



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

<b>Case Reference</b>		<b>LON/00BK/LSC/2022/0051 (PAPER REMOTE)</b>
<b>Property</b>	:	<b>27 Rivan Court 143 Inverness Terrace London W2 6JA</b>
<b>Applicant</b>	:	<b>Said Gasoub</b>
<b>Representatives</b>	:	<b>Sarmad Gassoub</b>
<b>Respondent</b>	:	<b>Nichola Stewart Stefan James</b>
<b>Representative</b>	:	<b>Preside Property Management</b>
<b>Type of Application</b>	:	<b>For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)</b>
<b>Tribunal Members</b>	:	<b>Judge Professor Robert Abbey</b>
<b>Date and venue of Hearing</b>	:	<b>9 May 2022 by a paper-based decision</b>
<b>Date of Decision</b>	:	<b>9 May 2022</b>

---

**DECISION**

---

## **Decisions of the tribunal**

- (1) The tribunal determines that: -
- (2) The disputed service charges are unreasonable and the applicant is not liable under the terms of the lease of the property to pay the service charges as demanded
- (3) the tribunal determines that there be an order for the refund of the applicant's application fee in the sum of £100.
- (4) An order be made under section 20c of the Landlord and Tenant Act 1985 in the terms set out below.

## **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 charge payable by the respondent in respect of service charges payable for services provided for **27 Rivan Court 143 Inverness Terrace London W2 6JA**, (the property) and the liability to pay such service charge.
2. The applicant is the lessee of the property pursuant to a long lease granted in respect of this flat. The property is within a larger development and the maintenance of the whole block is the responsibility of the management company who have used Ascent Property Services in regard to this service charge dispute.
3. The Disputed Charges are in relation to charges for a single item of works from 2017 in relation to a single invoice amounting to £2340. The invoice refers to completed water damage repairs to 17 Riven Court and shows a net amount of £1950 with VAT thereon of £390 giving the total claimed of £2340.
4. According to the lease terms, the tenant must pay a proportion of the service charges raised by the landlord.
5. 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
6. On 22 February 2022 Judge Shepherd issued Directions requiring the parties to take specified steps by specified dates in order to progress the case to the earliest hearing date. Regrettably, the respondent failed to comply with these Directions. Consequently, on 8 April 2022 Judge

Nicoll issued a Notification that because the respondent had failed to comply with a formal notice dated 28 March 2022 the respondent was barred from taking further part in the proceedings pursuant to Rule 9(7) of the Tribunal (Procedure) (First-tier Tribunal) (Property Chamber) Rules 2013. Accordingly, there were no submissions from the respondent in the papers for the Tribunal to consider when making this determination.

### **The hearing**

7. The tribunal had before it an electronic trial bundle of documents prepared by the applicant, in accordance with previous directions.
8. 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.
9. In the context of the Covid 19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork 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.

### **The background and the issues**

10. The property is a flat in a block of flats at this residential development. In the context of the Covid 19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork 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 narrow issues in dispute.
11. The lessee of the flat at the property holds a long lease which requires the management company, to provide services and the lessee to contribute towards their cost by way of a service charge. The lessee must pay a share described in his lease for the services provided.

12. Accordingly, the issues arise for determination are with regard to the charges and issues set out above. The Tribunal will consider whether the sums claimed for the service charge year are reasonable within section 19 of the Landlord and Tenant Act 1985, (were the services reasonably incurred and were they of a reasonable standard).

### **Decision**

13. The tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal will consider the item in dispute, taking into account the written representations made on behalf of the only the applicant bearing in mind the Direction barring the respondent as detailed above.

2017 Invoice for £2340

14. The applicant says that the service charge relates to an invoice from Ascent Property Services dated 13 May 2017. The invoice is addressed to the respondent's then property manager Preside Property Management. The job details within the invoice reads "engineer attended site and undertook repairs as per our estimate. Completed water damage repairs to 17 Riven Court" The cost of these repairs can be seen above.
15. These charges were added to the applicant's service charge account in 2017 but without any prior warning or explanation. The applicant wrote to the respondent to seek an explanation for this charge in 2017, 2018, 2019 and 2020 but no such explanation was forthcoming. Eventually in 2021 a copy invoice was finally provided.
16. In response the representative for the applicant told the respondent that the applicant had not seen the invoice before. It was not addressed to him but was addressed to Preside. The applicant asserted that the invoice did not meet statutory requirements in that there was an absence of information about the landlord and there was no summary of rights with the invoice. The applicant said that the "demand" failed to comply with sections 47 and 48 of the Landlord and Tenant Act 1987. These sections state: -

#### ***47 Landlord's name and address to be contained in demands for rent etc.***

*(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—*

*(a) the name and address of the landlord, and*

*(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.*

*(2) Where—*

*(a) a tenant of any such premises is given such a demand, but*

*(b) it does not contain any information required to be contained in it by virtue of subsection (1),*

*then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.*

*(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.*

*(4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.*

#### **48 Notification by landlord of address for service of notices.**

*(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.*

*(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.*

*(3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include*

*the receiving of rent , service charges or (as the case may be) administration charges from the tenant.*

17. Given the provisions of these sections it would appear that there are concerns with the nature of the “demand”. There are also clear concerns about how the respondent failed to clarify the nature of the claim or indeed to engage with the process of the application to the Tribunal.
18. The applicant further asserted that the invoice did not relate to common parts but rather related to another flat number 17. Details of the need for work and the need for the involvement of another flat were requested. Sadly, the respondent failed to provide any response to that request and so the application was made to this Tribunal. Even more regrettably the Tribunal issued Directions requiring explanations from the respondent but once again the respondent failed to respond and this prompted the Tribunal’s barring order set out above.
19. In all these circumstances and in the light of the significant problems with the format of the “demand” this Tribunal came to the inescapable conclusion that the service charge was unreasonable and therefore not payable by the applicant to the respondent.
20. Furthermore, Rule 13 allows for the refund of Tribunal fees. Rule 13(2) states that  

*“The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.”*
21. Even though the respondent has clearly acted unreasonably, there is no requirement of unreasonableness in this regard. Therefore, in this case the Tribunal considers it appropriate that the Respondent refund the Applicant’s application fee payment of £100.
22. In the circumstances the tribunal determines that there be an order for the refund of the application fee in the sum of £100 pursuant to Rule 13(2).
23. Therefore, the Tribunal determines that, for all the reasons set out above, the Tribunal is of the view that the service charge for the item listed above is consequently unreasonable and therefore not payable by the applicant.

### **Application for a S.20C order**

24. 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.
25. 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 compliance with Directions 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.
26. 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.
27. 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.
28. 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. For all these reasons the Tribunal has made this decision in regard to the 20C application

**Name:** Judge Professor Robert  
Abbey

**Date:** 9 May 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.