



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

Case reference : **LON/00AG/LSC/2021/0021**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Ground Floor Flat, 99 Iverson Road,
London NW6 2QY**

Applicant : **Mr Jagannath Rao**

Representative : **In Person**

Respondent : **Mr Leon Steinhaus and Mr Joseph
Bamberger**

Representative : **Ideal Management**

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 : **Mr A Harris LLM FRICS FCI Arb
Ms R Kershaw**

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

Date of decision : **2 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to/ by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that the tribunal were referred to are in a 2 bundles of 167 and 67 pages, the contents of which the tribunal 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 for the year ended 31 December 2017 are not payable.
- (2) The tribunal determines that service charges for the year ended 31 December 2018 are payable in the sum of £696.80.
- (3) The tribunal determines that managing agents fees of £250 are payable in the service charge year to 31 December 2019
- (4) The tribunal makes an Order under s20C 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.

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 Applicant in respect of the service charge years ended 31 December 2017, 31 December 2018 and 31 December 2019.

The hearing

2. The Applicant appeared in person at the hearing and the Respondent was represented by Ideal Management.

The background

3. The property which is the subject of this application is a ground floor converted flat in a property consisting of 4 flats. The ground floor flat is occupied by a long leasehold and the remaining flats are controlled by the freeholder.
4. 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.

5. The Applicant/Respondent holds a long lease of the property which 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 and will be referred to below, where appropriate.

The issues

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

- (i) Liability to pay and reasonableness of the following sums;

Year ended 31 December 2017	£ 788.98
Year ended 31 December 2018	£ 726.05
Year ended 31 December 2019	<u>£ 250</u>
<u>Total</u>	£1,527

- (ii) whether the costs are payable by reason of section 20B of the 1985 Act.

- (iii) whether an order under section 20C of the 1985 Act should be made.

7. 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 charge for the Year ended 31 December 2017 £ 788.98.

8. The applicant disputes liability for paying the service charge for the year ended 31 December 2017 in the sum of £788.98 on the basis that the demand for payment was not made until 9 January 2020. This was therefore not demanded within 18 months of the date the expenditure was incurred and by virtue of section 20B of the Landlord and Tenant Act 1985 is not payable.

9. The respondent states that the Applicant's solicitor was informed at the time of purchase that service charges were due every year, that the applicant was notified verbally on numerous occasions that costs were being incurred and he will be liable for his share. Once the invoice has been paid unconditionally it cannot be disputed. Finally, the charges under the lease were reasonable and correctly demanded.

The tribunal's decision

10. The tribunal determines that the amount payable in respect of service charges for the year ended 31 December 2017 is £nil.

Reasons for the tribunal's decision

11. Section 20B of the Landlord and Tenant Act 1985 imposes a time limit for the making of demands for service charges.

20B Limitation of service charges: time limit on making demands.

(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.

12. The demand for service charges for the year ended 31 December 2017 was not made until 9 January 2020 which is more than 18 months after the charges were incurred. No evidence was provided that the tenant was notified in writing that those costs had been incurred for the purposes of subsection(2).
13. The Respondent stated that as the amount had been paid without objection it was not capable of being challenged. By virtue of section 27A(4)(a) no application may be made to the tribunal in respect of a matter which has been agreed or admitted to by the tenant. However, under subsection (5) the tenant is not to be taken as having agreed or admitted any matter by reason only of having made any payment.
14. The correspondence makes it clear that the disputed amount for this year was only paid by the Applicant in order to obtain details of the buildings insurance policy which had been withheld from him and which he needed following a claim of storm damage. The correspondence does not show that the charges were admitted and payment does not count as an admission.
15. The tribunal therefore finds that the service charges for the year ended 31 December 2017 are not payable.

Service charge Year ended 31 December 2018 £ 726.05.

16. The Applicant states that the demand for this years' service charge was also not made until 9 January 2020. Section 20 B, referred to above places a limit of 18 months in which to demand costs incurred unless the lessee has been notified in writing that the costs would be incurred. Therefore, any invoices dated before 9 June 2018 would not be recoverable.
17. The amounts claimed and the Applicant's proposal are set out in the table below.

	2018		Applicant
Lighting for the Common Parts	£ 136.98		£ 22.83
Fire Alarm service	£ 75.00		£ 12.50
cleaning common parts	£ 30.00		£ 5.00
insurance	£1,186.17		£ 197.69
managing agents fee	£ 750.00		£ 250.00
	£2,178.15		£ 488.02
Ground floor proportion	33.33%		
payable	£ 725.98		

The tribunal's decision

18. The tribunal determines that the amount payable in respect of service charges for the service charge year to 31 December 2018 is £696.80 as shown in the table below.

Reasons for the tribunal's decision

19. The invoices for the relevant period are included in the bundle. The tribunal agrees that invoices incurred after 9 June 2018 are payable subject to any challenge on reasonableness. The invoices are as follows.

	2018		date
Lighting for the Common Parts	£ 64.44		
Fire Alarm service	£ 75.00		11/07/2018
cleaning common parts	£ 15.00		20/08/2018
insurance	£1,186.17		10-Jul-18
managing agents fee	£ 750.00		30/12/2018
	£2,090.61		
Ground floor proportion	33.33%		
payable	£ 696.80		

20. Electricity invoices for the common parts for the period 2 June 2018 to 29 November 2018 total £64.44. The invoice for December is included in the following years accounts.
21. In respect of insurance the tribunal considers that the whole of the premium is payable in the year in which it occurs as the cost is not apportioned in the accounts between different service charge years.
22. The managing agents fee of £250 is challenged as being unreasonable in amount. The invoice is raised at the end of each accounting year In response the respondent says this is a reduced fee and is not considered unreasonable particularly as it includes auditing of the accounts. Evidence is included at the end of the bundle that other agents would charge £1500 or more for managing this block. The tribunal notes that the freeholders also control the agents, and that the freeholders have interests in the other flats. The managing agents are not at arm's length from the freeholders. There is no evidence before the tribunal that managing agents services could be procured more cheaply and therefore the tribunal accepts this fee is reasonable.

Managing agents fees for the year ended 31 December 2019 £250

23. The Applicant challenges the managing agents fees in the sum of £250 on the basis that these are unreasonable. The Applicant has explored at some length whether the managing agents operate as a limited company and concludes that as they do not and that the principal of the managing agents is one of the freeholders the fees are unreasonable.
24. The Respondent says that Ideal Management is a long established business which is a partnership between Mr and Mrs Steinhaus although only Mr Steinhaus is listed as a freeholder.
25. For the reasons given above the tribunal accepts the £250 is a reasonable fee for managing this property and is therefore payable in the year to December 2019.

Application under s.20C

26. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having considered the submissions from the parties and taking into account the determinations above, the tribunal 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.

Name: A Harris LLM FRICS FCI Arb Valuer Chair **Date:** 2 June 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).