



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

**Case reference** : **LON/00BA/LSC/2021/0072**

**HMCTS code** : **V: CVPREMOTE**

**Property** : **3 The Keir, 24 West Side Common,  
London, SW19 4UG**

**Applicant** : **Margaret Murray**

**Representative** : **In person**

**Respondent** : **The Keir Properties Limited**

**Representative** : **John Fowler (Stock Page Stock, the  
managing agents)**

**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 Robert Latham  
Kevin Ridgeway MRICS**

**Date and Venue of  
hearing** : **19 October 2021 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **17 November**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been not been objected to by the parties. The form of remote hearing 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 Applicant has prepared a Bundle which totals 150 pages.

## **Decisions of the tribunal**

- (1) The Tribunal makes the determinations as set out in paragraphs 21 to 40 below;
- (2) 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 lessees through any service charge;
- (3) The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of 1/3 of the tribunal fees paid by the Applicant.

### **The Application**

1. By an application dated 2 March 2021, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2014/15 to 2020/21.
2. On 27 April, a Procedural Judge gave Directions (amended on 3 June). The Judge identified the following issues to be determined:

2017/18 year: Whether the parapet wall costs of £4,992 are reasonable and payable, whether the demand was correctly served, whether the Respondent complied with the terms of the lease and whether the Respondent complied with the consultation requirements under section 20 of the 1985 Act.

2018/19 year: Whether the electricity costs of £360 are reasonable and payable.

2019/20 year: Whether the electricity costs of £630 and the liability insurance charges of £738.42 are reasonable and payable.

2020/2021 year: Whether invoices for £2,549.10 and £849.70 are reasonable and payable.

Generally: Various questions relating to the reserve fund and reserve fund expenditure which would need to be clarified further, partly in order to establish whether the tribunal has jurisdiction to make a determination and partly so that the Applicant's case on these issues is clear to the Tribunal and to the Respondent.

3. Pursuant to the Directions:
  - (i) On 15 June, the Respondent disclosed such service charge accounts as were available. The Service Charge Accounts for 1 October 2018 to 31 March 2019 are at p. 114-115 and those for 2019/20 are at p.108-112.

(ii) On 26 July, the Applicant filed her Statement of Case and a number of documents (at p.38-97). The Directions required the Applicant to identify all the service charge items in dispute. Her Statement of Case differs from the service charge items identified in the Directions.

(iii) On 10 August (at p.37), a Procedural Judge gave Directions in respect of the Applicant's liability for the gas expenditure, as a result of which on 19 August, the Applicant filed a Supplemental Statement of Case (at p.98-102).

(iv) On 2 September, the Respondent filed its Statement of Case in Reply and a number of documents upon which it relies (at p. 103-118).

(v) On 16 September, the Applicant filed a Reply, together with some additional documents (at p.119-126);

(vi) On 28 September, the Applicant filed a Bundle of Documents totalling 144 pages. On 13 October, she filed six pages of additional documents.

### **The Hearing**

4. The Applicant appeared in person. The Respondent was represented by Mr John Fowler from the managing agents, Stock Page Stock ("SPS"). Ms Vivien Reuter, the lessee of Flat 5 and a director of the Respondent Company, joined the hearing as an observer.
5. Mr Fowler stated that SPS had assumed responsibility for the management of the 3 The Keir ("the Property") in "December 2018". His grasp of the detail of the case was not good. Ms Reuter intervened to assist him on a number of points of detail. These interventions seemed to be uncontroversial.
6. At the commencement of the hearing, the Tribunal noted that the Applicant had failed to provide either a copy of the lease or the relevant service charge demands. The Tribunal granted a short adjournment to enable the Applicant to provide a copy of her lease. She also provided copies of the service charge demands which have been made on 1 April, 1 July, 1 October 2020 and 1 January 2021.
7. When the Tribunal reconvened, we took the items in dispute item by item.

### **The Background**

8. The Keir ("the Property") is a Grade II listed house which was built on the west side of Wimbledon Common in 1789. It was later extended and

in 1932, it was divided to create nine flats. There are three floors and a basement.

