



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

**Tribunal Case Reference** : **LON/00AF/LSC/2022/0125**

**Property** : **88D Penge Road, London SE20 7UL**

**Applicant** : **Dauebi Ngembu**

**Respondents** : **Naka Estates Ltd**

**Type of Application** : **Payability of service charges**

**Tribunal** : **Judge Nicol  
Mr A Lewicki BSc (Hons) FRICS CBuildE  
FCABE**

**Date and venue of Hearing** : **31<sup>st</sup> January 2023  
By remote video**

**Date of Decision** : **31<sup>st</sup> January 2023**

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**DECISION**

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- (1) The Applicant, based on information received since making her application, withdrew her challenge to the service charges.
- (2) Both parties having stated that they do not seek to recover any costs in relation to these proceedings, the Tribunal makes no order as to costs.
- (3) The Respondent sought to raise an additional issue in relation to the payability of service charges for roof repair but the Tribunal declined to hear the issue. (This does not preclude any relevant person raising the issue in any further application which may be made later to the Tribunal.)

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

## **Reasons**

1. The Applicant is the lessee of one of the four flats at the subject property, 88D Penge Road, London SE20 7UL, a 4-storey converted terraced house. The Respondent is the freeholder. Rosenewgroup Ltd act as the Respondent's agents – they were previously listed as a party but that is inappropriate since they are not party to the lease and they did not participate on their own behalf.
2. The Applicant applied on 24<sup>th</sup> March 2022 for a determination under section 27A of the Landlord and Tenant Act 1985 (“the Act”) as to the reasonableness of the service charges levied by the Respondent for the years 2021-22.
3. The Tribunal heard the case on 31<sup>st</sup> January 2023. The attendees were:
  - The Applicant
  - Mr N Rosenberg from the Respondent
4. The documents before the Tribunal consisted of two bundles, one of 118 pages from the Applicant and one from the Respondent of 32 pages, together with a copy of the lease, all in electronic format. Both bundles included a Schedule of items in dispute, with comments from both sides in relation to the following issues:
  - (a) Building Insurance
  - (b) Fire Safety Installations
  - (c) Hedge Cutting
  - (d) Management fees
  - (e) Whether the consultation requirements under section 20 of the Act apply.
5. When she made the application, the Applicant was concerned as to whether these items had been correctly charged and, in relation to some items, whether her previous payments had covered all or part of the charges already. Since making the application, the Respondent has provided invoices and other documents clarifying the charges. At the beginning of the hearing, the Applicant stated she no longer challenged the first 3 items.
6. In relation to management fees, the Applicant was concerned whether the fee was set at the right level since the previous freeholder had charged less or even nothing in management fees. The Tribunal explained that, relying on its expert knowledge and experience, the amount charged in this case, namely £247.50 per unit, was well within the range of such fees which could be expected in the market. On that basis, the Applicant also withdrew her objection to the management fees.
7. In relation to the statutory consultation requirements, the Applicant pointed to the fact that her total service charges exceeded the £250 limit for engaging those requirements. However, the Tribunal explained that the requirements were not triggered whenever a landlord's total

expenditure happened to exceed £250. She accepted that there was no single item or project which engaged the requirements.

8. The Applicant had applied for orders under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent's costs of the proceedings should not be put on the service charges or charged to her. However, Mr Rosenberg, on behalf of the Respondent, stated that no costs would be sought in the interests of maintaining good relations with the Applicant.
9. As a quid pro quo, the Applicant also withdrew her application for reimbursement of her Tribunal fees totalling £300.
10. Mr Rosenberg raised a further issue. Since the application had been issued, section 20 notices had been served preliminary to executing essential works of repair to the roof. However, the Applicant queried whether roof maintenance was a service chargeable item. Looking at clauses 1(ii), 5(a)(ii), 5(e)(i), and 6(6) of the lease, the Tribunal can see a strong argument that the roof is the Applicant's sole responsibility.
11. The Tribunal informed Mr Rosenberg in December that he could either make this issue the subject of another application or it could be raised in these proceedings if the parties agreed. Therefore, with the Applicant's consent, he sought a definitive ruling on the interpretation of the lease and whether charges arising from roof repair would be payable.
12. However, the Tribunal declined to give such a ruling:
  - (a) The other 3 lessees have not been involved but would be affected by such a ruling. It would be unfair to reach a decision without their having an opportunity to make representations.
  - (b) The Tribunal did not have any of the relevant documents in front of it, other than the Applicant's lease.
  - (c) Both parties would benefit from legal advice before making their own decisions as to what they wanted to do.

**Name:** Judge Nicol

**Date:** 31<sup>st</sup> January 2023

## **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 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).