



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

Case reference : **CAM/26UB/LIS/2020/0001**

**HMCTS code
(paper, video,
audio)** : **A:AUDIO**

Property : **Flat 22 Eleanor House, 33-35 Eleanor
Cross Road, Waltham Cross,
Hertfordshire EN8 7FH**

Applicant : **Mr David Jesse Dakurah**

Representative : **In person**

Respondent : **Landmark (Bolton) Limited**

Representative : **Mr Andrew Rose of Residential
Management Group Limited**

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

Tribunal members : **Judge N Hawkes
Mr S Moll FRICS**

Date and Venue : **1st and 2nd September 2020 Eastern
Panel Remote Hearing**

Date of decision : **11 September 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing which has been consented to by the parties. The form of remote hearing was A:BT MEETME. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are in a bundle of 323 pages, the contents of which we have noted. The order made is described at the end of these reasons.

Decisions of the Tribunal

The Tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges which are payable by the Applicant in respect of the service charge years 2018/19 and 2019/20.
2. Directions were given in this matter on 12 February 2020 (“the Directions”). It is recorded in the Directions that other applications concerning the issues which arise in the present case have been made by a number of other leaseholders at Eleanor House.
3. Pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the Tribunal gave a direction making this application the lead application and staying the other applications.
4. The Directions included provision for a party in a related case to apply for their application to be substituted for the lead case, or to be added as a lead case. No such application has been made.

The hearing

5. Mr Dakurah, the Applicant, appeared in person at the hearing and the Respondent was represented by Mr Andrew Rose of Residential Management Group Limited “RMG”. Mr Rose was initially assisted by Mr Marcellow Amodeo, also of RMG. RMG are the Respondent’s managing agents.
6. The Tribunal heard oral evidence on behalf of the Applicant from:

- (i) the Applicant;

- (ii) Ms Jennifer Odugwu, the lessee of Flat 4 Eleanor House;
 - (iii) Mr Tariq Shah, the lessee of Flat 5 Eleanor House;
 - (iv) Mr Nhan Chu Huu, the lessee of Flat 7 Eleanor House;
 - (v) Mr Harbinder Singh, the lessee of Flat 45 Eleanor House; and
 - (vi) Mr Zafer Suzer, the lessee of Flat 29 Eleanor House.
7. The Tribunal heard oral evidence on behalf of the Respondent from:
- (i) Mrs Emilie Main, who was the first Property Manager to manage Eleanor House following the appointment of RMG as the Respondent's managing agents in October 2018; and
 - (ii) Mr Juber Ali, who has been the Property Manager of Eleanor since October 2019.

The background

8. Eleanor House is a six-storey block containing 45 residential flats on the first to fifth floors, above an undercroft garage. The Tribunal was informed that Eleanor House was formerly a commercial building and that it was converted to residential use in or about 2016. However, the lifts were not renewed and Mrs Main estimated that they are now approximately 25 years old.
9. It was not practicable to carry out an inspection of Eleanor House due to coronavirus pandemic restrictions. However, the witnesses described Eleanor House when giving oral evidence and the Tribunal was also referred to a number of photographs.
10. The Applicant is the lessee of Flat 22 which is situated on the third floor of Eleanor House. He has occupied Flat 22 since 2016, immediately following the conversion of the block to residential accommodation. The Tribunal has been provided with a copy of the Applicant's lease ("the Lease").
11. By clause 2.3 and Schedule 4 of the Lease, the lessee covenants to pay the "Service Charge". In the definitions section of the Lease, "Service Charge" is defined as "a fair and reasonable proportion determined by the Landlord of the Service Costs". The "Service Costs" are the costs

listed in Part 2 of Schedule 7 to the Lease, which include all of the costs reasonably and properly incurred or estimated by the Landlord to be incurred in providing the Services. The “Services” are the services are listed in Part 1 of Schedule 7. The Service Costs also include other items listed at part 3 of Schedule 7.

The issues

12. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of the actual service charges demanded by the Respondent in respect of the period 2018 to 2019;
 - (ii) The payability and/or reasonableness of the estimated/budgeted service charges demanded by the Respondent in respect of the period 2019 to 2020.
13. Having heard evidence and submissions from the parties and having considered all of the documents to which it was referred, the Tribunal has made determinations on the various issues as follows.

