



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

**Case reference** : **LON/00AF/LSC/2021/0277**

**HMCTS code (paper, video, audio)** : **P: Paper Determination**

**Property** : **13B Homesdale Road, Bromley, BR2 9JQ**

**Applicants** : **Satyabhama Pudaruth**

**Representative** : **In person**

**Respondent** : **V&J Investments Limited**

**Representative** : **J Patel**

**Type of application** : **Reasonableness and payability of service charges**

**Tribunal members** : **Judge N Hawkes**

**Dates of paper determination** : **24 January 2022**

**Date of decision** : **1 February 2022**

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**DECISION**

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**Covid-19 pandemic: PAPER DETERMINATION**

This has been a remote paper determination which has not been objected to by the parties. A face-to-face hearing was not held because it was not practicable and, in any event, the case is suitable for a paper determination. The documents that the Tribunal was referred to are in a bundle of 83 pages, including covering

letter and index, and in a supplementary reply of 5 pages the contents of which have been noted. The order made is described below.

### **Decisions of the Tribunal**

(1) The service charges which form the subject matter of this application are reasonable and payable.

(2) The Tribunal is not satisfied that it is just and equitable to make an order under section 20C of the Landlord and Tenant Act 1985, an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 or an order for the reimbursement of Tribunal fees.

### **The application**

1. By an application dated 9 August 2021, the Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges which are payable by the Applicant in respect of the service charge year 2021.
2. The Applicant is the leasehold owner of 13B Homesdale Road, Bromley, BR2 9JQ (“the Property”). The Tribunal has been informed that the Property is a 3 bedroom maisonette on the first and second floors of a building containing two flats (“the Building”). The Respondent is the freehold owner of the Building, having purchased the freehold interest in or about April 2021.
3. Each of the flats in the Building has its own private entrance. The Applicant is liable to pay 60% of the total service charge costs and the figures below represent the 60% charge to the Applicant unless otherwise stated.
4. The issues in dispute have been set out by the Applicant in a Schedule and concern building insurance, estimated fire safety costs, estimated repairs/maintenance costs, estimated management fees and estimated accountancy fees.
5. By clause 1 of the Applicant’s lease of the Property (“the Lease”) the Applicant is required to pay “the Maintenance Rent on the Payment Dates”. The lessor’s repairing and insuring covenants are set out in the Second Schedule to the Lease.
6. By clauses 8 and 9 of the Second Schedule provide as follows (emphasis supplied):

*“8. The cost of the foregoing services shall be ascertained and certified by the Lessor’s Managing Agents (whose certificate shall be final and binding on the parties hereto) **to the Maintenance Year End** and payment shall be made within one month of the production of such certificate and **until verified by the Managing Agent the Lessee shall pay on account of the Maintenance Rent the amount of the On Account Payment** by equal payments on the Payment Dates in each year and shall receive credit therefor against the next Maintenance Rent Payment*

*9. If in the opinion of the Lessor’s Managing Agents the amount of the On Account Payment shall be insufficient to cover the costs of the items contained in this Schedule they shall be entitled to serve one month’s notice requiring an increase in the On Account Payment which shall upon the expiry of such notice become the future On Account Payment”*

7. The Particulars to the Lease provide that the payment dates are: “25th March 24th June 29th September 25th December each year”. Subject to paragraph 9 of the Second Schedule to the Lease, the on account payments are £450 per annum, if demanded. The Maintenance Year End is defined as 31 December. By email dated 20 July 2011, the Respondent’s managing agents stated “Please take this as 1 month notice that the on account payment will be increasing to that presented in the budget”.
8. When the application was issued, the 2021 Maintenance Year had not ended and the payments which form the subject matter of these proceedings must therefore be on account payments. It is noted that, where a decision concerns estimated service charges, the parties retain the right to seek a determination of the Tribunal in respect of the actual service charge costs.
9. On 9 September 2021, Directions were issued leading up to a paper determination. The Directions provide at paragraph 4 that, if liability to pay is in issue, the Applicant must provide a statement (either in the tenant’s comments in the Schedule or separately) setting out (i) the relevant service charge provisions of the lease; and (ii) any legal submissions in support of the challenge to the service charges claimed. The Applicant has not referred the Tribunal to any specific provisions of the Lease.
10. The Tribunal’s determinations are set out under the various headings below. An appendix of relevant legislation is attached to this decision.

