FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/LSC/2019/0322** **LON/00AM/AOM/2019/0022**
Property	**:**	**Waldo House, Trenmar Gardens, London NW10 6BD.**
Applicant	**:**	**Ms. H. Sweilam.**
Representative	**:**	**Ms. H. Lennox, trainee solicitor BPP.**
Respondent	**:**	**Waldo House Limited.**
Representative	**:**	**Hillgate Management Limited** **Mr. Ben Stevenson.**
Attendance at the hearing	**:**	**Ms. R. Page – Proposed Property Manager, Red Rock.** **Mr. B. Simpson, Property Manager, Red Rock.**
Type of application (1)	**:**	**For the determination of the reasonableness of and the liability to pay a service charge under S.27 Landlord & Tenant Act 1985, and S.20C Landlord & Tenant Act 1985.**
Type of application (2)	**:**	**For the appointment of a manager under S.24 Landlord & Tenant Act 1987.**
Tribunal members	**:**	**Ms. A. Hamilton-Farey** **Mr. H. Geddes.**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**13 March 2020**

DECISION

Decisions of the tribunal

In respect of Application (1)

Using the Scott Schedule provided in the bundles:

(1) The tribunal determines that the sum of £419.18 in respect of building expenditure for the year up until the end of NHHO's management is reasonable and the applicant is liable for their proportion of £32.57.

(2) The tribunal determines that the sum of £698.63 the management fees of NHHO are reasonable and the applicant is liable for their proportion of £139.73.

(3) The tribunal determines that the sum of £2,078.99 in respect of building expenditure is reasonable and the applicant is liable for their proportion of £161.54.

(4) The tribunal determines that the Company Secretariat costs are not service charges and are not payable by the applicant.

(5) The tribunal determines the common parts expenditure in relation to cleaning is reasonable and the applicant is therefore liable for their proportion of £20.00.

(6) The tribunal determines the charge for common parts expenditure of £75.00 is reasonable and the applicant is liable for their proportion of £15.00.

(7) The tribunal determines that the current manager is entitled to charge £200.00 per unit per annum + VAT in relation to management fees and an apportioned amount for the period in question, is payable by the applicant.

(8) The tribunal determines the applicant is not liable for any of the other charges disputed within the Scott Schedule presented to the tribunal.

(9) All payments identified by the tribunal above, unless already paid, shall be paid by the applicant within 28 days of this decision.

Reasons for the decisions:

(10) The applicant made no complaint regarding the services provided during the period when NHHO were managing the building and in evidence recorded that the management was better than that provided by Hillgate. The tribunal finds that all of the sums claimed as part of

NHHO's management and maintenance of the building are reasonable and the applicant is liable for her percentage of those costs. It is not clear from the evidence whether the applicant has actually paid NHHO, but if not, she should make payment within 28 days of the date of this decision.

In respect of application (2):

(11) The tribunal, having heard the evidence from the parties and questioned the proposed manager, **does not** appoint Ms. Rebecca Page as the tribunal appointed manager under S.24 Landlord & Tenant Act 1987.

(12) The tribunal does confirm that had a more suitable manager be produced at the hearing, the tribunal would have made an appointment.

Reasons for the decision:

(13) The tribunal was concerned that Ms. Page had not visited the property and had not read the lease before making a proposal of management for the building. It also transpired during the hearing that Ms. Page had not met the applicant prior to the hearing. The tribunal finds these failures to be unacceptable and would expect any manager who wished to be appointed by a tribunal to make full enquiries of the building, including the lease and at least to have met the client.

(14) The tribunal had not been presented with a full management plan or draft Management Order as required by the directions and Miss Page had not been appointed Manager by any other tribunals. This placed her at a disadvantage which she accepted.

(15) The tribunal was concerned that the property management activities of Red Rock were conducted from Essex, and we consider this to be too far from the subject property to ensure that regular maintenance and compliance with legislation would be undertaken without additional travelling costs.

(16) The tribunal was not satisfied that Ms. Page had sufficient experience of managing a property such as this, where it appears the leaseholders do not co-operate with each other. For example, she had no strategy for dealing with payments for services whilst the current manager compiled books of accounts and handed over any reserves.

(17) Ms. Price also considered that 12-months would be a sufficient period of appointment. It is this tribunal's view that this would not be sufficient time. In our experience it can take a manager more than 12-months to receive service charge funds and sort out maintenance

issues and it is unrealistic of her to believe that she could achieve so much in such a short period, especially where there is division between leaseholders.