The service charge period 1.1.2018-24.3.2019

14. The Applicant is of the view that an incorrect accounting period has been applied by the Respondent. However, he stated that this would not make a practical difference to the total sums payable in respect of the various service charge items and he was therefore content for the Tribunal to proceed to determine the sums payable.
15. The Applicant and all of the lessees who gave evidence are of the view that these service charges are too high. However, the Applicant accepted that he did not have any comparative alternative quotations or expert evidence which could be relied upon as demonstrating that the service charge costs (before any deductions are made) fall outside the reasonable range of charges.

Buildings Insurance

16. Mr Rose confirmed that sums received by the Respondent after 24 March 2020, as a result of an insurance claim, will be credited to the service charge in the year 2020. The Applicant was satisfied with this statement and there is no longer a dispute for the Tribunal to determine under this heading.

Drainage Guttering and Sewage

General Repairs and Maintenance

17. Under these headings, the Applicant disputed five invoices for the period 12 February 2019 to 12 March 2019 concerning leaks at Eleanor House. The Applicant drew attention to the frequency of the visits and he was concerned that unnecessary and/or ineffective work had been carried out.
18. Mrs Main did not accept that unnecessary and/or ineffective work had been carried out. As regards the frequency of the visits, she gave evidence that there were four leaks in different parts of the building which badly affected seven different flats.
19. Mrs Main said that, due to the way in which the building conversion had been carried out, it had been necessary to cut out sections of wall in order to investigate the cause of the leaks. She stated that the Respondent chose to cut through the main corridors in order not to damage lessees' bathrooms. Further, one of the leaks involved a flat roof and the work in connection with that leak had included taking up balcony decking. Mrs Main explained that extensive work was required due to the manner in which the development of the building had been undertaken.
20. The Applicant did not have any evidence to contradict Mrs Main's account concerning the nature of the development and the number of different leaks which occurred. There was also no evidence before the Tribunal that the Respondent's conduct specifically caused any of the leaks.
21. In all the circumstances, the Tribunal accepts Mrs Main's explanation and finds that the sums claimed under this heading are payable.

Water bill

22. The Applicant does not challenge service charges in the sum of £10,362 which are supported by a Thames Water invoice. However, he challenges the payability of an additional sum of £425 which is yet to be invoiced. The Thames Water invoice covers a period ending on 6 February 2019. The additional sum of £425 is the Respondent's estimate of what Thames Water is likely to charge from the end of the period covered by the invoice to 24 March 2019.
23. The Service Charge is defined in the Lease as "*a fair and reasonable proportion determined by the Landlord of the Service Costs.*" The Service Costs are defined as "*all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred*" of the matters set out in Part 2 of Schedule 7 to the Lease.

24. Paragraph 2 of Schedule 4 to the Lease provides:

“2. Service Charge

2.1 The Tenant shall pay the estimated Service Charge for each Service Charge year in two equal instalments on each of the Rent Payment dates.

2.2 In relation to the Service Charge Year current at the date of this lease, the Tenant’s obligations to pay the estimated Service Charge and the actual Service Charge shall be limited to an apportioned part of those amounts, such apportioned part to be calculated on a daily basis for the period from the date of this lease to the end of the Service Charge Year. The estimated Service Charge for which the Tenant is liable shall be paid in equal instalments on the date of this lease and the remaining Rent Payment Days during the period from the date of this lease until the end of the Service Charge Year.

2.3 If, in respect of any Service Charge Year, the Landlord’s estimate of the Service Charge is less than the Service Charge the Tenant shall pay the difference on demand. If in respect of any Service Charge Year, the Landlord’s estimate of the Service Charge is more than the Service Charge, the Landlord shall credit the difference against the Tenant’s next instalment of estimated Service Charge (and where the difference exceeds the next instalment then the balance of the difference shall be credited against each succeeding instalment until it is fully credited). “

25. Mr Rose submitted that the Respondent was entitled to include the estimated sum of £425 in the schedule of service charge expenditure for the period 1 January 2018 to 24 March 2019. He referred the Tribunal to paragraph 7.10 of the RICS Code. Paragraph 7.10 includes provision that (emphasis supplied):

“An annual statement should be issued to leaseholders following the end of each service charge period, giving a summary of the costs and expenditure incurred and a statement of any balance due to either party to the lease. It is also recommended that explanatory notes are included. The accounts should be transparent and reflect all of expenditure in respect of the account period.

