FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2020/0173**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**27 Sherwood Court, Bryanston Place, London W1H 5FE.**
Applicant	**:**	**Mr. Durrell and Mrs. Robert-Durrell.**
Representative	**:**	**In person.**
Respondent	**:**	**Shellpoint Trustees Limited**
Representative	**:**	**Dale & Dale Solicitors.** **At the hearing: Mr. T. Fraser of Counsel.**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 and/or an administration charge under the Commonhold and Leasehold Reform Act 2002. An application under S.20C of the Landlord and Tenant Act 1985, Paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.**
Tribunal members	**:**	**Ms. A. Hamilton-Farey** **Ms. S. Coughlin MCIEH** **Ms. J. Mann MCIEH BSc Hons.**
Venue	**:**	**By remote video conference.**
Date of decision	**:**	**9 December 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V;VIDEOREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle prepared by the respondent, the contents of which have been noted by the tribunal. The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The tribunal determines that invoice 8006 in the sum of £120.00 is disallowed in full. That the sum is not a service charge and should be borne by the landlord.

(2) The tribunal determines that invoice 8007 in the sum of £216.00 is disallowed in full. That the sum is not a service charge and should be borne by the landlord.

(3) The tribunal determines that the fees claimed in invoice 8008 should be reduced to £500.00 and that sum should be paid by the applicants within 28 days of the date of this decision. The remainder of the sum is not a service charge and should be borne by the landlord.

(4) The tribunal makes no determination in respect of the applications under S.20C and Paragraph 5A, until written submissions have been made by the parties in relation to those applications. Written submissions should be made within 21 days of this decision and the tribunal will determine the applications on the basis of those submissions, without a hearing.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge year 2019. It transpired during the hearing that the amounts claimed were in fact administration charges and had been invoiced in the financial year 2020. .

2. The tribunal considers that although the applicants had made an error in the dates for the service charge year, the landlord was prepared for the matter to proceed, and in the interests of justice, the hearing proceeded on the basis of the documents supplied, including those supplied on the morning of the hearing, and which the respondent agreed should be admitted into the bundle.

The hearing

3. The Applicants appeared in person; Mr. T. Frazer of Counsel appeared on behalf of the respondent. Mr. M. Comport of Dale and Dale, Solicitors gave evidence on behalf of the respondent.

The respondent's case:

4. Mr. Frazer provided a skeleton argument the day before the hearing, in which it was confirmed that the amounts in invoices 2006 and 2007 were no longer being pursued against the applicants, but that the respondent wished the tribunal to make a determination that these costs were service charges and could be included within the service charge accounts.

5. As the tribunal were taken through the skeleton argument, it transpired that the sum claimed within invoice 2008 was incorrect, and that credits should be applied for the legal and court fees already paid by the applicants. The amount claimed in that invoice was now £1,223.00.

6. Mr. Frazer took the tribunal through the lease and confirmed that the management company employed Parkgate Aspen as managing agents. When instructed to do so Dale and Dale provided legal and professional services to the management company. It was the legal and professional fees that formed the basis of this application.

Invoice 8006:.

7. This invoice totalled to £120.00 and related to legal advice taken by the landlord in relation to a possible insurance claim against it, following contact by the tenant's contents insurers following a claim by the applicants in relation to a leak into their garage.. Mr. Frazer informed the tribunal that this was properly recoverable by the landlord under the lease. The applicants disputed liability and said that they appreciate the landlord had to defend itself against claims, but as they had not instructed their insurer to contact the landlord, they did not consider themselves to be liable.

8. It was agreed that the water leak had occurred in Flat 1 above the garage, but it appears that no attempt to claim against that leaseholder had been made. Mr. Comport was unable to inform the tribunal why the landlord had not contacted their own insurer. The tribunal had noted that clause 1.5.1 of the lease required the landlord to insure against third party claims such as this, but no claim had been made.

9. In the circumstances the tribunal considers that the £120.00 should not form part of the service charge. In our view, the managing agents should have been aware of the lease terms, and should have provided advice to the landlord, without the need for involving solicitors. We therefore

disallow this claim in full and do not consider that the landlord should recover any amount as a service charge.

