FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2020/0136** **V:CVPREMOTE**
Property	**:**	**Flat 3 Craven Court, 29-31 Craven Rd London W2 3BX**
Applicant	**:**	**Alan Black**
Representative	**:**	**In person**
Respondent	**:**	**SEP Properties Ltd**
Representative	**:**	**Ms R Meager of Counsel**
Type of Application	**:**	**S27A and s20C Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge F J Silverman MA LLM** **Mr D Jagger MRICS**
Date and venue of Hearing	**:**	**Remote CVP hearing** **19 October 2020**
Date of Decision	**:**	**27 October 2020**

DECISION AND ORDER

1 The Tribunal determines that the amount payable by the Applicant tenant in respect of the service charge year 2017-18 is £3,038.44, for the service charge year 2018-19, the sum of £3,364.20, and for the service charge year 2019-20, the sum of £4,238.73. This gives a total for the three accounting periods of £10,641.37.

2 The Tribunal determines that the Respondent is not entitled to require the Applicant to pay any 'administration' charges because the terms of his lease do not permit such charges to be levied.

3 In so far as the Applicant has not already paid these sums they will not be due and payable until the Respondent landlord has complied with s21 Landlord and Tenant Act 1985 by responding properly to the tenant's requests for information.

4 The Tribunal makes an order under s20C Landlord and Tenant Act 1985 in favour of Alan Black.

5 The Tribunal orders the Respondent within 28 days of the date of this decision to repay to the Applicant the sum of £400 representing his application fees (£200) and hearing fee (£200).

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE . A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The document which the Tribunal was referred to are contained in electronic bundles comprising approximately 1000 pages the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

1 The Applicant is the tenant and long leaseholder of the property known as Flat 3 Craven Court , 29-31 Craven Road London W2 3BX (the property) of which the Respondent is the landlord and reversioner.

2 On 24th June 2020 the Applicant tenant filed applications under s27 A and s20C Landlord and Tenant Act 1985 relating to service charges for the period 2017-8 and onwards and under Sched 11 Commonhold and Leasehold Reform Act 2002 relating to administration charges which he alleged were incorrectly levied on him by the Respondent landlord through its management company Blogsphere Properties Ltd.

3 Directions were issued by the Tribunal on 08 July 2020,26 August 2020, 02 September 2020, 04 September 2020, and 10 September 2020.

4 An application to adjourn the scheduled remote hearing and to substitute an oral hearing made by the Respondent on 02 September 2020 was refused by the Tribunal.

5 The Tribunal received and read over 1000 pages of electronic documentation, including the parties' respective statements of case, Scott schedules and witness statements which are referred to below. Additional documents which the Tribunal only received on the morning of the hearing were not considered during the hearing and no oral application for their inclusion was made at the hearing.

6 The hearing took place by way of a remote video (CVP) link to which the parties had previously consented. The Applicant appeared in person and the Respondent was represented by Ms R Meager of Counsel. Mr Singh of the Respondent company and Ms Davies of Blogsphere (managing agents) attended via separate video connections. The proceedings were recorded.

7 In accordance with current Practice Directions relating to Covid 19 the Tribunal did not make a physical inspection of the property but were able to obtain an overview of its exterior and location via GPS software.

8 The Tribunal understands that the property comprises a three bedroom flat within a six storey mixed use building known as 29-31 Craven Road and 17-18 Brook Mews North (the building). A commercial unit occupies the ground floor and the upper storeys comprise nine flats. The Respondent landlord owns this building and the adjacent building in Gloucester Terrace.

9 Mr Singh, a Director of the Respondent company, expressed the view that the two buildings formed one unit and were treated together for the purpose of service charges and management. The Applicant who and has owned the property for a number of years told the Tribunal that there were no common parts shared between the Craven Road section and the larger Gloucester Terrace section, the latter containing 18 flats. He said that although one flat belonging to Brook Mews was structurally part of the Craven road building, it was physically separate and shared no common parts with Craven Road but did contribute to sections of the Craven Road service charge.

10 The Applicant's explanation of the composition of the building is supported by the description in the lease (page 968) which specifically describes the extent of the 'building' as the Craven Road block. Service charge provisions in the lease (page 972) apply to 'the building'.

11 The Respondent only acquired the freehold reversion of the two blocks in October 2018. His evidence to the Tribunal was that he had visited

the two blocks four or five times since then. The Tribunal prefers and accepts the Applicant's evidence coupled with the wording of the lease as defining the extent of the property and building.

