First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**LON/00BK/LSC/2021/0454**
Property	**:**	**Flats C and D,** **220 Gloucester Terrace,** **London W2 6HU**
Applicants	**:**	**Dr. Nidhi Vaid & Hugo Busby**
Respondent **Represented by**	**:**	**Westminster City Council** **Ranjit Bhose KC (Westminster City Council Legal Department)**
Date of Application	**:**	**17th December 2021**
Type of Application	**:**	**to determine reasonableness and payability of service charges**
The Tribunal	**:**	**Bruce Edgington (Lawyer Chair)** **Kevin Ridgeway MRICS**
Date & place of hearing:		**22nd September 2022 at 10 Alfred Place, London WC1E 7LR**

DECISION

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1. The Tribunal determines upon the evidence before it that the service charges for 2020/21 and identified by the Tribunal in a directions order as being those which are the subject of this application are determined as follows:

   (a) Block repairs and maintenance charges of £276.01 per Applicant – reasonable and payable.
   (b) Planned preventative maintenance charges estimated at £103.00 per Applicant - £15.66 is reasonable and payable.
   (c) Block supervision and maintenance charges of £133.56 plus £34.20 per Applicant - £133.56 is reasonable and payable.
   (d) Paladin Bins hire charges of £25.78 per Applicant – not payable as they have been withdrawn by the Respondent.
   (e) Pest control charges of £93.21 per Applicant – reasonable and payable.
   (f) Major works charges under Scheme PR187 - £1,682.21 per Applicant – reasonable and payable.
   (g) Major works charges under Scheme S147A of £12,206.52 per Applicant – reasonable and payable.

2. The Tribunal makes orders (a) under Section 20C of **The Landlord and**

Tenant Act 1985 ("the 1985 Act") i.e. that any costs incurred by the Respondent in these proceedings are to be excluded from any service charge or (b) under Paragraph 5A of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") preventing the Respondent from recovering costs of this litigation from the Applicants.

Reasons

Introduction

3. Sadly, this application is a continuation of a dispute between the parties which follows from an earlier decision of the Tribunal in 2018 which shows that the parties appear to have been in dispute over service charges in recent years. This application is limited to service charges for 2020 and 2021.

4. A directions order was made by the Tribunal on the 8th February 2022 which was amended on the 1st June 2022. Both parties have provided statements of case, witness statements and supporting documents. Any references to page numbers in this decision are references to the page numbers in the bundle filed for the purpose of this hearing. The order set out the matters to be determined by this Tribunal as described in the decision above.

5. The Tribunal is grateful for the bundle filed. However, the hours of time which had to spent in considering many pages of duplicated documents just in case they included some new information was not appreciated. It showed that the Respondent, which prepared the bundle, was on the verge of breaching the need to help and co-operate with the Tribunal in the overriding objective contained within the procedural rules.

The Lease

6. The lease to flat C at page 63 is for 125 years commencing on the 31st May 1988 with a ground rent of £10 per annum pus 25% of service charges. The lease to flat D at page 77 is in the same terms with the same proportion of service charges.

7. As to service charges, there are references to them in various parts of the leases. Clause 3 sets out that main provisions including the need for the tenant to pay for improvements and monies on account of charges or proposed charges. The obligations on the landlord to provide services, including insurance, are substantial.

The Law

8. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'. Under section 27A, this Tribunal has the jurisdiction to determine whether service charges are reasonable or payable including service charges claimed for services not yet provided. Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") makes similar provisions with regard to administration charges.

9. Section 22 of the 1985 Act says that a leaseholder may, by notice in writing, require a landlord to afford him reasonable facilities for inspecting accounts, receipts or other documents relevant to the service charge accounts. The

landlord must also permit facilities for copying them at the leaseholder's expense. In other words, the Respondent in this case was not obliged to provide copies of documents on request. However, there is some evidence in the papers that an appointment was made for the Applicants to see such documents but when they attended at the Respondent's offices, no such facilities were made available. If that is correct, the Respondents needs to understand its legal obligations.

10. Section 20C of the 1985 Act gives the Tribunal the power to order that any costs incurred by a landlord in presenting a case before the Tribunal can be excluded from any service charge. Paragraph 5A of Schedule 11 of the 2002 Act allows a Tribunal to make orders preventing a landlord from recovering costs of litigation from a tenant.

The Inspection

11. With the present pandemic, Tribunals do not usually inspect properties and it was not felt that an inspection would have really assisted the members in making this determination. Pictures of the building in which the flats are situated and the terrace in which it is situated were considered by the Tribunal from Google Earth. The Respondent describes the building as a five storey mid-terraced building containing four flats. Two are let on weekly tenancies and the other two are let on long leases to the Applicants and they must pay 25% of the service charges for the building.

