



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

Case reference : **LON/00BJ/LSC/2021/0011**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Flat C, 741 Garratt Lane Earlsfield
London SW17 0PD**

Applicant : **Kimberley Natasha Cullum**

Representative : **N/A**

Respondent : **Garlanmanco Ltd**

Representative : **N/A**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge H Carr**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **14th May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that I was referred to are (i) in a bundle of 223 pages, the contents of which I have noted and (ii) a brief statement from the respondent which I have also noted. The order made is described below.

Decisions of the tribunal

- (1) The tribunal determines that £00.00 (nil) is payable by the applicant in respect of the service charges demanded in 2020.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (4) The tribunal determines that the respondent shall pay the applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the applicant

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the applicant in respect of the service charge years 2015 – 2020.

The background

2. The property which is the subject of this application is a first-floor, one-bedroom flat located at 741-743 Garratt Lane ("the Building"). The Building comprises a ground floor commercial shop and four residential flats which are all let on long leases.
3. The Applicant holds 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. Ms Cullum acquired the leasehold interest of the Flat in 2013. Flats A, B and D are sublet on short-term lets. Ms Cullum is currently the only long leaseholder resident in the Building.

4. The respondent, Garlanmanco, is a company owned and controlled by the long leaseholders of the four flats in the Building and the leaseholder of the commercial property, Honeylight Computers. All of the leaseholders, including the applicant, and the commercial leaseholder are shareholders and directors of Garlanmanco. Garlanmanco acquired the freehold title of the Building in June 2006.
5. The directors other than the applicant are : Honeylight Computers, the commercial lessee, Mr Roman Mouny who owns the long leasehold of Flat A, Mr Martin Walford who owns the long leasehold of Flat B and Mr Bruce Settle who owns the long leasehold of Flat D. Mr Peter Settle also appears to be a director of the company. It appears from the correspondence in relation to this matter that Mr Walford takes prime responsibility for the management of the property.
6. The respondent company does not employ managing agents but carries out the management of the property itself.
7. The respondent company appears to be dormant.
8. There have been previous tribunal decisions relating to this property. Those decisions are
 - (i) LON/ooBJ/LSC/2016/0211
 - (ii) LON/00BJ/LSC/2016/0127
 - (iii) LON/OOBJ/LSCI2017/0200
 - (iv) LON/ooBJ/I.SC/2017/0200 Further Decision (costs):
9. In summary the previous decisions determined which sums demanded by the respondent were payable and reasonable, but also required that service charge demands were properly served before the sums found to be payable and reasonable were due.
10. For the purposes of this application the substantive decision LON/ooBJ/I.SC/2017/0200 is the most useful and it is appended to this decision for ease of reference.
11. As the previous decisions indicate, there is a history of dispute between the parties in connection with service charge costs. The decisions indicate that the directors of the company other than the applicant, and prior to the applicant becoming a director, had operated an informal method of managing the building. This does not appear to have been

communicated to the applicant prior to her purchase of the property nor do the directors appear to have understood that there was no obligation upon her to abide by the informal arrangement.

12. The current application arises in the context of the applicant attempting to sell the property during 2020. Mr Walford, apparently acting on behalf of the respondent, refused to allow the sale to progress and demanded payment of sums he said were due to him from the applicant. The applicant's original conveyancer received an email from Mr Walford dated 18th June 2020 which said that the applicant owed him service charges and other costs totalling £12,098.09. The tribunal has treated that email as a demand for service charges for the year 2019 – 2020 although it relates to previous expenditure as well as current expenditure and to items which have previously been determined by the tribunal.
13. The email stated as follows: "Further to my email of 15th June I set out below a schedule of the costs incurred by myself and my fellow shareholders as a consequence of your client's failure to pay her share of the expenses in respect of the above property:- Legal fees (including Counsel's fees). £5107 Tribunal fees (see note below). £1022.50 Accountant's fees. £540 Debt collectors. £2880 Repairs roof. £1977.60 Other repairs. £387.65 Common parts electricity. £183.34 TOTAL. £12098.09
14. The email continues: 'Your client took us to four Tribunals. At the end of the first one the chairman told your client that " as an act of reconciliation" she should pay the roof repairs. She chose not to pay. After the first tribunal we had to engage a solicitor and be represented at the subsequent hearings by Counsel (cost £2884).We have not paid the last tribunal's fees (£165.66) as our solicitor advised that Tribunal rulings are not enforceable. If our solicitor had told us this earlier we would not have paid any of them. I instructed our solicitors to issue proceedings in April 2018.By September 2019 in spite much chasing by myself nothing had happened. I dispensed with their services. They are seeking a further payment of £960 which I have not paid..." - Martin Walford.
15. This email was then forwarded to the applicant's second conveyancer, Ms Syeda Yeasmin on 27th October 2020. The applicant says because she wished to ensure the sale of the property proceeded, that she offered to settle on the basis of proper service charge demands and clear invoices substantiating payment, but this is disputed by the respondent. The applicant lost her sale.
16. There was a Case Management Hearing of this application on 9th February 2021 which was attended only by the applicant. Following that hearing directions were issued on 11th February 2021 setting out a timetable for preparation for the determination.

