FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2021/0252**
HMCTS Code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**Flat 6, 30-32, St. Petersburgh Place, London. W2 4LD**
Applicant	**:**	**30-32 St. Petersburgh Place Ltd.**
Representative	**:**	**Mr. D. Fleming, solicitor, of William Heath & Co. Solicitors**
Respondent	**:**	**Mr. G.A. Hammond**
Representative	**:**	**Not represented**
Type of Applications	**:**	**For the determination of the reasonableness of and the liability to pay service charges and/or administration charges**
Tribunal Members	**:**	**Tribunal Judge S. J.Walker** **Tribunal Member Mr. R. Waterhouse MA LLM FRICS**
Date and venue of Hearing	**:**	**16 November 2021 – video hearing**
Date of Decision	**:**	**16 November 2021**

DECISION

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal's determination is set out below.

Decisions of the Tribunal

(1) The Tribunal determines that the sums payable by the Respondent by way of service charges in respect of the service charge years ending on 31 December each year are as follows;

2017	-	£3,492.04
2018	-	£3,690.76
2019	-	£6,608.01
2020	-	£4,178.35
2021	-	£4,814.28

(2) The application for an 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 is refused.

(3) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so that none of the landlord's litigation costs can be recovered as an administration fee is refused.

Reasons

The Application

1. The Applicant seeks 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 Respondent in respect of the service charge years ending on 31 December for the years 2017 to 2021 inclusive.

2. The application was made on 9 July 2021. Directions were issued on 24 August 2021 following an oral case management hearing in which both parties participated (pages 20 to 25). Among other things these directions required the Respondent to complete a Scott Schedule, the Applicant to respond to that schedule, and for the Applicant to prepare a hearing bundle. In fact, no Scott Schedule was ever produced, but the Applicant provided a hearing bundle to the Tribunal which consisted of 248 pages. Page references throughout this decision are to that bundle unless otherwise stated.

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

The Hearing

4. The Applicant's managing agent Mr. D. Pike attended the hearing, and the Applicant was represented by Mr. Fleming, a solicitor from William Heath & Co. The Respondent also attended but was not represented.

5. 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.

6. In addition to the bundle already referred to the Tribunal had before it 45 pages of documents provided by the Respondent, including a supplementary reply, and two spreadsheets, one produced by the Applicant and one by the Respondent. There was also a statement of case from the Applicant. This was inadvertently omitted from the bundle, but the Tribunal was satisfied from e-mail correspondence provided to it that this had been provided to the Respondent on 7 October 2021. There was no objection by the Respondent to its inclusion in the materials before the Tribunal.

The Background

7. The property is a terraced building which has been converted into eight flats.

8. The freehold of both numbers 30 and 32 St. Petersburgh Place is held by the Applicant (see pages 222 to 227). The Respondent holds the leasehold interest in flat 6 (see pages 229 to 230).

The Lease

9. By a lease dated 14 March 1975 originally made between the Applicant and Julia Daphne Raymond the Respondent holds the property for a term of 120 years from 1 July 1974 (pages 234 to 248).

10. By clause 4(2) of the lease the Respondent covenants as follows;

> "*To pay to the Lessors in each year a sum equal to eighteen per centum (18%) per annum of*
>
> *(i) all monies expended by the Lessors in carrying out all or any of the works and providing the services and management and administration called for under clause 5(4) hereof*
>
> *(ii) the Insurance premium for the Insurance Policy covering the said building in accordance with the Lessors' covenant herein contained and*
>
> *(iii) such a sum as the Lessors shall reasonably require for the purpose of setting up an adequate Reserve Fund to pay for any intended substantial works which are not annually required to be done*" (page 239)

11. The works, services, management and administration referred to in clause 5(4) are further defined in the Fourth Schedule and include the usual repairing, maintenance and management obligations imposed on the landlord.

