertions made in his application and statements.

The respondent's case

11. The respondent relied upon two digital, indexed and paginated bundle of documents. In a Statement of Case dated 10 February 2021 the respondent asserted that the building known as 237 Rye Lane formed part of the Building referred to in the applicant's lease. The Building was defined as including both 237 and 247 and was held by the respondent under Title No TGL158342. Therefore, the applicant's service charges were calculated in accordance with the lease's definition of the Building and calculated to be payable at 4.10% using a weighted beds method of apportionment for all of the 27 flats in 237/247 Rye Lane. The respondent also asserted that the Estate referred to in the applicant's lease referred to premises at 237/247 Rye Lane.

12. The respondent also relied upon the signed witness statements of Mr Robert Kuszneurk, a senior leasehold and service charge officer dated 10 February 2021 and Ms Simone Ricketts, a programme delivery manager dated 10 February 2021 and to which a Statement of Truth was attached to each.

13. In the witness statements and in oral evidence from Mr Kuszneurk, the tribunal was informed that the management fee charged to Mr Cooper was £204 per annum and is the sum that is applied to all of the respondent's leasehold stock

in the Greater London area. Mr Kuszneurk also accepted that the percentage of the service charge the applicant was required to pay was incorrect as it did not take into account the two commercial units. Consequently, the respondent was currently recalculating the percentage payable by Mr Cooper.

14. In her oral and written evidence, Ms Ricketts told the tribunal that the main roof terrace and the applicant's car parking space are located in 247 Rye Lane. Cleaning services are provided weekly by its contractor Pinnacle and communal windows are cleaned every 6 months. Ms Rickets stated she had not received any complaints from Mr Cooper about the standard of the cleaning. It was accepted by Ms Ricketts that another lessee had alleged a theft had taken place by a member of the Pinnacle team and this had been dealt with by the respondent although Mr Cooper had not been directly affected and here had been no police involvement. Fire safety inspections were regularly carried out by Ms Ricketts and the complaints made by Mr Cooper in respect of the noise nuisance created by the gym had been investigated.

The tribunal's decision and reasons

15. The tribunal finds that the subject premises form part of the Building known as 237/241 which Premises are defined in the applicant's lease under Schedule 9 as;

> *The building of which the Premises from part and each and every part of the Building and the car park service or loading area service road and any other areas the use and enjoyment of which is appurtenant to the Building whether or not within the structure of the Building.*

16. Clause 3.3 of the lease requires Mr Cooper 'To pay Outgoings and to pay the Service Charge' for all of the services provided under the terms (clause 7.4) of the lease to the Building and to the Estate of which his flat forms part.

Buildings insurance

17. Although Mr Cooper disputed the payability of the buildings insurance he did not seek to dispute or assert that the amount paid was unreasonable. The tribunal finds that the lease provides for the placing of the Building insurance concerning the premises 237-242 Fry Lane (lease clause 5.2) and that Mr Cooper is liable to contribute to these charges (lease clause 3.3.3).

External and internal cleaning

18. The tribunal finds these services have been provided by the respondent and accepts that the sums claimed in respect of them to be reasonable. The tribunal did not accept the applicant's assertions made without any supporting evidence

that the common external decking and windows had not been cleaned or maintained and preferred the evidence provided in the respondent's witness statement, oral evidence and supporting documents, which Mr Copper did not seek to challenge by way of cross examination at the hearing. Although Mr cooper employed his own window cleaner, the tribunal finds that this does not exempt him from making a contribution to the service charges for the same service provided by the landlord.

The buildings repairs and maintenance

19. The tribunal again prefers the respondent's evidence to that of the applicant on this matter and finds that Mr Cooper is required to contribute to the cost of these services provided by the landlord in respect of the Building of which the applicant's premises from part. Further, the tribunal finds the costs of these services to be reasonable.

Were demands correctly made?

20. The tribunal finds that the demands were made in the correct form and sent to the correct address notwithstanding that the percentage of the service charge due from Mr Cooper requires adjustment to reflect the services provided to and the contribution required from the commercial units.

The management fee

21. The tribunal finds the management fee to be in the middle of the range of what is usually considered to be reasonable for the services provided by the respondent. The tribunal finds that clause 7.4(c) of the lease makes express provision for the use of a managing agent by the landlord and that these costs are recoverable in the service charges and are payable by the applicant.

22. However, the tribunal finds that a reduction to these fess are required in order to reflect the applicant's failure to correctly calculate the apportionment due from Mr Cooper prior to having made its concession at the start of the final hearing. Therefore, the tribunal finds that a management fee in the sum of £150 per annum is reasonable and payable by the applicant in respect of the management fee until such time as notification of the correct service charge percentage is notified to Mr Cooper.

Audit fee

23. The tribunal finds that clause 3.11 of the lease makes provision for the payment of such sums and that they are recoverable from the applicant under the terms of the lease.

24. Although many of the assertions made by the applicant as to why he disputes particular heads of service charge were vague and unsupported by documentary

evidence or witness statements, for the avoidance of doubt the tribunal finds that the following heads of service charge are included within the terms of the lease and are payable by the applicant.

- Internal Cleaning
- External Cleaning
- Door Entry Systems
- Building Repairs and Maintenance
- Statutory Testing and Servicing
- Building Insurance
- Reserve and/or Sinking Fund
- Management Fee
- Audit Fee

Section 20C and schedule 11

25. The tribunal finds that clause 3.11 the lease makes provision for the legal costs and administration charges and recovery of these from the applicant. However, in light of the concession made by the respondent as to the correct percentage to be charged to Mr Cooper, the tribunal finds that any legal costs and administration fees incurred by the respondent in this application are to be limited to 80% of the total amount otherwise payable.

26. The tribunal makes no order for the reimbursement of the applicant's application and hearing fees.

Name: Judge Tagliavini **Date: 24 March 2021**

Rights of appeal from the decision of the tribunal

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).