17. Following correspondence between the parties the original directions were amended on 23rd March 2021. The amended directions ordered that an email from the respondent dated 25 February 2021 was to stand as its Statement of Case and debarred the respondent from making any further response to the application. This statement is copied at paragraphs of this decision

The issues

18. At the Case Management Hearing the tribunal identified the relevant issues for determination as follows:
- (i) The reasonableness and payability of service charges totalling £12,098. in particular:
 - (a) whether those costs are payable by reason of section 20B of the 1985 Act
 - (b) The reasonableness and payability of the legal costs which are demanded and whether the amount demanded is in accordance with previous tribunal decisions.
 - (c) The reasonableness and payability of the Debt Collection fee
 - (d) Whether the sums demanded are in accordance with the previous determinations of the tribunal
 - (e) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made
 - (f) whether an order for reimbursement of application/ hearing fees should be made

The decision

19. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on each of the items set out in the email as follows:

The payability of the legal fees of £5107

20. The applicant argues that the legal fees are not payable for the following reasons:
- (i) The legal fees have already been the subject of tribunal determinations in 2017/2018 when the amount was capped.
 - (ii) No valid service charge demand / certified accounts have been produced.
 - (iii) The invoice for the legal costs is not on headed note paper. The applicant has made efforts to contact NC Law for verification of the amounts but has received no answer.
 - (iv) The applicant argues that more than 18 months have passed since the costs were first incurred and no valid service charge demand, nor alternative notice order, has materialised and considerably more than 18 months have passed, both since the costs were first incurred and since the last tribunal decision.
21. The respondent's statement in response is very limited. It does not make specific reference to the issues set out in the directions. The statement is reproduced below and will also be referred to when determining reasonableness and payability of other items in dispute.
- (i) Martin Walford fell ill last weekend and cannot handle this matter on behalf of Garlanmanco. He has all receipts and most of them have already been by the preceding four Tribunals.
 - (ii) The five shareholders of Garlanmanco bought the freehold of the property in 2006 and decided to manage the building themselves saving the cost of managing agents and preparation of service charge accounts.
 - (iii) The respondent bought her flat in June 2013 which meant that she became 20% shareholder in the freehold of the property. She appeared to acknowledge status of the building in a telephone call

to the Leasehold Advisory Service in July 2015 when she said that the building was “ self managed “.

- (iv) In spite of the building being self managed the respondent is still demanding a Section 20 Notice and service charge accounts. Who does she think will do this?
- (v) This dispute is between freeholders and should not involve the Tribunal at all.
- (vi) The respondent has not paid her share of any costs (apart the annual insurance premium) since she bought the flat in June 2013.
- (vii) As a consequence of the respondent’s actions over the last nearly five years the remaining shareholders of Garlanmanco have incurred substantial extra costs as set out in the latest submission to the Tribunal by the respondent.
- (viii) When major repairs are required the remaining shareholders of Garlanmanco have always tried to involve the respondent. The main roof of the building requires repair. A quote has been obtained of £1596 which is acceptable to the other shareholders. The respondent has been asked to request another quote which at the present time has not been forthcoming.
- (ix) The respondent claims to have made an offer to settle this dispute. The remaining shareholders of the company are not aware of any offer being made.

The tribunal’s decision

The tribunal determines that the amount payable in respect of legal fees is £00.00 (nil).

