FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BB/LSC/2018/0417**
Property	**:**	**Flat 11, The Griffin, 3 Wattsdown Close, London E13 0NY.**
Applicant	**:**	**Mrs. K. Oyegunle**
Represented by	**:**	**In person at the hearing accompanied by Mr. J. P. Morgza.**
Respondent	**:**	**One Housing Group**
Represented by	**:**	**Ms. L. Corben (Property Management)** **Ms. B. Curtis (Solicitor)** **Mr. J. Murphy (Service Charges Officer)**
Type of application	**:**	**Application under S27A and S.20C Landlord & Tenant Act 1985.**
Tribunal	**:**	**Ms. A. Hamilton-Farey** **Mr. Sheftel** **Mr. P. Roberts Dip Arch RIBA,**
Date and venue of hearing	**:**	**14 February 2019**
Date of decision	**:**	**22 March 2019.**

DECISION

We determine that the following sums are payable and should be apportioned by the respondent to be recharged to the applicants:-

- **£6,872.00 claimed and allowed** in relation to service charges for the year 2015-2016;
- **£5,329.21 (£7613.15 claimed 70% allowed)** in relation to service charges for the years 2016-2017;
- These figures are based on the Scott Schedule provided by the applicants and should be apportioned according to the applicants'

liability under the lease. The amounts claimed also include items for which there is no dispute, and these should be properly paid by the applicant. Details of those matters disallowed or reduced by the tribunal are contained within the decision.

- The tribunal makes an Order under S.20c of the Landlord & Tenant Act 1985 that the landlord shall not recover any of the costs of proceedings in relation to this application from the service charge.
- The tribunal orders the respondent to refund £300.00 in relation to the application and hearing fees of this application to the applicants within 21 days of this decision.

The Application:

1. By an application dated 5 November 2018 the applicant sought a determination from the tribunal in relation to service charges for the years 2015 – 2017 inclusive. The applicant disputes liability for repairs and maintenance to the water pumps supplying the upper floors of the building with hot and cold water.

2. The applicant is a long-leaseholder under the terms of a shared ownership lease for a term of 99 years from 1 January 2006. The lease is registered under title number EGL5942. The applicant took an assignment of that lease in 2015 and no issues with water supply were noted by the vendor as part of the sales process.

3. The applicant does not, dispute liability for the payment of service charges, but says that the costs for the continual maintenance and replacement of water pumps is unreasonable, that the landlord has not considered the historical problems when considering future action, and there appeared to be no strategy for dealing with the problem. The applicant considers the costs relating to the pumps are unfair, unreasonable and not payable.

4. With the exception of the water pump costs, and management fees, the tenant does not dispute the quantum of any other charges made in the period in question. She says that the management fee is too high when comparable blocks are taken into consideration. As part of their bundle the applicant has produced evidence of the service charge of similar blocks, and evidence from plumbers who have given their view on the system.

5. Within the application the applicant said that the service charges in the block had increased by 79% in 2015-6 and 42% in 2016-17 and considered the increases to be too high.

6. The tribunal issued directions on 14 November 2018 that required the parties to agree a bundle of documents on which they wished to rely at the hearing, this included the production of a Scott Schedule, that schedule has been used by the tribunal when making its determination, as has the time line of events also provided by the applicant.

7. At the hearing the applicant represented herself and was supported by her husband Mr. Morza. The respondents were represented by their in-house

solicitor, Ms. Curtis, Ms. Corben, head of property management and Mr. J. Murphy service charge officer.

The Hearing:

8. The tribunal was informed the building was originally constructed in about 2006, was five storeys high with three flats on each floor, making a total of 15 flats. The block is situated on an estate known as the Portway Estate and the applicants are liable for both estate charges and block charges under the terms of their lease.

9. The applicant said that from the time of her purchase she noticed poor flow of water to the flat. Sometimes the flow was so poor that it was not possible to shower for any length of time and hot water provision was sporadic. The applicant said that complaints were made, but nothing was done to finally remedy the problems until 2017.

10. The respondent told the tribunal that originally it was thought that all flats had water pumps fitted, and the service charges had been apportioned equally between the 15 flats, but it later transpired that the water to the ground floor flats came directly from the mains, with the result that the service charge apportionment was changed to reflect this arrangement, with the costs to repair/maintain the pumps being spread across the 12 flats that received the service, this resulted in an increase in service charge to those 12 flat owners.

11. The tribunal was also told that the configuration of the pumps is unconventional. They are located in a ground floor cupboard with the water tanks in an adjacent cupboard. It is accepted by the respondent that there is currently a problem with a water leak from the cupboards that has extended onto the ground floor carpeting. This matter is dealt with later in the decision.

12. Ms. Curtis accepted there had been problems with the system, with residents reporting poor flow from 2014, some eight years after the building had been constructed. The respondent did not consider these issues constituted a defect and could possibly have been affected by the continuing lowering of mains pressure in the area as more and more properties were constructed.

13. Plumbers had been instructed to attend site and investigate the problems. Repairs were carried out as and when necessary, but it was the respondent's view that the repairs were the result of fair wear and tear and not defective workmanship or design. It was the respondent's view that the system had reached the end of its life during 2016-2018 with the result that the pumps and tanks had to be replaced. The cost of these replacements were met from the sinking fund and service charge.

14. The applicant has asked the tribunal to confirm whether or not these charges are fair and payable. She considers that the repairs are the result

of poor design or workmanship and that the costs should not be borne by the leaseholders.

15. The bundle provided by the applicants contained various invoices showing that the pumps had been inspected at regular intervals, that during the period in question, several repairs were undertaken, with pumps, tanks and gauges being replaced at various intervals. Although the applicant provided two statements from alternative plumbers, their opinion was that the system was unusual, but we could not conclude from their reports that there were any design faults with the system and that after a 10-year period, it would be likely that parts of the system would need to be replaced.

