FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AP/LSC/2018/0424**
Property	**:**	**Alexandra Court, 238 Alexandra Park Road, London N22 7BQ**
Applicant	**:**	**Alexandra Court (Wood Green) Residents Association Ltd**
Representative **Also in attendance**	**:**	**Ms Michelle Hebbron** **Mr Wales**
Respondents	**:**	**Ms Mia Ash**
Representative	**:**	**In person**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Daley** **Mr K Ridgeway MRICS**
Date and venue of Hearing	**:**	**27 March 2019 at 10.00 am 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**21 May 2019**

DECISION

© CROWN COPYRIGHT 2019

Decisions of the tribunal

The tribunal makes the following determination-:

(1) The Tribunal makes no order under section 20C in respect of the landlord's costs.

(2) The Tribunal makes an order for the reimbursement of the Applicant's cost of the application and hearing fee.

(3) The Tribunal's decision on the reasonableness and payability of the service charges is set out below at paragraphs 33-55

The application

1. The Applicants sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable.

2. Directions were given at a case management conference, on 20 November 2018. The Directions stated-: " The tribunal has identified the following issues to be determined [though these may be amplified by the parties in their statement of case]:

- Whether the annual service charges in the sum of £1500 is reasonable and payable in each of the service charge years 2016,2017 and 2018

- Whether the costs incurred in respect of the painting and building works carried out to Alexandra Court in the summer of 2014 are reasonable and payable."

3. The Directions also provided that the landlord should provide Disclosure of all relevant service charge accounts and estimates together with all demands for payments and payments made by 11 December 2018 and that following Disclosure the Respondent would by 4 January provide a schedule with columns referencing each service charge year, and that she would set out, the item and amount in

dispute, the reason why the amount is in dispute and the amount if any the tenant would pay for that item.

4. On 18 March 2019, the applicant wrote to the Tribunal to set out their position, that they had been unable to prepare for the hearing as the Respondent had not complied with the Directions accordingly they could not understand what her specific objection to the charges and could not formulate a response. The Respondent had failed to provide the schedule of dispute; however she had provided a list of approximately 115 questions that she wanted the Applicant's to deal with. The Tribunal decided that it would go through each of the years and would hear oral evidence from the parties as to why the service charge was occurred, and what the Respondent's objections to each of the charges were. Prior to the hearing, the Tribunal invited the parties to have a discussion with a view to whether they could narrow any of the issues, or charges. However the parties were not able to reach any agreement on any of the issues outstanding.

The background

1. The Applicant is the tenant's management company who is responsible for the management of the premises and for the setting and collection of service charges. The Respondent is the leaseholder of the premises known as 238 Alexandra Park Road, London N22 7 BO.

2. The Leaseholder's flat is situated in a purpose built block, comprising 9 flats in a three storey block of with a small communal area. The block was built in 1964.

3. The premises are subject to a lease agreement dated 11 May 1965, which provides that the Applicant will provide services, the costs of which are payable by the Respondent as a service charge.

4. Where specific clauses of the lease are referred to, they are set out in this decision.

The Hearing

5. At the hearing the Applicant was represented by Michelle Hebbron who was a director of the management company, also in attendance was Mr Wales who was also secretary of the management company. The Respondent represented herself.

6. The Tribunal decided that procedurally, it would go through each of the years in issue, and the Applicant would explain how and why the

charges were incurred. The Respondent would then have the opportunity to set out what her objection to the charge was.

7. The Tribunal was informed that the service charges for each of the years in question was £1500.00 per year. The sum owed by the Respondent as at 31 December 2018 was £4,500.

The Cleaning 2016, 2017 and 2018

8. The Tribunal was informed that the first item in the service charge account budget was cleaning in the sum of £550.00. The Tribunal was informed that in 2016 the cleaning was carried out twice a month. It was carried out by one person who was responsible for cleaning the communal area, sweeping and mopping the floor. In 2017 the cost of cleaning was £569.00 and £150.00 in 2018. There was a change in cleaner over the period. The cleaning was carried out by a cleaner called Seraphina. The property was without a cleaner for part of 2018.

