



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

Case reference : **LON/00AZ/LSC/2021/0286**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **Cavendish Court, 21-23 Bromley Road,
Catford, London SE6 2TS**

Applicant : **Yen Chu
Samuel Orakwe
Rob Lam
Yip Kein Lui
Oliver Hakim**

Representative : **In person**

Respondent : **Cavendish Court (Bromley Road) RTM
Company Limited**

Representative : **Stephen Wiles**

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 Carr
Judge Foskett
Mr Ridgeway**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **11th July 2022**

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: SKYPEREMOTE. 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 167 pages, the contents of which we have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal determines that the service charges demanded by the Respondent are payable by the Applicants in respect of the service charges for the years 2017 – 2021 inclusive.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicants in respect of the service charge years 2017 - 2021.

The hearing

2. Rob Lam, Oliver Hakim and Samuel Orakwe of the Applicants appeared in person at the hearing and the Respondent was represented by Stephen Wiles. None of the directors of the RTM company were in attendance.

The background

3. The property which is the subject of this application was purpose built in 1997 and comprises 3 blocks of flats with a communal garden and an underground carpark with an electronic gate. There are 24 flats in total with 23 being 2 bedroomed and 1 being 1 bedroomed.
4. Photographs of the building were provided in the hearing bundle. Whilst the applicants invited the tribunal to inspect the property the tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

5. The Applicants hold long leases of the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. A full copy of the lease was not provided in the bundle but in the event, there was no need to refer to its provisions as the challenges to service charges concerned reasonableness and not payability.

The issues

6. The applicants identified the issues for determination in the Scott Schedule they had prepared as required by the directions.
7. The tribunal was concerned that the schedule did not properly and fully identify the disputed service charges. Instead, there were extensive allegations of poor management, poor communications, a lack of transparency and neglect of the property. The directions made it clear that what was required in reference to each service charge year was details of the item and amount in dispute, the reasons the amount is disputed and the amount if any the tenant would pay for the item.
8. The tribunal explained that its jurisdiction under s.27A was to consider the reasonableness and payability of the service charges and that many of the issues raised could not be determined in the course of these proceedings. The tribunal offered the parties an opportunity to discuss the dispute between them and to resolve or narrow the issues but the applicants declined this.
9. The tribunal considered each of the issues raised on the Scott Schedule and having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues it was able to determine as follows.

The accountancy fee for 2020

10. The applicants asked in the Scott Schedule why the accountancy fee for 2020 was £1032 when in previous years it had been between £300 and £490. When pressed by the tribunal it became clear that the applicants were arguing that the sum of £1032 was not reasonable although this was not stated on the Scott Schedule and three applicants accepted that £500 or under would have been a reasonable figure for one year.
11. The respondent explained that the fee was £1032 because the respondent had been in dispute with the previous accountants about the accounts and had requested the return of the fee. This had not happened and the decision had been made to write off the debt. In the event Mr Wiles told the tribunal that no fees for accounts were demanded in 2021 as the current accountants had in effect done a year's work for free.

12. The applicants were not satisfied by the respondent's explanation and asked that it be discounted as it had not previously been disclosed to them.

The tribunal's decision

13. The tribunal determines that the amount payable in respect of accountancy fees for 2020 is £1032.

Reasons for the tribunal's decision

14. A sum of £500 per annum is a reasonable charge and the applicants produced no evidence to suggest that it was not reasonable (and three applicants accepted that £500 or lower would have been reasonable). The respondent's decision to write off the debt was also reasonable. However the tribunal notes that in the event over the two years the annual charge was an average of £500 despite the written off debt.
15. The tribunal was not prepared to discount the evidence of Mr Wiles as he had provided the answer to the question raised in the Scott Schedule and the additional evidence was in response to the challenge about reasonableness which was only made at the tribunal.

Discrepancies in figures

16. The applicants made several allegations with regard to different figures being provided by the respondent in its reports on expenditure and service charge demands.
17. They refer to the fact that expenditure and reserves do not match for 2018, an inaccurate total for service charge year is provided for 2020 and there are differences and inconsistencies in service charge budgets.
18. They argue that they may be paying up to £4000 per annum in additional service charges per year as a result of these discrepancies.
19. The respondent suggested that the discrepancies come from the expenditure shown on the budget reports. He says that these values are only indicative (to assist lessees with budgeting) and may not be final values as they are often prepared part way through a financial year and are cash based and not accruals based. There is also likely to be discrepancies between these reports and the final accounts as the accounts are prepared on an accrual basis.

The tribunal's decision

20. The tribunal is not able to make a decision on this matter as there is no specific item or items of service charges that are challenged.