16. In the circumstances, we have concluded that the costs claimed for the years up until 2016 were reasonably incurred and that repairs were due to general wear and tear on the system. We therefore allow the landlord's claim of £7,558.00. in relation to those repairs and maintenance costs shown in the service charge accounts.

The tribunal determines that £7,558.00 is reasonable and payable in relation to the 2015/16 charge.

17. In relation to the 2016/17 charges, we allow the following: -
    - £936.54 claimed for water safety testing;
    - £34.00 claimed for replacing the ball valve in flat 14;
    - £404.00 for replacing the pressure gauges;
    - £3,411.00 in relation to additional safety measures.

The tribunal determines that £5,639.00 is reasonable and payable in relation to the 2016/17 service charge.

18. We disallow the charges for, the following items mainly due to the fact that the respondent did not carry out satisfactory repairs, especially when dealing with the leak to the tank rooms and leaking pumps to the flats: -

    - £401.00 for the leak to the pump cupboard, because this issue has still not been resolved;
    - £166.00 in relation to works in flat 1, there is nothing to support this expenditure;
    - £207.00 leaking pump in the tank room, still not resolved;
    - £124.00 investigation for leaking pump, it is not clear to what this relates;
    - £2,610.00 to replace unspecified pumps, this appeared to be repeat work which was not corrected by the respondent the first time a repair was carried out;
    - £784.00 investigation into leaking tank room pump, repeat works not corrected by respondent in a timely manner;
    - £166.00 for engineer investigation, lacks detail.

The tribunal disallows the sum of £4,458.00 in relation to the service charge for 2016/2017 and confirms that amount is not payable by the leaseholders.

19. In relation to the 2017/2018 service charge, the tribunal allows the following: -

    - £2,513.00 in relation to the lift servicing contract;
    - £2,648.00 in relation to the lift maintenance;
    - £1,790.00 in relation to the internal cross charging

The tribunal allows the sum of £6,951.00 in relation to the disputed items for 2017/18.

20. The tribunal disallows the following charges: -

    - £616.00 for internal cross-charging because this appears to be a duplicate charge;
    - £2,246.00 for internal cross-charging because this again appears to be a duplicated charge;
    - £273.00 of the claim for water safety testing which appears to be wrongly allocated.

The tribunal disallows a total of £3,135.00 from the 2017/18 service charge and confirms that this is sum is not reasonable or payable by the leaseholders.

Leak to ground floor cupboard:

21. The tribunal was shown photographs of the water staining to the carpet adjacent to the water pumps/tanks in the communal hallway. The applicant said that the carpet had recently been replaced and was now ruined again by leaking water, which had not been addressed by the respondent.

22. The respondent informed the tribunal that the problem was one of condensation dripping from the pipework in the cupboard onto the floor and seeping under the cupboard door onto the carpet and that it was proposed that a small 'water bar' be placed against the door threshold to prevent the water from soaking onto the carpet. The respondent said that because of the design of the pipework in the cupboard it was not possible to lag the pipes with the result that condensation would continue to occur, but that drainage had now been installed in the cupboard to remove the water and with the proposed bar no water would leak onto the carpet. The respondent confirmed that the carpet would be replaced once the works were complete.

23. We are not persuaded by the respondents' proposal that it would provide an effective remedy to this problem. We do not consider it would be

reasonable for the respondent to charge the cost of any repairs to the cupboard threshold, replacing the carpet or lagging the pipework (if this can be done) should this be claimed from the service charge, and these costs should be borne by the respondent.

Management fees:

24. The applicant says that the respondent has not dealt with the water pump problems efficiently and has failed to respond to correspondence, has admitted that the service charge account has been 'mis-managed' and that the management fees as a result are not reasonable.
25. We have criticised the respondent in their handling of the water issues in this block. We consider that they relied too much on reports from internal contractors without taking any meaningful positive action. Although the issue with the pumps occurred when the block was about 8 – 10 years old, it does not appear that the respondent approached the original developer or the NHBC (if applicable) as we would have expected. They have not, in our view, taken into consideration the needs of the leaseholders, especially in a shared ownership scheme such as this, where leaseholders are generally not in a position to pay the full market price for a property, and therefore are on reduced incomes.

26. However, whilst we have criticised the respondent, we find the management fee claimed to be reasonable and payable in relation to the service provided.

Section 20c application:

27. The tribunal considers that an Order in these terms should be made for the following reasons: -

- The respondent has not provided accurate service charge accounts to the residents for some years, instead relying on the provisions of S.20(b) of the Landlord & Tenant Act 1985 in the timing of their account production. The tribunal considers this is not good practice and fails to give residents a clear view of their service charge accounts at the appropriate time.
- There is a lack of clarity on the invoices, especially those where there is an 'inter-company' recharge, such as those for maintenance services. The respondent said that they were bound by the systems operated by their subsidiary, but again the tribunal would question whether this system should be operated to the detriment of the leaseholders who have the ultimate responsibility to pay the charges. A more clear and transparent method of recharging and coding invoices would ensure that leaseholders were better informed of their liabilities and hopefully prevent disputes such as this.

In the circumstances we make an Order under S.20c of the Landlord & Tenant Act 1985 that the landlord may not recover any of the costs of these proceedings from the service charge for this block.

Application under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

28. The applicant applied for a refund of the fees paid to the tribunal in this application. Although the applicant has not been successful in every part of the application, we consider that had the respondent engaged in the process more freely the application to the tribunal would not have been necessary.

29. **The tribunal Orders the respondent to pay the applicant £300.00 being the application and hearing fees, within 21 days of the date of this decision.**

Name: Aileen Hamilton-Farey **Date:** 22 March 2019.

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).