FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/LSC/2019/0054**
Property	**:**	**Flat 1, 149 Stoke Newington High Street, London, N16 0NY**
Applicant	**:**	**Elizabeth Jones**
Representative	**:**	**Robin Jones (Applicant's father)**
Respondent	**:**	**1. Stoke Newington Slindon Limited** **2. Alliam Limited**
Representative	**:**	**No appearance by either Respondent**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Robert Latham** **Richard Shaw FRICS**
Venue and Date of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 28 October 2019**
Date of decision	**:**	**5 November 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal finds that no lawful demand has been made for the service charges payable for 2018 and 2019.

(2) The Tribunal makes findings at paragraphs 22 and 29 below in respect of the sums which will become payable if lawful demands are made.

(3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985.

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

The Application

1. By an application issued on 7 February 2019, 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 Respondent for the service charge years 2018 and 2019 in respect of the flat which she occupies as Flat 1, 149 Stoke Newington High Street, London, N16 0NY. The application was issued against "Mark Minashi (director of Slidon)".

2. On 5 March 2019, the Tribunal held a Case Management Hearing to give Directions so that the matter could be determined fairly and in a proportionate manner. The Applicant attended. Mr Minashi failed to attend. He subsequently informed the Tribunal that he was unable to attend as he had recently returned from Singapore. The Tribunal was satisfied that the appropriate landlord is Stoke Newington Slindon Limited ("SNSL"). The Tribunal identified a range of issues which it would need to consider in determining whether the service charges in dispute were payable.

3. By 22 March, SNSL was directed to disclose a number of relevant documents to the Applicant. This included the certificate required by clause 4.3 of Schedule 6 of the lease in respect of the 2018 service charge accounts. The landlord was further directed to disclose all relevant invoices. SNSL failed to comply with this direction.

4. On 2 May, Mr Minashi informed the Tribunal that he had sustained a head injury as a result of a riding accident on 22 April. He requested an extension of at least one month. On 7 May, a Procedural Judge decided not to grant the extension as the relevant respondent was SNSL who could and should have appointed a legal representative. On 9 May, Mr Minashi provided further medical evidence of his condition. He stated that SNSL had no employees and that he was the sole director and shareholder. On 15 May, a Procedural Judge agreed to grant an extension. The matter was set down for hearing on 26 June.

5. On 26 June, the matter was listed before this Tribunal. Mr Jones appeared on behalf of the Applicant. Mr Minashi appeared on behalf of the Respondent. The matter was unable to proceed because of Mr Minashi's ill health.

6. The Tribunal gave further Directions and relisted the matter for 26 July. The Tribunal noted that Michael Naik and Co had been appointed to manage the property. The Respondent was advised to arrange for alternative representation if Mr Minashi was unable to attend.

7. In its Statement of Case, SNSL had stated that the freeholder is Alliam Limited. The Tribunal therefore joined Alliam Limited ("Alliam") as a Respondent. The Tribunal noted in its directions that the application raised a number of issues of law, including:

> (i) The landlord's duty to inform the tenant of any assignment of its interest (Section 3, Landlord and Tenant Act 1985);
>
> (ii) The requirement that the landlord's name and address is contained in any demand for rent or a service charge (Section 47, Landlord and Tenant Act 1987);
>
> (iii) The requirement that any demand for the payment of a service charge shall be accompanied by a summary of the relevant rights and obligations of the tenant (Section 21B, Landlord and Tenant Act 1985);
>
> (iv) The statutory duty to consult where the tenant's contribution towards any qualifying works exceeds £250 (Section 20 Landlord and Tenant Act 1985).

The Tribunal urged Mr Minashi to seek legal advice.

8. On 12 July, Mr Minashi provided the Tribunal with the Official Copy of Register of Title which records that Alliam acquired the freehold interest of the property on 30 August 2018. Its registered address is 1 Bell Lane, Lewes, BN7 1JU. Mr Minashi informed the Tribunal that the two directors are his sons, Alexander and William Minashi. However, he added that SNSL continue to manage the property on behalf of Alliam. Mr Minashi stated that he would be abroad in Turkey with his sons between 18 and 31 July. The Tribunal therefore re-fixed the hearing for 28 October.

9. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

10. Mr Jones appeared on behalf of his daughter. Both Mr Jones and the Applicant gave evidence.

11. No one appeared on behalf of the two Respondents. On 27 October, Mr Minashi sent an e-mail to the Tribunal stating that he was not fit to attend. He gave no explanation as to why neither of his sons could

attend or why alternative representation had not been arranged. Ms Jones stated that she had had no contact with either son. Alexander and William Minashi must recognise their responsibilities as directors of Alliam, particularly given the apparent ill health of their father.

The Background

12. The flat is in a building known as 147a-149 Stoke Newington High Street ("the building"). There are retail premises on the ground floor. There are six flats, four on the first floor and two on the second floor. The landlord has recently enlarged the two upper flats by installing some 14 roof lights. The landlord has also demolished the warehouse at the rear of the building and has obtained planning permission to build two three-bedroom houses. Two flats are let under long leases; the four other flats are let out under assured shorthold tenancies.