Invoice 8007:

10. This invoice for £216.00 related to two matters. Firstly advice to the landlord regarding motorcycles parked in the courtyard area, and the advice to the landlord on the rights of the applicants to see receipts and vouchers in relation to the service charge accounts.

11. Mr. Comport informed us that roughly £20.00 related to the motorcycle issue and the balance towards the service charge advice. Mr. Frazer confirmed that, in his view, the costs were recoverable under the lease as service charges.

12. The applicants disagreed. They said that they originally complained about the motorcycles blocking the fire exit in 2014, but nothing was done, and the motorcycle was still in situ. It was confirmed to the tribunal the bike belonged to a resident of the block. In our view, a managing agent should be able to deal with customer complaints themselves without resorting to instructing solicitors, and that this would come within the normal management fee. We therefore disallow this part of the claim.

13. The second issue was the access to vouchers and receipts. The applicants said that they had contacted the agents and had requested access, as they had done in the past. They say that they were finally granted access to the vouchers and receipts and had taken their own scanner to the agents' offices to take copies. They say they were consistently refused access to the bank accounts which prevented them from being able to reconcile the sinking funds held with the transactions.

14. We find that in principle these costs might be service charges, however it is not reasonable in our view, for a managing agent to seek advice from a solicitor, and incur the costs of doing so, over what is a relatively simple and straightforward exercise. The tribunal would expect a managing agent to perform this task as a matter of routine when dealing with service charges, and the applicants should only be liable for the cost of copying, in accordance with the legislation. However, as the applicants had taken their own copying facilities, we consider nothing to be payable, and disallow this part of the claim.

Invoice 8008:

15. This invoice related to the legal fees in writing to the applicants regarding the installation of a CCTV camera, recovering arrears from the applicants and responding to a 9-page letter written by the applicants. The applicants said that they had given notice of the intention to install

the camera and the managing agents had not responded after 6 months. Once the CCTV was installed they received a letter from Dale and Dale. Other residents had installed security lights but no action had been taken by the managing agents. The applicants said that the letter was not written in response to the claim for arrears, but to general queries relating to the management of the property. This included queries in relation to the S.20 consultation which the applicants said was flawed; the additional payment requested from leaseholders in relation to garage works that should have been charged to NCP as the garage owner.

16. The applicants said that for six years they raised queries with the managing agents regarding these and other issues that they outlined within the Scott Schedule, but received no replies. The agents, they said failed to respond at all, or in a timely manner, refused to address the issues that were being raised, and that they had to wait 18 months for some replies. In their view this was unacceptable.

17. The applicants accept that they withheld their reserve fund contributions in protest at the lack of response from the managing agent/landlord, but paid in protest as part of their enfranchisement application. The tribunal noted that arrears had continued to accrue after these charges had been paid.

18. The applicants said that had the agents responded to them and acted correctly there would have been no need for a 9-page letter to be sent, and that they were being treated unfairly by the landlord/agents because they were the only leaseholders being pursued for legal fees. They felt that the fees were being charged to make them 'go away' and not pursue any disputes.

19. We find that in principle the CCTV legal costs might be service charges, however it is not reasonable in our view, for a managing agent to seek advice from a solicitor, and incur the costs of doing so, over what is a relatively simple and straightforward exercise, particularly when the applicant had given written notice of installation and the managing agents did not respond to that notice.

20. Having heard the evidence, the tribunal is satisfied that the landlord was entitled to take action to recover the arrears, but that had the managing agents dealt with matters in a more timely manner there would not have been a dispute about reserve fund contributions. In the circumstances, we consider the applicants should make a contribution towards the legal costs in relation to the recovery of arrears and that a reasonable contribution would be £500.00, and that this should be paid within 28 days of this decision.

S.20c Application and Paragraph 5A Application,

21. The applicants have made applications under S.20C and Paragraph 5A. It was agreed at the hearing that written submissions should be made on these applications following the publication of this decision.

