FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY) and IN THE COUNTY COURT AT WILLESDEN, sitting at 10 Alfred Place, London WC1E 7LR

Case reference	**:**	**LON/00BK/LSC/2020/0039**
County court claim number	**:**	**F24YX933**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 10 Langley House, Alfred Road, London W2 5ET**
Applicant/Claimant	**:**	**Network Homes Ltd**
Respondent/Defendant	**:**	**Shivanti Hrushka Lowton**
Type of application	**:**	**Transfer from County Court – Service & Administration Charges, Ground Rent, Interest and Costs**
Tribunal members	**:**	**Judge Nicol** **Mr P Roberts Dip Arch RIBA**
Date of decision	**:**	**15th October 2020**

ORDERS AND REASONS

Determination of the Tribunal:

(1) The Tribunal determines that the sum of £3,053.07 is payable by the Respondent in respect of service charges.

Order of the county court:

(2) The Defendant shall pay to the Claimant the sum of £7,130 in ground rent.

(3) The Defendant shall also pay to the Claimant the sum of £382.02 in interest on the arrears of service charges and rent.

(4) The court will determine the issue of costs on receipt of a copy of the Part 36 offer made by the Claimant to the Defendant.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant, the freeholder of the subject property, seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the amount of service charges payable by the Respondent.

2. Proceedings were originally issued in the county court on 6th March 2019. Following the filing and service of a Defence, they were transferred to the Tribunal by order of District Judge Kumrai on 3rd January 2020. On 31st January 2020 the Tribunal directed that all matters would be dealt with by the Tribunal, with the Tribunal judge also sitting as a District Judge to determine matters within the exclusive jurisdiction of the county court. Therefore, the Applicant's further claims for ground rent, interest and costs have also been addressed within these proceedings without the need for the case to be referred back to the county court.

3. The hearing took place by remote video conference on 12th October 2020. The attendees were:

   - Mr Edward Blakeney, counsel for the Applicant;
   - Mr Shackleton, solicitor for the Applicant;
   - Mr Oni Anyanwu, Leasehold Property Manager, witness for the Applicant; and
   - The Respondent (the Respondent's camera was only able to provide a very blurred image so that the other participants could not see her but she was able to see all the other participants and to share her screen when necessary).

4. Most of the documents before the Tribunal were contained in a 342-page bundle prepared by the Applicant. Mr Blakeney also provided a Skeleton Argument on behalf of the Applicant.

5. Prior to the hearing, the Respondent indicated that she had extensive further documentation and photos which she wished to present at the hearing but which had yet to be disclosed. The Tribunal explained to the Respondent that it would not be fair to introduce new evidence so late because the Applicant would have had no opportunity to consider it or what evidence it might have in response. The Respondent then explained how this position had been reached.

6. The Respondent has upper body disabilities. She does not wish the Applicant to know the details and so provided confidentially to the Tribunal, with the Applicant's consent, two documents which gave further information on her disabilities and the assistance she receives in order to be able to do her job as a Senior Lecturer at the University of

East London. For the purposes of these proceedings, she told the Tribunal in July 2020 that, as a reasonable adjustment to accommodate her disabilities, she needed relevant documents to be sent to her in hard copy. In fact, everything was provided to her in electronic format until she received a copy of the aforementioned hearing bundle on 8th October 2020. The Applicant says that they did not see the July correspondence and provided a hard copy of the bundle as soon as the Tribunal directed them to do so. In any event, at least part of the documentation the Respondent wished to present at the hearing arose from her consideration of the bundle over the weekend before the hearing.

7. In the Tribunal's opinion, and in accordance with the Tribunal's duties under the Equality Act 2010, the only option which would allow a fair hearing in these circumstances would have been to adjourn with the costs thrown away to be considered later. This would also have allowed the Respondent the opportunity to take legal advice – the Respondent says she did not have the money in the light of her potential liability for the Applicant's costs in these proceedings but the Tribunal pointed out that advice, as opposed to representation, was available at a relatively low cost or even for free. The Tribunal therefore proposed an adjournment on directions.

8. Mr Blakeney had already indicated the Applicant's opposition but it was the Respondent who was very firm that she did not want an adjournment, even if she could not present her full case. She was concerned in particular at the adverse effect on her mental health she anticipated from these proceedings continuing. She felt she had enough other stressful matters to attend to and insisted that she wished to proceed.

9. The Tribunal had no evidence in relation to the Respondent's mental health but there was no reason to deny the Respondent's assertion. The Tribunal had fully explained the consequences of refusing the proposed adjournment and had no doubt that the Respondent understood them. Therefore, in accordance with the wishes of both parties, the hearing continued to its conclusion.