12 In relation to the 2017-18 and 2018-19 service charges Counsel for the Respondent maintained that such a claim could only be sustained by the Applicant against a previous landlord. The Respondent acquired the freehold reversion of the building and Gloucester Terrace (they are registered together under one title number) at auction on 18 October 2018 part way through the 2018-19 service charge year. The service charge year is defined in the lease as running from June 25 in each year to the following June 24 (page 972).

13 The Respondent's view, set out in their Counsel's skeleton argument was unsupported by statutory or case law authority save for a brief comment in a Tanfield Chambers text and a passing reference in written Directions issued by a Judge in this case at a time before evidence had been disclosed.

14 She asserted additionally that the claim was essentially one for restitution and therefore outside the Tribunal's jurisdiction.

15 The Tribunal considers that this view is entirely misconceived. Firstly, the claim is lodged under s27A Landlord and Tenant Act 1985 , a statutory jurisdiction where the order sought is a determination of reasonableness, it is not framed as a claim for restitution which is an equitable claim within the chancery jurisdiction.

16 It is accepted that the Tribunal does not have power under the statute to make an order directing repayment of service charges from a landlord to a tenant but it can and does make enforceable orders relating to the amounts payable by the tenant to the landlord which may entail financial adjustments being made to service charge accounts.

17 Secondly , it was argued on behalf the Respondent that the Respondent could not be liable in respect of moneys paid to the previous freeholder prior to the Respondent's purchase of the reversion. Those moneys related to the performance by the former freeholder of its covenant to provide services under the terms of the lease. It is noted that the Respondent's original response to the application as shown in the Scott schedule on pages 52-59 does not make any denial of liability as now pleaded.

18 The Respondent's argument denying liability is tantamount to saying that they do not accept that liability to perform the landlord's lease covenants endures beyond the date of the assignment of the reversion. If that were so, it could be argued that an assignee-landlord need not perform any services, need not repair the building , need not insure it. Such a situation would quickly bring chaos to the leasehold market and is plainly contrary to the doctrine of privity of estate which creates and maintains the relationship between the landlord and tenant for the time being.

19 The accepted procedure is for the buyer of the reversion to make enquiries prior to contract to establish what the service charge position is and to take over the service charge liability and balance of the fund as from the date of completion , the assignee's position being secured by the non-excludable implied indemnity covenant imposed by

s 77 Law of Property Act 1925. This procedure appears to be reflected in the provisions of the contract for sale under which the Respondent acquired the property in 2018 (see page 531). The Respondent's apparent inability in this case to establish the factual matrix of the service charge position prior to their acquisition must rest on their own failure to perform due diligence prior to purchase.

20 It was established in an earlier Tribunal case relating to this property (LON/00BK/LSC/2005/0134; see pages 546-586) that the service charges relating to the property are to be divided into three categories of expense namely: 'Common parts expense', 'Insurance expense' and 'General expense' as defined in that Decision (see pages 573-5) . The Applicant tenant's proportion of those categories was set out in that decision as follows: Common parts expense:19.78%, Insurance expense: 13.47%; and General expense: 14.815% (page 586). These therefore are the categories and proportions which the Respondent should have used in order to calculate the correct amount of the service charge payable by the Applicant.

21 It is also trite law to repeat that the landlord can only charge to a property sums which have been expended on that property in accordance with the terms of the lease. In the present case the invoices disclosed in the bundle contain a significant number which refer only to Gloucester Terrace and which on the face of it should not be included in the charges levied on the Craven Court residents (eg page 33).

22 As noted above, Mr Singh for the Respondent said that he had treated the two blocks as one and had not therefore separated out the individual repairs to each block. The Tribunal finds that to be a totally unacceptable position because it is impossible to establish how much (if any) of each invoice is attributable to Craven Court (and then proportionately to the property).

23 Further, this lax method of accounting may have resulted in the Craven Court residents paying for work which has nothing whatsoever to do with their own building and vice versa in respect of Gloucester Terrace.

24 Mr Singh appeared to be unfamiliar with the terms of the leases and offered no explanation as to the proportions in which the liability had been apportioned between the various tenants. The proportions in which the tenants are required to share the service charge between them is specifically set out in their leases (as varied, see para 20 above) and must be adhered to.

25 Additionally, some invoices within the hearing bundle (eg page 34) relate to repairs to a specific flat or flats. The liability for these items lies with the owners of those specific flats and the sums cannot be treated as part of the general service charge.

26 The Respondent admitted that the two buildings had been treated as one with no attempt to apportion liability correctly either between the two buildings or between the three categories of service charge.

