



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

Case reference : **LON/00AM/LSC/2018/0381**

Property : **99 Lincoln Court 115 – 135 Bethune Road London N16 5EA**

Applicant : **London Borough of Hackney**

Representative :

Respondent : **Mr Jonathan Law**

Representative :

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

Tribunal members : **Mrs E Flint FRICS
Mr L Jarero FRICS**

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

Date of hearing : **13 March 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £1,921.55 is payable by the Respondent in respect of the major works invoice No. 4963394.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, i.e. preventing the landlord from adding the legal costs of these Tribunal proceedings to subsequent service charge accounts.
- (3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Clerkenwell and Shoreditch County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Respondent in respect of the service charge arrears of £1941.85 plus interest in respect of major works. Proceedings were originally issued in the Northampton County Court Business Centre under claim no. E2QZ9N8A. The claim was transferred to the Clerkenwell and Shoreditch County Court and then in turn transferred to this tribunal, by order of District Judge Robson.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr John Wenham, a paralegal with the council who called Mr Stephen Restall, an Electrical Lift Contract Manager to give evidence. The Respondent, Mr Law appeared in person.
4. The property which is the subject of this application is a three-bedroom ninth floor flat within an eleven-storey purpose-built block of sixtysix flats.
5. 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.
6. The Respondent 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 are referred to below.

7. Having considered the evidence and all of the documents provided, the tribunal has made determinations as follows.

The Issues

8. The only items in dispute are the charges in relation to the lift. The parties agreed that the Applicant had complied with the procedural elements of the statutory consultation procedure.

The Lease

9. There was no dispute that the landlord has an obligation to maintain the common parts of the building including the lift, nor that the respondent is required to contribute to the cost of works in accordance with the terms of the ninth schedule of the lease which is headed "Lessor's covenants to be observed by the lessor at the lessee's expense".
10. By paragraph 1 of the schedule the lessor covenants "*to keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew all worn or damaged parts)*
 - (i) *the main structure of the Block*
 - (iv) *All such parts of the Reserved property not hereinbefore mentioned and all fixtures and fittings therein and additions thereto*
11. Paragraph 5 requires the Applicant "*To manage the Block for the purpose of keeping the Block in the condition similar to its present state and condition*"
12. Paragraph 6 provides that the Applicant may "*carry out all such other works in respect of the Block or the Estate as are in the reasonable opinion of the Lessor necessary for the proper maintenance and management including works of improvement*"

The Hearing

13. Mr Wenham explained that the invoice was in respect of the replacement of lift components at Lincoln Court. The works were carried out over the winter of 2014/2015.
14. The lifts in the block were approximately 16 years old and a number of parts were beyond their serviceable life or obsolete and required

replacement in order to comply with current health and safety standards, in addition it was an opportunity to upgrade the lift to current standards.

15. Mr Restall explained that following complaints and call outs relating to the lift a report was commissioned by the applicant to ascertain the condition of the lift and the work necessary to ensure a reliable lift service was maintained. He said that the applicant acted proactively, there was a maintenance contract in place which involved monthly inspections and that the lifts at Lincoln Court were in a program of works which had come together due to age and obsolescence of equipment. He was of the opinion that lifts in blocks such as this one generally had a shorter lifespan than in private blocks where there would be less usage.
16. He referred to the report undertaken by T M Technical Services following a survey in November 2013. In the report it was noted that the last recorded visit by the service provider was in May 2013. At the time of the survey the lift was operating correctly. The lift car and frame were the originals with the lift machine room located above the well. The cleanliness was poor taking into account the age, design and access to the equipment. The shaft structure was concrete, it was in good condition with no apparent evidence of cracking or spalling.
17. The report is split into sections dealing with the lift, the lift motor room, machine room equipment, lift well, lift pit, landing doors and architraves and the lift car and entrance doors. Only the door operator was noted as requiring replacement. There were a variety of items which do not comply with the latest regulations including the light bulbs and some signage and several items were worn but fit for service.
18. The recommendations in the report suggested that as far as reasonably practicable the lift should be brought up to modern standards.
19. Mr Restall confirmed that the replacement of the door operator including all associated costs would not exceed £10,000.
20. Mr Law said that the lift was very basic but functional. In his experience as an architect a lift would be expected to have a life span of 25 – 30 years. He referred to the report by T M Technical Services and noted that most items related to non-compliance with Health and Safety legislation; other items were for upgrades. He accepted that the door operator required replacement and said that he and others in the building had already identified it as the problem and tried to bring their conclusions to the council. He thought a door operator would cost approximately £5,000.

