FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AH/LSC/2020/0061 (CVP REMOTE)**
Property	**:**	**Flats at The Red House 269 Sanderstead Road South Croydon CR2 0AG**
Applicant	**:**	**Mr Keeling and other leaseholders**
Representatives	**:**	**Mr James McDonnell**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Mr R. Gurvits**
Type of Application	**:**	**For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)**
Tribunal Members	**:**	**Judge Professor Robert Abbey** **Mr Richard Waterhouse MA LLM FRICS**
Date and venue of Hearing	**:**	**1 July 2021 by an online video hearing**
Date of Decision	**:**	**6 July 2021**

DECISION

Decisions of the tribunal

(1) The tribunal determines that: -

(2) Surveyors fees: the Tribunal finds that these fees are reasonable and payable in the sum of £1440

(3) Building insurance: the insurance charge was excessive and should be reduced to £4344.38 and is therefore payable at that level.

(4) Cleaning and gardening: these charges are not reasonable and should be reduced by £339.80 and £176.40 respectively.

(5) Lift line and emergency line: the charges are reasonable and payable

(6) Leak from downpipe investigation: the charges are reasonable and payable

(7) Post leak repairs: the charges are reasonable and payable

(8) Administration fees from handover to RTM: These charges are not reasonable and are reduced to £60 inclusive of VAT

(9) Otherwise, if service charge items are not specifically mentioned under this heading, then the Tribunal has found them to be reasonable.

(10) The Tribunal further determines that it is just and equitable in the circumstances for an order to be made under section 20C of the Landlord and Tenant Act 1985 that 50% of the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenants.

The applications

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the respondent in respect of service charges payable for services provided for **Flats at The Red House 269 Sanderstead Road South Croydon CR2 0AG**, (the property) and the liability to pay such service charge.

2. The Red House 269 Sanderstead Road South Croydon CR2 0AG is a purpose-built block of 10 flats. The respondent is the landlord and the applicant is the leaseholder of one of the flats in the block. The block consists of 10 residential flats in all, each of which is held a long residential lease. The respondent company is the freehold registered proprietor and a limited company.

3. The applications to the Tribunal were concerned with service charges and administration charges arising in service charge years 2018 and 2019. The first is for a Landlord and Tenant Act 1985 s.27A determination in respect of service charges arising in the two years mentioned above. In the second application the applicant seeks a determination pursuant to the Commonhold and Leasehold Reform Act 2002, Schedule 11, paragraph 5 relating to administration charges and a determination with regard to s.20c.

4. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

5. The applicant was represented by Mr James McDonnell and the respondent was represented by Mr R. Gurvits.

6. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

7. The Tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. For the most part, the facts before the Tribunal were not contested; the parties simply disagreed as to the application of the law to the facts and indeed as to the interpretation of some of the facts and figures relating to the service charges.

8. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the MoJ Cloud Video Hearing Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties

Decision

9. The Tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal considered in detail written and oral evidence and the

surrounding documentation as well as the oral submissions provided by both the parties at the time of the video hearing.

10. The Tribunal were required to consider service charges and administration charges arising in service charge years 2019 and 2020 as well as administration charges. The Tribunal will consider each in turn.

Surveyors' fee £1440

11. These were fees incurred by the landlord in connection with an insurance claims from 2018. The surveyor inspected on more than one occasion. Invoices were produced to the Tribunal supporting the claim and were for £600 plus VAT of £120 for the two invoices. The charges were for 5 hours work at £120 per hour each invoiced visit. The applicant asserted that the respondent had not provided claim form details and had not complied with directions. The applicant also asserted that these fees should have been covered by the insurance claims. In reply the respondent asserted that a claim was made but that the insurance company would not cover these fees and so they were charged to the leaseholders.

12. In the circumstances set out above the Tribunal took the view that the charges were payable by the leaseholders and at the hourly rate mentioned they were also reasonable. Therefore, the Tribunal determines that these surveyors' fees are payable and reasonable.

Building Insurance for 2019

13. The applicant believes that the insurance premium for this year, charged at £6058.18 by AXA, is excessive. The applicant looked at alternative quotes from other similar insurers and discovered the quotes worked out lower, the NFU at £4113.30 and Zurich at £4344.38. The respondent said that they had used a broker and that there had been market testing and that the quotes were not completely like for like. Furthermore, the landlord was not required to find the cheapest quote.

14. The Tribunal is satisfied that Zurich and the NFU are insurance companies of repute and that as such there is compliance with the obligation to obtain a quote from a reputable company. In the cases of *Berrycroft Management Co Limited v Sinclair Gardens Investment (Kensington) Limited* 1997 1EGLR 47 and *Havenridge Limited v Boston Dyers Limited* [1994] 49 EG 111(CA) it was made clear that the landlord does not have to accept the cheapest quotation but the

landlord must insure with a reputable company as is the case in this dispute.

15. From *Forcelux v Sweetman* [2001] 2 EGLR 173 it is apparent that a landlord should test the market when considering an insurance quote. In this dispute it was demonstrated that a market analysis was undertaken by brokers whereby several insurance companies were approached to test the market insurance premium rates.

16. Accordingly, the Tribunal accepted that there was no requirement on the landlord to find the cheapest quote but it could not ignore the fact that there were two similar quotes at significantly lower levels where the quotes were all at the same sum insured as set by the landlord and its insurer. In the circumstances set out above the Tribunal was of the view that the level of the premium charged by the landlord was excessive and that the level should be at the higher of the two alternative quotes from the other reputable insurers, at £4344.38 set by Zurich.

