FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00AK/LIS/2021/0019**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Princess Lodge, 39-435 Princess Street, Luton LU1 5AT**
Applicant	**:**	**Various leaseholders**
Representative	**:**	**Ms C Edmonds of Counsel**
Respondent	**:**	**Money Maker Limited**
Representative	**:**	**Mr I Sadeeq (Director)**
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 S Brilliant** **Mr N Miller BSc**
Venue	**:**	**Cambridge County Court,** **197 East Road,** **Cambridge CB1 1BA**
Date of decision	**:**	**04 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. 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 that we were referred to are

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in a bundle of 1,004 pages prepared by the Applicants, the contents of which we have noted. The reason that the bundle was so inordinately large was that pages 280 to 971 consisted of no less than 18 separate leases, identical in all relevant respects, only sample lease should have been provided.

Decisions of the tribunal

(1) The Tribunal makes the determination that none of the service charges the subject matter of these proceedings are recoverable.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") for the avoidance of doubt so that none of the Respondent's costs of the Tribunal proceedings may be passed to the Applicants through any service charge.

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

(4) The Tribunal determines that the Respondent shall pay the Applicants' costs in the sum of £7,612.00 within 28 days of this Decision, pursuant to rule 13 Tribunal Procedure (First–Tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

The application

1. The Applicants seeks a determination pursuant to s.27A of 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 Applicants in respect of the seven service charge years ending 28 February 2013 to 28 February 2019.

2. From 25 March 2019 the responsibility for fulfilling the service charge obligations of the Respondent has passed to an RTM Company, Pincess[1] Lodge RTM Company Ltd.

Procedural matters

3. At the request of the Applicants we substituted the name of Flat 8 in place of the name of Flat 9, pursuant to rule 10(1) of the 2013 Rules.

4. Directions were given on 22 September 2021. In particular, by 19 November 2021 the Respondent was directed to complete the column for its responses to the issues raised by the Applicants in their clear and comprehensive

[1] An obvious misspelling when the company was incorporated.

25 page Scott Schedule. The Respondent has failed to do so within time or at all.

5. Further, the Respondent was also directed to serve any witness statements upon which it wished to rely by the same date. The Respondent has failed to do so within time or at all.

6. In 2019 there were almost identical proceedings in the Tribunal between the owners of Flat 10 and 17 and the Respondent ("the 2019 Proceedings"). The decision, which is dated 18 April 2019, has the reference number of CAM/00KA/LIS/2018/0017 ("the 2019 Decision"). Reference should be made to the 2019 Decision when reading this Decision.

7. The Respondent, through its director, Mr I Sadeeq, has failed to engage in these proceedings just as it did in the 2019 Proceedings.

8. Despite having the power to do so because of these failures, Ms Edmonds urged us not to debar the Respondent from taking further part in the proceedings, and we did not do so.[2]

The hearing

9. The Applicants were represented by Ms Edmonds at the hearing and the Respondent was represented, as we have said, by Mr Sadeeq. However, Mr Sadeeq did not really participate at the hearing and did not cross-examine any of the witnesses referred to in the next paragraph.

10. The Applicants called the following witnesses:

- Mr Schuman, a director of Goodshoeman Ltd, the owner of Flat 1.
- Mr Varga, the owner of Flat 22.
- Ms Thomas, the owner of Flat 24.
- Ms Ball, a solicitor at Machins LLP, instructed on behalf of the Applicants.

The background

11. The flats which are the subject of this application are contained within a three story block of 24 flats ("the Block") within a larger development ("the Estate"). The development was completed in 2006.

12 . Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in

[2] See rule 9(3)(a) and (7)(a) of the 2013 Rules, and the line of cases commencing with *Mitchell v News Group Newspapers* [2013] EWCA Civ 1537, [2014] 2 All ER 430, [2014] 1 WLR 795 as applied to Tribunals following the Supreme Court decision in *BPP Holdings Ltd v Revenue and Customs Comrs* [2017] UKSC 55, [2017] 4 All ER 756.

dispute.

