FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/LSC/2020/0149**
Property	**:**	**80C Caversham Road, London NW5 2DN**
Applicant	**:**	**Dr B Geoghegan**
Representative	**:**	**In person**
Respondent	**:**	**The Mayor and Burgesses of the London Borough of Camden**
Representative	**:**	**Mr M Hayden-Cook of Counsel**
Type of Application	**:**	**For the determination of the liability to pay service charges**
Tribunal Members	**:**	**Judge P Korn** **Mrs L Crane**
Date and venue of hearing	**:**	**1st September 2021 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**30th September 2021**

DECISION

Description of hearing

This has been a face-to-face hearing in a hearing room at the tribunal's offices.

Decisions of the tribunal

(A) The charges still disputed by the Applicant as at the date of the hearing, namely those for £4,256.73 (see sub-paragraph 3(i) below) and £3,508.63 (see sub-paragraph 3(ii) below) are payable in full.

(B) Pursuant to section 20C of the Landlord and Tenant Act 1985 the tribunal makes an order that 50% of the costs incurred in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicant.

(C) Pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 the tribunal makes an order reducing by 50% the Applicant's liability (if any) to pay the costs incurred in connection with these proceedings.

(D) In addition to the orders contained in (B) and (C) above, the tribunal also orders that the Respondent may not recover from the Applicant more than 50% of the costs incurred in connection with these proceedings by charging them partly as a service charge and partly as an administration charge.

(E) For the avoidance of doubt, nothing contained in paragraphs (B) to (D) is intended to be treated as a decision on whether costs incurred in connection with these proceedings are contractually payable by the Applicant under his lease.

Introduction

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the payability of certain service charges.

2. The Applicant is the leaseholder of the Property under a lease ("**the Lease**") dated 30th January 1995 and made between the Respondent (1) and the Applicant (2). The Respondent is the Applicant's landlord and is the freehold owner of the Applicant's block. The block comprises four residential flats.

3. The original challenge was to the following items:-

   (i) invoice for roof repair works in the sum of £4,256.73;

(ii) invoice for fire risk assessment works in the sum of £3,508.63;

(iii) invoice for other major works in the sum of £3,593.70;

(iv) invoice for other major works in the sum of £1,078.11 respectively; and

(v) invoice for £1,973.44 for the estimated cost of major works which did not proceed.

4. At the start of the hearing the Applicant confirmed that the only items still in dispute were items (i) and (ii) above.

Items no longer in dispute

5. The sum of £3,593.70 referred to in paragraph 3(iii) above is described in the application as relating to the 2011 service charge year and being an estimated invoice. The particular aspects originally challenged relate to "replaced rainwater pipes etc" and scaffolding costs. In its statement of case the Respondent states that first of all this charge was reduced and then the demand for the balance was withdrawn. The charge having been withdrawn, there is no basis for any continuing dispute.

6. The sum of £1,078.11 referred to in paragraph 3(iv) above is described in the application as relating to the 2017 service charge year and being a "Major Works Adjustment". It is described essentially as an upwards adjustment to the cost of window repairs. In its statement of case the Respondent states that first of all this charge was reduced (together with the charge for £3,593.70 referred to above) and then the demand for the balance was withdrawn. The charge having been withdrawn, there is again no basis for any continuing dispute.

7. The sum of £1,973.44 referred to in paragraph 3(v) above is described in the application as relating to the 2016 service charge year and being in respect of a contract for communal repair work. The Applicant concedes in his application that the full amount of this charge has been refunded but he takes issue with the fact that the refund is in the form of a credit note. The Applicant accepted at the start of the hearing that, whatever the merits of his concerns about the refund being dealt with by way of credit note, it followed from the fact that the Respondent had accepted that it was not payable and that the charge had been refunded that this item was no longer in dispute for the purposes of these proceedings.

Respondent's case

Invoice for £4,256.73

8. The Respondent states that this invoice relates to repair works carried out in response to reported problems with the roof of the building and the works included erecting and dismantling scaffolding, renewing the roof coverings and fascia board and guttering, and repointing the chimney and parapet walls. The full extent of the works, which were completed on 24th March 2009, is detailed in the relevant Works Order included in the hearing bundle.

9. At the hearing, Counsel for the Respondent submitted – and the Applicant agreed – that the sole basis for the Applicant's challenge to this invoice was that in the Applicant's view the Respondent had failed to comply with the statutory consultation process.

