



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

Case reference : **LON/00BK/LSC/2021/0342**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **Flat 1 25A Duke Street, London W1U 1DJ**

Applicant : **Mr F Sayiar**

Representative : **In person**

Respondent : **A2 Dominion Homes Limited**

Representative : **Mr Last, in-house lawyer/team manager**

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 Pittaway
Mr T Sennett MA FCIEH**

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

Date of decision : **6 June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected 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 was referred to are in a bundle of 195 pages, and the Head Lease which was provided to the tribunal and the applicant immediately after the hearing. The tribunal gave the applicant the opportunity of making representations following receipt of the Headlease and he has done so.

Mr Sayiar represented himself. Mr Last represented the respondent. The tribunal heard evidence from Mr Sayiar and noted the witness statement in the bundle of Mr Brown-Marke of the respondent. It heard submissions from Mr Sayiar and Mr Last.

Decisions of the tribunal

- (1) The tribunal determines that the only element of the superior landlord's costs which is reasonable, and for which the applicant is liable, is the premium paid by the superior landlord for public and property owner liability insurance, stated to be £72 in the Statement of Anticipated Service Charge Expenditure for the year 1 April 2021 to 31 March 2022. Otherwise the sums claimed by way of Headlease Service Charge are not payable or are unreasonable.
- (2) The tribunal determines that a fair and reasonable proportion of the service charge payable by the applicant would be 33% of the costs incurred by the respondent in respect of the two flats at 25A Duke Street (the '**building**') and not one half of such costs as currently demanded by the respondent of the applicant by way of service charge.
- (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 £300, being the application fee of £100 and the hearing fee of £200 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**") as to the amount of service charges payable by the applicant in respect of the service charge years 1

April 2018-31 March 2019, and each succeeding to 31 March 2021 and a determination in respect of the anticipated service charge for the year commencing 1 April 2021.

2. The applicant also seeks an order under s20C of the 1985 Act and the reimbursement of the fees he paid to make the application. .

The background

3. The property which is the subject of this application is a bed-sit flat on the first floor of 25A Dukes Street. The tribunal heard evidence from the applicant that the basement and ground floor are used for retail purposes, and the second and third floors are one duplex flat of three bedrooms. The applicant has no access to outside space and has no parking.
4. 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 underlease of the property dated 10 February 2012 made between the respondent (1) and the applicant (2) (the '**underlease**').
6. The underlease contains a covenant by the tenant, at clause 3.3.3 to pay the Service Charge, which is defined in Schedule 9 as, 'The Specified Proportion of the Service Provision'. The 'Service Provision' is set out in clause 7.4 being, generally expenditure incurred by the landlord in connection with the Building. The 'Specified Proportion of the Building Service Provision' is defined in the Lease Particulars as, 'An equal share of the Building Service Provision or such proportion as specified by the Landlord on giving one calendar's month notice to the Leaseholder'. ('Building Service Provision is not defined in the lease, only 'Service Provision'.)
7. Clause 3.1 of the underlease contains a covenant by the tenant to pay the 'Headlease Service Charge'. The Headlease Service Charge is defined in Schedule 9 as lease 'a fair and reasonable proportion of the service charge payable pursuant to the Headlease'.
8. The Headlease is the lease dated 14 October 2011 made between Great Wigmore Partnership (G.P.) Limited and Great Wigmore Property Limited (1) the respondent(2), (the '**Headlease**') a copy of which was provided to the tribunal immediately after the hearing.
9. The Headlease demises the first to third floors of 25 Duke Street to the respondent (with appropriate access). The tenant covenants to pay the Service Charge (by way of estimate and balancing charge). 'Service

Charge' is defined as, 'a fair and reasonable proportion of the cost of all the Landlord's Expenses... but so that where it is fair and reasonable the proportion may vary between the different elements comprised within the Landlord's Expenses.' Clause 15.1 defines the Landlord's Expenses as being the costs to the Landlord of carrying out its obligations in clauses 14.2, 14.3 and 14.4 of the Headlease. These clauses impose on the Landlord an obligation to repair Structural Parts, Common Parts and certain non-exclusive Service Media, to enforce covenants on other tenants in the Building at the tenant's request and to clean the Common Parts. Structural Parts by definition include the main structure of the Building. Common Parts are areas so designated by the Landlord for common use.

