FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AN/LSC/2021/0184**
Property	**:**	**Flat 9 The Deckhouse, Thames Reach, 80 Rainville Road, London W6 9HS**
Applicant	**:**	**Thameside Court Management Co Ltd**
Respondent	**:**	**Savannah Storm Price**
Representative	**:**	**Mr RS Price, father and manager**
Type of Application	**:**	**Reasonableness of and liability to pay service and administration charges**
Tribunal	**:**	**Judge Nicol** **Mrs A Flynn MA MRICS**
Date and venue of Hearing	**:**	**29th September 2021** **By video conference**
Date of Decision	**:**	**30th September 2021**

DECISION

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(1) The demands for the service charges in dispute were properly served on the Respondent.

(2) The additional amount of insurance charged to the Respondent each year is payable but not reasonable to the extent that it exceeds 0.5% of the premium for the insurance of the whole building.

(3) The amount of £630 which the Applicant seeks to charge the Respondent for an inspection of the property is reasonable and payable.

(4) The Respondent shall reimburse to the Applicant the fees of £300 they paid to the Tribunal in these proceedings.

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

The Tribunal's reasons

1. The Applicant is a lessee-owned company which purchased the freehold of the building containing the subject property in 2006. Their current agents, MIH, replaced the previous agents, Aspect, in 2020.

2. The Respondent is the lessee of the subject property, comprising two top floor flats, 9A and 9B, in one of 3 blocks containing a total of 25 flats. The two flats have been used as one and are collectively known as Flat 9. The Respondent's father, Mr RS Price, manages the property on her behalf.

3. The Applicant applied for the determination of the reasonableness of the following charges and whether they are payable by the Respondent:

   (a) Service charges for 2020 – £13,318
   (b) Service charges for 2021 – £16,182.08

4. In their application, the Applicant stated that they had agreed to credit the Respondent 50% of the cost of two items to a total of £650.50. This reduces the total claim to £28,849.58. The Applicant also seeks reimbursement of the fees paid to the Tribunal for the application and the hearing.

5. The Tribunal heard the application by remote video conference on 29th September 2021. The attendees were:

   - Mr Colin Thomas, a member of the Applicant's Board and the lessee of Flat 5, representing the Applicant; and
   - Mr Price, representing the Respondent.

6. The documents available to the Tribunal, all in electronic form, were a bundle containing the parties' statements of case and the documents they relied on, including the leases of 9A and 9B, and a short skeleton argument from Mr Thomas seeking to clarify his stance on a couple of short points.

The issues

7. Despite not having paid any part of the amount claimed of £28,849.58, the Respondent only raises 3 matters:

   (a) In paragraph 5 of her Statement of Case, the Respondent said she does not recall receiving formal service charge demands for any of the years since she bought her lease in 2014 and effectively has put the Applicant to proof that the demands were properly served.

(b) In addition to the standard buildings insurance contained with the service charge, the Respondent has been paying an additional amount which the Applicant has said is to cover the increase in insurance resulting from her predecessor-in-title, Mr Young, having erected two structures on the roof. The Respondent has asserted that she is not liable for any such sum and that there has been a duplication of charges.

(c) The Applicant has charged the Respondent for a number of items of work carried out specifically in the demised property. The Respondent has argued that these charges should have been covered by payments from the insurers. The Respondent listed 12 items in particular. On further investigation, the Applicant conceded that this was correct in relation to one item costing £325. At the hearing, Mr Price only pushed forward on one item of the remaining 11 items, namely an inspection of a new installation in the property at a cost of £1,260. This was one of the items on which the Applicant had given a 50% discount and so the amount in dispute was £630.

Service of demands

8. In response to the Respondent's request for evidence of service charge demands, Mr Thomas included within the bundle demands from Aspect and MIH. The Tribunal was satisfied in the light of both parties' submissions that this was adequate evidence of properly-served demands, save that they not include the Summary of Rights and Obligations required under section 21B of the Landlord and Tenant Act 1985 and the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.

9. Mr Thomas did not realise that the Summary was part of a proper demand and had deliberately omitted them from the bundle. He checked his own documents and reminded himself what such a summary looks like. His evidence was firm that he recollected receiving demands by post from Aspect and by email from MIH and that they each included the same Summary. He asked the Tribunal to infer that the Respondent also received the Summary with each demand, given that all lessees were served in the same way.

10. The Respondent was entitled to put the Applicant to proof but had no positive evidence of her own to suggest that the demands were not properly served.

11. While the Tribunal would have preferred better evidence, it is satisfied, on the balance of probabilities and consistent with Mr Thomas's evidence, that Aspect and MIH, as professional property agents, served the demands with the requisite Summary.

Additional insurance

12. At some point during the 1980s, the Respondent's predecessor-in-title erected two structures on the roof of the building, extending Flat 9, as

the lease entitled him to do. To ensure continued insurance for the whole building, including the new structures, the amount to be paid for that insurance had to increase. An arrangement was reached whereby the increase would be paid as part of the service charges for Flat 9.

