FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/LSC/2021/0005 V:CVPREMOTE**
Property	**:**	**22B Camden Hight St London NW1 0JH**
Applicant	**:**	**Mr R Wilson**
Representative	**:**	**In person**
Respondent	**:**	**Independent Developments Ltd**
Representative	**:**	**Mr T Dewey of Pelham Associates**
Type of Application	**:**	**S27A and s20C Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge F J Silverman MA LLM** **Mr M Taylor MRICS**
Date and venue of Hearing	**:**	**Remote CVP hearing** **18 May 2021**
Date of Decision	**:**	**19 May 2021**

DECISION

1 The Tribunal determines that the Respondent landlord is entitled under the terms of the lease to make an interim demand for service charge on account and that the sum of £519.75 demanded for the period January-June 2021 is reasonable in amount. This sum is therefore payable by the Applicant.

2 The Tribunal makes no order under s20C Landlord and Tenant Act 1985 or paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and declines the Applicant's request for the reimbursement of his application and hearing fees.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE . A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The document which the Tribunal was referred to are contained in electronic bundles comprising approximately 1000 pages the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

1 The Applicant is the tenant and long leaseholder of a maisonette at 22B Camden High St London NW10JH (the property) of which the Respondent is the landlord and reversioner.

2 On 15 December 2020 the Applicant tenant filed an application under s27A and s20C Landlord and Tenant Act 1985 relating to a demand for £519.75 served by the Respondent's agent (Pelham) in respect of an interim service charge for the period January-June 2021. His claim also included applications under s20C of the Act and Sched 11 Commonhold and Leasehold Reform Act 2002 and a request for the return of his application and hearing fees totalling £300.

3 Directions were issued by the Tribunal on 27 January 2021.

4 The Tribunal received and read a bundle comprising approximately 140 pages of electronic documentation, including the parties' respective statements of case which are referred to below.

5 The hearing took place by way of a remote video (CVP) link to which the parties had previously consented. The Applicant appeared in person and the Respondent was represented by Mr T Dewey of Pelham Associates who manage the Respondent's property portfolio.

6 In accordance with current Practice Directions relating to Covid 19 the proceedings were recorded and the Tribunal did not make a physical inspection of the property but were able to obtain an overview of its exterior and location via GPS software and from a floor plan included in the hearing bundle.

7 The Tribunal understands that the subject property comprises a large three bedroom maisonette situated above a commercial unit on Camden High Street. The remainder of the building comprises a commercial unit on the ground floor and a smaller flat (no 22A) on the upper floors. No 22A is also held on a long lease the terms of which were not available to the Tribunal but which are assumed to be similar to those of the subject property. The Applicant holds the property under a long lease dated 27 March 1987 under which he is required to pay by way of service charge 35% of the total cost of repairs and outgoings of the building. The remainder of the service charge is split as to 15% by No 22A and as to the remaining 50% is payable either by the commercial unit or by the landlord depending on the type and location of the works or services involved.

8 The Respondent landlord has a mixed portfolio of properties very few of which are subject to long residential leases. Their agent's inexperience in dealing with this type of property has given rise to a number of previous Tribunal cases between the parties and a breakdown of trust by the Applicant in the Respondent's agents.

9 The Respondent's agents, present at the hearing said that they were now working towards the implementation of a service charge procedure in compliance with the lease terms and the issue of the budget and interim charge was the first step in this process.

10 The Applicant queried the Respondent's right to demand an interim service and its amount which he said was unreasonable.

11 The first question to be considered is whether the lease permits the landlord to raise an interim demand. The Fifth Schedule of the lease (page 122) contains provisions relating to service charge and expressly permits the landlord to levy an interim advance charge.

12 Paragraph 4 of Schedule 5 provides that if the amount of the interim/advance service charge exceeds the amount of the final charge any excess will be credited to the tenant for the next accounting period. There is no requirement in the clause for the overpayment to be repaid to the tenant but the Respondent at the hearing did state that this option would be given to the tenant.

13 The next issue to be considered is whether the amount requested by the Respondent in this case is reasonable. Clause 3 of the Fifth Schedule states that the amount of the interim demand shall be 'such sum as the Lessors or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment'.

14 The Tribunal considered the budget prepared by the Respondent for the coming year which they explained was divided into two sections. Schedule A related to matters affecting the whole building (ie including

structure and commercial premises) and Schedule B related to matters which affected only the freeholder and two long leaseholders.

15 The Applicant wished to question the need for and cost of some of the items on the budget (page 140). He suggested that the allowance for a health and safety risk assessment was unnecessary and that the proposed cost of cleaning the common parts was excessive. The Respondent said that they considered that provision for a health and safety assessment of the building was prudent to ensure compliance with current legislation and that they felt it was reasonable to budget for the cleaning of the common parts. The Tribunal reminded the Applicant that the budget was only an estimate and that he would be able to challenge the actual costs at a later stage if necessary.

16 The total service charge budget stands at £2,970 of which the Applicant will ultimately be asked to pay 35%. The current interim demand at £519.75 is slightly less than 35% of the total estimated budget which the Tribunal finds to be perfectly fair and reasonable.

17 The Applicant said that he thought a service charge of £1,000 per year was excessive for a flat of this type in this area but did not produce any alternative quotations or examples to support his contention.

18 The Applicant also complained that the Respondent was still using a double invoicing method. The invoices about which he complained (pages 72-74) actually relate not to the current year, apart from the invoice for insurance, but to the previous year. The Applicant accepted this when it was pointed out to him.

19 There does however, remain one area in which the Respondent is still using a dual invoicing system and this relates to the property insurance. The Tribunal considers insurance to be a service charge item and as such it must in future be included in the budget and service charge accounts and not dealt with separately. Ground rent however, is not a service charge item and must be invoiced and accounted for separately.

20 The Respondent accepts that they have previously made errors in the way in which they have handled the accounting of the service charge on the residential units and said that they were attempting to correct these deficiencies.

21 The Tribunal commented that the relationship between the Applicant and the Respondent's agent had broken down and suggested that the Respondent's agent followed the practice of appointing a dedicated named manager to oversee this property so that the residential tenants would have a point of contact for any issues arising.

22 The Tribunal reminded the Respondent that they expected the service charge to be administered strictly in accordance with the terms of the lease and in adherence to the RICS Service Charge Residential Management Code.

23 The Applicant's concerns about the Respondent's status as a company do not appear to have any legal foundation. It appears that the Respondent company has legitimately re-registered under a different jurisdiction with a resolution of continuation of business and acceptance of the change notified by the Land Registry.

24 The Applicant's request for the return of his application and hearing fees and similar request for an order under s20C Landlord and Tenant Act 1985 or Sched 5 para 11 Commonhold and Leasehold Reform Act 2002

are all refused. The Tribunal accepts that the Applicant had concerns about the demand for an interim payment but finds those concerns to be unfounded. It encourages future dialogue between the parties in the hope that further litigation can be avoided.

25 **The Law**

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.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

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).

Section 47 Landlord and Tenant Act 1987

(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 [F1or 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 court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (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.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5)Where a tenant withholds a service charge under this section, any provisions of the tenancy 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.

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.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.
(1)This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman
Date 19 May 2021

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.