10. Clause 9.3 of the Headlease contains a covenant by the tenant to pay 'Insurance Rent', which is defined as, "a fair proportion of the cost to the Landlord... of insuring the Building against the Insured Risks for its Full Reinstatement Cost'. Insured Risks include, '(e) such other risks as the Landlord may from time to time insure against'.

Issues

11. Mr Sayiar confirmed to the tribunal that the issues that he wishes the tribunal to determine are
 - Whether the Headlease Service Charge demanded of him by the respondent is reasonable; and
 - Whether the percentage of the total residential service charge for 25A Duke Street which he pays is reasonable.
 - Whether a section 20C order should be made
 - Whether he should be reimbursed the fees he had paid in connection with the application and hearing.
12. Mr Sayiar confirmed that he was challenging the proportion of the total residential service charge for 25A Duke Street incurred under his lease but not the service charge charged by the respondent under his underlease, except for the Headlease Service Charge.

Evidence and submissions

Recoverability of Headlease Service Charge

13. Mr Last submitted that the applicant was charged the Headlease Service Charge by reason of Clause 3.1 of the underlease.
14. Mr Last stated, on being asked by the tribunal, that he believed that the demands for Headlease Service Charge were included in the service charge demands made of the applicant without scrutiny by the

respondent as to whether there was liability to pay/ reasonableness, by reason of the terms of the Headlease and the applicant's own lease.

15. There was only one invoice in the bundle relating to the Headlease Service Charge, from Lee Baron. This states that it is issued as agents for Dupict Properties Limited and Mr Last confirmed that this company is now the Superior Landlord. The invoice is for a quarter's service charge in advance for 'Upper Floors-Residential Duke Street' in the sum of £804.04 for the quarter from 25 December 2019 to 24 March 2020.
16. Otherwise the bundle contained an excel spreadsheet showing the 'total current budget' for YE19 and 'total proposed budget' for YE20. This lists the expenditure as being made up of
 - Admin
 - Internal repairs
 - Redecorations
 - Estate-wide security
 - External repairs
 - Insurance
 - Fees
17. The bundle contained a Statement of Anticipated Service Charge Expenditure by the Superior Landlord for the year from 1 April 2021 which in addition to the heads of expenditure referred to above contemplates costs incurred in connection with 'Public & Prop Owner Liab' and 'S/C Audit Fees'.
18. Mr Last confirmed that these were the only documents available to the respondent in relation to the Headlease Service Charge.
19. The tribunal heard evidence from Mr Sayiar that until 2017 there had been no charge for 'external agents', the expression the respondent uses in its accounts to describe the Headlease Service Charge. Mr Sayiar drew the attention of the tribunal to the rising cost of the Headlease Service Charge, from a total of £753 in the year ending 31 March 2019, to £2,275.73 in the year ending 31 March 2020.
20. Mr Sayiar gave evidence that there had been no internal repairs or decoration or external repairs undertaken by the Superior Landlord. He is unaware of any security being enjoyed by the property.
21. On being questioned as to the responsibility for repair in the Headlease Mr Last indicated there was no covenant by the Superior Landlord to repair. Mr Last stated that the respondent had no information of any work undertaken by the Superior Landlord. It had received no information from the Superior Landlord other than that in the bundle.

22. Following receipt of the Headlease Mr Sayiar drew the tribunal's attention to clauses 15.2.2 and 15.5.3 of the Headlease, namely the obligation on the Superior Landlord to provide invoices and receipts (or make them available for inspection) and the obligation to credit balances of estimated service charge payments against the service charge due from the tenant in the next year. Mr Sayiar submitted that the respondent had either not received invoices from the Superior Landlord in breach of its obligation, or had failed to inspect them. Mr Sayiar also submitted that no credit had ever been set off against the next year's service charge demand.

