FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BA/LSC/2019/0136**
Property	**:**	**Flat 1 Normanhurst, Cecil Road, London SW19 1JS**
Applicant	**:**	**Normanhurst London Limited**
Representative	**:**	**Ms Alison Tebourski and Ms Rebecca Pullen, Directors**
Respondents	**:**	**Miren Limited (1)** **Wagama Estates Limited (2)**
Representative	**:**	**Mr Eli Rosenblatt and Mr Michael Kohr of Mylako Limited (Managing Agents) represented Wagama Estate Limited**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge N Hawkes** **Mr N Martindale FRICS**
Date and venue of hearing	**:**	**29 May 2019 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**12 June 2019**

DECISION

Decisions of the Tribunal

The Tribunal determines that service charges in the sum of £2,097.50 and administration charges in the sum of £39 are payable by the Second Respondent in respect of the year 2018.

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 administration charges payable by the Respondents in respect of the service charge year 2018.

2. The Applicant seeks a determination that service charges in the sum of £2,097.50 and administration charges in the sum of £231.50 are reasonable and payable.

3. It is common ground the Second Respondent is the current lessee and that any such charges are payable by the Second Respondent.

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

The hearing

5. The Applicant company was represented by Ms Alison Tebourski and Ms Rebecca Pullen (Directors) at the hearing and the Second Respondent was represented by Mr Eli Rosenblatt and Mr Michael Kohr of Mylako Limited. Mylako Limited are the Managing Agents of the Second Respondent.

The background

6. The property which is the subject of this application is an upper flat in a building which contains four flats; two upper flats and two lower flats.

7. 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.

8. The Second Respondent holds a long lease of the property. The specific provisions of the lease and will be referred to below, where appropriate.

The issues in dispute

The service charge

9. By Clause 6(viii) of the lease, the lessee covenants with the lessor that:

> *If the Lessee shall make default in any of the covenants hereinbefore or hereinafter contained for or relating to the repair of the Upper Flat it shall be lawful for the Lessor (but without prejudice to the right of re-entry under the clause or clauses hereinbefore or hereinafter contained) to enter upon the Upper Flat and repair the same at the expense of the Lessee in accordance with the covenants and provisions of these presents and the expenses of such repairs shall be repaid by the Lessee on demand and may additionally be recovered as rent.*

10. It is not in dispute that any charges which are payable by the lessee in accordance with this clause amount to a service charge within the meaning of section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") and the Tribunal is satisfied that this is the case.

11. The Applicant claims that service charges in the sum of £2,097.50 are reasonable and payable pursuant to clause 6(viii). These service charges are made up of the cost of repairs to wooden windows, repairs to fascia, and scaffolding costs ("the Work").

12. By clause 1 of the lease, the Second Respondent's property includes:

> *ALL THAT self-contained private residential flat known as 1 Normanhurst, Cecil Road Wimbledon London SW19 1JS (hereinafter referred to as "the Upper Flat") situate on the First Floor of the messuage or building known as Normanhurst Cecil Road Wimbledon London SW19 1JS ("the Building") from the lower surface of the joists of the floor of the Upper Flat (the flat situate in the Building below the Upper Flat being known as and referred to hereafter as 2 Normanhurst ("the Lower Flat")) upwards and inside and outside walls from the same level upwards including the roof and roof structure the gutters the drainpipes and the chimneys the air space beneath the roof but not any air space above the roof ….*

13. By Clauses 7(i) and 7(ii) of the lease, the lessee covenants with the lessor and with the lower flat as follows:

> *(i) In the year Two thousand and nine and thereafter once in every fifth year of the said term and in the last year thereof howsoever the same may be determined to paint all outside wood and ironwork and additions thereto with two coats of good quality paint in a proper and workmanlike manner*

and in a colour to be approved by the Lessor and in the year Two thousand and ten and thereafter once in every seventh year of the said term and in the last year thereof howsoever the same may be determined in a like way and manner to paint the inside wood and ironwork of the Upper Flat and to otherwise repairs and redecorate as appropriate.