10. The Respondent holds a shared ownership lease of the subject property for a term of 125 years from 19th August 2002. The Applicant points to the following clauses imposing obligations on the Respondent:

- 3(1) – to pay the ground rent of £3,565 per annum
- 3(2)(b) – to pay the service charge in accordance with clause 7
- 3(9) – to pay the costs incurred for the purpose of or incidental to the preparation and service of a section 146 notice or otherwise incurred in respect of any breach of covenant
- 7(2) – to pay the service charge by 12 equal monthly payments in advance

11. The Respondent has disputed her liability for service charges for over 10 years, principally on the basis that the Applicant has been delivering a poor service. However, she accepted that she was unable to challenge the reasonableness of the service charges because she had not submitted her evidence in time to enable a fair hearing to be conducted.

12. The Respondent cross-examined the Applicant's witness, Mr Anyanwu, who explained that up to 5 residents at Langley House, from the 33 flats, correspond frequently with the Applicant about various allegedly unsatisfactory aspects of the management and maintenance of the building. It became apparent during cross-examination that Mr Anyanwu had ingenuously categorised "complaints" as only those entering the Applicant's formal complaints system, rather than any expression of dissatisfaction, and so his witness statement was somewhat misleading in claiming that there were "rarely" any complaints. However, apart from that, the Respondent was not able to establish that the Applicant's services were deficient in any way.

13. In 2008 the Respondent said she would only pay her ground rent and the water charges element and limited her payments accordingly. From 2013, the payments ceased to match the ground rent and water charges, sometimes being higher and sometimes being less. The Applicant took it that they were now entitled to apply the Respondent's payments to whichever debts they chose and applied it to the oldest ones, however they arose. The Respondent insisted that she intended not to pay the service charges but she did not say so from 2013 and so the Tribunal is satisfied that the Applicant was allowed to apply her payments as they decided.

14. With the Respondent's payments being inadequate to cover the service charges demanded each year, arrears built up. On 12th June 2015 the Applicant wrote off £9,812.14 of the arrears. The Respondent denied that this was done as a matter of goodwill, as the Applicant claimed, but nothing turns on this.

15. When the proceedings were issued, the Applicant claimed that the Respondent's arrears amounted to £6,767.34 but also sought "further rent and service charges which may become due before judgment" (paragraph 4 of the Particulars of Claim). By the time of the hearing, the arrears had risen to £11,030.54. In the Tribunal's opinion, this figure must be reduced in two respects:

    (a) The figure includes the court fee of £455. This is also claimed in the Applicant's costs and is best left to consideration with all the costs.

    (b) The figure also includes the sum of £392.47, being the balancing charge for the year ending 31st March 2020. The Applicant notified the Respondent of this charge by letter dated 28th September 2020, enclosing the service charge certificate required under the lease which shows the actual expenses incurred for that year. This means that the Respondent was only notified of both the charge and the basis for it less than two weeks before the hearing. It would not be feasible for a lessee

to consider whether to challenge their liability for such a sum on that timescale, particularly for the Respondent who was focusing on her preparation for the hearing in relation to the balance of the Applicant's claim and never received a document including this sum as part of that claim. In the circumstances, the Tribunal excludes the sum of £392.47 from the claim. This does not mean that the Respondent may escape liability for it but that is a matter for another time.

16. The arrears of service charges and ground rent for these proceedings therefore total £10,183.07, going back to 1st October 2018. The Respondent has no defence to this. Since the jurisdiction of the Tribunal is limited to service charges, it is necessary to extract the ground rent of £3,565 per year. By the Tribunal's calculation, the rent element amounts to £7,130, leaving the service charge balance at £3,053.07.

17. The Applicant claims interest on the whole amount at the contractual rate, under clause 3(1) of the lease, at an annual rate of 3% above the Barclays Bank base rate. The Applicant's solicitor helpfully provided a calculation to 12th October 2020. Taking into account the exclusion of the amounts referred to in paragraph 15 above and the additional interest of 94 pence per day, the Tribunal calculates the interest as at 15th October 2020 to be £382.02.

18. It should be noted that, if the Tribunal had accepted the Respondent's case that her payments only went to the rent and water charges, the debt and interest calculation would have extended as far back as 2013, significantly increasing the amount of interest. However, as already referred to above, the Tribunal is satisfied that the Applicant was entitled to apply her payments to her oldest debts, a side-effect of which is to limit the interest which may be claimed.