13. The Applicants hold long leases of their respective flats each of which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

14. We now set out the various issues in these proceedings.

15. The Scott Schedule identifies the following items in dispute in each of the relevant service charge years:

- Electricity.
- Building Insurance.
- Cleaning.
- Repairs and Maintenance.
- Accountants' fees.
- Management charges.
- Administration charges.
- Water.

16. The following other issues arise for determination:

(1) Has the Respondent in any given year given notice of the estimated service charges at the start of the year?

(2) Has the Respondent in any given year provided a properly certified summary of expenses at the end of the year? R&R Accountancy Services accounts disclosed do not contain a certificate.

(3) Has the Respondent in respect of any given year provided any evidence of any relevant expenditure actually incurred?

(4) Has any demand served by the Respondent contained the information required by s.21B of the 1985 Act (a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges)?

(5) Has any demand be made out of time (s.20B of the 1985 Act)? The Applicants' case is that is that no service charges before January 2019 are recoverable under this provision.

(6) Did the Respondent fail to comply with the consultation requirements set out in s.20 of the 1985 Act? The Applicants say that this did not

happen in respect of a roof replacement in 2018 which cost £15,000. If correct, recovery is limited to £250 per flat.

The Lease

17. Under clause 1 of the lease the Tenant covenants to pay "additional and further rent payable under the provisions of paragraph 2 of the Fourth Schedule. Under clause 4.2 of the Lease the Landlord may in its reasonable discretion create a reserve fund of such amount as is reasonable in order to provide for the renewal of equipment and materials required for the provision of the services and amenities herein provided and for carrying out works other than those of an annual recurring nature… ."

18. Under paragraph 2 of the Fourth Schedule the Tenant covenants:

"To pay the Landlord by way of additional rent by one instalment in advance on the 29th day of September in each year …such estimated sum as shall be reasonably required (our emphasis) by the Landlord or its Agents and notified to the Tenants (our emphasis) …. of the reasonable and proper and necessary expense to the Landlord of performing the obligations and covenants …contained in the Seventh Schedule …and as soon as possible following the end of each such financial year the Landlord shall provide the Tenant with a summary of such expenses certified by the Landlords Accountants Surveyors or Managing Agents (our emphasis) and….any necessary or subsequent adjustment certified as due from or to the Tenant … shall be paid by the Tenant or credited to the Tenant on the date for payment following the issue of such certificate."

19. Under the Fifth Schedule the Landlord covenants to inspect, repair and redecorate the exterior of the Block and the Estate and to keep them clean and reasonably lighted. The Landlord also covenants to insure the Estate including the Block and to provide the services referred to in the Seventh Schedule.

20. Under the Seventh Schedule the Landlord Covenants to provide and the Tenant agrees to pay a contribution for, amongst other things, staff for the general management, security or maintenance of the Estate, communal radiotelevision and other aerials, the appointment of a solicitor accountant surveyor etc for the collection of rents or in connection with the Landlord's obligations, the repairing, maintaining, rebuilding and cleansing of all roads, paths, pavements, sewers, drains etc.

21. The Ninth Schedule contains provisions for the assessment and payment of the Service Charge including:

"1. The Service Charge shall be the amount determined as hereinafter provided and payable at the times and in the manner hereinafter mentioned."

2. As soon as is reasonably possible after the end of the accounting

year and thereafter at yearly intervals the Landlord will estimate the amount required from the Lessee to cover his liability for Service Charge for the following year and will serve written notice thereof on [the] Lessee (our emphasis)..."

3. Such estimate shall be based wherever possible on the actual costs and expenses of providing the said Services for the previous period..."

4. The Landlord shall as far as it considers practicable equalise the amount from year to year of its costs and expenses by creating reserve funds..."

22. Paragraph 23 of the Fourth Schedule states as follows:

"To pay to the Landlord all proper and reasonable costs charges and expenses (including Solicitors and Surveyors' costs) properly incurred by the Landlord in or in proper contemplation of any proceedings under Section 146 and 147 of the Law of property Act 1925 notwithstanding forfeiture is avoided or otherwise than by relief granted by the Court or in connection with the preparation and service of schedules or dilapidations (whether during the term or following the expiry thereof) and the supervision of the works specified therein."