The Hearing

12. Those attending the hearing were the Applicants, Mr. Bhose of counsel and the witnesses James Portsmouth, Matthew Curan, Christopher Pilkington and Jayne Stretton who was giving evidence in place of the witness Andrew Pye who was unable to attend.

13. The Tribunal chair introduced himself and the other Tribunal member. Mr. Bhose asked the Tribunal to confirm that the statement of Jayne Stretton could be accepted as evidence in place of those from Andrew Pye. The Applicants raised no particular objection to this as it meant that all of the available evidence could be considered.

14. The Tribunal members had carefully considered witness statements from Matthew Curran, Christopher Pilkington, Andrew Pye (2), James Portsmouth and Jayne Stretton on behalf of the Respondent. It also considered the statements of case filed by the Applicants and the supporting documents and legal submissions from both sides together with many photographs in the bundle, a number of which start at page 609. Finally, the decisions of the Tribunal dated 27th November 2018 and 8th February 2019 (starting on pages 653 and 777 under case reference LON/00BK/LSC/2017/0291 ("the 2018 decisions)" have been considered.

15. The Applicants had little to add in their opening comments and they submitted themselves for cross examination. Messrs. Curran, Pilkington and Portsmouth together with Ms. Stretton then gave evidence for the Respondent and submitted themselves for cross examination. It is no exaggeration to say that the cross examination did not really add anything of relevance to the

witness statements, submissions and large number of letters and e-mails in the bundle.

16. The Applicants were clearly very annoyed about the Respondent's conduct and made express remarks about what they considered were actions of incompetence and bad management. The Respondent's witnesses did not really add anything to their written statements or concede anything.

17. Apart from general comments that certain charges were unnecessary, unreasonable or a duplication of previous work, the Applicants produced no expert or other evidence to support their allegations or suggest what would be a reasonable figure for each claim. This was unlike the 2018 Tribunal case when they did instruct an expert whose evidence was clearly of assistance to that Tribunal. This Tribunal was not provided with a copy of any report from the expert used.

Discussion

18. In **Schilling v Canary Riverside Development PTD Ltd.** [LRX/26/2005, LRX/31/2005 and LRX/47/2005] His Honour Judge Rich QC had to consider upon whom lay the burden of proof. At paragraph 15 he stated :

> *"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard."*

19. In simple terms, this means that as this application is made by the tenants, it is for them to satisfy the Tribunal that the service charges claimed are unreasonable in terms of the amount or the standard of work. This Tribunal will consider the various individual service charges ordered to be the subject of this determination.

Block repairs and maintenance charges of £276.01 per Applicant

20. Apart from general criticism of Respondent's behaviour there was nothing in the evidence to suggest that this figure was excessive.

Planned prevention maintenance charges of £103.00 per Applicant

21. The Respondent has made an allowance bring that figure down to £15.66. The Applicants are still not happy about that but accept that it is a very small figure. No evidence was produced to suggest unreasonableness.

Block supervision and management charges of £133.56 plus £34.20 per Applicant

22. This was reduced to £133.56 per Applicant which the Tribunal finds is reasonable.

Paladin bins hire charges of £25.78 per Applicant

23. This claim has now been withdrawn by the Respondent.

Pest control charges of £93.21 per Applicant

24. This related to an infestation of mice and the charge is for 2 visits to a flat in the building occupied by council tenants. The Applicants say that this was the responsibility of the Respondent for not keeping its tenant in check. Whilst such a comment has some merit, the fact of the matter is that mice in a building can rapidly spread around and a landlord must therefore take action as part of its duty to keep any infestation in check. Only 2 visits have been charged and the Tribunal finds that this is a reasonable service charge for the building.

2021 major works charges – Scheme PR187 - £1,682.21 per Applicant

25. The Respondent has produced a photograph of the basement and doors to the cupboard in question (page 39 of the bundle) where asbestos encapsulating works were undertaken. The area in question contained input from the electricity company which was then metered and split off into the electricity supply for each flat. The work was said to have been completed in February 2021 by Alltask as subcontractors of the main contractor, Morgan Sindall. The claim was based on the estimated costs.

26. In answer to the Applicants' suggestion that this work is in a part of the building leased to the electricity supplier, the Respondent has produced a copy of that lease which does not include the rooms/cupboards in which asbestos was encapsulated.