9. Ms Ash stated that she was not happy with the cleaning and that in 2018 she started paying for cleaning to be carried out directly by Dave Dean. She also stated that she was not getting her windows cleaned, although there was a cleaner who was cleaning the windows.

10. Mr Wales stated that he lived at the block and he had seen the cleaner and was happy that cleaning being undertaken. Ms Hebbron stated that the cleaning was undertaken at £50 per visit, which she considered to be reasonable. Ms Hebbron stated that as Ms Ash had not set out that this sum was in dispute, she had not provided invoices to the Tribunal. Ms Ash was asked whether she had any invoices concerning her paying for her cleaning, or any evidence such as photographs of the interior, she stated that she did not have any additional information.

Light and Heating 2016, 2017 and 2018

11. The cost of light and heating for 2016 was £220.00, and £386.00 for 2017 and £544.00 for 2018. The Tribunal was informed that the cost was for lighting for the communal hallway, the lighting was for a push button, there were also 2 security lights. The Electricity was provided by EDF Energy and the bills were paid by direct debit. Ms Hebbron stated that the bills were either estimates or as a result of actual readings. In answer to a question from the Tribunal, she stated that she had not provided copies of the bills as these had not been requested by Ms Ash.

12. Ms Ash stated that she objected to this charge on the grounds that she had been without electricity from 7 September until October 2018 as the switch had been broken and nothing had been done to repair it despite her complaints.

Gardening

13. The Tribunal was informed that the ground in which the premises was situated was approximately half an acre and that it comprised grass, a mature willow tree to the front and there was also a patio. The Tribunal had the benefit of photographs which Ms Ash had taken in which the patio and parts of the garden could be seen.

14. Ms Hebbron, referred to clause 5 (B) of the Lease which stated-: "… To keep tidy and in good order (with the grass cut) the gardens (including any trees flowers or shrubs) paths and roads comprised in Alexandra Court and said dustbins areas and drying areas…"

15. The cost of the gardening for the years in issue was £1140 (for 2016) £2550 (2017) and £1425 (for 2018). The Tribunal was informed that the Gardening was carried out by a company called Middle Earth who used three or four people. The Gardening costing approximately £95.00 a month, however in 2017, there had been additional work of tree felling in 2017. The Tribunal was informed that a pine tree blocked the light to the flat and trees had been over hanging at the back. The estimate for the work was £1125. The Applicant was asked about how the estimates had been obtained. The Tribunal was informed that these were verbal quotes. However they had given Middle Earth the go ahead to get the work done.

16. The Respondent was asked whether she accepted that the work was necessary and had been carried out, Ms Ash stated that she did not know and needed to see an invoice. The Applicant was directed to provide copies of the invoice to leaseholder.

Health and Safety

17. The charges were £294.00 (for 2016) £258.00 (for 2017) and £294.00 (for 2018). The Tribunal was informed that this was for Annual reports which had been commissioned regarding the premises. These reports included copies of an asbestos report by 4 Site copies. The Tribunal stated that copies of the report should be provided.

18. Ms Ash stated that she had not seen copies of the report and did not know what the report was for. The Applicant stated that this was for fire safety and other safety reports for the building and that the standard report was approximately 50-60 pages long. The Tribunal noted that although it might not be feasible to provide each of the leaseholders with a copy of the report, however a copy of it should be available for

inspection should it be requested by the leaseholders. The Tribunal directed that invoices should be made available to the Respondent within 21 days, and that if the Respondent wished to inspect the report, then facilities should be made available to her for the purpose of inspecting the reports.

Insurance

19. The Tribunal noted that the insurance for the premises for the periods were as follows 2016 £2454.00, 2017-£2784.00 and £3041.00 for 2018.

