FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2021/0222**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 1, 197 Queen's Gate, London, SW7 5EU**
Applicant	**:**	**Ms H Pugmire**
Representative	**:**	**In person**
Respondent	**:**	**197 Queens Gate Ltd**
Representative	**:**	**Susan Metcalfe Residential Property Management**
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	**:**	**Mr A Harris LLM FRICS FCIArb** **Mr S Mason BSc FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**14 March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. 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 the tribunal were referred to are in an Applicants bundle of 579 pages plus a skeleton argument of 47 pages and a Respondents bundle of 461 pages, the contents of which the tribunal noted. The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

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 2012 to 2020 although the application to the tribunal only refers to the years 2015 to 2021.

The hearing

2. The Applicant appeared in person at the hearing a by video link although due to camera problems she was not visible and the Respondent was represented by Jenna Mullock and Eden Stimpson of Susan Metcalfe Residential Property Management. Also in attendance were Mrs D Blamey and Mr W Taktouk who are Directors of the Respondent.

The background

3. The property which is the subject of this application is a large mid-terrace house converted to a 6 flats. The Applicant occupies flat 1 on the lower ground floor. The Respondent company is owned by the 6 flat owners and the Applicant is one of the three directors of the company.

4. Photographs of the building were provided in the hearing bundle. 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 dispute.

5. 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. The specific provisions of the lease will be referred to below, where appropriate.

6. The papers included a service charge deposit deed and the licence to assign to the Applicant. Solicitors instructed by the Respondent had served a letter before action claiming arrears of service charge from the Applicant.

The issues

7. At the start of the hearing the Applicant identified the relevant issues for determination as follows:

   (i) Dismiss a pre-litigation letter and credit the Applicants service charge payment to her account.

   (ii) The payability and/or reasonableness of service charges relating to the section 20 works.

   (iii) Recover unreasonable service charge.

   (iv) Charge back individual flat expenses accordingly.

   (v) Retroactively recover insurance premiums.

   (vi) Cancel the Applicants service charge deposit deed and refund the money

   (vii) Force the Landlord to supply all the missing 2011-2016 documents as per the court order

   (viii) Order the Landlord to provide transition bank information between FirstPort (the previous managing agents) and the current agents.

   (ix) The Applicant also seeks a waiver of all fees.

8. The tribunal pointed out that under section 27A(3) the tribunal can determine whether, if costs were incurred for services, repairs, maintenance, improvements or insurance or management of a specified

description, a service charge would be payable for the costs and if it would as to

a) the person by whom it is payable,
b) the person to whom it is 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.

9. The tribunal ruled it had no jurisdiction over the pre-litigation letters or over the service charge deposit deed as they do not fall under s27A of the 1985 Act. ((i) and (vi) above

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Section 20 works 2012

11. On 2 March 2012 the then managing agents served a first notice under section 20 covering external repairs and decorations including roof repairs and internal decoration to common parts. The second notice dated 17 July 2012 set out details of the various contractors estimates with the cheapest being £73,882.60 including VAT. There was no dispute that the section 20 consultation had been correctly carried out. The works were paid for by service charge demands and by use of the reserve fund. The figures appear in the accounts for 2012 and show that a major works contribution of £48,701.33 was demanded and a contribution made from reserves of £25,181.26. The Applicant challenges that latter amount and claims it is missing reserve funds.

Decision of the tribunal

12. The tribunal is satisfied that the consultation was properly carried out and that the amounts claimed were due. There is no evidence before the tribunal that the reserve fund was improperly used and the tribunal is satisfied that the money is properly accounted for in the annual accounts. There is no missing money. This section of the claim is not upheld.

Section 20 works 2017

13. On 29 June 2017 a notice of intention to carry out works was sent to the leaseholders covering external repairs to the top floor balcony coping

stones and other associated necessary works to prevent leaks into the flats below. Observations were invited within 30 days. The notice was accompanied by a surveyor's report from Osborn and Co, chartered building surveyors setting out a diagnosis of the problem and recommended remedial work. The leaks were apparently due to the water penetration through the stone coping joints. The Applicant claims that the damage has been caused by overloading of the coping stones by planters belonging to the sixth floor leaseholder. The sixth floor balcony is not a communal area.

14. The second notice was dated 4 August 2017 including details of three estimates with the lowest being from Just Does It Contractors in the sum of £5150. Surveyors fees and VAT are payable in addition bringing the total cost of the work to £6663.60.

15. The Applicant challenges the validity of the consultation process as the contractor's estimates are dated prior to the first consultation notice with the successful estimate being dated 20 June 2017. Additionally the work is claimed to be for the personal benefit of the sixth floor leaseholder and not part of the common parts.

16. The Respondent argues that a consultation could not be carried out until it was known what the cost of the works was likely to be and that once estimates had been obtained it was seen that section 20 was engaged and the consultation was then carried out.