13. This arrangement was not included, as it probably should have been, in a deed varying the lease. However, when the Respondent bought her lease, the clear intention was that the arrangement should continue. The Applicant's agents explained the arrangement to the vendor's solicitors by letters dated 29th August and 4th September 2013, including that a similar arrangement applied to Flat 24, the top floor flat in another block. It is inconceivable to the Tribunal that this information would not have been passed on to the Respondent's conveyancer.

14. The Respondent now claims no contemporaneous knowledge of the arrangement but nevertheless paid the additional charge for several years without protest. Mr Price asserted that he and his daughter had thought everyone in the building was paying this but also asserted that it was obvious the charge was wrong given that the additional charge was equivalent to around 10% of the total insurance premium for the whole building.

15. The Tribunal is satisfied, again on the balance of probabilities, that the Respondent knew of the arrangement and chose not to challenge it because she accepted it. Each year the Applicant incurred the additional charge with the insurers. It would be unconscionable for the Respondent now to deny all liability. In the Tribunal's opinion, the Respondent is estopped from denying her liability for the additional insurance charge.

16. Mr Price asserted that the additional charge was actually a duplication. He pointed out that the insurance certificates relating solely to Flat 9 made no mention of additional structures and, on their face, might appear to be for the whole of Flat 9. On the other hand, Flat 9 was already included within the insurance for the whole building.

17. The Tribunal does not accept that there was any duplication. This would have involved the Applicant's brokers, insurers and agents all being unaware of the duplication. The more likely explanation is the one given by Mr Thomas, namely that the charge for Flat 9 represented the additional amount of insurance required when the structures on the roof were considered separately.

18. Very sensibly, MIH identified that having such separate insurance was an inefficient method of accommodating the cost of the roof structures. Unsurprisingly, they are able to obtain lower insurance premiums when taking the property as a whole, including the roof structures.

19. Mr Thomas conceded that the additional insurance charge was high. The Tribunal agrees and, moreover, is satisfied that it was so high that it should have been obvious that other arrangements should have been

considered. In the Tribunal's opinion, it was not reasonable to continue the arrangement unchanged for so many years. The result was an additional insurance premium which is unreasonable in amount.

20. Under the intended new arrangement of considering the building as a whole, the Applicant had identified that the Respondent would pay 8.235% of the building insurance premium compared to their existing 8% for the building insurance plus 10% for the additional insurance. However, Mr Thomas explained that this calculation failed to take into account the common parts of the building and would have to be re-done.

21. Therefore, the Tribunal has no accurate calculation of what a reasonable amount would have been for the Respondent to have paid to date for the additional insurance. Doing the best it can in the circumstances, and relying on its own specialist knowledge and experience of service charges, the Tribunal finds that the amount payable by the Respondent for the additional insurance would only be reasonable to the extent that it did not exceed 0.5% of the building insurance premium.

Sums recoverable from insurers

22. Mr Price explained that he had installed in the property a new system (he did not say for what). He had employed a specialist to oversee the work. He objected when the building insurers said they wanted to inspect the installation. He did not see the point given how much money he had spent on having expert supervision. He decided to co-operate to allow the inspection but specifically maintained his objection to paying for it when it took place.

23. In the event, Air Cool Engineering Service & Maintenance Ltd carried out an inspection and invoiced Aspect £1,206 on 14th August 2019. Aspect then included the charge within the Respondent's service and other charges. When Mr Price maintained his objection, the Applicant's Board tried to make it go away by conceding 50% and now only seek £630. Nevertheless, Mr Price still objects.

24. The Tribunal is satisfied that the work was done, as evidenced by the invoice. The Tribunal further accepts that the insurers required it to be done. The Applicant had little choice but to do as the insurers required as to do otherwise might have endangered the continuation of essential insurance cover.

25. The Tribunal understands Mr Price's frustration that his expenditure and extra care was not sufficient but the insurers are entitled to seek their own reassurance and the Applicant is entitled to pass on the cost.

Costs

26. The Respondent has partially succeeded in opposing the application but only in respect of a tiny part of the total claim of £28,849.58. Save for

putting the Applicant to proof of proper service of the demands, the Respondent did not dispute the balance of the sums owed and, if they had paid some of it, perhaps this litigation could have been avoided. In the circumstances, the Tribunal finds that it is appropriate to order the Respondent to reimburse the Applicant their Tribunal fees of £300.

27. Mr Price indicated that the Respondent had incurred legal fees of £6-10,000 and mused whether they should also be considered by the Tribunal. The Tribunal explained its limited powers in relation to costs and recommended that the Respondent re-consider the matter with the assistance of legal advice on receipt of the Tribunal's reasons.

Name: Judge Nicol **Date:** 30th September 2021

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 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.

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).