Cleaning and gardening

17. An RTM company was Ordered in regard to this property with effect from 11 May 2019. It appears that there were charges for gardening and cleaning that arose from work carried out at the property but after that date. The cleaning charges disputed by the applicant amounts to £339.80 and £176.40 for the disputed gardening charges. These two sums were payable by all the leaseholders so each would be responsible for a tenth of the charges, £33.98 and £17.64. The applicant objected to charges levied after the RTM was put in place. The respondent countered by asserting that there were contracts in place with these suppliers that had to be worked out on a contractual basis.

18. In effect the charges were carried out until the end of the contractual period with the suppliers. The Tribunal were not convinced by the argument. The respondent would have had a substantial period of notice before the RTM came into operation sufficient therefore to enable the landlord to make arrangements to stop the charges on or before the RTM took over responsibility for the property. In these circumstances the Tribunal disallows both these amounts.

Lift line and emergency line

19. The total charge for the lift line was £533.43 and £120 for the emergency line. It was apparent to the Tribunal that there was significant confusion as to what these charges were for and what the represented. Eventually these charges were clarified and as such the

Tribunal was satisfied that they were properly payable by the tenants. Additionally, in the absence of any convincing evidence from the applicants the Tribunal was satisfied that the charges were reasonable and so payable.

Leak from downpipe investigation

20. These were fees incurred by the landlord in connection with a downpipe leak where the fees amounted to £180. An invoice was produced to the Tribunal supporting the claim and was for £150 plus VAT of £30. The applicant asserted that this amount should be covered by an insurance claim and that the respondent had not provided claim form details. The applicant asserted that these fees should have been covered by the insurance claims. In reply the respondent asserted that a claim was made but that the insurance company would not make a pay-out in this regard as the sum claimed was below the excess amount fixed by the insurance policy terms and so these costs were charged to the leaseholders.

21. In the circumstances set out above the Tribunal took the view that the charges were payable by the leaseholders and were also reasonable. Therefore, the Tribunal determines that these fees are payable and reasonable.

Post leak repairs

22. These were fees incurred by the landlord in connection with a downpipe leak where the fees amounted to £1260.91. An invoice was produced to the Tribunal supporting the claim and was for £1050.76 plus VAT of £210.15. The applicant asserted that this amount should be covered by an insurance claim and that the respondent had not provided claim form details. The applicant asserted that these fees were not for the tenants to pay because they should have been covered by the insurance claims. In reply the respondent asserted that a claim was made but that the insurance company would only cover re-instatement costs and so they were charged to the leaseholders.

23. In the circumstances set out above the Tribunal took the view that the charges were payable by the leaseholders and were also reasonable. Therefore, the Tribunal determines that these fees are payable and reasonable.

Administration fees/charges

24. The respondent raised administration charges of £120 per leaseholder on the handover to the RTM company. Within the application the

applicant confirmed that the applicant wanted to make an application under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. This provides that a tenant may apply to the Tribunal for an order which reduces or extinguishes the tenant's liability to pay an administration charge.

25. The respondent says these charges are recoverable as a fixed fee for the handover of the property and is part of the management fees for the property which are allowed under the terms of the leases of the property. The applicant referred the Tribunal to a previous decision made by Judge Brandler on 12 August 2019, (Ref: LON/00AH/LSC/2019/0104), with regard to this property and the reasonableness of service charges. The Tribunal was referred to paragraph 49 of that decision where a supposedly analogous charge of £120 was reduced to £20.

26. On closer inspection it was clear to the Tribunal that the £120 charge in the previous decision was not directly comparable to the charge being considered by this Tribunal. The reduced charge was for an administration charge arising from a reminder letter. The charge before this Tribunal related to handover work. Whilst this was so the Tribunal also felt that the charge did seem high and unreasonable for what was needed to be done at handover. Therefore, this Tribunal will allow £60 inclusive of VAT

27. Section 20B issues. An issue was raised by the applicant at a very late stage in the proceedings in relation to this statutory provision. The respondent rightly pointed this out saying that he had not had any time to consider this issue. It was apparent to the Tribunal and admitted by the applicant that the issue had not been raised in the application or indeed in the applicant's statement of case. The Tribunal must be mindful of the provisions of Rule 3 of the Tribunal Rules, (The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 No. 1169 (L. 8)), that states that the overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly. It was clear to the Tribunal that this very late issue raised by the applicant could clearly lead to unfairness. Therefore, in the light of this the Tribunal decided to reject this aspect of the claim.

Application for a S.20C order

28. It is the tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in the decision above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that 50% of the

costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

29. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would not be just to allow the right to claim all the costs as part of the service charge. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them all.

30. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the Tribunal took a robust, broad-brush approach based upon the material before it. The tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented. The Tribunal also took into account all oral and written submissions before it at the time of the hearing.

31. It was apparent to the Tribunal that there had been a history of disagreement between the parties, to put it at its simplest. The applicant has resorted to taking steps under legislation that exists to protect leaseholders by way of this application and others before it. The outcomes of this application are mixed with both sides able to demonstrate to the Tribunal the appropriateness of their assertions. In the light of the determinations made by this Tribunal the Tribunal has made this decision in regard to the 20C application and in turn paragraph 5A of the Commonhold and Leasehold Reform Act 2002.

Name: Judge Professor Robert Abbey **Date:** 6th July 2021

Appendix of relevant legislation and rules

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.

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

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 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.