FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BA/LSC/2020/0245**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 4, 2 Sibthorp Road, Mitcham, Surrey, CR4 3NN**
Applicant	**:**	**Ms Helen Green**
Representative	**:**	**-**
Respondent	**:**	**Chaplair Limited**
Representative	**:**	**Mr Ben Presko of Salter Rex Managing Agent**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Brandler** **Mrs S Phillips, MRICS** **Mrs E Flint, FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**11th January 2021**
Date of decision	**:**	**9th February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected 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 documents that we were referred to are in a bundle of 244 pages, the contents of which we have noted. The order made is described at the end of these reasons. The parties said this about the process that they were content they had been able to tell the Tribunal everything they wanted to say.

Summary of the tribunal's decision

1. The service charges payable by the Applicant to the Respondent are as follows

YEAR	£
2013	Nil
2014	Nil
2015	Nil
2016	Nil
2017	£1159.81
2018	£836.37
2019	£842.89

2. The tribunal makes the determinations as set out under the various headings in this Decision

3. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicant through any service charge

4. The tribunal determines that the Respondent shall pay the Applicant £300.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 years 2013-2019.

The hearing

2. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Ben Preko from Salter Rex, the managing agent. Mr

Preko is an associate partner of Salter Rex and has been in that post for the past 12 years. He was accompanied by Mr Vernon Kamaga who has been the property manager for the subject flat for the past 2 years.

The background

3. The property which is the subject of this application is a 2 bedroom flat ("Flat 4") in a 1980's conversion of a Victorian block of flats in the centre of Mitcham. The block comprises 3 floors above a shop unit on the ground floor. There are two entrances to the flats in the block. The entrance to Flat 4 is on Sibthorp Road, the other entrance is on 242 London Road, CR4 3HD.

4. The Applicant does not occupy Flat 4. It is tenanted. She lives elsewhere at an address in Croydon ("the Croydon correspondence address").

5. A case management hearing took place by telephone conferencing on 1st October 2020 which was attended by the Applicant in person. Neither the Respondent nor its agents attended. Directions were drawn up in consultation with the Applicant and the issues to be determined were identified by the Tribunal Judge.

6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The Applicant holds a long lease of Flat 4, by way of a lease between Lee Savell Investments Ltd and Stephen William Webber. The term of the lease is 125 years from 24th June 1986. A copy of the lease was included in the appeal bundle [12]. The lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for service years 2013-2019

   (ii) The payability and/or reasonableness of administration charges in years 2013 and 2019.

9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charges for years 2013-2016

10. The Applicant challenges the service charges for the above service charges years on the basis that they were not demanded correctly. In the alternative, the Applicant claims that the amounts claimed are excessive as very minimal service was provided by the managing agents, and the service provided was very poor.

11. The details of the actual service charges are set out in the audited accounts submitted by the Respondents in response to this application. The Applicant's contribution is 7.5430%.

YEAR	Total expenditure	Flat 4 share of actual expenditure (@7.7430%)
2013	£14426.16 [p.60]	£1117.02 [p.59]
2014	£13808.20 [p.78]	£1069.17 [p.96]
2015	£16440.76 [p.102]	£1273.01 [P.108]
2016	£27836.62 [p.139]	£2155.39 [p.148]

The tribunal's decision

12. The tribunal determines that the amount payable in respect of service charges claimed for years ending 31.3.2013 to 31.3.2016 is £0.

Reasons for the tribunal's decision

13. The Tribunal found that the Applicant did not receive any service charge demands for these periods. The Respondents were aware of the Applicant's address for correspondence, and admit that they did not send the demands to the Croydon correspondence address contrary to the requirement of clause 7 of the lease which states, "*This Deed shall incorporate the regulations as to notices contained in Section 196 of the Law of Property Act 1925*". Demands for these periods, if they were sent at all, were defective, and the Applicant is not liable to pay service charges for the period 31.03.2013-31.3.2016.

14. In oral evidence the Applicant told the Tribunal that the Respondents were aware that she did not live at Flat 4, and that she had provided them with her Croydon correspondence address. Mr Preko for the Respondent initially denied having known about a correspondence address. He was referred to two letters in the bundle from Salter Rex addressed to the Croydon correspondence address. The letters are dated 17.04.2013 [72.3] and 27.08.2013 [76]. Mr Preko then remembered that they had

put in place a new spreadsheet program after taking over the management of the building in 2012. He went on to tell the Tribunal that it must have been a fault of one of his employees that this correspondence address was not maintained. He told the Tribunal that if there were two addresses, a box should have been ticked on their system so that the correspondence address was used for invoices, and he had to acknowledge that the company had made a mistake in not writing to the Applicant at her correspondence address.

15. Although Mr Preko was adamant that the demands had been sent to the Applicant at Flat 4, the Applicant was not convinced that they had been sent to her there either. The Applicant told the Tribunal that the tenants of Flat 4 had a good relationship with her letting agents, and she thought it likely that had some post arrived for her there, they would have alerted the letting agents to this. However, this did not happen. The first she was aware of a service charge demand was when her lender contacted her. From her communication with the lender, it transpired the Respondent had told her lender that she was in breach of the lease, and the lender had paid the demand, and added that sum to the Applicant's mortgage. This is evidenced by a letter from Property Debt Collection Ltd (PDC) to the Halifax Building Society [74] asking the lender to pay outstanding payments. Of note, the letter from PDC records both the address of Flat 4, and the Croydon correspondence address, which is referred to as "Borrowers Address". The Tribunal had no doubt that the correct correspondence address had been known to the Respondents, who had failed to correctly address demands to that address.

Service charge years 31.3.2017-31.3.2019

16. The Applicant challenges the service charges for the above service charges years on the basis that the amounts claimed are excessive and unreasonable as very minimal service was provided by the managing agents, and the service provided was very poor.