10. The Respondent states that the works were carried out under an existing long-term agreement for building maintenance with the Respondent's contractor BMD. Therefore, the consultation requirements for the specific works were governed by Schedule 3 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("**Schedule 3**"). Under Schedule 3, the landlord needs to serve a notice of intention on all leaseholders describing the proposed works and inviting observations, the leaseholders then have 30 days to make observations on the proposed works and estimated expenditure and then the landlord must consider the observations and provide a response to any observations within 21 days of receipt. Otherwise, the landlord is free to carry out the works.

11. The Respondent submits that it complied with these requirements. A notice of intention was sent out on or around 13th February 2009 containing a description of the works and a calculation of each leaseholder's contribution. The notice gave leaseholders 30 days to make written observations and the Respondent did not receive any observations within that period.

12. As regards service of the notice of intention, the notice was sent both to the Property and to the Applicant's alternative correspondence address at 84B Camden Road in London. This correspondence address was the address provided for Regent 2000 Properties Ltd, the Applicant's appointed agent in respect of the Property. There are emails from Regent 2000 Properties Ltd showing this to be its correspondence address.

13. Furthermore, a subsequent notice of intention dated 13th November 2009 was sent to that same address and the Applicant clearly received that subsequent notice as he made observations on it by email. In

addition, the Applicant does not suggest that the Respondent failed to serve any other demands on him, despite the fact that the Respondent has sent all correspondence to the same addresses since 2009. This includes the invoice relating to these works, which the Applicant clearly received as he paid it. There is also a letter from the Applicant to the Respondent dated 2nd December 2020 in which he reconfirms that the 84B Camden Road address is the correct address for sending information relating to service charges.

14. At the hearing it was confirmed that all letters to the Applicant had been sent by ordinary post.

Invoice for £3,508,63

15. The Respondent states that this invoice relates to fire safety works necessary to comply with the Regulatory Reform (Fire Safety) Order 2005. The works included installing emergency lighting in the communal areas, installing smoke detectors in the communal areas and all flats other than Flat A, updating/renewing lighting and electrical work in the communal areas, installing new fire-rated flat entrance doors to all flats other than Flat A and painting all communal areas in fire retardant paint.

16. The Respondent has provided a breakdown of the work and some copy photographs.

17. The Respondent states that in relation to these works the Applicant has not argued that the Respondent had failed to comply with the consultation requirements, and nor has he made any specific points on the face of his application. However, in his reply to the Respondent's response to his application the Applicant disputes payability on the basis that works were carried out within individual flats and therefore did not fall within the Respondent's repairing obligations under the leases. In addition, the Respondent notes that the Applicant questions its method of apportioning the charges.

18. At the hearing, Counsel for the Respondent stated that paragraph 12 of the Fifth Schedule to the Lease allows the landlord to recover the cost of complying with statutory requirements and that it does not distinguish between communal parts and individual flats.

19. Regarding the apportionment issue, paragraph 4.1 of the Fourth Schedule to the Lease expressly states that the tenant's proportion of service charges may be calculated by reference to the rateable value of the Property. As this is the method that was used by the Respondent there can be no argument on apportionment.

Applicant's case

Invoice for £4,256.73

20. The Applicant states that he did not receive the notice of intention. He also states that there is evidence that the Respondent consulted later on this contract and therefore did not do so the first time around. On the question of whether everything sent to him was always received, he has referred the tribunal to an email dated 28th July 2017 in which his agents state that they did not receive an invoice dated 29th June 2017.

21. The Applicant also argues that the Respondent did not consult properly, and on this point he has cross-referred to the copy letter or email on page 108 of his bundle.

22. The Applicant's written submissions also cover certain points which the Applicant did not pursue at the hearing.

Invoice for £3,508,63

23. The Applicant does not accept the Respondent's position on this invoice. In his view, there were some works which were purely internal and did not benefit others and therefore should not form part of the service charge.

24. At the hearing the Applicant also pointed out that certain descriptions of work done seemed similar to each other and he submitted that they represented a duplication of charges.

25. The Applicant's written submissions also cover certain points which the Applicant did not pursue at the hearing.

Mr Harding's evidence

26. Mr Harding is a senior consultation and final account officer employed by the Respondent and has given a witness statement on which he was available to be cross-examined. His witness statement contains relevant information about the two disputed invoices, and the pertinent aspects of his evidence are summarised elsewhere in this determination. In cross-examination there was a debate as to which areas were communal and which were private.

Mr Boulton's evidence

27. Mr Boulton is a principal fire safety adviser employed by the Respondent and has also given a witness statement, although he was not available to be cross-examined on it. His evidence covers the

purpose of the fire safety works, details of the works carried out, and some comments relating to the charges for the works.