22. The parties should therefore make written submissions within 21 days of this decision. The tribunal will determine those matters on the papers received.

Name: Aileen Hamilton-Farey **Date:** 9 December 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2020/0173**
HMCTS code (paper, video, audio)	**:**	**P:PAPERREMOTE**
Property	**:**	**27 Sherwood Court, Bryanston Place, London W1H 5FE.**
Applicant	**:**	**Mr. Durrell and Mrs. Robert-Durrell.**
Representative	**:**	**In person.**
Respondent	**:**	**Shellpoint Trustees Limited**
Representative	**:**	**Dale & Dale Solicitors.** **At the hearing: Mr. T. Fraser of Counsel.**
Type of application	**:**	**Application by the Respondents for Leave to Appeal the Tribunal's decision of 9 December 2020.** **Application by the Applicants under S.20C of the Landlord and Tenant Act 1985, Paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.**
Tribunal members	**:**	**Ms. A. Hamilton-Farey** **Ms. S. Coughlin MCIEH** **Ms. J. Mann MCIEH BSc Hons.**
Venue	**:**	**Paper Remote**
Date of decision	**:**	**29 January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a determination on the papers, which has been consented to by the parties. The form of determination was P:PAPERREMOTE A face-to-face hearing was not held because it was not necessary as all issues could be

LEAVE TO APPEAL:.

Decisions of the tribunal

1. The tribunal has considered the respondent's request for permission to appeal dated 6 January 2021 and determines that:
   (a) it will not review its decision; and
   (b) permission be refused.

2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

3. Where possible, you should send your further application for permission to appeal **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.

4. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

REASONS FOR THE DECISION

5. The reason for the decision is that the respondent now seeks to reverse the tribunal's decision in relation to invoice 8008. The tribunal had considered this invoice and the parties' arguments as to liability of the applicants and/or the service charge/administration charge, and determined that the sum was not so payable, when reaching its original decision.

6. The tribunal is not persuaded by the respondents' argument that this invoice relates to an administration charge, or if not, that it should be a service charge to be paid from the buildings' service charge funds.

7. The tribunal found in its original decision that the sum claimed was not reasonable and that it was neither an administration charge (and therefore payable by the applicants) or a service charge (and payable by all leaseholders).

The applications under S.20C and Paragraph 5a.

23. With respect to the S.20C application, the Applicants have been mostly successful in their application. Several matters were conceded by the respondents at the hearing, and the tribunal considered that the respondents had acted unreasonably in invoicing the applicant for charges that were unnecessarily incurred or should not have been sought from the applicant. For example, the respondents had sought the full cost from the applicants for invoices 8006 and 8007, but then changed their position at the hearing to only seek 2.84% of the invoices amount, in accordance with the lease.

24. The respondents did not attempt to resolve the matter prior to the hearing because they did not respond to the applicants e-mail enquiries regarding the costs sought by the respondents.

25. The respondents also failed to attend the case management conference on 3 September 2020, thereby preventing any potential settlement of the matters under dispute.

26. The tribunal therefore considers it is just and equitable to make an Order under S.20c of the Landlord and Tenant Act 1985, that none of the respondents' costs are to be considered as service charges and may not be recovered from the leaseholders.

27. With respect to the Paragraph 5A application, the respondents should pay the applicants the application and hearing fees totalling £300.00 within 28 days of this decision.

28. The reasons for this decision is that it was reasonable for the applicants to make the application to the tribunal because of the lack of response from the landlords and their managing agents to enquiries about costs sought. The tribunal has found that the majority of costs sought from the applicant were unreasonable or should have been recovered from another party instead of the applicants. It appeared from the evidence presented that the respondents were attempting to intimidate the applicants with solicitors; letters about matters that were not their responsibility, such as the motorcycle parting issues, and the water leak from another resident; flat. Finally, the amount sought by the applicants is reasonable.

Name: Aileen Hamilton-Farey **Date:** 29 January 2021.

Rights of appeal

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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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).