



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

Case reference : **LON/00AJ/LSC/2022/0054**

Property : **38 Walker Close, Lower Boston Road, Hanwell, London W7 3NB**

Applicant : **Sargon Oshana Abraham**

Representative : **In person**

Respondent : **Notting Hill Genesis**

Representative : **Ms Anna Clemente (Service Charge Lead)
Ms Christine Temple (Area Business Manager)**

Type of application : **For the determination of the reasonableness of and the liability to pay service charges**

Tribunal members : **Tribunal Judge I Mohabir
Mrs A Flynn MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **14 November 2022**

DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of his liability to pay the service charges claimed by the Respondent for each of the years from 2016/17 to 2021/22 inclusive.
2. The Applicant is the residential tenant of 38 Walker Close, Lower Boston Road, Hanwell, London W7 3NB (“the property”) pursuant to a lease granted jointly to him and his wife by the Respondent commencing from 25 July 2016 (“the tenancy agreement”). The tenancy is a weekly periodic assured shorthold tenancy. The total weekly rent paid by the Applicant includes a contribution for service and other charges.
3. Apparently, the estate is comprised of two separate blocks of flats. The block, in which the property is located, is comprised of 24 flats. As the Tribunal understands it, the tenants of these flats have all been granted residential tenancies, such as that granted to the Applicant (“the residential tenants”). The other block of flats is comprised of 35 flats, all of which are subject to long residential leases granted by the Respondent (“the leasehold tenants”).
4. Historically, the total estate charges claimed by the Respondent were apportioned 40% to the residential tenants and 60% to the leasehold tenants based on the number of flats in each block. However, since 2021/22, the Respondent has changed this method of apportionment by simply dividing the total estate charges by 59, being the total number of flats for each block.
5. The Applicant contends, as part of his case that the various methods of apportionment used by the Respondent is incorrect. Instead of a contribution of 1.695%, he should be paying a service charge contribution of 0.67796% for the estate charges. The list of service provided to the tenants, which comprise the block and estate costs is set out in Appendix 1 to the tenant agreement. As will become apparent, it is not necessary to set out how the Applicant has calculated the figure he contends for.
6. Paragraph 6.2 of the tenancy agreement expressly provides that the rent, service and other charges are to be apportioned on a pro rata basis. The agreement is silent as to whether the pro rata apportionment should be on the basis of the number of flats in each block or an equal contribution as between all of the flats.
7. It is important to note that the Applicant does not challenge the block costs element that forms part of his service charge contribution. Equally, the Applicant conceded that although the overall expenditure for the estate costs varied for each of the years in question, the service

charge contribution demanded by the Respondent for each year did not.

8. In other words, if the Respondent incurred estate costs that were greater or lesser in any financial year, it did not seek an additional service charge contribution or made a refund to the Applicant. This is what is known as a fixed service charge and is expressly made clear in paragraph 6.3 in the tenancy agreement. The agreement provides that the Respondent may only vary the overall rental figure upwards or downwards by first giving the Applicant not less than one month's written notice in advance. Importantly, it also states that the Respondent cannot increase the rent in this way within 52 weeks of any previous increase unless it is agreed with the tenant.

Relevant Law

9. This is set out in the Appendix to this decision.

Decision

10. The hearing in this case took place on 1 November 2022. The Applicant appeared in person. The Respondent was represented by Ms Anna Clemente (Service Charge Lead and Ms Christine Temple (Area Business Manager).
11. Of its own motion, the Tribunal raised the issue of jurisdiction at the commencement of the hearing having confirmed with the parties that the Applicant paid a fixed service charge contribution for each of the years in question. The Tribunal then invited both parties to make submissions on this preliminary issue.
12. Having regard to the (admitted) fact that the Applicant has paid a fixed service charge contribution for each of the disputed years, the Tribunal concluded that it was not a variable service charge within the meaning of section 18(1)(b) of the Act. Therefore, the Tribunal's jurisdiction under section 27A of the Act is not engaged and it cannot make any determination in relation to this application. That included a determination as to whether or not the method of apportionment adopted by the Respondent for the estate charges is correct.
13. Accordingly, the application is dismissed.

Name: Tribunal Judge I
Mohabir

Date: 14 November 2022

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 (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 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.