Follow-up points by Respondent

28. In relation to the works covered by the invoice for £4,256.73 ("**the First Works**"), the Respondent does not acccept that the notice of intention was not sent out until 11th September 2009. A notice was indeed sent out then, but that was a notice relating to different works, the cost of which is not in issue.

29. At the hearing, Counsel for the Respondent also made the point that the First Works were completed on 24th March 2009, well before the date of the later notice, and therefore that later notice cannot have related to the First Works. He also said that there was no evidence of letters sent by the Respondent to the Applicant having previously gone astray (aside possibly from one in 2017), there was no evidence before the tribunal of non-receipt by the Applicant's agent and that on the balance of probabilities the notice was correctly posted.

30. Counsel for the Respondent also submitted that there was no evidence before the tribunal that the Applicant had suffered any prejudice as a result of any non-receipt of the notice of intention relating to the First Works.

31. In relation to the works covered by the invoice for £3,508.63 ("**the Second Works**"), Counsel for the Respondent noted at the hearing that the issue of communal versus private benefit had been raised very late by the Applicant, and he also submitted that there was no actual evidence before the tribunal as to what works (if any) had been carried out in individual flats. By contrast, Mr Harding had visited the building and his evidence was that the copy photographs in the hearing bundle were of common parts, not private areas.

32. Regarding the allegation of duplication in respect of the Second Works, Counsel for the Respondent said that again this was a new point being raised very late by the Applicant and that if it had been raised earlier it could have been looked into in more detail. However, the mere fact that certain descriptions of works were similar to each other did not mean that there had been duplication; it could well be, for example, that two similar descriptions related to different sections of the same hallway.

Tribunal's analysis and determination

Invoice for £4,256.73

33. The Applicant's challenge to this invoice is limited to the question of whether the Respondent complied with the statutory consultation process. In relation to that consultation process, the only issue is the alleged failure to send the Applicant a notice of intention.

34. On the basis of the evidence before us, we are satisfied on the balance of probabilities that the Respondent served a copy of the notice of intention on the Applicant. The Respondent's evidence, supported by a witness statement, is that a copy of the notice of intention was sent by ordinary post to both the Property and to the Applicant's agent's correspondence address.

35. The Respondent states that the Applicant's agent's correspondence address is the address that it had been asked to use, and the Applicant does not deny this. Aside from one instance in 2017, there is no evidence of any other correspondence being sent to that address but not arriving, and there is no real suggestion (and certainly no evidence) that the Respondent's employees are being untruthful when asserting that the notice of intention was sent. There is also no evidence that the letter containing the notice of intention was returned to the sender.

36. In relation to the Applicant's suggestion that the notice of intention was not sent out until September 2009, the evidence indicates that these works were completed in March 2009 and therefore it is not plausible to conclude that a notice of intention sent out in September 2009 could have related to these works.

37. In any event, the Applicant has failed to demonstrate what prejudice he has suffered from any non-receipt of the notice of intention. His general point about the Respondent not consulting properly has not been made with any clarity, and the relevance of his cross-reference to page 108 of his bundle is similarly unclear.

38. In the absence of any other challenge, we are satisfied that this amount is payable in full.

Invoice for £3,508.63

39. The Respondent asserts that the cost of the fire safety works is recoverable via the service charge by virtue of paragraph 12 of the Fifth Schedule to the Lease. The relevance of the Fifth Schedule is that it lists various items of expenditure, and the definition of "Service Charge" is expressed to include all matters set out in the Fifth Schedule. The

tenant's obligation to pay the Service Charge is dealt with in detail in clause 3.2 of the Lease.

40. Paragraph 12 of the Fifth Schedule reads as follows:-

"The cost of taking all steps deemed desirable or expedient by the Landlord for complying with making representations against or otherwise contesting the incidence of the provisions of any legislation or orders or statutory requirements thereunder concerning town planning public health highways streets drainage or other matters relating or alleged to relate to the Estate for which the Tenant is not directly liable hereunder".

41. Fire safety is not specifically mentioned in the above paragraph, but in our view that paragraph is wide enough – and the intention will have been – to include any fire safety works required by primary or secondary legislation. The relevant wording for this purpose, in our view, is: *"The cost of taking all steps deemed desirable or expedient by the Landlord for complying with … the provisions of any legislation or orders or statutory requirements … concerning … public health … or other matters relating or alleged to relate to the Estate …".*

42. We note that paragraph 12 of the Fifth Schedule only includes the cost of items *"for which the Tenant is not directly liable hereunder [i.e. under the Lease]"* and it could therefore be argued that the Applicant cannot be charged for the cost of fire safety works within individual demises if the relevant leaseholder is technically responsible for statutory compliance within that leaseholder's own flat. However, in relation to certain categories of work, where those works are being carried out throughout a building and those works are clearly linked, it is in our view unrealistic to expect them to be divided into those which are service charge items and those which are not.