(18) For the above reasons we do not consider that Ms. Page can be appointed as a manager.

S.20c Application and application for costs:

(19) The tribunal determines the respondent shall pay the applicant the sum of £300.00 in relation to the application and hearing fees of this matter within 28 days of this decision.

(20) The tribunal makes no additional award for costs in this matter to the applicant.

(21) The tribunal makes an Order under S.20C of the Landlord & Tenant Act 1985, that the landlord shall not recover any of the costs of these proceedings from the service charges for the property.

(22) The tribunal makes further directions in relation to the management of the property at the end of this decision.

The application

1. This decision is supplementary to the tribunal's decision of 12 December 2019.

2. In that decision the tribunal was unable to ascertain the levels of service charge payable by the applicant due to lack of evidence, nor appoint a manager because the applicant had not proposed a manager and one did not attend the hearing.

3. Directions were issued following that hearing for a reconvene prior to which the parties would exchange the evidence on which they relied, and the proposed manager would be required to attend the hearing.

4. Although the applicant said the respondent had failed, one again, to comply with the directions the tribunal decided in the interests of proportionality to allow the late evidence in.

The hearing:

5. At the hearing the applicant was represented by Ms. Lennox a trainee solicitor with BPP. Mr. Stevenson represented the landlord, Waldo House Limited. The proposed manager Ms. Page from Red Rock

Property Management appeared and was accompanied by Mr. Simpson also of Red Rock.

6. Ms. Lennox reiterated the applicant's case that had been expressed at the first hearing. That is, no services had been provided, or if they had, they were to an unreasonable standard, with the result that none of the service charges claimed by the respondent were payable.

7. Ms. Lennox also said that due to these failures, the tribunal should appoint a manager in accordance with S.24 of the Landlord & Tenant Act 1987, and that even if the tribunal considered those failures not to be made out, that the tribunal should exercise its discretion and appoint a manager because it was just and convenient to do so .

8. The tribunal heard from Ms. Price. She confirmed to us that she had not been appointed as a manager by the tribunal before, but that she was responsible for the company's portfolio totalling 150 blocks (2,500 units). She confirmed that she understood the relationship between the tribunal and an appointee, in that she would not be working for the leaseholders. She had worked with social housing providers before and mentioned Aldwyk HA as previous clients.

9. When asked Ms. Price confirmed her management fee of £275.00, which included any S.20 consultation works or fire safety inspection. She was unsure of the liability in the common areas and had not seen the correspondence between the current manager and the applicant.

10. If appointed, Ms. Price suggested that a period of 12 months would be sufficient, and that in that period she would be able to rectify the problem with the entryphone and other outstanding repairs.

The next steps:

11. Given the tribunal's findings that, if a different manager had been presented, we would have made an appointment, we **DIRECT** the current manager to carry out the following tasks within the next six months:

- Remove from the service charge accounts the charges relating to the landlord company (Company Secretariat Fees, filing fees etc) and make a refund to the service charge fund.

- Arrange for an electrical check of the common parts, obtain the relevant certificates to ensure that the wiring is safe.

- Arrange for an inspection of both communal hallways to determine whether there are smoke/fire alarms in situ, and if

not, obtain the report of a professional to determine whether or not they are required, and if so, make proposals to the leaseholders for their installation.

- Arrange for the entryphone system to be inspected and if possible repaired, or if not, report to the leaseholders.

- Arrange for the building to be inspected and a planned maintenance plan and budget, for at least the next 10 years, produced for the freeholders and leaseholders' information, and consultation on timing/cost of the works required.

12. In the shorter term, we **DIRECT** the current manager to:

- Read the lease and ensure that he understands his obligations as the landlord's representative in relation to the management and maintenance of the building.

- Ensure that leaseholders' covenants under the lease are enforced, especially with relation to the cleaning of walls, damage by pets, and the common parts.

- Progress the replacement of the carpet to the communal area, damaged by one of the leaseholders, at the leaseholder's cost (and not through the service charge – with the exception of any insurance excess).

- If a new property manager is appointed, ensure that they are properly trained to carry out the functions of manager for the property.

13. In the event that the applicant is dis-satisfied with the results of these Directions in six-months' time, she may make a further application to the tribunal and put forward an alternative manager.

Name: A. Hamilton-Farey **Date:** 13 March 2020

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).

Appendix of relevant legislation

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).