Electricity

23. The service charge accounts for each flat (being 1/27 of the total) are to be found at pages 156-158 in the bundle. Strangely, the only charge for electricity in the relevant years is for the year 2012/2013. The amount claimed is £74.07, but there is no supporting evidence and we disallow the sum.

Building Insurance

24. The service charge accounts contain charges for insurance in respect of each of the seven relevant years. There is no documentary evidence apart from a renewal schedule for the year 2018/2019 in the sum of £3,691.95. The Applicants say that this does not amount to a policy. However, the Respondent has produced his bank statements for the period 28 March 2018 to 28 February 2019. They contain payments to AXA Insurance and we are satisfied that there was a policy taken out in 2018/2019 and that, subject to other issues, each tenant is liable to pay £136.74 for insurance in that year, but that year alone.

Cleaning

25. The service charge accounts contain charges for cleaning in respect of each of the seven relevant years. There is no documentary evidence. However, the bank statements for the period 28 March 2018 to 28 February 2019 show payments to individuals identified by the Respondent as cleaners. Accordingly, subject to other issues, each tenant is liable to pay £231.11 for cleaning in that year. There is no evidence, however, of window cleaning.

Repairs and Maintenance

26. The service charge accounts contain charges for repairs and maintenance in respect of each of the seven relevant years. There is no documentary evidence. However, the bank statements for the period 28 March 2018 to 28 February 2019 show payments to individuals identified by the Respondent as roofers, window repairers, locksmiths and painters. These trades relate to only a small portion of the services listed by the Respondent as included within the charges for repairs and maintenance in that year. Accordingly, subject to other issues, doing the best we can each tenant is liable to pay £75.00 for repairs in that year.

Accountants' fees

27. There is no evidence of accountants' fees having been paid. We disallow this item.

Management charges

28. The service charge accounts contain charges for administration in respect of each of the seven relevant years. The Respondent is entitled to charge a management fee in the event that no managing agents have been appointed by it. The sum recoverable is a proportionate part of the total of the other sums recovered. In the light of our eventual finding, no management charges are recoverable.

Administration charges

29. We understand these charges to arise from the collection of ground rent. Since we have no jurisdiction in respect of ground rents, we do not propose to deal with these charges.

Water

30. There is no evidence of water charges having been paid. We disallow this item.

31. We now turn to the generic issues.

Has the Respondent in any year given notice of the estimated service charges at the start of the year?

32. As we understand it, it is common ground that the Respondent has never given notice of the estimated service charges at the start of each year. We were told by Ms Edmonds that in his demands for payment dated 19 November 2019 the Respondent had factored in a sum of £750 for the estimated service charge. But this does not alter the fact that notice was ever given at the right time. We do not regard the provision relating to notices of the estimated amounts to be

mere machinery which can be disregarded. In our judgment, the requirement to give notice of the estimated service charges is a condition precedent for their recovery. No such notices having been given, the service charges demanded are not recoverable.

Has the Respondent in any year provided a properly certified summary of expenses at the end of the year? R&R Accountancy Services accounts disclosed do not contain a certificate.

33. Although the Respondent produced service charge accounts prepared by R&R Accountancy Services for the years 2016/2017, 2017/2018 and 2018/2019, none of these documents contained the requisites certificate. Again, we regard the service of a certificate to be a condition precedent for the recovery of service charges. No such certificates having ever been given, the service charges demands are not recoverable.

Has the Respondent in respect of any year provided any evidence of any relevant expenditure actually incurred?

34. We have dealt with this above.

Has any demand served by the Respondent contained the information required by s.21B of the 1985 Act (a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges)?

25. Although we were provided by the Respondent with a two-page summary containing the relevant information, we are not satisfied on the evidence that any such summary was provided with any service charge demand.

Has any demand be made out of time (s.20B of the 1985 Act)? The Applicants' case is that is that no service charges before January 2019 are recoverable under this provision.