19. The Respondent had applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Applicant's costs of these proceedings may not be regarded as relevant costs in calculating the service charge. She said there was no need for this litigation due to the following matters:

    (a) The Applicant had rejected a settlement offer from the Respondent in 2015. The Respondent criticised the Applicant for not providing further information, including any relevant payment policy, which would have allowed her to consider making an improved offer. However, the Tribunal accepts Mr Blakeney's point that the Respondent was not obliged in such circumstances to pay nothing towards her arrears – if she accepted that something should be paid, she could at least have paid that amount, thus reducing the chances of the matter being litigated.

    (b) The Respondent also criticised the Applicant for their lack of clarity in their correspondence. It is rare that a landlord or their agents couldn't have expressed themselves better at some point in such lengthy

disputes but the Tribunal was unable to locate any significant or material lack of clarity.

(c) The Respondent submitted that the Applicant could have recovered her arrears from her mortgagee. In fact, the Applicant did make moves to that effect but were met by the Respondent's objections such as in her letter of 3rd December 2018 when she went so far as to say, "I will consider it a violation under article 16 of the 2018 GDPR should Network Homes contact my mortgage provider with information that I consider and can prove to be inaccurate."

(d) The Respondent claimed that the Applicant had refused to mediate despite the comments by Henry Carr J in *Network Homes Ltd v Harlow* [2018] EWHC 3120 (Ch) that mediation should be considered in such disputes. In fact, a mediation did take place, using the Tribunal's mediation service, on 13th August 2020.

20. The Applicant has succeeded in establishing their claim. The Tribunal rejects the Respondent's submission that the Applicant had failed to take steps to avoid the litigation. In the circumstances, the Tribunal is satisfied that there is no basis for an order under section 20C.

21. The Applicant indicated that they wished to recover the costs of the proceedings and had provided a Statement of Costs in Form N260 for a total sum of £12,026 – Mr Blakeney pointed out that his brief fee had been wrongly stated, reducing the total to £11,276. He pointed to clause 3(9) of the lease which permitted the recovery of costs on an indemnity basis. He also stated that a Part 36 offer had been made and wanted Judge Nicol to consider imposing penalties in accordance with rule 36.17 of the Civil Procedure Rules, in particular the additional amount of 10% of the award under sub-rule (3)(d).

22. However, it is not possible to determine costs until after judgment, not least because the contents of the Part 36 offer cannot be revealed until then. Judge Nicol will determine the issue of costs after the Applicant has sent in a copy of the Part 36 offer.

Name: Judge Nicol **Date:** 15th October 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

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.

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).

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

General Form of Judgment or Order

In the County Court at Willesden sitting at 10 Alfred Place, London WC1E 7LR	
Claim Number	**F24YX933**
Date	15th October 2020

Network Homes Ltd	**Claimant Ref**
Shivanti Hrushka Lowton	**Defendant Ref**

BEFORE Tribunal Judge Nicol, sitting as a Judge of the County Court (District Judge),

UPON the claim having been transferred to the First-tier Tribunal for administration on 31st January 2020 by order of District Judge Kumrai sitting at the County Court at Willesden

AND UPON hearing counsel for the Claimant and the Defendant in person

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

IT IS ORDERED THAT:

1. The Defendant shall pay to the Claimant the sum of £10,183.07 being the sum found due and payable in respect of ground rent and service charges;

2. In addition, the Defendant shall pay the sum of £382.02 in interest;

3. The court will determine the issue of costs on receipt of a copy of the Part 36 offer made by the Claimant to the Defendant;

4. The reasons for the making of this Order are set out in the combined decision of the court and the First-tier Tribunal (Property Chamber) dated 15th October 2020 under case reference LON/00BK/LSC/2020/0039.

Dated: 12th October 2020

General Form of Judgment or Order

In the County Court at Willesden sitting at 10 Alfred Place, London WC1E 7LR	
Claim Number	**F24YX933**
Date	20th October 2020

Network Homes Ltd	**Claimant Ref**
Shivanti Hrushka Lowton	**Defendant Ref**

BEFORE Tribunal Judge Nicol, sitting as a Judge of the County Court (District Judge),

FURTHER to the order issued on 15th October 2020, in particular paragraph 3, and taking into account the decisions and reasons of the First-tier Tribunal made at the same time under case reference LON/00BK/LSC/2020/003, in particular paragraphs 5-9 and 19-22,

AND UPON reading the Part 36 offer made by the Claimant to the Defendant by letter dated 26th April 2019,

IT IS ORDERED THAT:

1. The Defendant shall pay the Claimant's costs summarily assessed on an indemnity basis in accordance with clause 3(9) of the lease in the sum of £11,276;

2. There shall be no further order under CPR 36.17(4) because it would be unjust to do so.

Dated: 20th October 2020