



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

**Case reference** : **LON/00AU/LSC/2021/0345**

**Property** : **Flat 58 Prospect House Donegal Street  
London N1 9QD**

**Applicant** : **Peabody Trust Limited**

**Representative** : **Ms Clara Zang**

**Respondent** : **Ms Francisca Okeneme**

**Representative** : **-**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A  
of the Landlord and Tenant Act 1985**

**Tribunal members** : **Mrs E Flint FRICS  
Mr R Waterhouse FRICS**

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

**Date of decision** : **27 October 2022**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £316.03 is payable by the Respondent in respect of general service charges and £319.82 in respect of the balance due for the major works.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The application is referred back to the County Court at Clerkenwell and Shoreditch.

## **The application**

1. The Applicant issued proceedings in the County Court Business Centre on 24 May 2021 (Claim Number H5QZ33T9) for outstanding service charges of £1411.42. A defence was filed on 18 June 2021. On 26 August 2021 the claim was transferred to the County Court at Clerkenwell and Shoreditch. On 3<sup>rd</sup> September District Judge Sterlini made the following order: Transfer to First-tier tribunal (Property Chamber).
2. There are two parts to the claim:
  - a claim for unpaid general services payable quarterly amounting (after taking into account adjustments/credits applied to the account) to a balance of £316.03 as at the date of issue of the claim and
  - sums due for major works being £584.90 for lighting and £1034.92 for general safety/fire compartmentation works totalling £1612.82. By the date of the court claim the Respondent had made a payment to the major works account of £1300, leaving a balance of £319.82.

## **The background**

3. The property which is the subject of this application is a ninth floor flat in a purpose-built block of 58 flats.
4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The Applicant holds a long lease of the property which 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 will be referred to below, where appropriate.

## **The issues**

- Has the landlord complied with the consultation requirement under section 20 of the 1985 Act.
  - Are the works within the landlord's obligations under the lease and if so, are the cost of works payable by the leaseholder under the lease.
  - Are the costs payable by reason of section 20B of the 1985 Act.
6. Having heard evidence and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

## **The lease**

7. A copy of the lease was enclosed in the bundle. The lessee covenants at clause 3 (1) *"To pay the yearly rent the Service Charge and the insurance rent referred to In Clauses 5 and 1 (2) (3) respectively hereof (collectively called "the Rent") on the days and In the manner as provided in Clauses 1 and 5 hereof ..."*
8. Clause 5 states *"THE Service Charge referred to in Clauses 1 and 3(1) shall consist of (so far as permitted by the Landlord & Tenant Acts 1985 and 1987 and the Housing Act 1985 as amended by the Housing and Planning Act 1986):*  
*(1) Expenses which relate solely to the demised premises and referred to in Clause 5(3)(e)(ii) hereof; and*  
*(2) Any expenses incurred by the Landlord in remedying any breaches of covenant (where appropriate) which shall be paid by the Tenant to the Landlord within 14 days of the date of demand*  
*(3) A proportion of the expenses and outgoings incurred or to be incurred by the Landlord on those items set out in the Third Schedule hereto and which comprise (i) the repair maintenance renewal and improvement of the Building and any facilities and amenities appertaining to the Building and the Estate*  
*(ii) the provision of services for the Building and the Estate (if any)*  
*(iii) other heads of expenditure"*
9. The service charge accounts are to be certified each year and any overpayments credited to the lessee's account and any underpayments demanded
10. By Clause 3 (f) The annual amount of the Service Charge payable by the Tenant as aforesaid shall be calculated as follows:
- (i) *by dividing the aggregate of the expenses and outgoings incurred or to be incurred by the Landlord In respect of the matters set out in*

- Part I of the Third Schedule hereto in the year to which the Certificate relates by the aggregate of the rateable value (in force at the end of such year) of all dwellings and other rateable parts in the Building the repair maintenance renewal or servicing whereof is charged in such calculation as aforesaid and then multiplying the resultant amount by the rateable value (in force at the same date) of the demised premises ("the Building Element")*
- (ii) *by dividing the aggregate of the expenses and outgoings incurred or to be incurred by the Landlord in respect of the matters set out in part 2 of the Third Schedule hereto in the year to which the Certificate relates by the aggregate of the rateable value (in force at the end of such year) of all the residential units on the Estate and then multiplying the resultant amount by the rateable value (in force at the same date) of the demised premises ("the Estate Element")*
- (iii) *a fair and reasonable proportion of the expenses incurred to be incurred by the Landlord in connection with the matters set out in Part 3 of the Third Schedule in the year to which the Certificate relates (hereinafter called "the Management Element")*
- (iv) *by adding together the Building element the Estate element (if any) and the Management element to any expenditure incurred ..... PROVIDED ALWAYS (A) That the Landlord shall have the right at any time fairly and reasonably to substitute a different method of calculating the Service Charge attributable to the dwellings in the Building;  
and that In the event of the abolition or disuse of the rateable values for the property the reference herein to the rateable value shall be substituted by a reference to the floor areas of all the dwellings in the Building and on the Estate (excluding any areas and lifts (if any) used in common) and calculated accordingly*

11. The Lessor covenants at clause 6 to comply with its obligations in the sixth schedule of the lease which require it to keep in repair and where necessary to rebuild or reinstate the external walls of the building and the Reserved Property, which includes the roof (First Schedule).

12. The tribunal determines that the covenants in the lease provide for the landlord to carry out the various works included in the schedule of works. In addition, the lessee's covenants provided for the costs of the works to be paid for via the service charge mechanism set out in the lease.

11. Section 20 consultation took place prior to both the emergency lighting works which were completed in 2013 and the fire safety/compartimentation works in 2017. The Applicant sent letters dated 18 February 2013 and 30 March 2017 respectively setting out the costs of these works. There is no evidence of non-compliance with the consultation requirements.

## **Section 20b compliance.**

12. Section 20B Limitation of service charges: time limit on making demands.

(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,

13. The tribunal determines that the applicant has complied with the requirements of the Act therefore the costs of the works are payable in accordance with the terms of the lease.

14. The purpose of the rule is to prevent Tenants being faced with demands years after the costs became due. The lessee was aware of the estimated costs before the works commenced via the S20 consultation. Moreover, invoices were served in respect of the final cost of the works within the necessary timeframe.

15. The respondent has not challenged any specific item of the service charge account and has presented no evidence regarding the amount being unreasonable. Ms Simone Buchanan, the collections team leader at Peabody confirmed that all the flats in the block were charged the same proportion of the service charge. Despite the respondent asserting in correspondence that she had cleared all outstanding amounts following a 2018 County Court Judgement the landlord had not been able to find any record of such a judgement or any payments by the respondent in respect of such a judgement.

## **The Tribunal's decision**

16. The tribunal determines that the sum of £316.03 is payable by the Respondent in respect of general service charges and £319.82 in respect of the balance due for the major works for the reasons set out above.
17. The decision is referred back to the county court for its determination in respect of costs

**Name:** E Flint

**Date:** 27 October 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).