Reasons for the tribunal’s decision

- 22. The tribunal is not clear what the respondent is claiming for when it refers to legal fees. The respondent has provided no explanation. The confusion of the tribunal is exacerbated by the fact that the respondent also claims for tribunal fees.
- 23. If the legal costs are costs associated with the various tribunal claims, then the tribunal notes that no costs were found to be payable by the

applicant in connection with those claims as the tribunal made s20C orders. The sum demanded is therefore not payable.

24. If these costs relate to other matters, then the costs would have to be reasonable and payable under the lease and valid service charge demands are required to be served.
25. The tribunal accepts the evidence of the applicant that a valid service charge demand has not been served. The email that Mr Walford sent to the conveyancers is not a valid service charge demand, and the respondent has provided no evidence that it has served a service charge demand. Indeed the statement provided to the tribunal by the respondent indicates that it has no intention of issuing service charge demands. Therefore the tribunal determines that the legal fees are not payable.
26. Nor is there evidence to suggest that the amount has been reasonably incurred. The tribunal notes the applicant's evidence that she has not been able to secure details about the legal costs and that the invoice provided was not on headed notepaper. There is no explanation for the amount charged to the applicant and whether there has been any apportionment of the charges.
27. Further the tribunal agrees with the applicant that any claim for legal fees is now out of time. It is more than 18 months since the last tribunal determination and no valid service charge has been served in that time. Therefore the amount is not payable.

The reasonableness and payability of the tribunal fees of £1,022.50

28. The applicant argues that this sum is not payable for the same reasons that the legal fees are not payable, ie the sums were found to be not payable until a valid service charge demand has been served, no such demand has been served and the respondent is now precluded from serving a valid service charge demands by the operation of s.20 B of the Act.
29. In addition the applicant argues it is unclear how the respondent reached a total of £1,022.50. this total she says does not match the figure on the 'invoice' produced for NC Law either (sent via email 3rd July 2020).
30. The respondent produced no invoices in response to the directions the applicant is unable to make sense of the figures and does not find them credible. Further the applicant draws the attention of the tribunal to his email in which he indicates that he has not paid a sum of £960 to NC Law. She therefore argues that there is insufficient evidence that the sum has been incurred.

31. The respondent has provided no explanation other than the statement copied at paragraph 22 of this decision.

The decision of the tribunal

32. The tribunal determines that the amount payable in respect of tribunal fees is £0.00 (nil).

Reasons for the tribunal's decision

33. The tribunal assumes that this charge relates to the costs incurred by the respondent in connection with tribunal proceedings. The tribunal has three reasons for determining that these monies are not payable.
34. First the tribunal notes that the respondent has not provided any invoices or evidence that these costs have been incurred. The respondent has provided no coherent explanation of the charges. The tribunal agrees with the applicant that it is very unclear how the respondent has calculated these sums. It would therefore be unreasonable to order that these sums are payable.
35. Second, on the basis that these are costs associated with tribunal proceedings, it is more than 18 months since the last tribunal case and the tribunal has no evidence before it that a service charge demand has been served in connection with these monies. Therefore the sums are not payable due to the provisions of s.20B of the Landlord and Tenant Act 1985.
36. Thirdly, the tribunal notes that the 2017 decision made a 20C costs order. This order was not appealed by the respondent. That order makes it clear that no

The reasonableness and payability of the accountant fees totalling £540

37. The applicant repeats her arguments that the amount demanded is not payable because there is no valid service charge demand or certified accounts produced and that it is out of time under Section 20B.
38. In addition she argues that the sum demanded is not reasonable as the respondent is claiming 100% of the accountancy fees from the applicant, which is greater than her share under the lease given there are 5 leaseholders. The applicant also notes that if this sum relates to materials submitted in prior tribunals the respondent was found to have costs in the wrong years, and the costs were not produced with certified accounts, making it not valid.

39. The respondent provides no argument other than the statement reproduced in paras above.

The tribunal's decision

40. The tribunal determines that the amount payable in respect of accountant fees is £0.00 (nil).

Reasons for the tribunal's decision

41. The tribunal does not know what this claim relates to. If it relates to sums previously determined by the tribunal to be payable following the service of a valid service charge demand, then because of the operation of s.20B of the Landlord and Tenant Act 1985, those demands can no longer be served.
42. If the sum claimed relates to any other expenditure on accounts then the respondent has failed to provide evidence that it was reasonably incurred, that it has been demanded in accordance with the lease and the statutory requirements and that the sums claimed have been properly apportioned as required by the terms of the lease. As the respondent has failed to provide this information to the tribunal the tribunal determines that the monies are not payable.

