



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

**Case reference** : **CAM/12UD/LBC/2020/0004**

**HMCTS code (paper, video, audio)** : **V: CVPREMOTE**

**Property** : **Flat 6, Brampton Place, Walfords Close, Old Harlow, Essex CM17 0DG**

**Applicant** : **Katarzyna Kisala**

**Representative** : **Mr Edward Kisala**

**Respondent** : **Walfords Management Company Limited (1)  
Topcott Developments Limited (2)**

**Representative** : **Mr Robert Graham**

**Type of application** : **Application concerning liability to pay service charges**

**Tribunal member** : **Tribunal Judge Dutton  
Mr S E Moll FRICS**

**Venue** : **Remote video hearing 6 April 2021**

**Date of Decision** : **7 April 2021**

**DECISION**

## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVPREMOTE. 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 two bundles of a large number of pages, the contents of which we have noted. The order made is described at the end of these reasons.

## **Background**

1. This is an application by Mr Edward Kisala on behalf of his mother who is the leaseholder of flat 6 Brampton Place, Walfords Close Old Harlow (the Property) pursuant to s27A Landlord and Tenant Act 1985 (the Act). It is noted in the lease that the flat is described as being on the first floor under the Property definition at page 6 of the lease but in Schedule 1 described as a ground floor flat at page 16.
2. The respondent was initially Walfords Management Company Limited. By a letter emailed to the parties on 25 March 2021, Topcutt Developments Limited were added as a respondent. Walfords is a tenant owned management company set up in the lease under which the applicant owns her flat dated 16 July 2012 between the second respondent (1), the first respondent (2) and the applicant (3) for a term of 125 years from 25 December 2010 upon the terms therein contained.
3. The matter came before us for hearing on 6 April 2021. We had been provided with two large bundles of papers, which included what purported to be invoices demanding estimated service charges on a quarterly basis from April 2014 to September 2018. In addition, we had a letter from the respondent to the applicant dated 11 March 2019 setting out the alleged level of indebtedness, said to be £4,163.47 to the end of 2018 and a further sum of £1,620.22 for 2019. This figure was picked up in a letter before action sent by Backhouse Solicitors to the applicant dated 10 November 2020, which sought to establish that the sum of £5,733.69 was outstanding in respect of service charges up to and including July 2020.
4. In addition to the above, copies of the accounts for the first respondent from December 2013 to December 2019 were provided. We have set out on the attached schedule a resume of these documents.
5. For the applicant Mr Kisala raised a number of issues. These can be put simplistically as follows:

- There has been non-compliance with the terms of the lease which requires that the accounts be audited and that the tenant is supplied with a certificate (see 6<sup>th</sup> Schedule para 4.3)
  - That there are instances where s20 of the Act has not been complied with and no s20ZA application has been made
  - That s21B of the Act has not been complied with
  - That there has been a failure to comply with s20B
  - It is possible that there have been breaches of s42 of the Landlord and Tenant Act 1987
6. In addition to these issues, it may be that others will emerge. We say that because having discussed the matter with Mr Kisala and Mr Graham it was agreed that the proceedings should be adjourned for 6 months. Our reasons for agreeing such an adjournment are as follows.
- Mr Graham has only very recently taken on the mantle of the only director of the first respondent and has not had the opportunity of getting to grips with the documentation. Apparently, there are others who will join him on the Board.
  - The second respondent was only joined in the last few days and has not indicated a wish to participate, when its participation would be welcome.
  - Mr Kisala said he wished to work with Mr Graham to resolve matters amicably in the hope that a compromise could be reached. Indeed, it was said that his brother, Krystos Kisala, would be willing, subject to proper authority from the applicant, to become a director of the first respondent and assist in this rapprochement.

### **Findings/comments**

7. We were asked if we would make some findings/comments on a preliminary basis to assist the parties as they enter negotiations. We are content to do so.
8. Firstly, it seems to us that the respondents, both together, have not complied with the terms of the lease on a number of issues, some of which are as follows.

- Firstly, the estimated demands have been made on a quarterly basis when they should be half yearly (see 4<sup>th</sup> Sch para 2.1)
  - At para 2.3 any overpayment of estimated service charges demanded should be credited to the tenant, we cannot see that it has been..
  - At para 4.3 of 6<sup>th</sup> Schedule a requirement to audit the service charge accounts and provide a certificate has not been complied with. Although it is noted that the requirement of the tenant is to pay on demand and there is no set off.
9. As to non-compliance with the Act it would seem that there was no statutory wording required by s21B, which in turn means that the applicant is entitled to delay payment until complied with, which in turn extinguishes any claim for interest for late payment.
  10. It is not possible to comment on s20 issues, save to say that Mr Kisala mentioned a payment for roof repair in 2014 in the sum of circa £8,000. However, the accounts produced for that year show no such payment as having been made and reclaimed.
  11. There is a lack of transparency in respect of reserve/sinking fund monies which must be clarified.
  12. As to the issue under s20B and the 18 month rule our initial view is that the invoices served from 2014 onwards could, on the face of it, comply with s20B(2).

### **Further steps**

13. In agreeing to the adjournment of these proceedings for a period of 6 months, or shorter if matters either prove incapable of resolution, or resolution is achieved earlier, the intention is that Mr Graham will have time to investigate and meet with Mr Kisala. To enable this, we will allow Mr Graham up to one month to carry out a review and at the end of that time, or before if possible, he must contact Mr Kisala and arrange a meeting, possibly with the second respondent if it participates.
14. There is no need to involve the tribunal in these negotiations. It is only if the negotiations fail that the matter will be reinstated. The parties must notify the tribunal at the end of the 6 month period, or before, as to the status of the claim and the tribunal will review the file.
15. We wish the parties well in their endeavours. There is no doubt that requiring the accounts to be audited will incur additional costs. It is

also noted that in the letter before action service charges years before 2015 do not seem to be the subject of any claim by the first respondent.

*Andrew Dutton*

Tribunal Judge Dutton

Date 7 April 2021

### **SCHEDULE**

Figures taken from the Walfords Management Company accounts for 2015 to 2019 at tabs 1 – 7 inclusive and the demands included in the respondents papers at tab 8

Demands period	Amount £	Annual A/c £	Share 1/9 £	‘ Profit’ £
Jan – Dec 2015 Sinking fund	1400 100	6184	687.11	6441
Jan – Dec 2016 Sinking fund	1400 100	7325	813.88	5275
Jan – Dec 2017 Sinking fund	1400 100	7014	779.33	5586
Jan – Dec 2018 Sinking fund	1400 100	13348	1483.11	(4594)
Jan – Dec 2019		10914	1620.22	(7732)

Lease terms

Sch 4 2.1 Estimated payable in two equal instalments

2.3 Pay balance in demand

Sch 4 4.3 send T a certificate showing service costs and service charges for that service charge year. Certificate in accordance with service charge accounts prepared and audited by the L independent accountants