## **The Tribunal's determinations**

### **Building insurance £793**

11. In the Schedule, the Applicant states:

*“The premium has doubled compared to prior year and includes insurance for non-existent items. The invoice has been shared for the insurance renewal and the certificate, hence I have been paying my share of the premium. I tried to seek quotes for building insurance for comparison purposes but was unable to get any as I was told I am not responsible for the entire building hence quotes can only be provided for the section owned by me.”*

12. The Applicant does not specify the non-existent items referred to. In the supplemental reply, the Applicant has provided a copy of a letter dated 14 December 2021 to the Respondent stating:

*“Quotation for building insurance has been sought and is still awaited. The Brokers need the surveyors’ report to assess the declared value of the building disclosed as £549,500 in the current building insurance. Can you share a copy of the report showing the basis of this valuation please.”*

13. No application has been made to adjourn this paper determination. The letter dated 14 December 2021 encloses an Insurance Certificate for the Building which was issued on 20 March 2020. Further, the Applicant has provided an indicative quotation from AXA under which the total amount sum payable for insuring the Building is £1,385.07. The premium payable under the policy obtained by the Respondent is £1,322.25. The Applicant has not provided valuation evidence demonstrating that the Buildings Declared Value in the policy obtained by the Respondent is incorrect. In its response to the Applicant’s Schedule, the Respondent indicates that it used a broker and the Certificate of Insurance provides that the broker is BK Insurance Limited.
14. There is no obligation on a landlord to obtain the lowest possible premium. On the very limited evidence which is currently available, the Tribunal is not satisfied that the sum of £793 charged to the Applicant falls outside the range of reasonable charges for obtaining insurance in accordance with the terms of the Applicant’s Lease.

### **Fire safety £120**

15. In the Schedule, the Applicant states:

*“Estimate. Requested information on what this will be used for as there is no common areas on the premises. I did not receive any reply.”*

16. In its response, the Respondent states:

*“An Estimate has been provided in line with the lease for a one off inspection. The Freeholder needs to ensure that there are no items that cause a risk. The lease allows for estimates to be charged on account.”*

17. The Tribunal accepts that it is reasonable for the landlord to charge an estimated sum for an inspection to be carried out to ensure the proper maintenance of the Building with reference to the landlord’s fire safety obligations. The Applicant has not provided any evidence to the effect that £120 is outside the reasonable range of charges for a fire safety inspection and the Tribunal is not satisfied, in all the circumstances, that the estimated charge of £120 is unreasonable.

### **Repairs/Maintenance £240**

18. In the Schedule, the Applicant states:

*“Estimate. No information shared what this estimated amount is to be used for.”*

19. In response, the Respondent states:

*“The Service Charge Estimate includes an amount for ad hoc repairs. This is in line with the lease. It was communicated to the Leaseholder that this could be for matters such as gutter cleaning. These are small items but it is prudent to have an amount on account.”*

20. The Tribunal accepts this explanation and finds that this estimated on account payment is reasonable

### **Management fees £360**

21. In the Schedule, the Applicant states:

*“I tried to seek quotes from high street managing agents unfortunately they do not manage 2 flat blocks. A request for what services this includes from the current managing agent have to-date not been attended to. I have recently been faced with a pest situation whereby squirrels have chewed the electrical wires through the ceiling on the top floor bedroom. I reached out to the managing agent to check if the roof works fall under the building insurance, but was told to settle their fees first. Please refer to Annex 1 for proposed work to the ceiling to repair the roof damage”*

22. In response, the Respondent states:

*“The managing agent has quoted a reasonable fee. This is evidenced by the fact that the Leaseholder has been unable to find another quote. The work required is intensive especially given the numerous emails questioning the time required. The Lease allows for a managing agent to be appointed and their fees paid. The previous Freeholder undertook the work themselves which is possibly why the costs of the Agent are now being disputed. Another agent used by the Freeholder charges up to £800 for a block of 2 flats. As such the cost of the appointed agent is more than reasonable for the service provided.”*

23. In the absence of any alternative quotations, the Tribunal is not satisfied that the management fees fall outside the reasonable range

**Accountancy fees £180**

24. No alternative quotations have been provided and the Tribunal is not satisfied that these fees fall outside the reasonable range.

**Applications concerning costs**

25. In light of the findings set out above, the Tribunal is not satisfied that it is just and equitable to make an order under section 20C of the Landlord and Tenant Act 1985, an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 or an order for the reimbursement of Tribunal fees.

**Name:** Judge N Hawkes

**Date:** 1 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).

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.
- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

### **Schedule 11 to the Commonhold and Leasehold Reform Act 2002**

1. (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—

- (a) specified in his lease, nor
- (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

5. (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.