The reasonableness and payability of the Debt Collection fee of £2,880

43. The applicant has provided correspondence which indicates that Mr Martin Walford instructed a debt collection agency in 2020 to collect a debt of £9,506.06. Mr Walford is now claiming £2,880 of costs for the debt collection.
44. The applicant argues that no breakdown was provided for this alleged '£9,506.06 debt' and that three tribunals have explained to the respondent how to collect any sums it considers to be due, i.e. via a valid service charge demand and certified accounts. The applicant states that a debt collection service was not the correct means of pursuing any monies the respondent considered to be due.
45. She also argues that if the debt collection charge was payable and reasonable she should only have to pay a proportion of the charge whereas it appears that the respondent is passing on 100% of the costs.
46. The respondent makes no specific reference to debt collection costs in its statement copied at paragraph 22 of this decision.

The tribunal's decision

47. The tribunal determines that the amount payable in respect of debt collection services is £00.00 (nil).

Reasons for the tribunal's decision

48. The tribunal determines that the amount is not payable because it agrees with the argument of the applicant that the respondent has not complied with the requirements of the lease and has not complied with its obligations in connection with service charge demands. The tribunal has not been provided with a service charge demand for this sum, nor any explanation as to apportionment etc.
49. The tribunal notes that there is nothing provided by the respondent to indicate that it incurred the costs, rather than Mr Walford personally. Nor has the respondent indicated that it has the power to charge for debt collection under the lease.
50. The tribunal also determines that the sum demanded is not reasonable. The tribunal agrees with the applicant that instructing a debt collection agency in these particular circumstances was not reasonable. The respondent had a simple means through which to collect any charges that it considered to be due following the determinations of the tribunal, the costs of which would have been nil. That means was by service of a valid service charge demand. Instructing a debt collection agency was an unreasonable course of action and therefore no costs can be demanded in connection with debt collection.

The reasonableness and payability of the roof repairs totalling £1,977.60

51. The applicant repeats her argument that these costs are out of time because of s.20B of the Landlord and Tenant Act 1985. The applicant points out that the parties have been to the tribunal for this sum previously and Garlanmanco were told by the judge, that to collect this sum, they needed to produce a valid Service Charge Demand and Certified Accounts.
52. The respondent provides no argument other than the statement reproduced in paragraph 22 above.

The tribunal's decision

53. The tribunal determines that the amount payable in respect of roof repairs is £00.00 (nil).

Reasons for the tribunal's decision

54. The tribunal notes the determination of the tribunal which found that roof repair costs incurred in about May 2016 in the sum of £1,977.60 were payable and reasonable as long as a valid service charge demand is served.
55. It is now more than 18 months since the determination. The tribunal accepts the evidence of the applicant that no valid service charge has been served. Therefore the monies are no longer payable.

The reasonableness and payability of other repairs totalling £367.65

56. The applicant points out that there are no details relating to this demand. She suggests it might be referring to a demand of £136.25 for fence repairs in June 2014 (which was ruled out of time in the 2017 tribunal decision) ii) £75.40 for rats works in Aug 2015 which the tribunal determined had not been the subject of a valid service charge demand iii) £24 for minor roof repair in 2016 – which was conceded as not payable by the respondent as recorded in the 2017 tribunal decision, and iv) £5 for company house filing fees which was determined to be not payable by the applicant in the decision of 2017.
57. This leaves a shortfall of £147 for which the respondent has failed to provide invoices, service charge demands, nor a certified account.
58. She points out that it is now 2021 and still no valid service charge demand and certified accounts have materialised in connection with those charges which were found to be payable on condition that a valid service charge demand was served.
59. The respondent's statement does not provide any explanation for these sums.

The tribunal's decision

60. The tribunal determines that the amount payable in respect of other repairs is £00.00 (nil).

Reasons for the tribunal's decision

61. It is not the role of the tribunal to work out what expenditure monies demanded relate to. The respondent has failed to provide any explanation and there are no invoices nor service charge demands relating to these sums.