13. Ms Jones occupies her flat pursuant to a lease dated 11 December 2015. This is one bedroom flat on the first floor. She is the original tenant. Her lease is for a term of 125 years from 1 January 2016. She is required to pay a ground rent of £350 per annum payable on 1 January. Her service charge contribution is 17.5% in respect of expenditure relating to the six residential flats and 7% of the costs relating to the building. Thus overall, the service charge expenditure is apportioned 60% to the retail premises and 40% to the residential units. The landlord may vary the service charge contributions, but has not done so despite the enlargement of the two second floor flats. The lease makes provision for a sinking fund of £250 per annum or such other sum as the landlord may notify to the tenant.

14. A landlord is obliged to manage a flat pursuant to the terms of the lease. The lease makes provision for the payment of an advance service charge premised on a budget for the year. The service charge year is the calendar year. At the end of the year, there is to be a reconciliation between the actual and the budgeted expenditure. As soon as reasonably practicable after the end of each service charge year, the landlord shall prepare and send to the tenant a certificate showing the service charge costs and the service charge for that service charge year.

15. The Tribunal were shown a number of e-mails to which a number of excel spread sheets were attached. None included the required certificate. Transparency is required in the operation of service charge accounts. Most landlords have no difficulty in preparing budgets and service charge accounts which are well presented and comprehensible. The landlord should be in a position to provide, when requested, the relevant invoices. That is not the position in this case. The Respondents have recently provided the Tribunal with two certificates for 2018 and 2019 signed by Mr Minashi, on behalf of SNSL. These are undated. The certificate for 2019 is premature as the service charge accounts can only be prepared at the end of the service charge year. It is difficult to

reconcile the "invoices" which have been provided with the account; many are merely undated quotes (see A13, A15-A17).

16. The Tribunal has alerted the Respondent to a number of statutory requirements with which a landlord is required to comply. The Respondents have decided not to apply their minds to these issues. The Tribunal is satisfied that the landlord has failed to comply with the following:

(i) The landlord's duty to inform the tenant of any assignment of its interest (Section 3, Landlord and Tenant Act 1985): On 30 August 2018, SNSL assigned its freehold interest to Alliam. Alliam was required to notify Ms Jones of the assignment and its name and registered address by no later than 30 October 2018. Alliam failed to do this. Mr Minashi refers to an e-mail which he sent to Ms Jones dated 10 December 2018. This was not sent by Alliam. Mr Minashi's e-mail did not provide Alliam's address.

(ii) The requirement that the landlord's name and address is contained in any demand for rent or a service charge (Section 47, Landlord and Tenant Act 1987): None of the demands for service charges have complied with this requirement. We were referred to an email sent by Mr Minashi to Ms Jones dated 17 December 2018. This merely stated "please see attached". There were seven attachments. Where the information required by statute is not provided, the sums only become payable when the information is "furnished by the landlord by notice given to the tenant".

(iii) The requirement that the landlord shall by notice furnish the tenant with an address in England and Wales at which notices may be served on him by the tenant (Section 48 of the Landlord and Tenant Act 1987). Alliam has not furnished Ms Jones with such a notice. Where the landlord fails to comply with this provision, any rent or service charge shall not be treated as being due from the tenant until the information required by statute is provided.

(iv) The requirement that any demand for the payment of a service charge shall be accompanied by a summary of the relevant rights and obligations of the tenant (Section 21B, Landlord and Tenant Act 1985): On 26 June, the Tribunal directed the relevant landlord to send copies of all service charge demands, together with any summary of rights and obligations, in respect of the service charges for 2018 and 2019. No relevant demands have been provided. Ms Jones stated that no demand has been accompanied by the relevant summary of rights and obligations. We accept her evidence.

(v) The statutory duty to consult where the tenant's contribution towards any qualifying works exceeds £250 (Section 20 Landlord and Tenant Act 1985). The service charge accounts for 2018 include a number of items of qualifying works where the relevant contribution charged to Ms Johnson exceeds £250. On 26 June, the Tribunal directed the relevant landlord to send copies of the relevant statutory notices. No such notices have been disclosed. Ms Jones stated that none had been sent. We accept her evidence. The effect of this, is that the relevant landlord is restricted to recovering £250.

Service Charges Payable for 2018

17. On 15 January 2019, Ms Jones paid SWSL £1,189. £550 of this related to ground rent, £589 to the service charges and £250 to the sinking fund. The service charge accounts are at A4 and A5.

18. Ms Jones conceded that the following sums would be payable were the relevant demands to have been made: (i) Insurance: £1,328; (ii) Electricity: £400; (iii) Refuse: £286; (iv) Cleaning: £135; (v) General Maintenance: £180; (vi) Managing agent fee for Michael Naik: £720. Total sum: £3,049, of which Ms Jones is liable for 17.5%, namely £533.58.

19. We note that Ms Jones accepts her liability in respect of the managing agent, Michael Naik. The Tribunal records that it has seen no evidence of the service provided by the managing agents in managing the building. No management agreement has been provided.