17. The actual service charges appear in the audited accounts submitted by the Respondents in response to this application.

Year	Total expenditure	Flat 4 share of actual expenditure (sums disputed and removed)	Items disputed	Applicant liability
2017	£18296.10 [p.161]	£1416.67 [p.183] (£19.93) (£236.93)	Water rates of £19.93	**£1159.81**

			50% of the management fee of £473.87	
2018	£14230.04 (p.189)	£1101.83 [p.198] (£28.53) (£236.93)	Water rates of £28.53 50% of the management fee of £473.87	**£836.37**
2019	£17552.14 (p.226)	1359.06 p.231 (£19.29) (£236.93) (£109.95) (£150.00)	Water rates of £19.29 50% of the management fees of £473.87 Rubbish removal fee of £109.95 Legal fee of 150.	**£842.89**

The Tribunal's decision

18. The Tribunal determines that the amount payable in respect of service charges claimed for communal water rates, removal of waste from the commercial premises, and for a legal charge for years ending 31.3.2017 to 31.3.2019 is £0.

19. The Tribunal determines that the amount payable in respect of management fees for this period be reduced by 50% The sum payable for management fees for 2017 is £1159.81, for 2018 is £836.37 and for 2019 is £842.89.

Reasons for the Tribunal's decision

20. Water bills for the communal areas: The Applicant states that each flat has their own water supply with a corresponding water bill. The introduction of the Respondent's charge for a communal water supply commenced only in 2017. The Applicant asserts that this supply is for the ground floor commercial unit and the leaseholders have no access to this water supply and are not responsible for this charge. She believes that water supply is for the ground floor commercial unit and began when the unit was rented out to a supermarket.

21. The Respondents confirmed that the commercial unit has been vacant for some time, could not provide a date when it became vacant, and could

not advise as to what percentage contribution was applicable to that unit. Nor could the Respondent clarify why the charge for communal water rates had only commenced in the last few years.

22. The Tribunal found no reason to persuade them that there was a communal water supply for the benefit of the leaseholders, and that this supply was on balance for the benefit of the commercial unit only. Each leaseholder has their own water supply that they pay for and all the claims for communal water have been rejected. £0 is payable by the Applicant for this item.

23. Charge for removal of waste from commercial unit: the respondent confirmed in writing [222] and orally during the hearing that this charge will be removed. For the avoidance of doubt, £0 is payable by the applicant for this item.

24. Legal fees of £150: The Respondent says that this fee was a legal cost incurred following a referral for non-payment by the Applicant [222]. No evidence was provided in relation to this charge. The Applicant states that she queried a demand with the Respondents, and they failed to respond to her, instead referring the matter to their legal team. On balance the Tribunal found that the Respondents should have responded to the applicant's queries and there was no justification for this charge. £0 is payable by the applicant for this item.

25. Management Fees: The Applicant asserts that a very unprofessional and minimal service has been provided by Salter Rex. The details of incorrectly demanded service charges and recouping the funds from the Applicant's lender instead of engaging with the Applicant herself are detailed above and provide a flavour of the Respondent's lack of proper engagement with the Applicant. The Applicant says there are other instances of her querying issues with the Respondents and never receiving a reply. For example, a query in relation to a demand, which the Respondents failed to respond to, preferring instead to incur legal fees to recharge to the Applicant, without apparent justification. Historic issues of pest control problems were referred to, as well as the lack of any sort of maintenance for years.

26. The Respondent says that they took over the management of the building when it was in a very poor state, and it took a lot of effort on their part to remedy issues. There was no evidence before the Tribunal to support the high level of management fees claimed.

27. Mr Preko was asked directly, what do the tenants get for the management fee. His response was that they provide an accounts service, electrical repairs and electricity supplies, and fire safety insurance as well as pest control, that they deal with general correspondence, and that generally everything specified in the lease they step in and provide.

28. He was asked directly, how many service contracts do they have in place with maintenance companies and how many suppliers of services. His response was initially that it was difficult to say, that it depended on what repair is required, going on to say that they will engage general maintenance, plumbers and masons.

29. When pressed to tell the Tribunal how many contractors managed this building per year, Mr Preko's response was "*a host of them. For a property like this there will be hundreds of them. Different issues. Off the top of my head, its difficult to say. Numerous contractors*"

30. Nothing in the appeal bundle supported these claims, and the Tribunal found on balance, that if Mr Preko was engaging such a large number of contractors, which would involve substantial hours of work for the company, he would be able to be specific and been able to provide the Tribunal with some documentary evidence of this.

31. The Tribunal were satisfied that the service charge for management fees was excessive and unreasonable and reduced the sum claimed by 50% for the service charge years 31.3.2017-31.3.2019.

Application under s.20C and refund of fees

32. At the end of the hearing the applicant sought an order under section 20C of the 1985 Act. In the applicant's submission she stated that this matter should have been resolved between herself and the management company without recourse to the Tribunal. She made numerous attempts to resolve issues before issuing the application, but the respondents had failed to engage with her. In response, the Respondent submitted that they will not recharge any costs of these proceedings to the leaseholder. For the avoidance of doubt, the Tribunal were satisfied that an order under s.20C of the 1985 Act should be made so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. These proceedings could have been avoided, had the Respondents acted in accordance with their management duties, and liaised with the Applicant.

33. It was clear to the Tribunal that the Applicant had tried to avoid involving the Tribunal in this matter. The Respondents had failed to engage with her prior to her application to the tribunal, had failed to attend the case management hearing and had failed to provide any documentary evidence to support their claims during the hearing. Taking into account the determinations above, the Tribunal orders order the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

Name: D. Brandler **Date:** 9th February 2021

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).

Appendix of relevant legislation

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).