FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/LSC/2020/0186**
HMCTS code (paper, video, audio)	**:**	**P: Paper remote**
Property	**:**	**Flats 3 and 4 88 Chatsworth Road London E5 0LS**
Applicants	**:**	**Ana Isabel Vieira Bastar Cordoso Dos Reis (Flat 3)** **Kingsley Lunt (Flat 4)**
Representative	**:**	
Respondent	**:**	**Radcliffe Investment Properties Limited**
Representative	**:**	**Warwick Estates**
Type of application	**:**	**Reasonableness of and liability to pay service charges under the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Dutton**
Venue	**:**	**Paper determination**
Date of decision	**:**	**7th January 2021**

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that I was referred to are in a bundle, the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The tribunal determines that the sum of £368, plus VAT were appropriate, is payable by each Applicant in respect of the service charges for the year 2017. The details of the items making up this total are set out at paragraph 8 below.

(2) The tribunal makes order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge year 2017.

The background

2. The properties, which are the subject of this application, are one bedroomed flats in a four storey property, above commercial premises, there being four such flats, with each leaseholder paying 25% of the service charge costs chargeable under the lease.

3. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

4. The Applicants hold long leases of their flats, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The issues

5. On 18th March 2019 the tribunal, in case LON/00AM/LSC/2019/0010 (the Decision), made certain findings in respect of a claim brought by

the leaseholders of flats 1 and 2 at the property 88 Chatsworth Road, Hackney E5 0LS. The claim related to the same service charge issues and period as the claim brought in the proceedings which are before me today.

6. Simply put the Applicants ask that the findings made in the Decision should be applied to them, as the issues and the evidence are the same.

7. In the Decision the tribunal determined that claims for electrical testing, general minor repairs, risk management and out of hours building services should be disallowed and no sum was awarded for these heads. The Decision explains why such a finding was made, which is largely because no such cost was incurred.

8. Certain sums were allowed for Management in the sum of £125 plus VAT per flat; for Accountancy fees and certification - £60 and £18.75 per flat, plus VAT where charged; for electricity at £35.75 per flat; for sundries of £3.50 per flat and a reserve fund contributions of £125 per flat.

9. In respect of roof repairs Mr Lunt, an applicant in this case and a Chartered building control surveyor, wrote to the tribunal concerning the roof repairs indicating that the works did not comply with building control. The sum being claimed from each leaseholder was £672. For the reasons set out in the Decision the amount was held to be unreasonable and not recoverable.

10. The Decision has not been appealed.

11. Directions in this case were issued, following a telephone case management hearing, on 29th September 2020. The Respondent has played no part in these proceedings. Indeed, it would seem that the Respondent was within a hairsbreadth of being disbarred having been given notice by the tribunal on 24th November 2020 requiring that it complied with the directions at paragraph 3 by 2nd December 2020 or faced being disbarred. The Respondent was, in fact subsequently given an opportunity to explain why the Decision should not apply to the Applicants, but has failed so to do.

The tribunal's decision

12. In the application it is said that the managing agents, Warwick Estates, were written to asking for confirmation that the Decision would be applied to the current Applicants. No such conformation was given and instead in January 2020 the agents sent Notices to all four leaseholders in which the demand for the service charges was reiterated, including the demand for a contribution to the roof repairs. Subsequently, Warwick Estates indicated that the finding of the tribunal in the

Decision would be applied to those leaseholders who had brought the case but not to the current Applicants. It appears that there may be issues with later service charge years, but it is only the year 2017 that is before me.

13. It is technically correct that the Decision relates only to those leaseholders who were parties, thus not including the present Applicants. However, it does seem to be a somewhat doctrinaire approach to the management of the premises. The tribunal making the Decision took into account the submissions made by the Respondent that in a number of cases no service had been supplied and some were agreed as being due. To now seek to recover, as appears to be the case, charges for services that were not provided, is, in my, finding to say the least unreasonable. The tribunal also considered the position in respect of the roof repairs and made clear findings that the sums claimed were not recoverable from the applicants in that case. As I indicated above no appeal has been made against the Decision.

14. The Respondent has been given ample opportunity to explain why the Decision should not apply to the present Applicants and has failed to do so. I can see no logical reason to do anything other than uphold the Applicants' contention that the Decision should apply to them as well.

15. Accordingly, I adopt the findings made by the tribunal in the Decision as being the correct findings to make in this case for the service charge year 2017. On my calculation that means that the sum of £368 is due from each Applicant as their contribution to the service charges for the year 2017. It would seem that there is VAT to be added to the management fees (£25) and possibly to some element of the accountancy/certification fee, although I am not aware as what that sum may be. If VAT is properly payable for the Accountant, then it should be paid by the Applicants in addition to the sums set out at paragraph 8 above.

Application under s.20C and refund of fees

16. The Applicants in the application form applied for an order under section 20C of the 1985 Act. Taking into account the determinations above and the lack of involvement on the part of the Respondent, I conclude that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs which may have been incurred in connection with the proceedings before the tribunal through the service charge.

Name: Tribunal Judge Dutton **Date:** 7th January 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).