



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

**Case Reference** : **LON/00AM/LSC/2022/0109  
(PAPER REMOTE)**

**Property** : **12 Boxmoor House, Whiston Road, E2  
8SA**

**Applicant** : **London Borough of Hackney**

**Representatives** : **Judge & Priestley; Solicitors**

**Respondent** : **Mohan Emmanuel**

**Representative** : **-**

**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** : **23 January 2023 by a paper-based  
decision**

**Date of Decision** : **23 January 2023**

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**DECISION**

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## **Decisions of the tribunal**

1. The Tribunal determines that the service charges claimed in the sum of £4805.22 are, for the reasons set out below, both reasonable and payable by the respondent to the applicant. Accordingly, the Tribunal determines that as at the date when the applicant issued the County Court proceedings there was payable by the respondent to the applicant all the service charges claimed by the applicant in the sum of £4805.22.
2. The file shall be returned to the County Court for the determination of the following claims which this tribunal does not have jurisdiction to determine:
  - (i) Court fee, interest and
  - (ii) Costs

## **The application**

3. The applicants seek (and/or following a transfer from the county court the tribunal is required to make) a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) regarding the service charge payable by the respondent in respect of services provided for 12 Boxmoor House, Whiston Road, E2 8SA, (the property) and the liability to pay such service charge. Specifically, the items in dispute concern whether several service charges in the total sum of £4,805.22 are payable.
4. On 15 February 2022 in the County Court at Clerkenwell & Shoreditch District Judge Pigram made the following order: “*Transfer to the First Tier Tribunal (Property Chamber) to consider reasonableness of the Service Charge.*” Consequently, the Tribunal issued initial Directions on 1 April 2022.
5. The respondent is the lessee of the property pursuant to a long lease granted in respect of the flat in the property. The property maintenance, i.e., of the structure of the whole block is the responsibility of the applicant.
6. According to the lease terms, the tenant must pay a proportion of the service charges raised by the landlord. The lease of the property provides that the respondent is liable to pay to the applicant service charges or management charges for a proportionate part of the sums expended by the applicant in carrying out services to the property and to the estate in which it is located. In relation to service charges or management charges, the respondent covenanted at Clause 3 of the lease as follows;

*“(A) Pay to the Lessor such annual sum as may be notified to the Lessee by the Lessor from time to time as representing the due proportion of the reasonably estimated amount required to cover the cost and expenses incurred or to be incurred (and whether prior to the grant of the Lease or otherwise) by the Lessor in carrying out the obligations or functions contained in or referred to in this Clause or Clauses 6 and 8 hereof and in the covenants set out in the Ninth Schedule hereto for each financial year running from the First day of April in each year to the Thirty-first day in March in the following year and also of any costs and expenses incurred during a previous financial year but remaining unpaid which the Lessor may in its absolute discretion consider it reasonable to include (such cost and expenses being hereinafter together called “the Management Charges”) such estimated amount to be payable in advance on the days for payment of rent hereunder the first payment being a proportionate part for the period from the date hereof to the next rent day to be made on the execution of these presents and IT IS HEREBY DECLARED that the*

*Management Charges may (without prejudice to the generality of the foregoing) include such amounts as the Lessor shall from time to time consider necessary to put to reserve to meet the future liability of carrying out major works to the Block the Reserved Property referred to in Schedule 3 or to the demised premises...*

*b. (C) Pay to the Lessor on demand the amount by which the estimated sum paid by the Lessee to the Lessor under sub-clause (A) or (B) of this clause in respect of the Management Charges for each financial year as aforesaid (including unpaid charges for each financial year as aforesaid) (or in the first year of this term part of a financial year) is less than the due proportion payable by the Lessee of the total monies properly and reasonably expended or retained by the Lessor constituting the Management Charges for such financial year such due proportion of the total sum expended or retained by the Lessor as aforesaid in respect of or otherwise for the benefit or use of the Block...*

*c. (D) if the amount by which the estimated Management Charges paid by the Lessee to the Lessor under sub-clause (A) or (B) of this clause is more than the due proportion payable by the Lessee of the total monies properly and reasonably expended or retained by the Lessor as above the excess so paid shall be carried forward by the Lessor to be credited to the account of the Lessee.”*

7. These provisions enable the applicant to make and demand service

charges that must under the terms of the lease be repaid by the respondent.

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 15 August 2022 Judge Vance issued Directions requiring the parties to take specified steps by specified dates to progress the case to the earliest hearing date. Full and detailed submissions by way of an electronic bundle were eventually made by the parties and received by the Tribunal and were utilised in this determination. In these Directions Judge Vance stated that “*The parties should note that this matter is **not** now going to be dealt with on the basis that a tribunal judge will also sit as a County Court judge to decide those aspects of the claim that fall within the County Court’s sole jurisdiction. The tribunal will be determining the payability of the service charges claimed, and **not** interest or costs.*” It is on this basis that this determination is being made.
10. Amended and reamended Directions were also issued on 25 October 2022 and 24 November 2022.