9. Flats 7 and 9 are separate from the main building and are owned freehold. These flats contribute to the maintenance of those parts of the common parts from which they benefit. The remaining flats are held leasehold. The current leaseholders are: Flat 1: Bryan Barkes; Flat 2: Andrew Galloway; Flat 3: Margaret Murray, the Applicant; Flat 4: Stephen Hall and Simon Gosling; Flat 5: Vivien Reuters; Flat 6: Stephen Hall and Simon Gosling and Flat 8: David Towell. The Applicant contributes 15.463914% to the Schedule 1 Service Charges and 14.285714% to the more modest Schedule 2 service charges to which Flats 7 and 9 also contribute.
10. It seems that in about 2004, the Respondent Company acquired the freehold interest in the Property. Five of the seven leaseholders (Flats 1, 2, 4, 5, and 6) are shareholders in the Respondent Company. The current directors are Ms Reuters (appointed 14 September 2018); Mr Galloway (30 May 2019) and Mr Hall (4 June 2019). Thus, Ms Murray is a shareholder, but not a director. The Tribunal notes that any expenditure incurred by the Applicant Company which cannot be recovered through the service charge from the leaseholders will be borne by the Company and ultimately, its shareholders. Thus, Ms Murray would be liable for 20% of the Company's debts, a somewhat higher liability than her service charge contribution.
11. Mr Fowler stated that SRS took over the management of the Property in December 2018. On 15 October 2018, he was appointed as Company Secretary of the Applicant Company.
12. Ms Murray stated that she acquired the freehold interest in Flat 3 in 1994. She initially occupied her flat pursuant to a lease dated 25 May 1962 which had been granted by Keir (Residents Association) Limited for a term of 52 years which would have expired in 2014. She currently occupies the Flat pursuant to a lease dated 5 October 1997, under which Stone Court Investments Limited granted a term of commencing on 1 October 1997 and expiring on 14 June 2104. She paid a premium of £100,200.
13. Ms Murray complains about the manner in which the Property has been managed over many years. It seems that between 2003 and 2010, there was a Tribunal appointed manager. In about 2014, the Applicant Company assumed responsibility for the management of the Property. Ms Reuter was not happy with this decision and resigned from the Board. The active directors were Bryan Barkes and Alan Wright.
14. In 2018, Ms Reuter brought an application before this tribunal challenging the service charges which she had been required to pay (LON/00BA/LSC/2018/0196). The Respondent Company did not

appear. On 1 August 2018, Mr Barkes and Mr Wright had resigned from the Board. The Tribunal issued its decision on 20 September 2018.

15. On 14 September 2018, Ms Reuter was appointed to the Board. She was responsible for appointing SPS to manage the block. It seems that the Ms Murray's desired outcome was for the appointment of professional managing agents. However, she has not been satisfied with the manner in which SPS has managed the Property. Mr Fowler stated that there are currently arrears of £3,398.80 on the Applicant's service charge account.

### **The Lease**

16. The Applicant occupies the Flat pursuant to a lease dated 1 October 1997. By Clause 5, the lessee covenants to comply with the obligations specified in the Third Schedule. This includes an obligation to pay a service charge. The lessee is required to pay an advance service charge by two equal half yearly instalments payable on 24 June and 25 December in each year. In practice, SPS have collected the interim service charges quarterly. It is important that SPS should manage the Property in accordance with the terms of the lease.
17. By Clause 5, the lessor covenants to comply with the obligations specified in the Fourth Schedule. This includes covenant (i) to keep the structure of the Property in good and substantial repair (paragraph 2(a)) and (ii) to adequately light the common parts (paragraph 2(c)),

### **The Law**

18. Section 18 of the Landlord and Tenant Act 1985 defines "service charge" and "relevant cost":

"(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."

19. Section 27A specifies the jurisdiction of this tribunal to determine the liability of a leaseholder to pay service charges:

"(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."