(ii) From time to time and at all times during the said term well and substantially to repair uphold support cleanse maintain drain amend and keep the Upper Flat including all sewers pipes drains wires cables and other media in or upon the demised premises whether the same solely serve the demised premises or not and all additions made to the demised premises and fixtures therein and all sewers drains pathways passageways easements and appurtenances thereof with all necessary reparations cleansings and amendments whatsoever.

14. It is common ground that the Second Respondent was in breach of these repairing obligations when the Work was carried out (and that the lessees of the three other flats in the building were in breach of similar repairing obligations). It is also common ground that the Applicant carried out a statutory consultation pursuant to section 20 of the 1985 Act before undertaking the Work.

15. The issues in dispute are:

(i) whether further notice, in addition to that provided by a section 20 consultation, needs to be given to the lessee before work is carried out under clause 6(viii) of the lease; and

(ii) whether, under the terms of the lease, the scaffolding costs should be divided equally between the four flats.

16. The Second Respondent accepts that if, as claimed by the Applicant, the Second Respondent is required to bear the scaffolding costs which relate to work carried out to the Second Respondent's flat pursuant to clause 6(viii), the Applicant's method of apportionment of the scaffolding costs is reasonable.

The administration charge

17. By clause 8(v)(b) of the lease, the lessor covenants that:

Subject to and conditional upon the payment being made by the Lessee of its total share of the service charge in accordance with the provisions of this Lease the Lessor will:-

(a) *Carry out all necessary maintenance and repairs to the main structure of the Building roof foundations and driveway including all pipes wires drains and cables (other than those included in the Upper Flat or in the other flats in the Building)*

(b) *Pay all the administration costs of running Normanhurst London Limited or any other management costs due to any appointment by the Lessor and will provide annual accounts …*

18. The issue in dispute is whether the Applicant can require the Second Respondent, as a lessee, to pay a share of the costs of running Normanhurst London Limited as an administration charge. The parties agree that, if such costs are not payable by the Second Respondent, an administration charge in the reduced sum of £39 will be payable. The Tribunal was informed that the Second Respondent has no interest in Normanhurst London Limited.

The Tribunal's determinations

19. Having heard evidence and submissions from the parties and having considered all of the documents which were referred to, the Tribunal has made determinations on the various issues as follows.

The service charge

20. The Tribunal is satisfied that Clause 6(viii) of the lease, which is expressly without prejudice to separate rights "of re-entry under the cause or clauses hereinbefore or hereinafter contained", includes no requirement that a notice must be served before the rights set out in the clause can be exercised. It is not in dispute that a statutory consultation pursuant to section 20 of the 1985 Act has been carried out and the Tribunal finds that, on its true construction, Clause 6(viii) does not impose an additional notice requirement.

21. The Tribunal was not referred to any element of the Work which was not solely the responsibility of the Second Respondent pursuant to the clauses 7(i) and 7(ii) of the lease. Accordingly, the Tribunal is satisfied that the cost of the scaffolding, insofar as it relates to the carrying out of the Work, is payable by the Second Respondent. It is agreed that, in these circumstances, the scaffolding costs which have been charged to

the Second Respondent (and the other costs which make up the service charges claimed in these proceedings) are reasonable.

22. Accordingly, the Tribunal finds that the service charges in the sum of £2,097.50 are payable.

The administration charge

23. The lessor covenants that, subject to the conditions set out above, it will pay the costs of running Normanhurst London Limited. It is noted that these costs do not fall within the definition of administration charge contained in paragraph 1 of Schedule 11 of the 2002 Act (see the Appendix below) and the Applicant was unable to point to any covenant on the part of the lessee by virtue of which the lessee covenants to pay a share of these costs.

24. The Tribunal therefore finds that the costs of running Normanhurst London Limited are not payable by the Second Respondent lessee as an administration charge and that a reduced administration charge in the sum of £39 is payable.

Name: Judge N Hawkes **Date:** 12 June 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 (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 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.]

20 Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 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).