



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

**Case reference** : **LON/00BA/LSC/2022/0036**

**HMCTS code  
(paper, video,  
audio)** : **HEARING IN PERSON**

**Property** : **26 Queen Elizabeth Gardens, Morden  
SM4 5AG**

**Applicant** : **Ms Kathleen Teresa Walsh**

**Representative** : **In Person**

**Respondent** : **Clarion House**

**Representative** : **Did not appear and was not represented**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A of  
the Landlord and Tenant Act 1985**

**Tribunal members** : **Judge Daley  
Alison Flynn MA MRICS  
John Francis QPM**

**Venue** : **On 7 November 2022 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **7 November 2022**

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**DECISION**

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This has been a hearing which has been consented to by the parties. The form of hearing was face-to-face. The documents that were referred to are in a bundle of 114 pages, the contents of which have been noted. The order made is described at the end of these reasons.

### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £2543.74 is payable by the Applicant in respect of the service charges for the years in issue.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal makes 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.
- (4) The tribunal determines that the Respondent shall pay the Applicant £300.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2014/15, 2015/16, 2017/18, 2018/19, 2019/20, 2020/21, 21/22, 22/23.
2. Directions were given for the preparation for the hearing on 31<sup>st</sup> May 2022.

### **The hearing**

3. The Applicant appeared in person at the hearing, however the Respondent did not appear and was not represented. The Respondent took no part in these proceedings and did not provide a written response to the Applicant's case.
4. Prior to the hearing the Applicant had provided the Tribunal with a Skeleton Argument in which she set out her submissions. At the hearing the Applicant informed us that the total sum in issue for all of the years including 2022/23 which was an estimated charge was £2816.36. We were also provided with information in the form of a statement of Actual

Service Charge Expenditure for 2020/21 in which the Applicant had received a credit due to the fact that services had not been provided during covid.

### **The background**

5. The property which is the subject of this application is a 1- bedroom Maisonette in a block of 12 purpose- built maisonettes, the premises is on the first floor, and is accessible through a door on ground floor level, there is no communal entrance to any of the properties which make up the block. The occupants who live on the ground floor, have the benefit of small front gardens. The block is within a cul de sac of 27 properties which make up the estate. The properties have parking bays, which the Applicant stated are subject to residential parking permits.
6. The premises which is managed by the Respondent, is within an estate which is mixed tenanted with leaseholders and also social housing tenants. The Tribunal was assisted by photographs and also Google Street View.
7. The Applicant holds a long lease of the property the lease which was signed by a predecessor in title was dated 12 May 1992, this lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

### **The issues as discussed at the hearing**

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges for the years listed above
  - (ii) The Applicant had helpfully set out the matters which were in dispute in her schedule of charges, we considered the following items of charge: The block caretaking, block repairs, estate caretaking, estate maintenance, and management and administration charges. The Applicant helpfully indicated that the insurance charges were accepted, and that on reflection she was prepared to accept that the estate maintenance charges were payable.
  - (iii) The Tribunal considered the terms of the lease in particular clause 4 (2) which imparted an obligation to pay “all rates taxes

assessments charges impositions and outgoings which may at any time or from time to time be assessed charged or imposed upon the Demised Premises or any part thereof... or imposed by the Landlord in respect of building of which the demised premises forms part.” The charges were to be calculated by reference to the number of dwellings within the building.

- (iv) Clause 5 of the lease set out the service charge proportions, and although these were said to relate to Schedule 5 of the lease, Schedule 5 set out the definitions within the lease. For the purpose of the hearing the Tribunal set out the appropriate definitions as agreed with the Applicant on a wider reading of the lease provisions as obliging her to pay 1/12 of the block charges and 1/27 of the estate charges.
- (v) The Tribunal reminded the Applicant that, in respect of the service charges which she was disputing, the onus was on her to prove her case on a balance of probabilities, that is that the charges which she disputed were not reasonable or payable on the grounds which she set out.

- 9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Service charge item & amount claimed**

#### *Block Charges*

- 10. The Applicant set out that there were no block expenses as such as each occupant had their own door which accessed the premises and the only communal area of the block was a small bin stall at the front for 4 wheelie bins. She accepted that the charges which were £19.67 for 2014/15, £14.21. for 2015/16 £19.58 for 2016/17 and £14.43 for 2017/18 were small, however she had tried to find out what the charges were for, had asked to see the invoices to inspect them, and the Respondent had not provided her with an opportunity to investigate the charges or respond to her query. The Tribunal noted that no block charges had been levied for any of the other years.

