FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AH/LSC/2021/0167 V:FVHREMOTE**
Property	**:**	**Flats 159 , Vita Apartments, 1 Caithness Walk, Croydon CRo 2WD**
Applicant	**:**	**Mr P Major**
Representative	**:**	**In person**
Respondent	**:**	**Ruskin Square Phase One LLP**
Representative	**:**	**Ms Jabarri of Counsel**
Type of Application	**:**	**s27A and s20C Landlord and Tenant Act 1985 , Sched 11 para 5 Commonhold and Leasehold Reform Act 2002.**
Tribunal Members	**:**	**Judge F J Silverman MA LLM** **Ms S Phillips MRICS**
Date of Hearing	**:**	**01 October 2021**
Date of Decision	**:**	**01 November 2021**

DECISION AND ORDER

1 The Tribunal determines that the service charges demanded by the Respondent for the years 2016/7, 2017/8, 2018/9, 2019/20, 2020/21 and estimate for 2021/22 are reasonable and payable in full by the Applicant (in accordance with the percentage of the total charge allocated to him under the terms of his lease) with the exception of a line rental charge of £1,300 (year 2020/21) and district heating charge of £5,736 (year 2021/22 estimate) both of which are disallowed for the reasons set out below.

2 The Tribunal makes an order under s20C Landlord and Tenant Act 1985 and Sched 11 para 5 Commonhold and Leasehold Reform Act 2002 in favour of the Applicant and limited to a total of £1,000.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:FVHREMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred to are contained in an electronic bundle 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 Flat 159 Vita Apartments, 1 Caithness Walk Croydon CR0 2WD (the property) of which the Respondent is the landlord and reversioner.

2 The Applicant issued an application on 09 April 2021 seeking a determination under sections s27A and s20C Landlord and Tenant Act 1985 and Schedule 11 para 5 of the Commonhold and Leasehold Reform Act 2002 in respect of the service charge years 2016-2017 onwards including the estimate for the current year 2021-2022.

4 Directions were issued by the Tribunal on 08 June 2021.

5 The Tribunal received and read over 500 pages of electronic documentation, including the parties' respective statements of case, and witness statements which are referred to below.

6 The hearing took place by way of a remote video (VFH) link to which the parties had previously consented.

7 The Applicant appeared in person and the Respondent was represented by Ms S Jabarri of Counsel. For the Applicant the Tribunal heard evidence from Mr Lewis, chairman of the residents association and for the Respondent from Ms A Manhas of RMG who are the Respondent's managing agents responsible for the day to day management of the block. The Applicant had filed a further twelve witness statements made by other tenants living in the same block all of whom supported his case. None of these witnesses was present at the hearing and although the Tribunal had read these statements it was unable to place great evidential weight on their content because it was not subject to cross examination. The Tribunal notes however that a theme of discontent with some aspects of the management of the property pervades all these statements with the maintenance of the lifts and garden being of particular concern. The Tribunal also reminded the Applicant that the persons who had given witness statements on his behalf were not parties to the application and would not therefore benefit from any order made under it.

8 At the commencement of the hearing the Respondent made an application to adjourn the hearing because the Respondent had discovered further documents which they wished to include in their bundle. These were in addition to the documents which they had served on the day before the hearing and the Applicant had not yet had an opportunity to read any of them. The Tribunal pointed out that the Directions issued by the Tribunal had set out a timetable for disclosure which applied to both parties and that serving documents at the last minute was not acceptable, particularly when, as here, the Respondent was a professional landlord assisted by professional managing agents and with professional legal representation in these proceedings. The Tribunal was happy to accept Counsel's written skeleton argument but would not permit any extra evidential documents to be added to the hearing bundle. It considered that the documents contained in the hearing bundle were adequate for the purposes of determining the issues before it and that neither party would be prejudiced by the refusal to grant an adjournment. Conversely, any delay to these proceedings could cause the Applicant, as a litigant in person, additional and unnecessary stress. It was in both parties' interest to proceed with the hearing as listed. The request for an adjournment was refused.

9 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.

10 The Tribunal understands that Vita Apartments is a 26 storey block comprising 166 flats commissioned in 2016 and forming part of a larger development. The building is close to East Croydon station and within walking distance of the extensive amenities available in the centre of Croydon. Its street level gardens are part of the larger estate and the Vita tenants do not pay a service charge contribution towards of their maintenance which is in any event not under the direct control of the Respondent. A second area of garden exclusive to the Vita residents is situated on the roof of the block.

11 The copy of the Applicant's lease included in the application shows him to be a joint tenant of the property. The Applicant confirmed to the Tribunal that he has now acquired his former joint tenant's share of the property and is duly registered as sole proprietor at HM Land Registry.

12 No arguments were raised by either party about the terms of the lease itself e.g. repairing obligations and liability to pay service charge and these matters are not further referred to in this document.

