FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2021/0180**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Ground Floor Flat 50 Parchmore Road Thornton Heath CR7 8 LW**
Applicant	**:**	**Lakeside Developments Limited**
Representative	**:**	**Trust Management Limited (Managing Agents)**
Respondent	**:**	**Teresa Muwo Vonu**
Representative	**:**	**In person**
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 H Carr** **Mr M Taylor MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**6th October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been [consented to/not objected 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 I was referred to are in a bundle of 161 pages, the contents of which I have noted. The order made is described at the end of these reasons.

There were considerable technical difficulties which prevented the hearing commencing until after midday. The parties are thanked for their patience in this matter.

Decisions of the tribunal

(1) The tribunal determines that the sum of £1,662.93 is payable by the Respondent in respect of the service charges for the period June 30th 2019 to November 31st 2020.

(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 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 Respondent in respect of the service charge period, June 30th 2019 to November 31st 2020.

2. The tribunal notes that this period was not made clear in the application which also failed to specify the amounts in dispute.

3. The tribunal also notes that the respondents have queries about the service charges payable between August 2017 and February 2018. That period is not part of the application before us and if the respondents wish to have a determination on the reasonableness of charges for that period they should submit an application.

The hearing

4. The applicant was represented by Mr Hemel Davda a director of Trust Property Management (Trust) the landlord's Managing Agents at the hearing and the Respondent appeared in person and was assisted by her

husband Mr Richard Chukwuma. Mr Amos attended to give evidence on behalf of the applicant.

The background

5. The property which is the subject of this application is a ground floor flat in a late Victorian two storey end of terrace house now arranged in two flats. There is a communal area which is a small vestibule approximately 16 square foot. The communal area is lit by a single light bulb and the electricity for this is metered via a meter in the Ground Floor Flat.

6. There have been a number of tribunal challenges relating to this property. The tribunal were provided with incomplete copies of decisions dated 18th August 2012 and 17th July 2017.

7. The lease allows service charges to be demanded only after they have been incurred. The managing agents demand the charges on a quarterly basis.

8. In August 2018 (subsequent to the latest tribunal decision in 2017) the lease was extended on substantially the same terms but no further ground rent is payable.

9. 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.

10. The 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

11. 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 the period 30th June 2019 to 31st November 2020 relating to

        a. Electricity

        b. Insurance

        c. Management fees

12. 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.

Electricity

13. The applicant says that the respondent is liable for their share of the electricity charges for the communal area.

14. The total charges for the period in dispute demanded by the applicant is £150.38p.

15. To the surprise of the tribunal there were no electricity bills provided in the hearing bundle. Six bills were provided late in the hearing.

16. The bills provided show as follows:

    (i) The charge for the period 11th August 2019 to 10th September 2019 was £12.96. The outstanding debt at that time was £277.86

    (ii) The charge for the period 11 November 2019 to 10th December 2019 is £12.55. The amount outstanding at that date was £309.94

    (iii) The charge for the period 11th February 2020 to 10th March 2020 is £12.13. The outstanding debt was £100.12

    (iv) The charge for the period 5th August 2020 to 10th August 2020 is £4.73. The debit at that point was £27.76

    (v) The charge for 11th August 2020 to 10th September 2020 is £24.41. The debit at that date was £52.17.

17. The respondent argued that the amount is not reasonable considering the only electricity provided is for the single light in the communal area. She asks the tribunal to bear in mind the £50 annual electricity charge determined by the 2017 tribunal as a reasonable charge for the electricity provided. She notes that there have been no meter readings and no attempts by the applicant to organise meter readings or reconcile the bills.

18. The applicants say that the bulk of the charges are standing charges.

19. The tribunal notes that all the bills provided are estimated. Mr Davda was unable to explain why the managing agents had not provided meter readings to the electricity supplier. The respondents said this was because the landlord's meter was not in the communal area and that as far as they were aware no request had been made of their tenant to allow the landlord to read the meter.

The tribunal's decision

20. The tribunal determines that the amount payable in respect of electricity charges by the applicant for the period in dispute is £117.

Reasons for the tribunal's decision

21. The billing information is incomplete and incoherent. In general the monthly charge is £13 for the period in question although it appears to have doubled in August 2020 for no explicable reason.

22. The tribunal notes that the decision in 2017 determined that the most it considered to be reasonable for a single lightbulb is £100 per annum to be shared between the two flats.

23. Based on the scant information provided, the tribunal determines that an annual charge of £156 for electricity divided between the two flats is a reasonable charge. The claim is for a period of 18 months which results in a sum of £117.

Insurance premiums

24. The applicant is demanding £1,362.93 for insurance for the period in question.

25. The applicant provided the following explanation of the charge:

    (i) PIB Insurance brokers (PIB) are appointed by the applicant to deal with its insurance matters. The subject property forms part of a large portfolio of properties belonging to the applicant and due to the size, complexity of administration and the specific cover requirements needed for a large property portfolio, it elects to insure all its properties on a portfolio basis.

    (ii) The property has had a subsidence claim settled earlier in the year for £14,496.

