



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

**IN THE COUNTY COURT at  
Edmonton, sitting at 10 Alfred  
Place, London WC1E 7LR**

**Case Reference** : **LON/00AK/LSC/2020/0058**

**Court claim number** : **F2QZ60KQ**

**Property** : **47 Sherborne Avenue, Enfield, EN3  
5BW**

**Applicant/Claimant** : **London Borough of Enfield**

**Representative** : **In house**

**Respondent/Defendant** : **Mohi Uddin**

**Representative** : **In person**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay service charges**

**Tribunal Member** : **Tribunal Judge I Mohabir**

**In the County Court** : **Judge Mohabir**

**Date of Hearing** : **20 November 2020**

**Date of Decision** : **20 November 2020  
amended 15 February 2021**

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**DECISION**

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Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be:

- (a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or;
- (b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties

## ***Introduction***

1. The Applicant commenced proceedings in the County Court to recover service charge arrears totalling £20,034.84 in respect of 47 Sherborne Avenue, Enfield, EN3 5BW (“the property”) together with statutory interest and costs.
2. The Defendant/Respondent (“the Respondent”) is the long leaseholder of the property by a lease granted to Barry Keith Smitherman and June Dorothy Smitherman dated 1 April 1985 for a term of 125 years from that date (“the lease”). The Respondent took an assignment of the lease on 25 November 2015.
3. The Respondent’s covenant to pay a service charge contribution is found in clause 2(B) of the lease. It requires the Respondent to pay a “proper proportion” of the estimated or costs incurred by the Applicant in carrying out its repairing obligations generally and, in addition, the cost of any major repairs pursuant to the Fourth Schedule in the lease.
4. The Applicant’s general repairing obligation can be found in clause 7 of the lease, which limits the obligation to the exterior parts of the block “*including the windows (both the window frames and the glass panes thereof...*”. The Fourth Schedule extends the scope of the repairing obligation to the cost incurred for “*common repairs and services*” incurred in relation to the block and the estate.
5. The Applicant carried out various major works to the block and estate between 2015 and 2019, having carried out statutory consultation. On 21 June 2019 it sent a demand to the Respondent for his service charge contribution in the sum of £20,275.17. However, in the claim form the Applicant limits the claim to the lesser sum of £20,034.84
6. In a pro forma Defence dated 5 December 2019, the Respondent made the following challenges:

- (a) that the Applicant was not entitled to carry out repairs to the (flat) windows.
  - (b) that the service charges in issue are not reasonable and/or are not in accordance with the terms of the lease.
  - (c) that the charges are not accurate.
7. The claim was subsequently transferred to the Tribunal and it issued directions dated 12 March 2020 as to the filing and serving of evidence.
8. These have been complied with by the Applicant. The only “evidence” filed and served by the Respondent is the partial completion of the Scott Schedule issued with the Directions. From this, it appears that the only item of cost challenged by the Respondent is his service charge contribution of £3,571.16 in respect of the cost of window replacement to the property. It is made on the basis that, under the First Schedule of the lease, the windows and window frames of the property are demised to the lessee. No express challenge has been made about the cost and, indeed, the Respondent has not adduced any evidence about this.

### ***Relevant Law***

9. This is set out in Appendix to this decision. The Tribunal’s determination takes place pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”).

### ***Decision***

10. The determination took place on 20 November 2020 and was based on the witness statement and documentary evidence filed by the Applicant.

### ***Windows***

11. This is the only item of cost expressly challenged by the Respondent. He correctly asserted that the windows and window frames at the property are demised to the lessee. However, he has misunderstood how the repairing obligations on the part of the Applicant in relation to the block and the estate arise. The relevant lease terms have already been set out

at paragraphs 3 and 4 above. Whilst it is correct to say that the windows and window frames are demised, the obligation to repair and maintain the exterior of them falls on the Applicant under the terms of the lease. It follows that the Respondent is obliged under clause 2(B) of the lease to pay a service contribution for the cost of replacing them.

12. The Tribunal, therefore, concluded that the Respondent was contractually liable to pay for the cost of replacing the windows and window frames at the property. Given that the cost of doing so has not been challenged nor has the Respondent adduced any evidence about this, the Tribunal found the cost claimed by the Applicant to be reasonable.
13. As to the balance of the remaining service charges claimed by the Applicant, the Respondent has not challenged these and, in any event, he has not filed or served any evidence. The Tribunal also concluded that the costs are recoverable under the lease as service charges and are found to be reasonable.

### ***Interest***

14. The Applicant has claimed both contractual interest in the sum of £342.42 and statutory interest at a rate of 8%. It cannot do both.
15. However, by a supplementary witness statement of Joe Whimpenny dated 18 December 2020, the Applicant has conceded that the claim for contractual interest is incorrect and that only statutory interest at the rate of 8% is claimed in the sum of £342.42. The Tribunal awards this sum in addition to the judgement figure.

### ***Costs***

16. None has been claimed by the Applicant save for the issue fee of £916.98 and these were allowed by the Tribunal.

**ANNEX - RIGHTS OF APPEAL**

*Appealing against the tribunal's decisions*

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

*Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court*

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.
6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.
7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

*Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court*

8. In this case, both the above routes should be followed.

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **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 a leasehold valuation 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 a leasehold valuation 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.