Decision of the tribunal

17. The tribunal finds that the section 20 consultation process was properly carried out. There is no evidence in the surveyor's report that the defects were caused by the sixth floor lessees planters. The surveyor's report does not contain an estimate of the likely cost of remedial works and once estimates had been obtained it was perfectly proper to carry out a consultation exercise based on those estimates and inviting further nominations from leaseholders of contractors. No leaseholder nominated a contractor. The repairs in question form part of the structure of the building which is the landlord's responsibility to repair and not the individual leaseholders. The tribunal finds that the works were properly chargeable to leaseholders under the service charge and properly accounted for in the annual accounts. No refund is due to the Applicant.

Section 20 works 2020

18. A first notice under section 20 was served on 9 November 2020. The Applicant objected to the works due to the ongoing Covid outbreak. The respondent stated that works had been postponed for two years. However an invoice dated 15 December 2020 from Osborn and Co in

the sum of £4590.24 was paid from reserves for preparation of the specification for the external decorations works.

Decision of the tribunal

19. The tribunal finds that the surveyor's fee is chargeable to the service charge as being the first stage preparatory to a section 20 consultation.

2021 payments

20. The Applicant challenges a number of payment said to have been made during 2021. The accounts that year are not yet complete and the tribunal is unable to deal with those accounts.

Electricity billing

21. The Applicant challenges interim service charge demands for electricity on the basis that they show a higher percentage of electricity costs than she is liable to pay. It was agreed between the parties that there is an informal agreement that 19% of the electricity bills for the communal parts will be charged to Category A and 89% to Category B under the sixth schedule of the lease.

Decision of the tribunal

22. The Applicant's argument is based on amounts shown in interim service charge demands and not on the final accounts. The final accounts for each year show that the electricity charges are in accordance with the agreement.

Future Lighting

23. The Applicant Claims there is a Qualifying Long-Term Agreement with Future Lighting involving two visits per year for a total cost of £250 per year. Additionally the accounts show that over a six-year period from 2016 to 2021 payments totalling £3699 were made to Future Lighting.

24. The Respondent stated that there was no long-term agreement with Future Lighting and a new contract was entered into each year and the additional cost over the servicing was for one-off repairs to individual light fittings and battery replacement in emergency lighting.

Decision of the tribunal

25. The tribunal accepts that there is no Qualifying Long-Term Agreement with Future Lighting and in any event the annual service fee is below the consultation level of £100 per flat for such an agreement. The tribunal accepts the evidence of the respondent that the difference between the annual service fee is for individual repairs and determines that the amounts are fully recoverable in the various years.

Door maintenance charge

26. The Applicant produced evidence to show that in 2010 a long-term contract was signed with Interphone limited to install a five way video door entrance panel with camera and speaker unit serving flat 2 to 5. The installation involved works inside the flats and there is no record of any section 20 process. The contract amount is billed in Category A as common parts. This is not only unfair to flat 1 as a violation of the lease each flat should be responsible for its own video monitor maintenance and repairs since flat one is not part of the contract.

27. The Respondent stated that the door entry system was installed before the Applicant owned her flat and it is covered under clause 8 of the Category A services in the sixth schedule. Although flat 1 is not connected to the system if the Applicant wishes to be connected this can be arranged but this has not been requested previously.

Decision of the tribunal

28. The Category A services at clause 8 requires the landlord *"to maintain (if and when installed by the landlord at its discretion) an entrance security system or other security system or systems in the Building."*

29. The tribunal notes that flat 1 has a separate access not through the main entrance door although the lessee has a right of access. Nevertheless the charge is a proper one under the provisions of the lease and is properly chargeable to the service charge.

Avenue Cleaning

30. The Applicant challenges payments of £1000 to Avenue Cleaning for cleaning the stair carpet which is only used by flats 3 to 6 on the grounds of reasonableness under section 19 of the 1985 Act.

31. The Respondent stated that the cleaning contractor covers the Porter's duties when the porter is away and as well as annual carpet cleaning includes rubbish removal.

Decision of the tribunal

32. Cleaning and maintenance of the common parts is a landlord responsibility under schedule six of the lease. There is no evidence before the tribunal that carpet cleaning was unnecessary or that it is unreasonable for a contractor to be used when the regular porter is not available. The tribunal determines that the amounts for carpet cleaning are reasonable and payable.

Electrical usage for charging a motorbike by flat 6

33. The Applicant claims reimbursement for electrical usage for charging an electric bike from the common parts electricity supply by the leaseholder of flat 6. A photograph was put in evidence of the incident but the date was unclear. No specific amount was identified by the Applicant.

34. The Respondent agreed that charging should not take place from the common parts but that it was a one-off incident and that there is no identifiable increase in the electricity bill arising from it.