21. He was of the opinion that some corrosion would have been due to water ingress into the shaft due to the gullies in the raised playground abutting the building not having been well maintained. He, and others, had noted that breakdowns often coincided with periods of heavy rainfall when water from the playground entered the block at mezzanine level.
22. Mr Law agreed that the door operator required replacement but thought it should have been dealt with as a standalone job not as part of a general upgrade. The work was undertaken by the same company as the regular maintenance. He was concerned that the technical reports for the two lifts in the block were identical, he thought it was unlikely that they would be in exactly the same condition.
23. As far as the Health and Safety work was concerned, he stated that there is no legal requirement to upgrade the lift parts to comply with the latest regulations. In fact, the lift call buttons were already within the specified height range and were in working order; only the supersized alarm and doors open buttons were outside the current position at 1300mm rather than at a maximum of 1200mm. The car control buttons are 350mm from the front of the lift rather than the 400mm in the Building Regulations as likely to satisfy the EA legislation. The test to justify replacing the controls is one of substantial disadvantage caused by the location of the buttons, he did not believe their present location would cause substantial disadvantage and at a cost of £15,000 per lift it was an unreasonable adjustment to make.
24. Mr Wenham asserted that it was more economical to undertake a comprehensive programme of works rather than several one of jobs. This approach also reduced the total time the lift was likely to be out of service. A point which was not accepted by Mr Law.
25. In his closing submissions and in answer to a question by the tribunal Mr Wenham conceded that the lease provision as regards the costs to be borne by the lessees covered only repairs and not improvements.
26. At the end of the hearing Mr Wenham confirmed that it was not the intention of the Applicant to add the costs of the Tribunal to the service charge account. The authority's policy was only to add costs where the Respondent acted unreasonably: that was not the case here. Indeed, both parties had met to try and settle the matter via mediation, albeit unsuccessfully.
27. Some days after the hearing Mr Wenham wrote to the Tribunal and the Respondent stating that the lease did cover improvements and that the relevant clause could be found at page 108 of the bundle. The Tribunal had already identified the clause during their deliberations. Further Directions were issued so that Mr Law could make further submissions

in view of the effective withdrawal of the concession regarding improvements.

28. Mr Law reiterated that his objection was that some of the works were unreasonable and therefore their cost was also unreasonable. The consultant's report was carried out in year 15 of a 25-30 year major maintenance cycle for a standard lift installation of this type. The council failed to show professional judgement to avoid unnecessary and unreasonable costs. The necessary works cost between £5,000 and £8,000.

Application under s.20C

29. Having heard the submissions from the parties and taking into account the determinations set out above the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and therefore the Tribunal makes an order under section 20C. The circumstances include the conduct and circumstances of all the parties as well as the outcome of the proceedings in which they arise

The tribunal's decision

30. The tribunal determines that the amount chargeable to the service charge account is £86,586.66 plus fees and administration. The Respondent's share under the terms of his lease is a due proportion. The Applicant has used a bed weighting method. Applying the same percentage to the costs plus fees, the Respondent's contribution is £1,921.55.
31. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, i.e. preventing the landlord from adding the legal costs of these Tribunal proceedings to subsequent service charge accounts.

Reasons for the tribunal's decision

32. The tribunal finds that the only item of repair work undertaken was the door operator. The sum of £10,000 was accepted by the Applicant as being sufficient to cover all associated costs and is double the Respondent's estimate of the cost of the door operator. There was insufficient evidence to show that it was unreasonable to have replaced the door operator on the second lift in the block.
33. Paragraph 6 of the 9th Schedule refers to improvements, the improvements are limited to those necessary for the proper maintenance and management of the Block or Estate. The Tribunal finds that many of the items such as the provision of a fire extinguisher,

improving the lighting and providing safer working conditions for the maintenance engineers would all fall within the clause on improvements and can reasonably be considered to be improvements necessary for the proper management of the Estate. The Tribunal finds that complying with current Health and safety legislation in this regard properly falls within the obligations in the lease.

The next steps

34. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the Clerkenwell and Shoreditch County Court.

Name: Evelyn Flint

Date: 30 April 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).

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 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.