



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

**Case Reference** : CHI/00ML/LSC/2021/0099

**Property** : 80 Leahurst Court, Leahurst Court Road,  
Brighton, BN1 6UN

**Applicant** : Patrick Ward  
[pjdward@ntlworld.com](mailto:pjdward@ntlworld.com)

**Representative** : -

**Respondent** : Leahurst Court Limited: Colin Gardiner  
Company Secretary.  
[colin.gardiner@ntlworld.com](mailto:colin.gardiner@ntlworld.com)

**Representative** : -

**Type of Application** : Determination of Service Charges under  
Landlord and Tenant Act 1985  
  
Application for an Order under Section 20 C  
Landlord and Tenant Act 1985 and Para 5A of  
Sch. 11 to Commonhold and leasehold Reform  
Act 2002

**Tribunal Member** : W H Gater FRICS MCI Arb

**Date of Decision** : 27 April 2022

## **Decisions of the Tribunal**

1. The Tribunal determines that the sum of £11.46 in respect of the works described below, is not payable by the Applicant in the service charges for the year 2019.
2. The Tribunal makes orders under Section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the Landlord's costs of the Tribunal proceedings may be passed to the Lessees through any service or administrative charge.
3. The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

## **Background**

4. The Applicant seeks a determination of the service charges payable for the year ending 24 March 2019 and a costs order under the above Acts.
5. The Tribunal has identified the following issues to be determined:
  - Whether the cost of certain insulation works to Flat 87 should be charged to the maintenance account.
6. The total value of the dispute is said to be £1,008. According to the lease provided the Applicant would be liable for 1/88 of this sum or £11.46.
7. The Tribunal issued directions on 10 January 2022 requiring additional and better information about the application. In view of the limited scale of the matter to be determined the Tribunal further directed that the matter would be determined on the papers only, comprising the application, with further particulars, and the Respondents reply.

## **The Law**

See the Appendix to this decision for the relevant law.

## **The Parties submissions**

8. The Applicant submits that the cost of installing insulation in the roof void over 87 Leahurst Court should not form part of the service charge. The expenditure was solely for the benefit of that flat and not the estate as a whole.
9. He refers to an invoice from Crest Builders Limited dated 4 February 2019 and marked "Paid" on 8 February 2019. This lists the installation of a total of 300 mm of insulation between the ceiling joist over Flat 87

at £800 +VAT, and the provision and fitting of a lock to the access door at £40 +VAT. The total amount was £1,008.

10. The Applicant states that this was an improvement to an original flat which only had one inch of insulation installed in 1963 when it was built. If charged to the maintenance account this would be grossly unfair to the other 21 top flat residents who insulated their flats at their own expense.
11. He cites advice from the Leasehold Advisory Service which he says supports his view.
12. The Respondent's reply was received on 4 February 2022, notwithstanding the Tribunal's direction requiring this to be submitted by 1 February 2022. On consideration and in the interests of the overriding objective of the Tribunal, this evidence is admitted.
13. In it the Respondent states that the roof space is not part of the flat as laid out in the lease. The company was responsible for replenishing the insulation to a satisfactory level after it was damaged by another leaseholder.
14. The Respondent goes on to say that further details will be furnished after taking legal advice, but no further communication has been received.

### **The Lease**

15. It is assumed the lease to Flat 87 is identical to one provided. Flat 80 Leahurst Court and Garage 42 are held on a lease dated 10 December 2000 for a term of 162 years from 24 June 1998, between Leahurst Court Ltd as Lessor and Patrick Donald Ward as Lessee.
16. The terms relevant to this application are: -
  - The Buildings are defined in 1.5 as the *buildings erected on the whole or part of the Estate and consisting of 88 flats and 46 garages*
  - The Common Parts are defined at 1:13 as *the front door the entrance hall stairs landings passages and lift storage cupboards bins stores and other parts of the Buildings used in common by the Lessee with the lessees of other flats within the Buildings.*
17. The relevant part of the definition of the Flat is
  - *S1.3 the plaster work of the ceilings and the surfaces of the floors including the floor tiling and wood blocks*
  - *S1.4 one-half in depth of the space between the ceilings of the Premises and the floors of the flat above but not the joists or beams from which the said ceilings are suspended and one-half*

*in depth of the space between the floors of the Premises and the ceilings of the flat below including the joists and beams on which the said floors are laid ...*