13 The Applicant had taken possession of his flat as a new build and both he and Mr Lewis expressed extreme frustration at the number and severity of the faults (snags) which had occurred since completion and that the costs of correcting these faults appeared in many cases to have been passed on to the tenants through the service charge. In his application the Applicant had requested the Tribunal to investigate a number of generic issues on his behalf. He had not specifically challenged any individual items of the service charge nor had he sought to provide alternative estimates e.g. for cleaning, or to provide specific evidence of poor quality of work e.g. through photographs. His case appeared to rest solely on the basis of the (un)reasonableness of the charges made by the Respondent. He was challenging the service charges for each and every year since the lease commenced i.e. from 2016/7 up to and including 2021/2. In a number of cases the Applicant had queried the charges levied by the Respondent by comparing them with the estimated budget or the conveyancing estimate (i.e. pre-completion of the building). While the Tribunal has some sympathy with this approach it accepts the Respondent's explanation that it is almost impossible accurately to assess the cost of service charges in a new build block of this size and thus the comparison of actual charges against pre-completion estimates does not provide a realistic benchmark.

14 That being so, the Tribunal proceeded to deal with the disputed items on the Scott schedule (pages 79-105) by category starting with gardens. Unless otherwise stated the amounts allowed for each class of item (in bold below) relate to each of the years under scrutiny and the amount payable by the Applicant for each item is that proportion of the entire charge which is allocated to him under the service charge provisions contained in his lease.

15 The Respondent agreed that the standard of the **street level garden** had been unacceptable but was now improving. A small contribution to this was included in the estate charges but not in the service charge payable by the tenants. The Applicant had not produced any evidence to demonstrate the unreasonableness of this charge which the Tribunal therefore finds to be payable but as part of the estate charge not the service charge.

16 The **roof garden** is however part of the Respondent's property and its maintenance falls within the scope of the landlord's obligations and equally within the Applicant's duty to pay under the service charge provisions of the lease. The Respondent admitted that the maintenance of this area had been 'sub-optimal'. The area had now been re-planted and a maintenance contract established with an irrigation specialist. The first two years' maintenance had been carried out under warranty without cost to the tenants but the remedial costs of about £1,000 had been charged to the service charge. The Applicant brought no evidence

to show that this charge was unreasonable and bearing in mind that the tenants had not been charged at all for the first two years' maintenance, the Tribunal allows the sum in full but would encourage the Respondent to pursue the original contractor to recover the remedial costs caused by its poor standard of work. Any sums so recovered should be re-credited to the service charge account.

17 The Applicant queried the **insurance** premiums for the property but brought no comparative evidence to demonstrate that they were unreasonable. The Tribunal therefore allows them in full.

18 A common thread of the complaints in almost all of the statements made by the Applicant's witnesses was the dire level of functionality of the **lifts**. The Respondent accepts that there have been ongoing problems with the lifts and said that their breakdown frequency had been exacerbated by abuse of use during the pandemic. They cited delivery persons who blocked the doors open while loading parcels thereby triggering the emergency shut down of the system. Following complaints from the tenants the Respondent paid back into the service charge fund the sum of £10,000 thus reimbursing the cost of lift repair callouts for the first two years of operation. Without comparative estimates the Tribunal has no evidence that the charges for this item were unreasonable and therefore deems them payable in full but does consider that the Respondent's manager should have engaged with the lift manufacturer at an earlier stage which might have prevented some of the difficulties experienced by the tenants over the defective lifts.

19 The Applicant has not effectively challenged the charges for the **lift telephone** which are therefore deemed to be payable in full.

20 The Applicant said that the amounts and descriptions of accounting entries for **fire precautions** varied wildly but did not offer any alternative quotes in evidence. The change in terminology of items in the accounts is a feature throughout the Respondent's managing agent's accounting methods which they say is an ongoing attempt to provide clarity for the tenants. In this case the frequent change of heading or description of an item appears to have led to confusion and makes it difficult to carry out a year by year comparison of like for like items. However, in the light of Grenfell and without any specific evidence to the contrary, the Tribunal is reluctant to make a deduction from monies spent on fire precautions and equipment. The subject property is 26 stories high and proper functioning fire protection is imperative to ensure the safety of the occupants. These sums are payable in full.

21 The Applicant complained that the cost charged for **cleaning of common parts** was excessive and queried what the cleaners actually did as the block had the benefit of a manager (who he described as 'exemplary') and permanent caretaker who undertook some cleaning. He said he had gained the impression that the cleaners were not on site for even an hour each week (the Respondent said the weekly visit was longer than this) but did not substantiate this and brought no alternative quotation to challenge the cost in the service charge accounts. Since he made no allegation that the standard of cleaning was unsatisfactory the Tribunal has little alternative but to approve the costs in full as charged.

22 In respect of **general repairs**, the Respondent had not supplied a detailed breakdown of the sums charged but said that they related to

unforeseen faults/breakdowns. The Applicant's only comment here was to remark that the sum charged exceeded the budget figure. Although the amount spent on this item appears to be high for a newly constructed building and is over budget, since the Applicant brought no evidence to challenge the sum the Tribunal confirms it as payable in full.