12. By clause 4(2)(a) payments "*on account in each year of such a reasonable sum as the Lessor shall require*" are to be made, payable in advance by quarterly instalments (page 239)

13. Clause 4(2)(c) further provides as follows;

> "*If in any year it shall prove necessary for the Lessors to carry out any works of the kind referred to in the Fourth Schedule hereto and the Lessors shall not have included the cost of such works in the amount of the payment on account mentioned in sub-clause (b) hereof then the Lessors shall have the power to require the Lessee to make a*

further payment on account of such a reasonable sum as the Lessors may require for the carrying out of such works ...." (page 240).

14. Whilst the lease makes express provision for the Respondent to pay a share of 18% of the identified expenses, Mr. Fleming, on behalf of the Applicant, made it clear that historically, and possibly as a result of a re-organisation of the layout of the building, the Respondent was only ever charged a 16.67% share. The sums being sought in this application were also based on that lower share.

THE APPLICANT'S CASE

15. The Applicant's case, as set out in their statement of case, the witness statement of Mr. Pike (pages 28 to 30) and by Mr. Fleming at the hearing was as follows.

16. The sums sought from the Respondent are as follows;

2017	-	£3,492.04
2018	-	£3,690.76
2019	-	£6,608.01
2020	-	£4,178.35
2021	-	£4,814.28

17. The approach taken by the Applicant to service charges is to make demands on the basis of each year's budget. At the end of each year no balancing charge or credit is made, instead, if there is a surplus this is transferred to the reserve fund and if there is a deficit, this is subsidised out of that reserve.

18. The budgets for each of the service charge years in question are at pages 43 to 46. They show the budgeted amounts under cost headings. Applying the lease fraction of 16.67% to each year's figure produces the following;

Year	Budget Amount	Respondent's Share
2017	£15,948.00	£2,658.52
2018	£17,140.00	£2,857.24
2019	£17,140.00	£2,857.24
2020	£20,065.00	£3,344.84
2021	£23,880.00	£3,980.80

19. In each year the Applicant also sought a contribution towards the reserve fund referred to in clause 4(2)(iii) of the lease. This was £5,000 per year. (There is a reference at page 47 to the sum being £4,999.92 per year, however, the Applicant's accounts show contributions to the reserve of £5,000 each year and, in any event, the difference is immaterial. The Respondent's share of this contribution to the reserve fund each year was £833.52.

20. This explained the service charges sought for every year apart from the 2019 year. In that year an additional charge had been made to cover major works. Mr. Pike's unchallenged evidence was that these were works to repair the roof and the roof outlet – which the Tribunal took to mean the drainage from the roof. An additional levy was sought from the leaseholders of £17,503.50, of

which the Respondent's share was £2,917.25, as payment towards the major works.

21. Mr. Fleming also referred the Tribunal to the Applicant's annual accounts. These showed that the sums held in the reserve fund at the end of each service charge year were as follows;

2016	£21,809	Page 53
2017	£26,809	Page 53
2018	£31,809	Page 63
2019	£6,235	Page 73

22. The Applicant's case was that, adding together the share of the annual budget, the share of the annual contribution to the reserve fund, and the share of the additional contribution to the major works produced the figures set out in paragraph 16 above and these were the amounts sought from the Respondent.

THE RESPONDENT'S CASE

23. As explained above, the Respondent had not produced a Scott Schedule. With one exception, he had also raised no substantive challenge to the payability of any of the charges sought by the Applicant elsewhere. It was clear to the Tribunal from the substantial correspondence between the parties that the principal issues between the parties were (a) the explanation as to how the sums charged were arrived at and (b) the state of account as between them.

24. The Tribunal explained to the Respondent that its jurisdiction is limited to determining what service charges are payable. It has no role in determining disputes between parties about whether or not particular charges have been paid or not, nor does it have a role in settling accounting disputes.

25. The Tribunal invited the Respondent to explain exactly why he contended that the charges sought from him were not recoverable.