Reasons for the tribunal's decision

21. The tribunal noted the various discrepancies and was particularly concerned that there were variations in the figures shown in the accounts – Mr Wiles was asked questions by the tribunal in relation to these for the years ended 31 December 2018, 2019 and 2020. It did however accept Mr Wiles explanation that for many lessees the running total of expenditure proves helpful and that he is under no obligation to provide this information.
22. If the applicants wish the tribunal to consider unreasonableness of service charges in relation to these discrepancies they must identify service charges to challenge and reasons why they are said to be unreasonable.

Telephone cost

23. The applicants challenged the telephone cost although it was not specified in the Scott Schedule what the cost was nor which year was being challenged. They asked which telephone this referred to and where it is located in the building.
24. The respondent explained that it was the charge for the CCTV broadband phone line.

The tribunal's decision

25. The tribunal determines that the service charge demanded for the telephone line was payable and reasonable.

Reasons for the tribunal's decision

26. The respondent answered the question raised and the applicants provided no evidence that the charge was not reasonable.

Managing agent fee for 2017

27. The applicants asked why the managing agent fee was so high in 2017 when Prime did not take over management until the middle of the year.
28. The respondent said that Prime had charged £1650 fees in 2017 (for the second part of the year after they had taken over from Haus, the previous managing agents). The total service charges also included the charge made by the previous managing agents Haus of £3390 (for the

first part of the year). Haus also charged £193 to manage a carpet installation. The respondent pointed out the charges for the year equate to £210 per unit including VAT which they argue is reasonable.

The tribunal's decision

29. The tribunal determines that the amount payable in respect of management fees for 2017 is £5233.

Reasons for the tribunal's decision

30. The explanation provided by the respondent appears reasonable and the fee level is reasonable.
31. The applicants provided no evidence that the charge was not reasonable and Ms Chu said that she was satisfied with the respondent's explanation of the figure.

Buildings External and Buildings internal

32. The applicants asked questions about the difference in charges between 2018 and 2019 and asked what constitutes buildings internal and external.
33. In the lunch adjournment Mr Wiles investigated the difference and later explained that it related to a decision to allocate the charges for internal works to the caretaker.

The tribunal's decision

34. No determination is made on this matter as no challenge to a specific service charge item has been made.

Discrepancies in building insurance figures for 2019

35. The applicants asked why there was a difference in the buildings insurance in the 2 accountant's reports for the same year (the year ended 31 December 2019). The December 2019 report showed £2526 and the December 2020 report showed the 2019 figure as £2750.
36. The respondent said that the figures were in fact the same but that the insurance for the Directors and Officers had been consolidated in the 2020 accounts so that there was one figure of £2750, rather than two separate figures of £2526 for buildings insurance and £224 for the D&O insurance, which is how the figures were shown in the December 2019 report.

The tribunal's decision

37. The tribunal determines that the amount payable in respect of insurance for 2019 is £2750 made up of £2526 and £224.

Reasons for the tribunal's decision

38. The tribunal and indeed the applicants accepted the explanation of the respondent.

Major works supervision fee

39. The applicants challenged the charges that Prime had made for supervising the major works. They said the major works relating to the windows had been poorly supervised. They produced photographs of various different stages of the works to demonstrate the limited supervision. In the hearing bundle there was no evidence as to who had taken the photographs and when but during the lunch break Ms Chu was able to provide that evidence.
40. The applicants also said that as the intercom had been replaced like for like there was limited need for supervision.
41. They suggested that CCTV evidence indicated that there had been no supervisory visits during the period of the window installation.
42. Mr Wiles provided evidence of a number of site visits and indicated that if there were continuing problems he would visit to solve them.

The tribunal's decision

43. The tribunal determines that the amount payable in respect of management fees for the supervision of major works is £1740 for the supervision of the installation of the intercom and £1860 for the supervision of the windows installation.

Reasons for the tribunal's decision

44. Prime Management have been paid in accordance with their contract with the respondent. They are entitled to the higher rate as no surveyor was involved in either of the projects. The rate appears reasonable for supervision of works.
45. Whilst the tribunal agrees that there appears to have been some weaknesses in the supervision of the installation of the windows and is surprised that there are still some outstanding issues, it also notes that the applicant, Ms Chu, urged Prime Management to pay the contractor.

It would seem to the tribunal that if there were concerns about the quality of the window installation then the service charges for that should have been challenged.

46. The tribunal notes that Mr Wiles has now agreed to visit the property and ensure that all remaining difficulties are resolved.
47. The tribunal also notes that the Scott Schedule did not raise the issue of the quality of the supervision of the major works

Application under s.20C and refund of fees

48. In the application form the applicants applied for an order under section 20C of the 1985 Act. In the light of the determinations of this tribunal no order is made.

Name: Judge H Carr

Date: 11th July 2022

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).