27 If, for whatever reason, that apportionment was not made, then it would have been impossible for the Respondent to have correctly apportioned the liability between the various tenants in accordance with their contractual percentages.

28 Further, the service charge demands sent to the Applicant (eg page 450) make no attempt to break down the sum demanded into the various proportions nor do they provide any guidance as to how they have been calculated.

29 The Applicant's requests for information under s 21 of the Landlord and Tenant Act 1985 Act (see eg page 497) have not been complied with.

30 Mr Singh said that the service charge accounts and demands were prepared by the managing agents, currently Blogosphere, whose representative Ms Davies attended the video hearing from its commencement but failed to re-join at 11.10am after a brief adjournment. She did however send an email message to the Tribunal case officer (immediately copied on to the Tribunal) to say that she had no power and could not re-join the meeting.

31 The Tribunal read her written witness statement but was unable to hear from her in person and her evidence was therefore not subjected to cross-examination.

32 The Applicant's unchallenged evidence was that there are 9 residential units in Craven Court one of which (Brook Mews) has a separate entrance and postal address and does not share any part of the common parts area. As previously stated, the Applicant's percentages (see para 20 above) are not simply one ninth of the amount chargeable to the property and therefore it must be assumed that other tenants' proportions are similarly varied.

33 The Tribunal concludes that the amounts charged to the Applicant for the service charge years 2017-18 onwards cannot possibly be correct and have almost certainly been overstated because they must have included amounts relating to repairs and services either provided exclusively to the Gloucester Terrace building which is substantially larger than the subject property and/or sums properly chargeable to individual tenants in relation to non-service charge items relating to specific flats.

34 The Respondent states that the accounts for the year 2018-19 onwards have not yet been finalised and therefore cannot justify or explain the amounts charged to the Applicant during that accounting period.

35 For the most part the Applicant paid his service charges before challenging them and apart from matters relating to the allocation of a major works contract and cleaning has raised no substantive issues relating either to the provision of services or of their quality.

36 The Tribunal concludes therefore that the Applicant accepts both that some services have been provided by the landlord and that their quality was not totally unacceptable. He should therefore be required to pay a reasonable amount for those services .

37 In relation to cleaning, the Applicant asserted that the Respondent's charges were excessive . However his cited example of the lower cleaning costs relating to a block of flats in East Grinstead West Sussex are not considered by the Tribunal to provide an appropriate comparison with the cleaning costs for a central London property. The Tribunal does not find this assertion to be substantiated by the evidence provided by the Applicant.

38 There is no clear pathway by which the Tribunal is able to unravel the maelstrom of the Respondent's accounting system in order to specifically allocate proportionate amounts to the Applicant but a solution must be found to enable this matter to be resolved .

39 The Tribunal proposes therefore to adopt the average percentage reduction which was ordered by previous Tribunals in relation to this property. These average out at 40% (see pages 564-645 and para 7 of the Applicant's statement at page 61).

40 The amount demanded by the Respondent for the year 2017-18 was £5,064.08, an allowance of 40% reduces that figure to £3,038.44.

41 The amount demanded by the Respondent for the year 2018-19 was £5,607.64 , an allowance of 40% reduces that figure to £3,364.20.

42 The amount demanded by the Respondent for the year 2019-20 (£4,238.73) in respect of service charges (but excluding major works £6,159.47) is no longer disputed by the Applicant(para 34 p 66) and subject to the service on the tenant of proper demands is due and payable.

43 These reduced figures are therefore the maximum amounts which the Tribunal determines that Respondent is entitled to retain in settlement of the accounts for the above years with any balance over and above these sums (totalling £10,641.37) being returned to the Applicant or credited to his liability for the current and subsequent year(s). Where the Applicant has not already paid these sums they will not be due and payable until the Respondent landlord has complied with s21 Landlord and Tenant Act 1985 by responding properly to the tenant's requests for information.

44 Clause 3(1)(d) of the lease provides that the landlord will serve service charge demands on the tenant on two specific dates during each accounting year namely 24 June and 25 December. The first demand is for a sum on account for the service charge year and the second a balancing charge at the end of the accounting period. There is no other provision within the lease allowing interim or advance charges to be levied.

45 The Applicant had on two occasions sent formal requests to the Respondent asking for detailed information about the breakdown of the amounts demanded in the Respondent's invoices (pages 494-6). The Respondent had not responded to these requests and as a result the Applicant had withheld his payments, as he would in these circumstances be entitled to do.