*But excluding:*

- *S 1.7 any part of the Buildings not referred to as specifically included in the Premises and any of the walls or partitions (whether internal or external) except such of the internal walls and partitions and the plastered surfaces windows window frames doors and door frames as are expressly included in this demise*
- *S 1.9 any part of the Buildings lying above the surface of the ceilings or below the floor surfaces save as otherwise provided in this lease*
- *S2.8 provides The right to keep a water tank in the loft space above the Premises together with a right of entry for its repair maintenance and replacement subject to the Lessee being responsible for any damage caused to the Building by the exercise of such rights or by any water escaping from the said water tank.*

The lease requires the Landlord to provide services and the Tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease in relation to this are: -

- *Particulars 7: Maintenance Contribution: One eighty eighth part of the expenses incurred by the Lessor in complying with its obligations set out in Clauses 5.1 and 6.1*
- *5.1 the Lessor shall: at all times during the Term (unless such insurance is vitiated by any act or default of the Lessee) insure the Buildings against loss or damage by the Insured Risks and keep the Buildings so insured in the name of the Lessor for such sum as the Lessor shall reasonably consider adequate to cover the cost of rebuilding or reinstatement works including demolition architects' and surveyors' fees and third party and property owners' liability and*
- *5.2 in case of destruction of or damage to the Buildings the Lessor shall as soon as practicable reinstate the same and any money received by virtue of any insurance effected by the Lessor shall be applied in reinstating the Buildings and in case the same shall be insufficient for that purpose the Lessor shall make up such deficiency out of the Lessor's own money*
- *6.1.1 The Lessor covenants with the Lessee to maintain repair decorate and renew the main structure and in particular the foundations roofs load-bearing walls external windows gutters and rainwater pipes of the Buildings.....*

## **Discussion and Decision**

18. Having considered the submissions from the parties and the documents provided, the Tribunal has made determinations on the various issues as follows.
19. The definition of the flat and common parts is lacking in that it does not provide specifically in S 1.4 for a top floor flat with a roof void over and merely refers to delineation between the flats above and below.
20. Paragraph S 1.9 excludes from the flat any part of the Buildings lying above the surface of the ceilings or below the floor surfaces save as otherwise provided in this lease. Given that the roof void is not specifically mentioned in S 1.4 the Tribunal finds that the space lying above the ceiling of Flat 87 is not part of the demise as envisaged in S1.7, and is within the areas for which the Lessor of responsible.
21. The fact that the authors of the lease included a reserved right for the Lessee to gain entry for the installation and maintenance of a water tank reinforces the conclusion that the roof void is retained by the Lessor.
22. Having determined that the roof void area is within the retained part of the building, the Tribunal now considers whether the works qualify as reasonable service charges.
23. In *Forcelux Ltd v Sweetman* [2001] 2 EGLR 173 the Upper Tribunal stated that a two stage test should be applied when determining service charges. Was it reasonable to incur the cost of the work and was the cost of that work reasonable?
24. Was it reasonable to incur this cost? The Respondent states that the insulation had been damaged by another Lessee. No evidence is provided as to why that person was not required to make good the cost. S 2.8 of the lease provides that a Lessee shall be responsible for damage caused to the building by the exercise of the right of entry to the roof void.
25. If the damage was accidental no evidence was submitted about insurance claim recovery.
26. The unchallenged evidence from the Applicant is that all the other 21 top flat Lessees installed installation at their own expense. No evidence has been provided that the Lessor at any time installed insulation in the roof voids.
27. In the absence of evidence to the contrary from the Respondent the Tribunal finds that the replacement of the roof insulation due to damage by a Lessee is not a reasonably incurred expense which can be recovered by way of service charge.
28. The provision of a lock to the roof hatch is an installation within the demise of Flat 87 and not something for which the Lessor would be

responsible. Accordingly, it is not a reasonably incurred cost for the same reasons.

29. It is not necessary for the Tribunal to determine the reasonableness of the cost of the works as they have been disallowed from the service charge.

### **Application under S20C and refund of fees**

30. The Applicant made an application for a refund of fees that he had paid in respect of the application. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the £100 fee paid by the Applicant within 28 days of the date of this decision.
31. In the application and when providing further particulars as directed, the Applicant applied for costs orders under Section 20C of the 1985 Act and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for these orders to be made, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

## **Appendix of relevant legislation**

### **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 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be



liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.”

**Section 21B** - Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

**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.

## **Section 20**

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

## **Appendix of relevant legislation**

### **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.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **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.

## **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).