Proportion of service charge payable by Mr Sayiar

23. Mr Sayiar submitted that it was not reasonable for him to pay one half of the service charge when the other half is paid by a flat that comprises two floors and three bedrooms, when his flat is a one-floor bedsit.
24. Mr Last submitted that it was the respondent's policy to charge service charge according to the number of units paying the same, irrespective of the relative size of those units.

Reasons for the tribunal's decision

Recoverability of Headlease Service Charge

25. Having now seen the Headlease the tribunal find that Mr Last was not correct in stating that there was no repairing obligation on the Superior Landlord in the Headlease. It is contained in Clause 14.2 and the cost to the Superior Landlord of such work is recoverable by way of the Headlease Service Charge.
26. However in the absence of any evidence from the respondent that the Superior Landlord has undertaken any repair or redecoration (including the drainage work budgeted for in the year ending 31 March 2020) at any time during the service charge years at issue the tribunal accept Mr Sayiar's evidence that there has been no such work and there should be no charge for these works. As Mr Sayier submitted clause 15.2.2 of the Superior Lease contemplates that these invoices will be provided/ made available and this has not happened.
27. The Headlease Service Charge does not contemplate recovery of a charge for security and the tribunal find that this is not recoverable by way of the Headlease Service Charge.
28. The definition of 'Insured Risks' in the Headlease includes '(e) such other risks as the Landlord may from time to time insure against'. The tribunal find that this sub-clause entitles the Superior Landlord to charge for public and property owner liability insurance. However the

obligation on the Superior Landlord to insure is not an obligation on the landlord under any of clauses 14.2, 14.3 and 14.4 of the Headlease so that insurance does not form part of the Headlease Service Charge. The tribunal find that the tenant is not liable to pay for the public and property owner liability insurance.

29. Insofar as staff costs and management fees are concerned these are not recoverable by way of Headlease Service Charge under clauses 14.2, 14.3 or 14.4 of the Headlease. Even if they were recoverable it would not be reasonable to charge the sums contemplated in the excel spreadsheet for YE19 and YE20 and the Statement of Anticipated Service Charge Expenditure for the year to 31 March 2022, when no other element of the Headlease Service Charge is recoverable.
30. From a footnote at the bottom of the excel spreadsheet it would appear that there was a different agent until 2017, which may explain why there was no charge for Headlease Service Charge before then. It is unfortunate that when the agent changed (possibly when the Superior Landlord changed) the respondent did not check liability to pay/reasonableness of the sums demanded before including them in its own service charge demand.
31. While the tribunal note the submission Mr Sayiar has made in relation to clause 15.5.3 this is a clause which governs the service charge position between the Superior Landlord and the respondent, not between the respondent and Mr Sayiar.

Proportion of the service charge payable by the applicant.

32. The tribunal accept Mr Sayiar's evidence as to the respective sizes of his flat and that on the 2nd and 3rd floors of 25 Duke Street.
33. The tribunal note that Mr Last considered the manner in which the service charge was apportioned was fair but, given the disparity in size between the two units sharing the service charge, the tribunal find that the service charge should be apportioned in a manner that reflects this, for the service charge to be reasonable. It notes that the Superior Landlord apportions the service charge between the retail and residential elements of the building on a floor area basis but the tribunal have no information as to the relative floor areas of the two flats. The tribunal therefore find it reasonable to apportion the service charge on the basis of the number of floors each flat occupies. It finds that the applicant should be paying 33%, not 50% of the service charge.

Application under s.20C and refund of fees

34. In the application form the applicant applied for an order under section 20C of the 1985 Act. By a letter of 20 January 2022 the respondent

indicated that it would not oppose this application. In the circumstances 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.

35. The applicant made an application for a refund of the fees that he had paid in respect of the application and hearing¹. Mr Sayiar submitted that these should be refunded as he had had to bring the application to correct charges that had been made unreasonably for seven years. Mr Last submitted that the fees should not be refunded as the respondent had not invited the application. Having heard the submissions from the parties and 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.

Name: Judge Pittaway

Date: 6 June 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.

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

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).