62. The tribunal assumes from the statement of the respondent that these are sums relating to previous tribunal decisions. If that is so then a valid service charge demand should have been served in order for these monies to be payable. It is now more than 18 months since the last tribunal decision and no service charge demand has been served. The operation of s.20B of the Landlord and Tenant Act 1985 means that these sums are no longer payable. In addition it would not be reasonable to expect that the applicant pay these sums after such an elapse of time.
63. If these sums relate to costs incurred subsequent to the last tribunal decision, then they are not payable because they are not accompanied by any service charge demand, they have not been demanded in compliance with the terms of the lease and there is no evidence that the respondent has incurred these costs. Therefore the sums demanded are unreasonable and unpayable. In the light of the absence of any evidence about the alleged repairs the tribunal can only determine that no monies are payable in connection with them.

The reasonableness and payability of sums demanded for electricity totalling £183.34

64. The applicant states that there was a decision on this item made by the 2017 tribunal which reduced to the amount to 25% share of the electricity bill dated 15 February 2017. The applicant's share of that bill was £91.34. This is less than the £183.34 sum which is now demanded by the respondent. In addition the tribunal determined that the moneys was only payable if a valid service charge demand and certified account was produced. The applicant says that this has not materialised and more than 18 months have passed since that date. The applicant therefore argues that the sum is not payable because of s.20B of the Act.
65. The respondent provides no explanation for the demand.

The tribunal's decision

66. The tribunal determines that the amount payable in respect of electricity is £00.00 (nil).

Reasons for the tribunal's decision

67. The tribunal assumes that the respondent is referring to a previous bill for common parts electricity. It shares the confusion of the applicant as to how the respondent has reached its figure. No invoices have been provided to substantiate it.
68. In its decision of 2017 the tribunal determined that the common parts electricity in the sum of £91.34 referred to in a bill dated 15 February

2017 was payable and reasonable if a valid service charge demand was served.

69. If a valid service charge demand had been served subsequent to the tribunal then that amount would be due to the respondent. However the tribunal accepts the evidence of the applicant that no such demand has been served. It is now more than 18 months since the date of the bill. Section 20B of the Landlord and Tenant Act prevents demands being served more than 18 months after the costs have been incurred. Moreover it would be unreasonable for the monies to remain payable after such a long period of time. Therefore the tribunal determines that no monies are payable for common parts electricity.

Application under s.20C and refund of fees

70. In her statement the applicant made an application for a refund of the fees that she had paid in respect of the application¹. Taking into account the determinations above, the tribunal orders the respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
71. In the application form the applicant applied for an order under section 20C of the 1985 Act. In the view of the tribunal the respondent has not incurred any costs in relation to this application. Nonetheless, for the avoidance of doubt, and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Final comment

72. This decision extinguishes all potential liability that the applicant as a leaseholder of the property owes to the respondent company for service charges and associated administrative costs to the end of the service charge year 2020.
73. These matters have taken up a considerable amount of tribunal time. At every stage of the dispute the tribunal has endeavoured to take account of the nature of the respondent company and has provided advice on how to proceed to ensure that the costs it incurs are reimbursed by its leaseholders.
74. For some reason that the tribunal cannot understand, the respondent has not taken account of the decisions issued by the tribunal. It refuses to accept that it has obligations to the applicant under the Landlord and Tenant Act 1985, in particular obligations to serve valid service charge

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

demands and comply with the terms of the lease. It continues to repeat that this is a dispute between freeholders and that the tribunal has no jurisdiction. If it had followed the advice of the tribunal it would have been able to recover reasonable sums for services provided and it would not have incurred costs that are not recoverable.

75. In its statement the respondent asks who does the applicant think is going to issue service charge demands and s.20 notices. The answer to that question is clear in the law; it is the respondent. The respondent can do this in a number of ways. It could take on those responsibilities itself or it could instruct a managing agent to do this. If it did the latter it could charge the costs of management to the leaseholders.
76. The tribunal strongly suggests that the respondent seek the advice of a solicitor who has expertise in leasehold law and ensure that the property is managed in accordance with the law in the future.

Name: Judge H Carr

Date: 14th May 2021

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).