Many leases set out the procedures regarding preparation of the annual statement and often require for it to be certified by the landlord’s surveyor, managing agent and sometimes the landlord’s accountant. In addition, certain leases might also require the statement to be audited.

*It is essential that contractual requirements in the lease are followed. Compliance with the requirements and procedures set down in the lease may be a condition precedent. **You should therefore ensure that service charge statements are issued strictly in accordance with the procedures and requirements as set down under the terms of the lease.***

If the lease does not specify the form and content, service charge accounts should be prepared in accordance with TECH 03/11 (see glossary for details) It is best practice and helpful to users of the accounts if prior year numbers and/or budgeted figures are included.”

26. Mr Rose also referred the Tribunal to TECH 03/11 which includes provision that:

“2.1 There is no recognised accounting framework for the service charge statement. Section 21(5), LTA 1985 sets out the requirements for a summary of costs prepared in accordance with a request made by a lessee under s21(1), but the requirements do not equate to accruals-based accounting and there is no requirement for any sort of balance sheet.

2.2 This guidance recommends that service charge accounts are prepared on the accruals basis and the accounts should include a balance sheet for the service charge fund as well as an income and expenditure account and explanatory notes. As a minimum, where service charge monies are held on trust, the records must be capable of showing the amount held at bank for an individual property/service charge scheme, and the amounts demanded and paid in advance by or due from each lessee.

In some instances, however, the lease will require the accounts to be prepared on a cash basis.

2.3 The service charge statement will always need to include details of the costs incurred in the accounting period in relation to the property in accordance with the property lease(s).”

27. The Tribunal does not read the RICS Code of Guidance and Tech 03/11 as stating that it is best practice to include estimated sums in a demand for actual service charges.
28. In any event, the Tribunal must consider objectively the natural meaning of the Lease, which draws a distinction between “estimated” and “actual” service charges. Paragraph 2.3 of Schedule 4 provides a mechanism for making an adjustment if the estimated service charge is greater or lower than the service charge. If the actual service charge were intended to include estimated sums, a further mechanism for making adjustments

would be necessary. Having considered the natural meaning of the service charge provisions in the Lease, the Tribunal is not satisfied that the actual service charge includes estimated costs. Accordingly, the Tribunal finds that the sum of £425 falls to be deducted under this heading.

Electrical Maintenance and Repairs

29. The Tribunal heard evidence called by the Applicant that there was a delay on the part of the Respondent in carrying out work to remedy the issue of a wire which had been left hanging. However, there was no breach of covenant/set off case before the Tribunal, only an application concerning the reasonableness and payability of the charges in respect of the work which was carried out.
30. We are not satisfied on the evidence that any of the work covered by the specific invoices in respect of the relevant period was not carried out to a reasonable standard at the time when that work was undertaken. Accordingly, the Tribunal finds that the sums claimed under this heading are payable.

Cleaning contract

31. The Applicant and his witnesses gave evidence that the standard of cleaning was poor during the period which is under consideration (as well as evidence that the standard of cleaning was poor at other times). Although one of the witnesses made complaints in respect of an earlier period, the Applicant's case is that the standard of cleaning was poor from October 2018 onwards.
32. Prior to the hearing, the Applicant filed and served video evidence in support of his contentions. This evidence had not reached the Tribunal and it would not have been possible to share video evidence during a telephone hearing. The Applicant was therefore given permission to submit photographic evidence in respect of his case concerning the lack of cleaning to supplement the oral evidence.
33. The Tribunal directed the Applicant to file and serve this photographic evidence before 9 am on the morning of 2 September 2020 in order that the Respondent would have over an hour to consider it before the hearing resumed, although it was anticipated that the evidence would comprise stills taken from the video which the Respondent's representatives had already seen.
34. By 9 am on the morning of 2 September 2020, the Applicant had filed and served photographs demonstrating a lack of cleaning to the external common parts of Eleanor House. Mrs Main accepted that no cleaning had been carried out to the external common parts but stated that the

cleaning contract did not cover this area due to a significant shortfall in the service charge funds.