46 The Respondent's apparent response to the Applicant appears to have been to continue to issue cumulative demands for payment and in default of receipt of the balances demanded to issue 'reminder' letters (see pages 438-451) for each of which they charged the Applicant an additional administration charge of £90 or £180.

47 Although some of the example invoices contained in the bundle do have attached to them notice of the tenant's rights (missing on page 493) they do not contain clear details of the amount of the service charge demanded, for what period of time or the method of its calculation (see eg page 441) . As such they are not valid demands and effectively the tenant is not liable to pay any amount under these demands until properly drawn invoices have been sent to him.

48 The Applicant also asked the Tribunal to consider both the legality and the reasonableness of the Administration charges levied by the Respondent on the Applicant. Pages 453 to 465 all deal with the Applicant's alleged cumulative non-payment of service charges and in respect of which the Respondent charged the Applicant £90 or £180 for each reminder letter sent to him.

49 In order to charge such an administration charge there must be an express provision to that effect in the lease. The Respondent sought to rely on a combination of clauses in the lease none of which in the Tribunal's opinion had any connection whatsoever with the right to levy administration charges for tenant defaults of this nature.

50 In the absence of an express clause therefore, the Tribunal finds that these charges should not have been made and are not recoverable by the Respondent from the Applicant. Further, these letters were premature. In the absence of service by the Respondent of a valid demand no payment is due from the tenant and the Tribunal has already expressed its view that the demands themselves were flawed.

51 It is noted that the demands were also patently inaccurate and in one case the amount demanded was amended three times after complaint by the Applicant (page 401).

52 The costs of sending the reminder letters (when appropriate to the situation) should form part of the managing agent's basic annual fee which it charges for the general management of the block.

53 A further letter with an administration charge attached to it was sent to the Applicant alleging that the Applicant had committed a breach of covenant by refusing to complete and return to the Respondent a detailed questionnaire about the occupancy of the property.

54 The Applicant had sent the Respondent a complete copy of the underlease relating to the flat in compliance with the lease covenant to that effect (page 978) but maintained that he was not under an obligation to supply the detail required by the Respondent's questionnaire.

55 The Tribunal expressed the view that it had been unable to find any clause in the lease which would relate to this alleged breach of covenant. Counsel for the Respondent agreed with the Tribunal's view.

56 The Tribunal therefore finds that the Applicant's failure to fill in the questionnaire cannot constitute a breach of a covenant within the lease and the Respondent's service of a notice of breach is otiose. As above, no charge can be levied against the Applicant for preparation of this letter (page 464) because the lease does not any contain provision allowing the Respondent to make charges in these circumstances.

57 The advance payment for the major works contract is not yet payable since no correctly served demand has been issued in respect of it and, as stated above, the lease does not allow for interim demands or advance payments (see para 44 above). The Applicant clearly has issues about both the s20ZA process followed by the Respondent and the award of the contract for the works to a company which he alleges is closely related to the Respondent. Those issues are outside the scope of the present application and are not further discussed here.

58 The Applicant asked the Tribunal to make an order in his favour under s 20C. The Respondent objected to this and presented a schedule of

costs amounting to approximately £14,000, a sum apparently incurred in the preparation of this case by the Respondent's solicitors who were only instructed to act on 01 September 2020.

59 The Respondent said that they intended to make an application for costs under Rule 13 of the Tribunal Rules of Procedure but would do so after the promulgation of the Decision. It is noted that the Respondent's evidence to the Tribunal contained no allegations or examples of the Applicant's alleged unreasonable conduct but that the Respondent had since the commencement of the proceedings changed its legal advisers several times and had shown consistency in its failure to meet procedural time limits.

60 In relation to the s20C application, the Tribunal determines that it will make such an order in favour of the Applicant preventing the Respondent from recovering all or any part of the costs of the proceedings from the Applicant. The Respondent's conduct both of the management of the service charges which are the subject of this application and of the proceedings themselves has been tardy, incompetent and with scant regard either to the terms of the lease or to Directions issued by the Tribunal.

61 The Tribunal also orders the Respondent to repay to the Applicant the sum of £400 representing the application and hearing fees paid by him.

62 **The Law**

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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or
  (b) on particular evidence,
  of any question which may be the subject matter of an application under sub-paragraph (1).

Section 47 Landlord and Tenant Act 1987

(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 [F1or 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 [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (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.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5)Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1)A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.
(1)This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman
Date 27 October 2020

Note:

RIGHTS OF APPEAL

1. 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 rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.