### **The tribunal’s decision and Reasons for the tribunal’s decision**

- 11. The tribunal had no information before it given the nature of the estate that these charges had been properly incurred. It noted that the Respondent had discontinued the practice of applying block charges. In the absence of any explanation in relation to these charges, and given the

nature of the block the Tribunal determines that the sums due for block charges are not reasonable and not payable. .

### *Repairs*

#### **Service charge item & amount claimed**

1. The Tribunal noted that there were three items for repair, which unhelpfully were described differently for each of the years in issue firstly as Block Repairs in the sum of £83.99 for 2014/15 for 2016/17 as general repairs in the sum of £92.46 and Day to Day Repairs in the sum of £86.96 for 2019/20. We noted that the building was a 1970s block and that the work appeared to be entirely reactive. The accounts for the years in which the sums were in issue had been certified

#### **Tribunal decision and Reasons for the tribunal's decision**

12. The tribunal was satisfied that these sums were proportionate for the age of the building, and that the accounts had been certified, and that small reactive repairs had been carried out. It noted that given the sums involved there was no obligation on the Respondent as Landlord to consult with the leaseholders, accordingly the Tribunal finds the sums claimed for repairs reasonable and payable. .

#### **Service charge item & amount claimed**

### *Estate Caretaking and Estate Cleaning*

13. The Applicant raised a similar issue to the estate as to the block in respect of caretaking, in respect of the lack of information about what the item entailed. She also challenged whether cleaning was taking place as set out in the charges. The Tribunal noted that clause 5(2) of the Lease meant that the landlord was responsible for the road, footpaths, and access to open spaces. There were two sums claimed for estate caretaking in the sum of £29.14 for 2014/15 and £12.71 for 2015/16. In respect of estate cleaning the sums involved were £15.87 for 2014/15 and 12.71 for 2015/16, 2016/17 in the sum of £16.47, and £15.97 for 2017/18.

#### **The tribunal's decision and Reasons for the tribunal's decision**

14. The Tribunal having considered the sums involved, and the nature of the landlord's obligations, it noted that these items did not appear every year, the charges were certified, and the Tribunal accepted that the sums incurred were reasonable and payable under the terms of the lease. It

noted that given the sums charged it was unlikely that a “Rolls Royce” type service was being provided, however it considered that cost would have been incurred under these headings in the upkeep of the estate. It was satisfied that the sums claimed were reasonable and payable.

### **Service charge item & amount claimed**

#### *Management and Administration Fees*

15. The Applicant set out that there was no provision for administration fees within the lease, and that the management charges had to be proportionate for the management of the building, and this meant that the Respondent could not merely divide its management costs, amongst all its properties. The Tribunal noted that there were two items for administration in the sum of £32.53 for 2012/22 and £32.20, for 2022/23 as an estimated charge. No explanation for these charges had been provided, and the Tribunal were not able to ascertain the provisions within the lease which permitted the charge to be levied. In respect of the management fee the sums were £171.70 for 2014/15, and £207.36 for each of the subsequent years, although the true sum for 2020/21 would have been lower given the credit received by the Applicant in the sum of £159.87.

### **The tribunal’s decision and Reasons for the tribunal’s decision**

16. The Tribunal accepts that management would have been undertaken in relation to the building which would have included, insuring the building, certifying the service charges, responding to the leaseholder concerning issues raised and serving demands. It noted that there was a lack of proactivity from the landlord concerning dealing with the Applicant’s queries on service charges. It also noted that there were years in which the expenditure in relation to the building was small, given this it would not have been difficult to respond proactively to the Applicant. The Tribunal decided, that the approach of the Respondent amounted to a reduced service, save for 2020/21, as this was already acknowledged by the refund accordingly the Tribunal has reduced the management fee, for 2015/2016, 2016/17, 2017/18, 2018/19, 2019/20, and 2021/22 and the estimated charge for 2022/23 by £20.00 for each of the years set out making a total refund for management charges of £140.00. The Tribunal is also not satisfied that the sums claimed for administration charges in the sum of £32.53 and £32,20 is reasonable and payable

### **Application under s.20C and refund of fees**

17. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application/ hearing<sup>1</sup>.

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Having heard the submissions from the Applicant and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant [within 28 days of the date of this decision].

18. In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. [Having heard the submissions from the Applicant and taking into account the determinations above, the tribunal determines for the avoidance of doubt, 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 Applicant/ Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge Daley

**Date:** 7 November 2022

### **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).