43. The evidence before us indicates that these works were linked and needed to be carried out as a whole for the benefit of all residents of the building so as to maximise their effectiveness. Whilst it is true that as part of those works smoke detectors were installed in individual flats as well as in communal areas, smoke does not respect boundaries and it would be artificial to treat the installation of some of the smoke detectors as not being service charge items. In any event, nothing would be gained by this as individual leaseholders would then simply have to pay for their smoke detectors separately.

44. The Applicant has made a late suggestion that some works of decoration have been carried out in private areas and included within the service charge. This is disputed by the Respondent and in our view there is no clear evidence that specific private areas have been decorated or had other works carried out to them (other than fire safety works) at the expense of service charge payers.

45. In relation to the Applicant's late suggestion that there has been some duplication of charges, if he had made this assertion earlier then the Respondent could have investigated the matter and the tribunal could possibly have drawn an adverse inference from any failure on the Respondent's part to provide a satisfactory explanation. However, as the Applicant has left it so late, in the absence of any proper evidence supporting his contention that there has been duplication we are not in a position to accept his argument simply on the basis that certain invoice narratives look similar to each other. As the Respondent has pointed out, there can be a rational explanation as to why two separate sets of works have been described in a similar way.

46. As regards the method of apportionment, we are satisfied that paragraph 4 of the Fourth Schedule to the Lease allows the Respondent to use a rateable value method of apportionment in relation to this charge.

47. In conclusion, therefore, we do not accept the Applicant's arguments and are satisfied that this amount too is payable in full.

Issues no longer in dispute

48. The item referred to in sub-paragraph 3(v) above should not have been challenged by the Applicant, as the Respondent had already conceded that it was not payable. We note, though, that the Applicant had a separate concern in relation to this item which he mistakenly thought he could pursue as part of a service charge application at the First-tier Tribunal, and we do not criticise him for this.

49. As regards the items referred to in sub-paragraphs 3(iii) and 3(iv) above, these no longer form part of the application but this is only because the Respondent has conceded both points during the course of this long-running dispute between the parties. The Respondent is to be commended for eventually conceding points which it realised should be conceded, but at the same time it appears that the Applicant has had to battle for a long time in order to persuade the Respondent to concede these points.

Other observations

50. The Applicant's written submissions in this case have been very long but they have also in the main been very unfocused. Although this is understandable to some extent as he is not legally qualified, nevertheless it has been extremely difficult to understand the relevance of most of his written submissions in the context of the real issues in this case.

Cost applications

51. The Applicant has made cost applications under section 20C of the 1985 Act ("**Section 20C**") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

52. The relevant part of Section 20C reads as follows:-

(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 … the First-tier Tribunal … 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 …".

33. The relevant part of Paragraph 5A reads as follows:-

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

34. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the tenants as an administration charge under the Applicants' respective leases.

35. The Applicant has been unsuccessful on the two issues remaining in dispute. Of the three other issues which have fallen away, one is an issue which should not have been pursued but the other two are ones which the Respondent has belatedly conceded.

36. Whilst the Applicant has not articulated his concerns very effectively in written submissions, he is a litigant in person who has had to battle hard to persuade the Respondent to concede anything. At the same time, in relation to the two points which survived to be determined by this tribunal, the Respondent has been successful on both points.

37. In the circumstances, we consider that a fair approach to costs would be to make orders limiting the Respondent's contractual rights in respect of cost recovery to a maximum of 50% of its costs. We therefore make a Section 20C order that 50% of the costs incurred in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicant. We also make a Paragraph 5A order reducing by 50% the Applicant's liability (if any) to pay the costs incurred in connection with these proceedings. We also order that the Respondent cannot

recover from the Applicant more than 50% of the costs incurred by them in connection with these proceedings by charging them partly as a service charge and partly as an administration charge.

38. For the avoidance of doubt, this is not a decision as to whether the Lease permits the Respondent to recover its costs. Therefore, as well as the limitations referred to above, it should be noted that the Respondent's costs will only be recoverable to the extent that the Lease permits recovery and to the extent that they are reasonable.

Name: Judge P Korn **Date:** 30th September 2021

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.

APPENDIX

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.