23 The Applicant noted that the Respondent had once again exceeded their own budget estimate for the **water risk assessment** but brought no evidence to challenge the allocated costs. These assessments are a vital health and safety issue and in the absence of an alternative quote from the Applicant or evidence that the job had not been carried out to a satisfactory standard the Tribunal confirms this sum as payable in full.

24 The small amounts for **Sundry expenses, Staff sundries** and **Landlord's water** were agreed by the Applicant and are therefore payable in full.

25 For the first two years of occupation the amount charged to the tenant for **communal electricity** was minimal but the charge increased dramatically in the third year and is unsurprisingly challenged by the Applicant. The Tribunal accepts the Respondent's explanation for the reason for this increase although it is barely credible as the actions of a competent managing agent. The Respondent said that on handover of the building from the builders they were shown one electricity meter and only discovered the existence (and thus liability to pay) of the primary meter two years later. The charges for the first two years have been settled by the Respondent and because of the operation of s20B Landlord and Tenant Act 1985 have not been passed on to the tenants. There has been no suggestion from the Applicant that the charges themselves are unreasonable and therefore they are payable in full.

26 The Applicant complained that the amount charged for **pressure pump maintenance** was almost double the budgeted figure but did not provide evidence to challenge the reasonableness of the charge and did not complain about the standard of the work. This sum is therefore payable in full.

27 The **door entry system** seems to have been problematic from the beginning and was only eventually resolved by the installation of a complete replacement unit. It is understandable that this continuing fault was a source both of worry and aggravation to the tenants and unfortunate that the Respondent's managing agents did not engage earlier with the replacement of the unit instead of spending time and money on ineffective repairs. However, no alternative estimate has been suggested by the Applicant and the Tribunal therefore confirms the amount as payable in full.

28 The Respondent stated that the cost of the **Electrical Maintenance contract** was in line with previous years' expenditure. This is another example of the Respondent's managing agents having changed the method by which it defines an item of expenditure which makes it difficult to compare with previous costings. The Applicant has not provided any alternative quotations nor challenged the necessity of this item which the Tribunal confirms as payable in full.

29 The Applicant's entry under the heading **'Boiler Associated costs'** appears to be an amalgamation of costs which have already been dealt

with under different headings e.g. 'water risk'. This is therefore a duplication of costings which have been dealt with elsewhere.

30 According to the Respondent the entry relating to **'Line rental'** which appears for the first time in the 2020/2021 accounts has been split off from another energy bill. Contrary to the Respondent's assertion that this was done to aid transparency it appears to have added confusion and no comprehensible explanation of this charge was offered. It seems to relate to a charge for remote readings of energy meters and as such should probably form part of the standing charges referred to in Clause 7 (5)(3)(b) of the lease rather than forming part of the service charge. As such it is therefore disallowed as part of the service charge.

31 A similar situation arises in relation to '**Internet Costs**' which appear for the first time in the 2020/2021 accounts. The Respondent said that this had previously been charged under a different heading and was the cost of an internet connection for staff at the building. As such the cost may be reasonable and as the amount was not specifically challenged by the Applicant the Tribunal allows it in full.

32 '**District Heating'** appears for the first time in the 2021/2022 budget. The Applicant argues that this item should not form part of the service charge because, similarly to the charge for line rental (paragraph 30 above), it should be part of the daily standing charge reserved by the lease which does not form part of the service charge. The Respondent stated that this item also included the cost of sending out reminder letters to defaulting tenants. The latter should only be charged to the tenants in default and not charged generically to all tenants. For both the above reasons this charge is disallowed in total.

33 The Respondent's **Management charges** have risen from £50,232 to £58,751.20 over the five years under scrutiny in this application. Although the Applicant's manner of challenging the service charges has not succeeded in substantially reducing the amounts charged by the Respondent it has exposed flaws and idiosyncrasies both in the Respondent's management of the building and in its accounting procedures. The Tribunal understands that some glitches and faults will inevitably occur in a new build property but the extent of those faults and the manner in which they were managed by the Respondent in this case appear to have led to a high level of dissatisfaction among the tenants. Of particular note are issues surrounding the garden(s), lift maintenance, the communal electricity meter and the door entry system all of which the Respondent's managing agents failed to deal with effectively. Further, the inconsistent method of presenting the accounts made it very difficult for the tenants properly to assess the level of charges being made and engendered mistrust. The Respondent is a large landlord who engages a professional management organisation to manage the building . They are responsible for the actions of their agent whose their level of service in this case fell below that to be expected of a reasonably competent manger. For that reason the Tribunal deducts 20% from each year's management fee (which will result in a corresponding reduction of VAT on that sum).

34 The Applicant asked the Tribunal to make an order under s20C Landlord and Tenant Act 1985 and/or Sched 11 para 5 of the Commonhold and Leasehold Reform Act 2002 restricting the Respondent from recovering

litigation costs through the service charge. Having considered the representations made by both parties' in their closing submissions the Tribunal determines that it will make such an order in favour of the Applicant as named above but limited to £1,000. Although only a few of the Applicant's arguments have been substantiated the Respondent's general standard of accounting and communication in relation to service charges has been very poor and they should bear some responsibility for this.

35 **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 01 November 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.