Decision of the tribunal

35. The tribunal agrees that no individual leaseholder is entitled to use the common parts electricity supply for charging an electric vehicle in this way. However as no amount has been identified as arising from this incident the tribunal is unable to order any reimbursement.

Miscellaneous items

36. The Applicant challenges a number of items which she claims should be recharged to individual leaseholders. Other items are not necessary. In particular charges to Bee Cleaning for roof and gutter cleaning twice within a five-month period. Plants have been purchased by the leaseholder for flat 6 from a garden centre for personal use as there is no communal garden at the building. The purchase of 100 LED light bulbs for ”experimenting” is not payable.

37. The Respondent stated that the roof and gutter cleaning was necessary to remove leaves and other debris from the gutters on a regular basis. The plants were for the plants on either side of the front entrance and which are visible in the photographs. The lightbulbs are for the common parts to replace incandescent bulbs which blow on a regular basis and the ”experiment” is to see if LED bulbs will significantly reduce electricity charges and the number of times bulbs need replacing. The tribunal was shown in the accounts where recharges to individual leaseholders had been made of the amounts identified by the Applicant for such items as replacement keys.

Decision of the tribunal

38. The tribunal accepts that regular gutter cleaning is necessary at a building in this location as and when required. The tribunal is satisfied on the photographic evidence that plants have been provided by the front entrance. The tribunal also accepts that the provision of LED bulbs in place of incandescent light bulbs is an appropriate step to take in view of the longer life and lower energy consumption. The tribunal accepts that the various disputed recharges have been made as these were shown to the tribunal on the accounts in the bundle.

Adept telephone charges

39. The Applicant challenges the inclusion in accounts of charges for a telephone in the lift as there is no telephone.

40. The Respondent agreed that there is no lift and that the charges were incorrectly levied by the previous managing agent who confused this property with the building next door which they also manage. The charges have been written off from the accounts and recovery of the charges is being sought from the previous managers.

Decision of the tribunal

41. The tribunal accepts the Respondent's explanation. The charge should not be levied against the subject property service charge and should be recovered as set out above. However practically the company has no money and assets apart from the service charge so until recovery is made it should either be shown as a debt due to the company or written off until recovery is made. There is nowhere else to order reimbursement to the Applicant.

Insurance premiums

42. The Applicant claims a refund of the insurance premiums since she bought her flat in the sum of £4528.50. The reason for this is that she claims she is unable to benefit from any insurance as she only occupies her flat for approximately three months per year. The remaining time spent in New York.

43. The Applicant claims that in 2017 a blocked drain caused water damage to her flat which cost of £738 to repair.

44. The Applicant states that she has been told by the managing agent that there is an occupancy clause which states that losses may not be recovered if the flat is unoccupied for more than 45 consecutive days unless the leaseholder can prove that the utilities have been turned off

and that during October to March the water system and central heating system is drained or that the utilities are turned off and the heating system is in effective operation for at least four hours in every 24 hours and that the vacant flat is inspected internally once a week during any period of unoccupancy.

45. The respondent stated that the unoccupancy clause only came into effect from 2019-2020.

Decision of the tribunal

46. The tribunal is satisfied that the insurance premiums are properly recoverable. There is no evidence before the tribunal that the building has not been insured in accordance with the covenants of the lease. There is no evidence that the Applicant made an insurance claim in 2017 which was rejected. An unoccupied property clause is a perfectly normal clause to find in insurance and is not unreasonable.

Management fees

47. The Applicant seeks a refund of all management fees for the building. The Applicant alleges that the landlord has failed to perform basic service charge disclosure and failed to discuss any service charge issues raised during the subject period. This has resulted in an improper and effective prelitigation demand due to the "unclean hands" doctrine. The Landlord and property managers should not be entitled to any expenses or legal costs. The building leaseholders service charge accounts should not be touched for this matter .

Decision of the tribunal

48. The tribunal does not accept this argument. The Applicant is a director of the Respondent company but does not appear to have engaged with it. The Applicant is not resident at the building for most of the year. The Applicant refers to the leaseholder of flat 6, Mrs Blamey as the landlord at times.

49. The two representatives of the managing agent clearly showed a good knowledge of the building and its requirements and were able to answer questions on the accounts and go to relevant documents clearly and easily.

Summary

50. The Applicant has been unsuccessful in all of the challenges to the service charge.

51. It is not entirely clear to the tribunal what has triggered such a time-consuming dispute on a relatively modest service charge in a leaseholder owned and controlled block. The tribunal is satisfied that the block is well run and the accounts are in good order.

Application under s.20C and refund of fees

52. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

53. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines and makes no order under s20C.

54. In the application form, the Applicant applied for an order under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that no administration charges will be payable by the Applicant. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines and makes no order under Schedule 11 extinguishing liability for fees.

Name: A Harris **Date:** 14 March 2022

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

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).