35. The Applicant asserted that, by failing to arrange for the external area to be cleaned, the Respondent was in breach of its obligations under the Lease. However, as stated above, there was no breach of covenant/set off case before the Tribunal. As regards the service charge, there has been no charge for cleaning the external common parts to potentially be reduced.
36. By the afternoon of 2 September 2020, the Applicant had provided photographic evidence to support his case that the cleaning of the internal common parts was not carried out to a reasonable standard during the relevant period.
37. The oral evidence of the Applicant and his witnesses concerning the internal common parts included evidence that graffiti, cigarette detritus, other rubbish, stained carpets, and, at the rear of the block, urine were not attended to in a timely manner by the cleaners during the relevant period. Witnesses did, however, agree that cleaners attended the site.
38. Mrs Main accepted that, when she had taken over management of the block, the back door had been insecure and that this had enabled homeless people to gain access to the rear of the block, leaving rubbish and urine. She replaced the back door with a secure door but a number of residents left the new door open. In response, Mrs Main wrote to residents asking them to close the back door but not all residents complied.
39. Mrs Main stated that the cleaning contract does not cover carpet stain removal. As regards the other complaints which were made concerning the cleaning, Mrs Main stated that she had requested photographs in order that she could follow up the residents' complaints but these had not been provided and she had not personally observed the issues reported.
40. The Tribunal accepts the oral evidence of the Applicant and his witnesses, supported by photographs, that the cleaning of the internal common parts was not carried out to a reasonable standard during the relevant period. However, the Tribunal also finds that some cleaning was carried out and we accept Mrs Main's account that she did not observe the matters complained of during her inspections and that she requested photographs which she did not receive. We also accept Mrs Main's evidence that the cleaning contract does not cover carpet stain removal.
41. The photographs of the exterior, where no cleaning was taking place, present a worse picture than the photographs provided by the Applicant

in respect of the interior of Eleanor House. Doing our best on the basis of the limited evidence available, we find that the cleaning charges which amount to £4,039 in respect of invoices dated 1 October 2018 to 24 March 2019 fall to be reduced by £800 on account of the Applicant's evidence that the internal cleaning was not carried out to a reasonable standard.

Lift maintenance

42. The Applicant was concerned by the frequency of visits to Eleanor House in order to carry out lift maintenance and he noted that more than one visit has taken place in the space of a single day. He submitted that that the evidence "does not stack up".
43. The Applicant accepted that the threshold for a formal section 20 consultation was not met but he was of the view that, given the frequency of visits, the lessees should have been informally consulted regarding lift maintenance.
44. In respect of the two visits which occurred on the same day, Mrs Main gave evidence that the first visit took place in the early hours of the morning and the second occurred in the late hours of the following evening. They were both out of hours call outs attracting an out of hours' fee. One call out was requested by Mrs Main herself and the other was requested by a resident.
45. Mrs Main confirmed that there was no charge to the service charge account in respect of an instance when a BT Engineer failed to attend. She explained that the invoice in question combined two attendances, with the charge solely relating to the second. As indicated above, she gave evidence that the lifts are approximately 25 years old.
46. A 25 year old lift is likely to require a significant amount of maintenance and its condition is likely to deteriorate over time. In the absence of expert evidence from a lift engineer to the effect that unnecessary work has been carried out, the Tribunal is not satisfied on the balance of probabilities that the nature and frequencies of the attendances were unreasonable for lifts of this age, which were not replaced when the building was converted from commercial to residential use in about 2016. Accordingly, the Tribunal finds on the balance of probabilities that the sums charged under this heading are payable.