20. The Tribunal noted that the lease contained two provisions concerning insurance. In clause 2 (8) it provided that the tenant should take out insurance in the joint name of the tenant and the landlord. The lease stated-: " 2 (8) To insure and keep insured the demised premises at all times throughout the term hereby granted in the joint names of the Landlords and the Tenant from loss or damage by fire storm or tempest in the office of the Gresham Fire Accident Insurance Society Limited or such other office as the Landlord shall from time to time determine and make all payments necessary for the above purposes within Seven days after the same shall respectively become due and to produce to the Landlords (including as aforesaid) or their agent on demand the Policy or Policies of insurance and the receipt for each such payment and to cause all monies received by virtue of such insurance to be forthwith laid on in rebuilding and reinstating the demised premises and to make up any deficiency out of his own money Provided Always that if the Tenant shall at any time fail to keep the demised premises insured as aforesaid the Landlords may do all things necessary to effect or maintain such insurance and any monies expended by the Landlords for that purpose shall be repayable by the Tenant on demand and be recoverable forthwith by action."

21. The Landlord's covenants in the lease concerning insurance were to be found in clause 3. (ii) (a) which provided that-: The landlords shall be entitled (a) to take out such insurance as they may consider necessary in connection with the parts of Alexandra Court not by this or any like lease of a flat and garage comprised in Alexandra Court demised …"

22. The implications of the two covenants were that the tenants were actually responsible for providing building insurance for the demise and the landlord was responsible for the common parts, however the landlord's had insured the premises, an eventuality that the lease provided could occur in default of the tenant insuring the premises.

23. The Tribunal asked about whether the landlord had market tested the insurance, and Ms Hebbron did not have this information. It was noted that the cost had increased due to the claims history.

24. Ms Ash's contention was that she had no proof that the building was being insured and she did at the hearing raise any issue with the landlord insuring the premises. It was noted that there had been a claim against the insurance pertaining to a leak from the roof which affected the bathroom in flat 8. This appeared to indicate that the building was insured. The Tribunal noted that Ms Ash was free to make arrangements with her landlord to inspect the service charge invoices by arrangement, and this included the insurance policy documents.

Repairs

25. The costs for the repairs, over the periods in issue were made up of many small items of expenditure including £132.00 for a small repair to a section of fence in 2016. Tile and Manhole replacement in the sum of £612.00 this was for a gap between two tiles near the door entrance. And roof repairs in the sum of £720.00(2018). There were repairs to the fence and gate. The Tribunal was informed that there were 7 to 8 feet of fence replacement/repair, for a section of the fence in the drive way. There was also the cost of repairs to the gate to the front and back of the building, the total of costs of which were £1740.00. The Applicant had also on replacement of the lock had to provide the tenants with replacement keys in the sum of £152.00

26. The Tribunal was informed that major works were carried out to the washing /drying area in 2016 in the sum of £9,140.00. This was an area of repair to the concrete and fencing behind the property. Ms Hebbron informed the Tribunal that in October 2015 at the AGM it was suggested that the drying area should be repaired. The Tribunal asked for details of the section 20 notice procedures, and whether the leaseholders had been consulted.

27. It was accepted by Ms Hebbron and Mr Wales on behalf of the Applicant that the Landlord had not complied with the Section 20 consultation process.

28. In respect of these items of work Ms Ash noted that there was no proof that the work had been carried out. The Tribunal referred to the accounts which had been provided for 2016, 2017 and 2018 and that the accounts had been audited.

29. Following the hearing, the Tribunal noted that the parties had not been provided with the opportunity to make representations in respect of the damp proofing works in the sum £1296.00. The Tribunal also noted that it had sought no representations in respect of company expenses such as drop box and bank charges. The Tribunal also asked for details as to whether the Applicant sought to rely upon provisions in the lease in relation to management charges.

30. The Tribunal wrote to the parties on 28 March 2019 and informed the Applicant that they should provide copies of the invoice(s) pertaining to the work within 14 days and also it invited the parties to make any additional representations that it wished to make in relation to the damp proof work and the other items that were set out in the Tribunal letter. The Respondent was given 7 days to reply.

31. Copies of invoices including the repairs and redecoration were provided by the Applicants, the cost of this work was £13900.00 were provided by the Applicants, there was no detailed description of work undertaken such as a specification and the tribunal did not have the benefit of a section 20 notice or indeed any other details which set out how the Applicant's had gone about choosing the contractor.