20. Ms Jones disputes her liability to pay the following sums:

(i) Repairs to the main roof (£6,199.20); to the flat roof (£5,712) and new escape window (£2,136). It is for the landlord to establish that these sums are payable and reasonable. The landlord has failed to establish that they were. Some of this work seems to have included extensions to the upper flats. These would not be works of repair. This was a single package of works. These were qualifying works in respect of which the landlord was required to consult. The landlord failed to do so. He is therefore restricted to recovering the statutory sum of £250 against the Applicant.

(ii) Drainage Works (£492 + £2,151). These were qualifying works in respect of which the landlord was required to consult. The landlord failed to do so. He is therefore restricted to recovering the statutory sum of £250. Mr Jones also argued that this should have been an insurance claim and that there was an inherent defect as the pipework was too small. We do not accept these arguments.

(iii) Alleyway (£4,403). These were qualifying works in respect of which the landlord was required to consult. The landlord failed to do so. He is therefore restricted to recovering the statutory sum of £250. Mr Johnson also sought to argue that these works did not benefit the residential units. However, we are satisfied that this alleyway is part of "the building" as defined by the lease. Neither do we accept his argument that these were part of a larger package of major works.

21. The landlord also claims £1,500 for "management and administration of works and accounting fee". This sum was not included in the budget. In so far as the management charge related to the three items of major works, this would be caught by the statutory cap of £250. No proper accounts have been maintained, so no accountancy fee could be justified as being reasonable.

22. We are therefore satisfied that service charges of £1,283.58 (namely £533.58 + £750) will become payable if a lawful demand is made. However, the landlord has agreed to fund £3,000 of this from the sinking fund, so this would reduce Ms Jones' liability by £500 (it is understood that all flats contribute £250 per annum to the sinking fund).

Interim Service Charges Payable for 2019

23. On 15 January 2019, Ms Jones paid SWSL £1,108, £550 of this related to ground rent, £508 to the interim service charges and £250 to the sinking fund. The service charge budget is at A7 and A8.

24. Ms Jones conceded that the following sums would be payable were the relevant demands to have been made: (i) Insurance: £1,127; (ii) Replaster and decorate main entrance: £600; (iii) Decorate interior: £500; (iv) Fire extinguishers: £300; (iv) Refuse: £286; (iv) Cleaning: £400; (v) General Maintenance: £400; (vi) Managing agent fee for Michael Naik: £720. Total sum: £4,333, of which Ms Jones is liable for 17.5%, namely £758.27.

25. Ms Jones disputes that £400 is payable in respect of electricity. She states that Mr Minashi informed her that this was covered by the £400 include in the 2018 service charge. It is unlikely that the electricity charges for 2018 would have been exactly £400. This therefore seems to have been an estimate. If the landlord is able to establish that more than £400 has been expended on electricity over the two years 2018 and 2019, he will be able to claim this when the service charge accounts for the year are finalised.

26. The budget includes £10,000 to refurbish the front elevation. These would be qualifying works in respect of which the landlord was required to consult. There has been no such consultation. No works

have been executed. If the landlord does consult, there is no prospect that these works could be executed in 2019. We therefore disallow this item.

27. Mr Jones raised a further argument and showed us an e-mail which Mr Minashi had sent to Ms Jones, dated 29 September 2017. Mr Minashi refers to repainting the front of the building at a cost in excess of £10,000. He states: "I will not be asking for any contributions". Mr Jones argued either that this was a warranty that no demand would be made or that an estoppel had arisen. It is not necessary for this Tribunal to address these arguments.

28. The landlord includes £1,500 for "management and administration of works and accounting fee". In so far as this relates to the management of the refurbishment of the front elevation, we have disallowed this sum as there is no prospect that this work will be executed in 2019. No proper accounts have been maintained, so no accountancy fee could be justified as being reasonable. The Tribunal has allowed £720 in respect of the managing agents fee charged by Michael Naik. No additional charge has been justified.

29. We are therefore satisfied that an interim service charge of £758.27 will become payable, if a lawful demand is made. However, we are satisfied that no lawful demand has yet been made.

Application under s.20C and Refund of Fees

30. In her application form, the Applicant applies for an order under section 20C of the 1985 Act. Having regard to our 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 Respondents may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

31. At the end of the hearing, the Applicant made an application for a refund of the fees of £300 that she had paid in respect of the application and hearing pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having regard to our findings, the Tribunal orders the Respondents to refund any fees paid by the Applicant within 28 days of the date of this decision.

Judge Robert Latham
5 November 2019

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

Section 3

(1) If the interest of the landlord under a tenancy of premises which consist of or include a dwelling is assigned, the new landlord shall give notice in writing of the assignment, and of his name and address, to the tenant not later than the next day on which rent is payable under the tenancy or, if that is within two months of the assignment, the end of that period of two months.

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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.

(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.

21B. Notice to accompany demands for service charges

(1) 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.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Landlord and Tenant Act 1987

47. Landlord's name and address to be contained in demands for rent etc.

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which
notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

48. Notification by landlord of address for service of notices.

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.