



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

Case Reference : **LON/00BK/LSC/2021/0288
CVP VIDEO:REMOTE**

Property : **Flats 50 and 52 Vale Royal House 36
Newport Court London WC2H 7PX**

Applicants : **Ms J Rytooja (Flat 50)
Mr H Ben (Flat 52)**

Representative : **Ms J Rytooja**

Respondent : **Westminster City Council**

Representative : **Mr Pye**

Type of Application : **s27A and s20C Landlord and
Tenant Act 1985**

Tribunal : **Judge F J Silverman MA LLM
Ms R Kershaw BSc**

Date of hearing : **22 March 2022.**

Date of Decision : **25 March 2022**

DECISION

- 1 **The Tribunal finds the estimate for major works issued by the Respondent and detailed in a s20 notice dated 29 January 2021 to be reasonable in amount and content.**
- 2 **The application brought by Mr Ben is dismissed.**

This has been a hearing by remote video link which has been consented to by the parties. The form of remote hearing was CVP:REMOTE. 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 to which the Tribunal was referred are contained in electronic bundles the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

- 1 The Applicants are the individual long leaseholders of Flats 50 and 52, Vale Royal House, 36, Newport Court, London, WC2H 7PX (the property) which forms part of a larger building comprising commercial premises and self-contained residential flats on the upper floors. Some of the flats are let on long leases, others remain in the ownership of the Respondent freeholder and are let on short tenancies.
- 2 It is understood that Mr Ben has indicated that he does not wish to proceed with his application. He has taken no part in the proceedings and was not present at the hearing. His application is therefore dismissed.
- 3 The only issue for determination by the Tribunal is the reasonableness or otherwise of an estimate for major works issued by the Respondent on 29 January 2021 in conjunction with a notice served under s20 Landlord and Tenant Act 1985.
- 4 This matter falls to be determined under s27 Landlord and Tenant Act 1985 because it concerns the liability of a person to pay for an item which falls due under the service charge provisions of the lease.
- 5 The application also included a request for an order under s20C of the 1985 Act and a similar order under para 5 of Schedule 11 Commonhold and Leasehold Reform Act 2002.
- 6 The Application was filed on 29 July 2021 and Directions were issued by the Tribunal on 08 October 2021.

- 7 The Tribunal received and read the electronic bundles of documents filed by the parties, including their respective statements of case referred to below.
- 8 The hearing took place as by a remote video link to which the parties had previously consented.
- 9 Ms Rytooja represented herself at the hearing and the Respondent was represented by Mr Pye assisted by Mr Vaja (the latter by telephone connection only) both of whom are employed by the Respondent.
- 10 In accordance with current Practice Directions relating to Covid 19 the Tribunal did not make a physical inspection of the property but was able to obtain an overview of its exterior and location via GPS software.
- 11 The Tribunal explained to the Applicant that it was unable to deal with her request to assess the service charges for the years 2021-2026 as requested on her application form because the charges had not yet been estimated or incurred. Similarly, the Tribunal was unable to consider her allegations of negligence, breach of covenant and breach of the fire regulations because these matters did not fall within its jurisdiction under this application.
- 12 Although the Applicant's application did not refer to the matter, the Applicant asserted that the s20 notice was invalid. She said that it did not explain clearly the extent of the works to be carried out and she had been unable to reconcile the figures. She objected to paying for doors and windows in other flats, considered that the costs of fire precautions should not form part of the service charge because the Respondent was in breach of current fire regulations and that she should not be asked to pay for repairs to the Podium (part of the structure of the building). She said that the management fees were too high and that she should not be required to pay sums in advance of the commencement of the works.
- 13 When asked by the Tribunal to do so she was unable to identify any specific faults in the s.20 notice nor to point to any areas of the works which were outside the scope of her repairing obligations under the lease.
- 14 For the Respondent Mr Pye and Mr Vaja explained that the plans for this large project had been ongoing for several years and that when the Applicant bought her property in 2017 she had been informed (as part of the landlord's information pack) of her likely future liability in the sum of circa £40,000 for major works. The Applicant did not deny this.
- 15 The Respondent explained to the Applicant that the item relating to replacement doors only included the cost of replacing the doors of those units which remained in the Respondent's ownership. Her own door would be replaced only if she opted in to this item at a separate cost. There was no question of her being asked to pay for other tenants' doors or windows. She would however be required to pay her proportion (thought to be 1.1%) of the repairs to the Podium because

this area formed part of the structure of the building and her lease contained a covenant for her to contribute to this item. The Respondent was obliged by law to comply with fire regulations which necessitated an upgrade to fire precautions as set out in the estimate under discussion.

- 16 The Applicant challenged the proposed management charges but was not able to provide evidence of equivalent or comparative rates either for this or for any other of the items which she challenged.
- 17 A further area queried by the Applicant was the absence of any comparative quotations from the Respondent who explained that they had entered into a long- term qualifying agreement with a chosen contractor after a tendering process and thus were not required to obtain alternative quotations. The Tribunal is satisfied with this explanation.
- 18 The Applicant also objected to being asked to pay in advance for works which have not yet commenced but did not suggest that such pre-payment was contrary to the terms of her lease. The Respondent had offered various methods of payment by instalments or by deferring payment to a charge on the property. She had not accepted any of the offers made to her.
- 19 The property is situated in a busy area of central London where the cost of any works is inevitably inflated by collateral costs including scaffolding, access, hoists, noise control and traffic management. These additional costs can add a significant sum to the overall cost of any project and the Respondent had taken the view that it was more cost efficient to carry out all major works in one tranche rather than to spread them into smaller but more frequent events.
- 20 The s20 notice and accompanying documents issued by the Respondent were lengthy and complex reflecting the size and difficulty of the extensive project to be undertaken and it is unsurprising that a lay tenant might have difficulty in deciphering them. The Applicant had raised a number of queries with the Respondent which she said had either not been answered or had not been sufficiently explained to allay her fears of the large service charge bill which she would be required to pay. She had not however sought any independent advice about her queries nor had she sought to obtain any alternative quotations for the works.
- 21 The Applicant voiced her concerns during the hearing and Respondent attempted to explain to her the project and the extent of her liability under it.
- 22 Although the Tribunal does understand and sympathise with the Applicant's concerns about the Respondent's major works contract, she has failed to provide any evidence to the Tribunal to demonstrate either that the s20 notice was flawed or that the estimated costs are

disproportionate to the proposed works or that any of the proposed works fall outside the extent of the repairing/service charge obligations imposed on the respective parties by the lease. In such circumstances the Tribunal can find no reason not to confirm the proposed charges as reasonable.

- 23 When the works are completed the Applicant will be able to assess the quality of the works against the sums she is required to pay for them and, if necessary, may at that time consider a further application under s27A.
- 24 The Applicant also asked the Tribunal to make an order in her favour under s20C Landlord and Tenant Act 1985 and or Schedule 11 para 5 of Commonhold and Leasehold Reform Act 2002 which prevent the Respondent from adding the litigation costs of this application to a future service charge bill. The Respondent said that they did not intend to add any costs to the service charge. In any event, since the Applicant has not succeeded in her application the Tribunal does not consider it appropriate to make such an order in this case.

25 **The Law**
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).

Section 47 Landlord and Tenant Act 1987

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1or an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under

this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.

(1) This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman
Date 25 March 2022

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.