32. The Applicant did not provide any explanation in respect of the drop box or the bank charges. In respect of the invoices, the Respondent noted that the work had been carried out to remedy damp in Ms Hebbron's flat. Ms Ash also made some alleged that save for the two leaseholders who acted as secretary and director of the management company and also Rachel Kirby no other leaseholders who acted as director and company secretary had been paid a fee for managing the premises.

The Tribunal's decision

33. The Tribunal considered the documents before it together with the oral evidence and representations from both parties. It noted that the Respondent had not complied with the Directions, and this was to her detriment. Although the Tribunal provided the Respondent with the opportunity to put her case, the Respondent did not have the benefit of the additional documents, and reply that the Applicant would have provided had Ms Ash complied with the directions and raised detailed objections.

34. The Tribunal determined this matter on the basis of the documents before it. The Tribunal noted that the accounts had been prepared Applicant provided accounts from Mann Accountancy Services.

The Cleaning

35. The Tribunal determined on the evidence before it that the cost of the cleaning was reasonable and payable. The Tribunal reached its decision on the evidence before it, which included photographs provided by the Respondent together with the oral evidence. The Tribunal noted that

Mr Wales stated that he had seen the cleaner at the property and that he was satisfied with the standard of the cleaning.

36. The Tribunal noted that the cost of the cleaning was £50.00 per visit. There was a period in 2018 when no cleaning was carried out, however this was reflected in the cost of £150.00 for 2018, accordingly the Tribunal is satisfied on the balance of probabilities that the costs was reasonable and that the Respondent was not charged for periods when no cleaning was carried out.

37. Accordingly the Tribunal finds this sum reasonable and payable.

Light and Heating 2016, 2017 and 2018

38. The Tribunal noted that the cost of the heating and lighting was determined by utility bills provided by EDF energy. The Tribunal is satisfied that the costs of utility was reasonable, should the Respondent wish to inspect copies of the bill then these should be made available for her inspection upon reasonable notice that inspection is required.

Gardening

39. The Tribunal was assisted by photographs of the garden. Although this was only reflective of when the photographs were taken the Tribunal noted that the garden appeared to be kept to a reasonable standard. The Respondent's main objection was that she did not have sight of the invoice, the Tribunal asked for copies to be provided. The Tribunal decided that the cost of gardening including the costs of pollarding the trees is reasonable and payable. The Tribunal in the absence of a detailed objection from the Respondent considered the size of the communal garden as determined by the photographs, the cost of the work as considered by reference to the Tribunal's knowledge and experience, in considering this it noted that the work was carried out by more than one person, and that the cost worked out to be approximately £95.00 per visit. The Tribunal finds that this cost is reasonable and payable.

Health and Safety

40. The Tribunal noted that the reports were provided by 4 Site, these reports are normally available on line. The Applicant should make this information available to all leaseholders, if 4 Site offer this facility so that any leaseholder who wishes could inspect the reports.

41. The Tribunal noted that the Respondent may upon reasonable notice inspect the Reports. The Tribunal in reaching its decision heard no evidence to suggest that these inspections were not carried out.

Accordingly the Tribunal is satisfied on a balance of probabilities that the cost of the inspection reports is reasonable and payable.

Insurance

42. The Tribunal noted that the wording of the lease provided that the leaseholders should arrange insurance in the joint names of themselves and the landlord this means in the first instance the tenant should insure the building and that the default position was that if the tenant failed to insure the premises the landlord could step in so as to preserve the landlord's interest and that of the other tenants in the building.

43. Ms Ash did not assert that it was her right to insure the building neither did she suggest that the landlord had acted improperly in insuring the building. She merely wanted proof that it was insured. The landlord did not assert failure to insure by the tenant. It would appear that the landlord has insured the building due to a custom and practice which has been carried out at the building. As the landlord has the right to insure in default of the tenant insuring, the Applicant may seek reimbursement from the tenant by way of service charges.