26. We accept the submission of the Applicant. The only demands of service charges disclosed by the Respondent are dated 19 November 2019.

Did the Respondent fail to comply with the consultation requirements set out in s.20 of the 1985 Act? The Applicants say that this did not happen in respect of a roof replacement in 2018 which cost £15,000. If correct, recovery is limited to £250 per flat.

27. On the evidence before us we find that there are was such a failure.

The Tribunal's decision

28. For the reasons given above we find that none of the service charges the subject matter of these proceedings are recoverable by the Respondent.

29. For the avoidance of doubt, the Tribunal makes an order under section 20C of the 1985 Act that none of the Respondent's costs of the Tribunal proceedings may be passed to the Applicants through any service charge.

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

31. The Applicants make an application that they should be awarded their costs pursuant to rule 13(1)(b)(iii) of the 2013 Rules which provides:

The Tribunal may make an order in respect of costs only … if a person has acted unreasonably in bringing, defending or conducting proceedings in … a leasehold case …

32. The jurisdiction to award costs under rule 13 was examined by the Upper Tribunal in Willow Court Management (1985) Ltd v Alexander [2016] UKUT 290 (LC), [2016] L&TR 34.

33. The head note in L&TR reads as follows:

> *(1) The Court of Appeal guidance on what constitutes "unreasonable" conduct in the context of wasted costs applies in FTT proceedings for the purposes of r.13(1)(b), rather than this term having a wider interpretation, Ridehalgh v Horsefield [1994] Ch 205 applied. The test for unreasonable conduct may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or, is there a reasonable explanation for the conduct complained of?*
>
> *(2) A systematic or sequential approach to applications under r.13(1)(b) should be adopted. At the first stage the question is whether the person has acted unreasonably. At the second stage it is essential for the tribunal to consider whether, in light of the unreasonable conduct it has found, it ought to make an order for costs or not. If so, the third stage is what the terms of the order should be. At both the second and third stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. Whether the party whose conduct is criticised has had access to legal advice is relevant at the first stage of the enquiry, as the behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice; it may also be relevant, though to a lesser degree, at the second and third stages, without allowing it to become an excuse for unreasonable conduct. At the third stage, a causal connection with the costs sought is to be taken*

into account, but the power is not constrained by the need to establish causation.

(3) Applications under r.13(1)(b) should not be regarded as routine, should not be abused to discourage access to the tribunal and should not be allowed to become major disputes in their own right. They should be dealt with summarily, preferably without the need for a further hearing, and after the parties have had the opportunity to make submissions. Those submissions are likely to be better framed in light of the tribunal's substantive decision rather than in anticipation of it, and applications at interim stages or before the substantive decision should not be encouraged.

34. Turning to the actual words used by the Upper Tribunal, the following paragraphs are germane:

24. ... "Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test [in Ridehalgh v Horsefield [1994] Ch 205]: is there a reasonable explanation for the conduct complained of?

28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

29. Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that "the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid", subject to the tribunal's procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case 'in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of

the parties and of the Tribunal.' It therefore does not follow that an order for the payment of the whole of the other party's costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.

30. At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases.

35. We are satisfied that by any objective standard the Respondent has acted unreasonably. We also consider in light of the unreasonable conduct we have found, we ought to make an order for costs or not. The Respondent's failure to manage the service charge accounts or produce any supporting documents makes it entirely appropriate for an order for costs to be made against him. He already had a rap over the knuckles in the 2019 Decision.

36. On the other hand, the Respondent is not a professional landlord and in all the circumstances we consider that he should pay 50% of the Applicant's costs.

37. We were provided with a costs schedule by Ms Edmonds. We reduce the amount of hours for letters out to the Applicants from 18.5 hours to 4 hours and the number of hours spent on the telephone to them from 4.5 hours to 3 hours. This reduces the amount of costs to £15,225.35 which we round down to £15,225.00. Accordingly, the Tribunal determines that the Respondent shall pay the Applicants' costs in the sum of £7,612.50 within 28 days of this decision.

Name: Simon Brilliant **Date:** 04 February 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).