26. The applicant argues

(i) when comparing terms for a large portfolio, an insurance intermediary must consider the exposures facing the landlord and endeavour to obtain levels of cover which meet the insurance demands and needs as required by the Financial Conduct Authority. PIB remarket the portfolio periodically and have found AXA to b the most competitive insurance based on price and extent of cover and claims experience.

(ii) The insurance in place cannot reasonably be compared to a standalone quotation as these do not provide like for like levels of insurance cover. It is normal that a standalone property owner's policy will have many conditions or obligations that cannot be complied with by a large property owner.

(iii) The AXA insurance policy that covers the portfolio of which the subject preprty forms part does not require notifications of changes of occupancy. It also includes enhanced cover to protect the freeholder and the leaseholder including

(a) No pre-existing subsidence exclusion

(b) Cover continuing despite a change in tenancy not being disclosed to the insurer.

(c) Third party contractors

(d) Automatic interest cover

27. The respondent says that the charge is too high. She told the tribunal that her husband obtained much cheaper quotes for cover. She also points out that the insurance claim was a one-off and cannot justify the doubling of the premium. She also said that the subsidence was solely in the kitchen extension and did not mean there was a risk to the whole building. She asked whether consideration had been given to third party liability.

28. Mr Amos for the applicant said that he understood the respondent's concern that the insurance premium had doubled since 2017. He said that was in part as a result of the subsidence claim. His experience was that it was very difficult to get affordable insurance after a subsidence claim particularly in an area which is deemed to be high risk. He told the tribunal that the fact that the subsidence was in the extension would, in his experience, make no difference and stated that in his opinion the loss

adjusters would have considered any potential third-party claim, although he agreed with the tribunal that this may have been difficult as any potential claim might be against the freeholder.

29. Mr Amos said that he had investigated other possibilities and provided a table in his statement at paragraph 12 . This showed that Axa was the cheapest available.

The tribunal's decision

30. The tribunal determines that the amount payable in respect of insurance for the period in question is £1,362.93.

Reasons for the tribunal's decision

31. The tribunal understands the concern of the respondent. However the particular circumstances of the subsidence claim suggest that the quote is reasonable. The tribunal was impressed by the evidence of Mr Amos and the efforts he had made to demonstrate the reasonableness of the premium. It was also impressed with the answers he provided to questions it raised.

32. The tribunal notes that the respondent was not able to provide evidence that cheaper insurance was available.

Management fees

33. The applicant is demanding £569.50 in management fees for the period in question.

34. The applicant says that the management fee covers the day-to-day management of the building within which the subject property is situated which includes but is not limited to dealing with the ongoing insurance claims, health and safety compliance including periodic inspection of the building, payment of supplier invoices, the production of service charge accounts and the production of payment demands.

35. The applicant also argues that the industry minimum fee for the management of this type of building in this location is £300 plus VAT per unit but this is subject to a minimum fee of £2,500 plus VAT. Mr Davda said that it was simply not commercially viable to manage such a building for a fee anywhere near the level proposed by the respondent.

36. The respondent points to the very limited management provided and required for the property and the failure of the applicant to properly manage the insurance claim. The respondent says that she faced considerable difficulties in relation to the subsidence claim. She had to

pass through a third party to contact the leaseholder of the first floor flat in whose garden the trees which were the cause of the subsidence were located. The managing agents provided no help at all. The insurance representative put the claim on hold until the respondent paid £1200 to cut down the trees. Getting help from the managing agents was almost impossible. There were no replies to emails other than correspondence about payment of the excess.

The tribunal's decision

37. The tribunal determines that the amount payable in respect of management fees for the period in question is £183.00,

Reasons for the tribunal's decision

38. The tribunal considers that the managing agents provided minimal services for the property.

39. It accepts the evidence of the respondent that no help was provided in relation to the subsidence problem and the lack of response from the lessee of the first floor flat. Mr Davda did not appear to understand the responsibilities in that regard under the lease. It notes that the electricity meter has not been read during the period. There is no evidence of inspections despite Mr Davda saying they would have happened annually. The only service that appears to have been provided is the insurance, which is largely managed by the broker, and the service charge demands.

40. The tribunal does not accept the applicant's evidence of an industry minimum of £2,500 per annum.

41. It notes the previous tribunal decision which determined management fees at £100 plus VAT.

42. The tribunal considers that the standard rate for a property of this type would by £200 plus VAT. However, the level of service provided by the managing agents has been so minimal over this period that it considers that the previous tribunal determination sets an appropriate level for fees, albeit with a small uplift for inflation. It therefore determines that a fee of £110 plus VAT per annum is reasonable which for the period in question totals £183.

Application under s.20C and refund of fees

43. Although substantive parts of the applicant's claim have succeeded, the tribunal agrees with the respondent's concerns about the lack of clarity in service charges and the very limited services provided by the

management company. It has been particularly concerned by the failure of the applicant to help the respondent avoid paying £1200 for the removal of trees that are either the freeholder or the other leaseholder's responsibility. It is also concerned that this matter has to keep returning to the tribunal when a reasonably competent management company could achieve the necessary transparency in its service charge demands. The tribunal therefore 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 applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge H Carr **Date:** 6th October 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).