26. His first response was to accept that he was liable to pay his share of the budget sums for each financial year. He raised no challenge to any of the budget headings and did not challenge any of the budgeted sums. Neither did he challenge his liability to pay for his contribution towards the major works.

27. The Respondent then stated that he did challenge his obligation to pay towards the reserve fund. This was consistent with the case he put forward in his correspondence.

28. The Tribunal directed the Respondent's attention to clause 4(2)(iii) of the lease. He accepted that this term of the lease imposed an obligation to pay towards the reserve fund. However, he argued that he and other leaseholders had been given an option as to whether or not they wished to participate in the reserve fund. Although he said that this had been done in writing, he was unable to produce any evidence to support his contention.

29. The Respondent then asked Mr. Pike whether the other leaseholders were all also contributing to the reserve fund. His reply was that they were. At this

point the Respondent informed the Tribunal that ne now accepted that he was liable to make contributions towards the reserve fund and he now accepted that the sums set out in the Applicant's statement of case were recoverable from him. However, he reserved his position as to what sums had been paid and what had not, but, as the Tribunal explained to him, that was not something for the Tribunal to consider.

THE TRIBUNAL'S DECISION

30. Given the Respondent's concession in the course of the hearing that the sums sought by the Applicant were payable by him, there is little to add.

31. The Tribunal was, in any event, satisfied that the Applicant's method of making service charge demands based only on each year's budget was justified under the terms of the lease, which expressly provide for both payments on account (clause 4(2)(a)) and for the making of contributions towards the reserve fund (clause 4(2)(iii)). It was also satisfied that there was no excessive contribution towards the reserve and that the accounts showed that the reserve was used in 2019 to help fund the cost of the major works that year.

32. In light of the fact that no substantive challenge had been brought in respect of the budget items or the major works, the Tribunal was satisfied that the charges in respect of these items were reasonable and payable. It was also satisfied that the additional levy to cover major works was permitted under the terms of clause 4(2)(c) of the lease.

33. The Tribunal was satisfied that clause 4(2)(iii) of the lease expressly provided for contributions towards a reserve fund. In the absence of any challenge as to the amount of such contributions, and in the light of the evidence which showed the reserve being made use of, the Tribunal was satisfied that these contributions were also payable under the terms of the lease and reasonable.

Applications under s.20C of the 1985 Act and Para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and Fees

34. At the end of the hearing the Respondent made an application for an order under section 20C of the 1985 Act ("section 20C") to the effect that none of the Applicant's costs of the Tribunal proceedings may be passed to the lessees through any service charge, and an order to reduce or extinguish his liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("paragraph 5A").

35. The test for whether orders should be made under section 20C is whether or not the making of such an order is just and equitable. The Tribunal is entitled, when considering such an application, to have regard to both the relative success achieved by the parties and also to the history of the proceedings and the conduct of the parties in those proceedings. In this case the Applicant has achieved total success and the Respondent has failed to put forward any genuine substantive challenge to the recoverability of the charges sought. At best he put forward an argument, unsupported by any documentary evidence, that the term of the lease providing for the recovery of contributions to the

reserve fund no longer applied to him. In the absence of any such clear evidence, this was clearly a hopeless argument which the Respondent himself abandoned in the course of the hearing.

36. The Tribunal also had regard to the correspondence between the parties which, in its view, demonstrated that the Applicant was seeking to explain its position throughout.

37. In the circumstances the Tribunal concluded that it would be neither just nor equitable for such an order to be made.

38. For the same reasons, the Tribunal also decided to make no order under paragraph 5A.

39. There were no other applications before the Tribunal.

Name: Tribunal Judge S.J. Walker **Date:** 16 November 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section –
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

(6) Regulations under section 20 or this section
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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).

Schedule 11, paragraph 5A

5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.

(3)In this paragraph—

(a)"litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b)"the relevant court or Tribunal" means the court or Tribunal mentioned in the table in relation to those proceedings.