44. The service charge is therefore payable. The Tribunal noted that the Respondent does have the right to arrange her own insurance in terms of the lease, and this may be an option that she may wish to explore in future years. The Tribunal noted that on 27 December 2016, the Respondent emailed her fellow leaseholders concerning the practice of paying commission for the placement of insurance. The article detailed an investigation that had been carried out concerning the practice of paying commission to landlords and managing agents, and how this had led to an increase in the premium.

45. The Respondent, in the same email, complained about the Applicant's lack of transparency and called for the building insurance policy document to be made available.

46. The Tribunal have decided that the cost of the premium is reasonable once the Applicant has confirmed that copies of the document has been made available to the Respondent either by way of copies or on inspection. **The Applicant must arrange to facilitate inspection at a time and date to be agreed, or alternatively by copying the documents to the Respondent within the next 14 days**.

Repairs

47. The Tribunal noted that there were many small repairs carried out in relation to the fence, lighting and the tile and manhole cover and the

gate. Part of Ms Ash's dissatisfaction appeared to be her contention that the Applicant's representatives were not even handed in dealing with repairs in that often repairs in the common parts of the building are in front of other flats, and Ms Ash's flat does not receive the benefit of the work. The Tribunal also noted that Ms Ash was critical of the Applicant's use of the same builder Mr Sliwka. However the Tribunal noted that no other estimates or alternative costings had been provided by the Respondent.

48. The Respondent has also only been charged for work which was carried out.

49. The Tribunal whilst making no findings of any bias concerning the manner in which the work was carried out, noted that many tenant owned companies chose to use a managing agent, so that not only is the building management professionally, there is also a plan in respect of maintenance of the building. In respect of the repairs for 2016, 2017 and 2018, save for the drying area, the Tribunal finds the cost of the repairs reasonable and payable.

50. In respect of the cost of the drying area, the Tribunal noted that the cost of this work was above the threshold for consultation and that the Applicant had failed to comply with the section 20 consultation, the Applicant could apply for dispensation which would require the Applicant to make an application however unless or until an application is made and determined in the Applicant's favour the cost of the work should be limited to £250.00 which is the maximum payable for a single item of work without consultation.

51. In respect of the major works carried out in 2014, although the Respondent did not provide a statement of case, it was clear from her email that Ms Ash was querying the extent of the work undertaken.

52. In their statement the Applicant set out " At best we can only assume that given most of her objections relate to the work that was carried out on Alexandra Court during November/December 2014 by Wojciech Sliwka which she contends were costed at a price that grossly overstated the work involved.

53. The Respondent did not provide any alternative estimates, neither did she provide any evidence for her assertion that the monies spent involved expenditure for work on the flat of the then managing director Ms Kirby.

54. It is unsatisfactory that no addition information has been provided by either party, and the Tribunal noted that the work had been undertaken some 4/5 years ago. Therefore it was difficult to determine from photographs provided, the standard of the actual work.

55. The Tribunal has seen the invoices and although they are lacking in some detail the Tribunal accepts that painting was carried out at the premises accordingly the Tribunal finds that service charges are payable for this work. However the Tribunal noted that the cost of this work was above the threshold for consultation and that the Applicant had failed to comply with the section 20 consultation, the Applicant could apply for dispensation which would require the Applicant to make an application however unless or until an application is made and determined in the Applicant's favour the cost of the work should be limited to £250.00 which is the maximum payable for a single item of work without consultation.

Application under s.20C and refund of fees

56. Ms Ash applied for an order under section 20 C in respect of this lease this does not appear to provide for the payment of legal costs, however the Tribunal would make these observations, firstly the Applicant was represented by Ms Hebbron and Mr Wales, as managing director and company secretary as such legal costs have not been incurred. This Tribunal save for limited and a statutory exception (that is as provided for by law) is a no cost jurisdiction.

57. The Tribunal therefore determines that the cost of this hearing is not to be charged as a service charge item.

58. However the Tribunal consider it appropriate for the Applicant to recover the cost of the application fee and the hearing fee.

Name: Judge Daley

Date: 21 May 2019

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.

Appendix of relevant legislation

Landlord and Tenant Act 1985

(1) **Section 27A**

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
   (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
   (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
   (a) £500, or
   (b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.