20. Section 20ZA (1) provides:

“Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

**Issue 1: The Service Charge Demand dated 9 November 2018**

21. The Applicant challenges her liability to pay a service charge demand dated 9 November 2018 in the sum of £22,661 (at p.16). £990 of this sum related to rent. This demand had been submitted by SPS, upon them taking over the management of the Property. On 22 November 2018, Ms Murray paid the sum demanded (see p.97). She states: “While I do not admit the accuracy of the demand made, I am paying the sum in question and will endeavour to agree a long term solution”.
22. It is apparent that this demand related to arrears which had arisen between 1 March 2012 and 1 October 2018 (see p.16). Ms Murray had not paid anything towards her service charge. Mr Fowler stated that the shortfall had been met by the five other shareholders. This is reflected in the accounts which SPS prepared for 2018/19 (at p.113-5). SPS had only been managing the Property for the last four months of the year.
23. When a tenant who has not paid any service charges for six years, is seeking to challenge service charges which date back to 2012, clear and cogent evidence is required. Ms Murray has not produced any such evidence. We accept that demands for payment were made and that financial accounts were prepared. Mr Fowler does not have access to these. Ms Murray has failed to produce them.
24. A further problem that the Applicant faces is that this is not a demand for service charges, but rather for the arrears for the past six years. She has not produced the service charge demands that she had received for the previous six years. It is therefore impossible for this Tribunal to determine the payability or reasonableness of any of the service charge items which she had been required to pay, and which she has now paid.
25. Further, even had these not been lawfully demanded as service charges, she would still have had a liability as a shareholder of the Respondent Company. It is apparent from the accounts (at p.115), that the sum of £21,671 (£22,661 less the rent of £990 rent) was credited to the other shareholder who had met the shortfall that had arisen. Ms Murray referred us to the Accounts at for 2018/9 at p.58-65. These are not service charge accounts, but rather the accounts that the Respondent Company is required to file with Companies House relating to the Company’s financial affairs. This is not a matter for this Tribunal.

26. Ms Murray states that there has been an element of double charging, sums being charged both to the freeholders of Flats 7 and 9 and also to the six leaseholders. We have seen no evidence of this.

**Issue 2: Service Charge Year 2018/9 - the Parapet Wall**

27. The Applicant challenges her liability to contribute to the cost of repairs to the parapet wall. Voytex Construction Limited submitted a bill of £4,992 which the Respondent paid on 22 January 2018. This issue was raised in LON/00BA/LSC/2018/0196 (at p.133-8). The Tribunal found (at [13]) that there had been no Section 20C Consultation. Neither had there been any application for dispensation. In such circumstances, the Tribunal found that Ms Reuter's liability should be limited to £250.
28. Mr Fowler accepts that the Applicant has been charged a similar sum as Ms Reuter, namely £988.42 and that Ms Murray should also be entitled to be refund of £738.42 which should be met by Mr Barnes, the director responsible for this default. If this is not possible, this refund must be borne by the Respondent Company.

**Issue 3: Service Charge Years 2018/9 & 2019/20 - Electricity Costs**

29. In September 2014, the Respondent approved the installation of an electrical charging socket for the benefit of Mr Barkes, one of the two directors. He has not been required to pay for the cost attributable to charging his car. It has rather been charged to the service charge account.
30. This issue was also raised in LON/00BA/LSC/2018/0196 (at [12]). Ms Reuter was unable to provide any evidence of the cost that should be apportioned to Mr Barkes and the Tribunal therefore made no determination in favour of Ms Reuter.
31. The Applicant has identified that £360 was charged to the service charge for electricity in 2018/19 (see p.13) and £630 in 2019/20 (p.14). Ms Murray was unable to give any estimate of the sum that should be apportioned to Mr Barkes. Mr Fowler suggested a figure of £50. We find that the Respondent should have charged £50 for his use of electricity in 2018/19 and 2019/20 (the two years raised in the application) and in future years. Any sums recovered from Mr Barkes must be credited to the service charge account.

**Issue 4: Service Charge Year 2018/9 - HGB Facility Works to the Boiler**

32. On 5 June 2019, HGB Facilities Limited billed SPS three invoices in the sums of £2,040, £1,920 and £1,560 for works to the boiler. The total was



£5,520. The Applicant complains that there was no consultation and that the cost is unreasonable.