### **The hearing**

11. The tribunal had before it an electronic trial bundle of documents prepared by the parties, in accordance with previous directions.
12. 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 given that 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 the parties to this dispute.
13. The Tribunal did not consider that an inspection was possible or necessary. 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.

### **Decision**

14. The tribunal is required to consider the reasonableness and payability of the disputed service charges in the sum of £4805.22 that

were raised by the applicant in an invoice dated 10 March 2021 and supplied to the respondent. The applicants say that the demand was for their service charges properly incurred in relation to the property. The applicant as landlord of the property is responsible for the cleaning, repair, maintenance and other provision of services to the block and estate in which the property is situated and the respondent is required to pay a reasonable proportion of the cost of that work/service in accordance with the provisions of the lease of the property.

15. On the other had the respondent says that he asked by a letter to the applicant for details of the charge issued on 7 April 2021 enquiring as to their reasonableness, but he says he received no response. The respondent in his County Court defence does acknowledge subsequent receipt of a statement of actual expenditure and a certificate of service charges for the period up to 31 April 2021 but not for 2018-2019 and 2019-2020. Accordingly, the respondent asserts that he has not paid the outstanding service charges due to not being provided with sufficient information to ascertain whether the charges incurred are fair and reasonable. In reply the applicant asserts that the respondent has been provided with copies of all relevant service charge accounts and estimates for the items and years in dispute, together with demands for payment and details of any payments made.
16. In the trial bundle the applicant has provided the tribunal with a detailed response to each of the respondent's disputed items. The Tribunal noted that the respondent's challenges are vague. For example, the respondent wrote in January 2023 to the solicitors for the applicant that "*There is no means for the tenant to question the fairness or reasonableness of a number of charges within the time allowed by the Tribunal that are of concern.*" This is notwithstanding that the transfer from the County Court was made as long ago as February 2022.
17. As such it did seem to the Tribunal that the applicant has tried its best to properly respond to the challenges made by the respondent. However, the respondent has failed to provide any information as to the reasons he believes the work was not carried out and no evidence to support his assertions for the applicant to deal with. For example the Directions issued by the Tribunal required the tenant to send to the landlord by post and, if possible by email a schedule in the form attached to the directions, completed by the tenant setting out in the relevant column, by reference to each service charge year: the item and amount in dispute, the reason(s) why the amount is disputed; and the amount, if any, the tenant would pay for that item. All that the respondent stated in the schedule was "*Major works programme service not provided*". So, in response and in regard to estate repairs the applicant asserted that:-

*“The Applicant is unsure as to what 'Major works Programme' the Respondent is referring to. The Applicant assumes the Respondent believes Estate Repairs have been included in a Major Works programme. If this is alleged, this is incorrect. Estate Repairs were carried out and properly charged pursuant to the Lease and the provisions on Maintenance Charges. A breakdown of the Estate Repairs carried out, along with the date these were paid for and a calculation of the Respondent's contribution is provided within the Applicant's Statement in Exhibit JDR7 on page 74. The total cost of Estate Repairs for the Estate was £12,239.26 and the Respondent's contribution is £47.75.”*

18. This pattern of challenge and explanation was repeated throughout the schedule. The works disputed by the Respondent include general estate and block cleaning, maintenance and repairs which would not be included within a major works programme as asserted by the respondent. The respondent appears to have disputed all work carried out which the applicant believes to be unreasonable.
19. It was apparent to the Tribunal that the respondent's case lacked detail and substance. There were simply repeated requests for further information. The respondent did specifically cite a specimen example of concern and highlighted a payment from September 2018 in the sum of £444.83. However, the respondent failed to say why or how this payment was unreasonable. As such the Tribunal could not find any reason to be concerned with this service charge. In these circumstances the Tribunal was unable to find any reason to find any of the challenges acceptable and or reasonable and as such the respondent's claims must be rejected.
20. Therefore, the Tribunal determines that the service charges claimed in the sum of £4805.22 are, for the reasons set out above, both reasonable and payable by the respondent to the applicant.

### **Transfer back to the County Court**

21. As will be apparent from the preceding clauses of this determination there were some claims made in the court proceedings which the tribunal does not have jurisdiction to determine. I have therefore transferred the file back to the County Court so that these claims may be pursued if the applicant wishes to do so.

**Name:** Judge Professor Robert  
Abbey

**Date:** 23 January 2023

## **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.