27. The Applicants must understand that the cost of maintenance and repairs to a building does not fall upon the landlord particularly where the ground rent is low – as in this case. Broadly, if work has to be undertaken to the interior of demised premises, the cost falls wholly on the long leaseholder. Work undertaken to the structure and common parts becomes a service charge. The fact that a section of the common parts is locked does not bring it outside the common parts. The rooms/cupboards in question are not leased to anyone and the Applicants, whatever they may feel, do benefit from them as they help to transport electricity to their demised premises.

28. The one issue which does concern the Tribunal is the cost of supervision. When the final demand is sent out it must be clear that only one reasonable charge is made for supervising these works. It is simply wrong for the sub-contractor's work to be supervised by the main contractor and for the Respondent to then charge another fee for supervision. If the Respondent wants to split that one supervisory cost with the main contractor, then so be it.

2021 major works charges – Scheme S147A

29. This is split into several sections i.e. (i) demolitions, alterations and hazardous materials (£8,320), (ii) replacement of doors £12,700), (iii) electrical works (£11,824.18), (iv) fire risk assessment works (£4,893.69) and (v) contractors profit and administration (£12,600.15).

30. It is said that this new work was required to comply with the service of an Enforcement Notice by the London Fire Commissioner served on the 10th July 2020 (starting on page 826) plus some work needed to update the lighting system covering the common parts.

31. The Applicants say that this was work assessed by the Tribunal in the 2018 case as Scheme 147. It is also said that the Tribunal then did not consider the claim reasonable and it is therefore unreasonable to revamp the same claim in a format to include the extra work caused by the Enforcement Notice.

32. The Respondent says that the claim referred to in the 2018 decision was simply withdrawn. Following receipt of the Enforcement Notice the expanse of the major works then needed was completely redrawn and as far as any such work as was included in the 2018 case was concerned, suitable adjustments have been made to reflect that decision.

33. It is unfortunate that asbestos then had to be removed when it had recently been encapsulated but, as was pointed out, if work to the rooms/cupboards in question required the encapsulated parts to be cut or removed, that would release asbestos which could cause harm to the workers. There was no expert evidence to suggest that the decisions to undertake these 2 asbestos works were unreasonable in the circumstances.

34. There are also arguments that doors have been renewed when the previous doors had sufficient fire resistance. The problem with that is that neither party has been able to produce any definitive evidence that the previous doors do comply with the present regulations. All landlords are now extremely concerned about fire risk following the Grenfell disaster and Enforcement Notices from fire departments all over the country have become much more frequent in recent times. Landlords cannot and should not ignore these Notices.

35. In situations such as this where long leases include the ability of the landlord to include the cost of 'improvements' within the service charges, it means that long leaseholders are suffering. Until the law changes, this Tribunal can do nothing about that because it must be deemed reasonable for a landlord to follow the requirements of an Enforcement Notice.

36. Having said that, the Tribunal repeats its previous comments about the cost of supervision of the works. The Applicants should not have to pay for 2 lots of supervision and this adjustment must be made in the final demand.

Conclusions

37. Taking all these matters into account and doing the best it can with the evidence presented, the Tribunal's conclusions are as set out in the decision.

38. The Tribunal cannot see that the Applicants' multitude of other allegations and criticisms of the Respondent set out in their representations, statements and correspondence have any relevance to the actual decision the Tribunal has the power to make. The Tribunal has made the positive decision not to become embroiled in those issues. The management skills of the Respondent do leave

a lot to be desired but their general management fees are less that a long leaseholder would expect to pay with a commercial private landlord.

Costs

39. The Tribunal has been asked to make orders to ensure that the Applicants do not have to pay for the landlord's costs of representation in this case. Mr. Bhose stated that such costs would not be claimed as the leases do not allow these to be claimed contractually. However, in order to provide some comfort to the Applicants, the Tribunal makes the orders requested.

40. The Applicants have also asked for a costs order to be made pursuant to rule 13 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** based on what they say has been unreasonable conduct in the defence or conduct of this application. They say that details of these costs/expenses will be submitted after the hearing.

41. Whilst the Applicants can bring such an application, the Tribunal felt that it may be helpful to indicate that it is doubtful that such an application would succeed – although it will obviously keep an open mind until final submissions are made. The result of the main application indicates that the Respondent was justified in contesting this application.

42. The only conduct within this application which could be described as unreasonable is the way the bundle has been prepared with so many duplicates of documents. That would not, in the normal course of events, justify a rule 13 order. In any event, the Applicants, in their application filed just before the hearing, say that the Respondent's behaviour in that regard has extended the hearing from 1 day into 2 which caused unreasonable loss of earnings. In fact the hearing did not even last 1 day.

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Judge Bruce Edgington
26th September 2022

ANNEX - RIGHTS OF APPEAL

i. 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 London.RAP@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. 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.

iii. 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.

iv. 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.