33. The works include the draining down of the heating system, and the installation of new brackets, new isolation valves, new pipework and expansion bellows and a new pump. Mr Fowler explained that these works needed to be done urgently, otherwise the communal heating system would have been inoperative. Whilst there may have been three separate visits, the Tribunal is satisfied that this was a single set of qualifying works which triggered the Section 20C duty to consult (see *Phillips v Francis* [2014] EWCA Civ 1395; [2015] 1 WLR 741). Mr Fowler applied for dispensation under 20ZA of the 1985 Act. The Tribunal is satisfied that the costs incurred were reasonable; that the works were urgent, and that no prejudice has been caused to the tenants by any failure to consult. Indeed, it would not have been possible to consult given the urgency of the works. This is a clear case for dispensation (see *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854).

#### **Issue 5: Proposed Works - the Brackets Supporting the Balconies**

34. SPC are proposing to install brackets to the Property to support the balconies in place of the existing pole supports. The estimated cost is some £1,692. The Applicant contends that this is not a work of repair which falls within the scope of the landlord's covenant to repair. It is rather an improvement. She further denies that the balconies are in disrepair.
35. Upon being appointed managing agents in October 2018, SPC carried out a condition survey and prepared a 15 year planned maintenance budget (at p.85-96). The need for works to the balconies was identified in this report. There are photos of the balconies at p.131 and 132. These are to be included in the 2021/22 budget.
36. The Tribunal accepts the evidence that the supports are no longer fit for purpose. This is a Graded II listed building. The proposed brackets are a sensible solution and may be no more expensive than replacing the current poles which are in disrepair. New poles would need ground support. The Tribunal is satisfied that the balconies are in disrepair, that the proposed works fall within the scope of the covenant to repair and that the anticipated cost is reasonable.

#### **Issue 6: The Interim Service Charge Demands for 2020/21**

37. At the hearing, the Applicant produced four service charge demands for interim service charges which had been demanded on 1 April, 1 July and 1 October 2020 and on 17 December for the sum payable on 1 January. Schedule 1 costs are claimed in the sum of £773.20 and Schedule 2 costs

in the sum of £76.50 for each quarter. These demands were accompanied by the requisite summary of Rights and Obligations.

38. Ms Murray complains that the lease provides for two advance service charges which are payable on 24 June and 25 December. Ms Murray is correct (see [16] above). However, the sums have now become payable. They are reasonable demands based on an estimate of the likely expenditure. The final accounts for the year should shortly be available. It is important that Mr Fowler should manage the Property in accordance with the terms of the lease. However, we are satisfied that these interim service charges a reasonable estimate of the likely expenditure and have now become payable.

### **Issue 7: Gas Costs**

39. In her Supplemental Statement of Case, the Applicant complains that the supply of gas to Flat 6 should not be charged to the service charge account. There is a communal heating and hot water system. In about 2011, the tenant of Flat 6 installed her own gas boiler which was connected to the gas supply for the communal boiler supply. This gas supply also heats the gas hob in this flat. In 2016, the tenant died. Her flat was empty for a number of years. In May 2019, Stephen Hall and Simon Gosling purchased this flat. They also own Flat 4. They intend to combine the two flats. When they do so, the combined flat will have its own gas boiler and a separate meter will be installed for their supply.
40. The Applicant has adduced no evidence of the additional cost that has been borne by the service charge account. This issue was also considered in LON/00BA/LSC/2018/0196 (at [10] – [11]). The Tribunal was unable to make any finding of any additional cost borne by the service charge account. We agree that this is a matter for the Respondent to resolve with the lessees. Flat 6 should have a separate metered gas supply. However, we are not satisfied that any additional cost has been incurred. With its own central heating system, Flat 6 was making no demand on the communal boiler. Flat 6 has been empty for some three years. It would have made little demand on the communal gas supply.

### **Application under s.20C and refund of fees**

41. At the end of the hearing, the Applicant made an application for a refund of the tribunal fees of £300 that she had paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Applicant has only succeeded on a minority of the issues that she has raised. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund £100 of the fees paid by the Applicant within 28 days of the date of this decision.

42. In her application form the Applicant applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. The landlord has not managed this Property in accordance with the terms of the Applicant's lease.

**Judge Robert Latham**  
**17 November 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).