



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case Reference : **LON/00AU/LSC/2022/0198
(PAPER REMOTE)**

Property : **Flat 2, 181 Offord Road, London N1 1LR**

Applicant : **William Hampson**

Representatives : **N/A**

Respondent : **Network Homes Limited**

Representative : **N/A**

Type of Application : **s.27A Landlord and Tenant Act 1985
application for a determination to
liability to pay and reasonableness of
service charges**

Tribunal Members : **Judge Professor Robert Abbey**

**Date and venue of
Hearing** : **24 October 2022 by a paper-based
decision**

Date of Decision : **24 October 2022**

DECISION

Decisions of the tribunal

1. The Tribunal determines that the weekly service charge of £2 is reasonable and payable.
2. A s.20c order is made in the terms set out below.

The application

3. The applicant seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) regarding the service charge payable to the respondent in respect of services provided for **Flat 2, 181 Offord Road, London N1 1LR**, (the property) and the liability to pay such service charge. The applicant has an interest in the property by way of an assured tenancy granted to him by the respondent in January of 2021.
4. Specifically, the Tenancy agreement provides for the payment of service charges pursuant to clause 1.5 of the tenancy agreement that provides that in respect of service charges the respondent: -

“... will provide services to you for which you will pay a service charge. We may, after consulting you, vary, add to or remove the services provided. We will review your service charge no more than twice a year on the basis of the actual costs of providing the services and any anticipated increases or reduction in our costs. We will give you at least 4 weeks’ written notice before the service charges are varied. The cost of services shall be apportioned so as to be fair and reasonable as determined by us”.

The applicant’s application concerns the payment of service charges for 2021, and 2022 in the sum of £2.00 per week. He questions the reasonableness and payability of the service charges on the grounds that he is not being provided with the services contrary to the agreement.

5. The applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.
6. The applicant is the lessee of the property pursuant to the tenancy agreement granted in respect of the flat in the block. The property maintenance, i.e., of the structure and common parts of the whole block is the responsibility of the respondent.

7. According to the tenancy agreement terms, the tenant must pay the stipulated proportion of the service charges raised by the landlord currently at £2 a week or £104 per year.
8. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision
9. On 28 June 2022 Judge Daley issued Directions requiring the parties to take specified steps by specified dates in order to progress the case to the earliest hearing date. Full and detailed submissions by way of an electronic bundle were subsequently made by the parties and received by the Tribunal and were utilised in this determination.

The hearing

10. The tribunal had before it an electronic trial bundle of documents prepared by the parties, in accordance with previous directions.
11. This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was classified as P (PaperRemote). A face-to-face hearing was not held because it was not practicable given the Covid-19 pandemic (and the need for social distancing) and no one requested the same or it was not practicable and all issues could be determined in a remote hearing on paper. The documents that the Tribunal was referred to are in the electronic bundle described above and supplied by both parties to this dispute.
12. In the context of the Covid 19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was possible or necessary. However, the Tribunal was able to access the detailed and extensive paperwork and photos in the trial bundle that informed their determination. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.

Decision

13. The tribunal is required to consider the disputed service charge of £2 per week. The applicant complains about service charges relating to the provision of communal electricity, the garden area, the upkeep of the communal areas, the maintenance of the street door and finally alarm checks and street lighting charges. The applicant says of the communal electricity that the intercom and lighting were not working and so it was not being maintained. As for the garden area the tenant says that nothing was done by the respondent. As to the upkeep

of the communal areas the applicant says there is no evidence that this was ever maintained by the respondent. He also says that the street door is in a poor state with no working intercom. Finally, the applicant is not aware of an alarm and the emergency lighting failed and the regular lighting was broken for 16 months.

14. The respondent says the £2 weekly charge has not changed since 2011. The property is within a small housing co-operative where members make the management decisions and set this level of charge. This property is within a building containing four units sharing a communal area consisting of a hallway and connecting stairwell. Flat 2 is on the ground floor and its entrance is roughly 12 feet from the front door. The respondent says that four health and safety visits took place during the period 3 February 2021 and 9 June 2022. Fire alarms and electricity in the communal areas were operational with all lights working.
15. With regard to the communal electricity the respondent says the applicant was charged £41.08 for the relevant period. An invoice from the electricity supplier supporting the charge was produced. Regarding the garden or external area, the respondent reports a charge of £20.28 for the upkeep of these areas. Regarding the maintenance and upkeep of the communal areas a charge of £20.28 was disclosed. The respondent says this is a sinking fund to help pay for the occasional repairs or expenses that might arise.
16. Alarm checks and emergency lighting. A charge of £22.36 was highlighted in this regard. Details of the visits and the time taken was stated by the respondent who said the actual cost to this property was charged at £25.30.
17. In the light of the evidence produced to the Tribunal it was satisfied that work had been carried out in the manner set out by the respondent in its evidence put before the Tribunal in the Trial Bundle. The Tribunal was satisfied that the expenditure of £2 a week was a reasonable charge given the nature of the works carried out as supported by the evidence produced by the respondent.
18. Therefore, the Tribunal determines that, for all the reasons set out above the service charge of £2 a week is reasonable and payable by the applicant.

Application for a S.20C costs order

19. It is the Tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in this decision the

Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that 100% of the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

20. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The Tribunal thought it would not be just to allow the right to claim all the costs as part of the service charge. Bearing in mind the determinations made above the Tribunal thought that there had been obvious issues regarding the accounts with duplicate entries and other issues and that therefore a 100% order was appropriate. The s.20C decision in this dispute gave the Tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them by way of the service charge.
21. In *Re Scmla (Freehold) Limited* [2014] UKUT 0058 Deputy Chamber President Martin Rodger QC stated that “*An order under section 20C interferes with the parties’ contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances...*” Accordingly the Tribunal was indeed mindful of the consequences of any order it might make under s.20c and as a result the percentage Order was made.
22. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the Tribunal took a robust, broad-brush approach based upon the material before it. The Tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented and timings.
23. The Tribunal felt that in the light of the above comments and authorities it would be just and equitable to proceed as set out above. It was clear to the Tribunal that the applicant had cause to be concerned with the respondent’s responses to his reasonable enquiries. The respondent did not always provide information in a timely manner or reasonable time frame and as such the perceived lack of communication has probably exacerbated the situation. Bearing in mind these comments, the Tribunal has made this decision in regard to the 20C application.

Name: Judge Professor Robert
Abbey

Date: 24 October 2022

Appendix of relevant legislation and rules

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.

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.