Health & Safety

47. The Applicant withdrew his challenge under this heading in respect of this service charge period.

Staff costs

48. Mrs Main gave oral evidence that the relevant staff costs had been paid and the Applicant accepted this oral evidence.
49. The Applicant submitted that there should be a reduction in the staff costs on the grounds that the concierge service was not provided to a reasonable standard from October 2018 to the end of the period under consideration.
50. The Appellant and his witnesses gave oral evidence to this effect and, on the basis of their oral evidence, the Tribunal is satisfied that there were times when the concierge should have been on duty but was absent. A witness expressed the view that staff absences could have led to post going missing but the Tribunal also heard evidence that each flat had an individual locked postal box. In any event, the service which was contracted for should have been provided.
51. Mrs Main also accepted the Applicant's case that the concierge service was not provided to a reasonable standard for the period of approximately six months from October 2018 to 24 March 2019. However, she stated that she had negotiated a 20% reduction in the concierge costs in respect of this period. The charge of £6,212 for the relevant period already reflects this discount.
52. Mrs Main gave evidence that, as a result of complaints received from residents, she visited Eleanor House every week in order to monitor the performance of the concierge. She also asked for photographs and she reviewed the CCTV footage.
53. As a result of her investigations, Mrs Main found evidence which supported the residents' complaints. In her view, the 20% discount was "a good gesture" because, from her review of the CCTV footage and her personal visits, she was not satisfied that the concierge was absent for as much as 20% of the time.
54. The lessees did not give evidence that they were without a concierge service for more than 20% of the time and neither party provided the Tribunal a contemporaneous log of specific times and dates when the concierge should have been on duty but was absent.
55. Mrs Main was the only witness who sought to quantify whether the concierge absences were greater or less than 20% of the time with reference to personal observation and other material. Doing its best on the basis of the limited evidence available, the Tribunal accepts Mrs Main's account and finds that, in light of the reduction which has already been made on account of poor service, the sum claimed under this heading is payable.

Management fees

56. In the Applicant's statement of case and in the witness evidence he relied upon, numerous criticisms were made of the management of Eleanor House by RMG.
57. Mr Rose contended that the management fees had been agreed by the Applicant relying upon section XII of the Applicant's statement of case where the Applicant stated:

"Our main concern is the handover fee and not the reasonableness of management fees in total."
58. The Tribunal does not accept this contention. A statement that the "main concern" is the handover fee is does not amount to a statement that the other management fees are agreed although, in response to a question from the Tribunal, the Applicant confirmed that he was not disputing the rate charged but was simply contending that there should be a reduction on account of poor management. Whilst he omitted to refer to the management fees in opening, it is clear from documents filed and served prior to the hearing that the Applicant's case included criticism of the standard of management.
59. Accordingly, the Tribunal found that it was fair and just, in accordance with the Tribunal's overriding objective, to allow the Applicant to present his case that there should be a reduction in the management fees.
60. Both parties' witness statements were brief and, as the Applicant and his witnesses expanded upon some of their contentions in giving oral evidence, the Tribunal gave the Respondent permission to file and serve additional evidence in response. The Tribunal directed this evidence to be filed before 9 am on 2 September 2020 so that the Applicant would have at least an hour to consider it before the hearing resumed.
61. Mrs Main was the only Property Manager managing Eleanor House during the relevant period. She was managing a converted block containing lifts which were over 20 years old and pipes which were difficult to access. Four separate leaks occurred during her time as Property Manager and the lifts required maintenance. The Tribunal accepts evidence given by Mrs Main that, when she took over management, there were also cash flow problems which she attempted to remedy.
62. All parties agree that some residents at Eleanor Court engage in anti-social behaviour and some of the complaints which were made in evidence concerned the conduct of other residents rather than that of the landlord.

63. Having heard Mrs Main give evidence, the Tribunal accepts that she took reasonable steps to follow up complaints and to respond to the anti-social behaviour. There is no suggestion that employees of RMG or of the Respondent have themselves left the back door open, engaged in acts of vandalism, left cigarette butts on cars, littered the common parts or that they have engaged in any of the other anti-social acts complained of.
64. Mrs Main was very proactive in following up residents' complaints concerning the concierge and in negotiating a 20% discount in respect of the concierge costs for the relevant period. As regards the cleaners, the Tribunal accepts Mrs Main's evidence that she asked the cleaners to provide photographs of their work and that she asked residents for photographic evidence to enable her to investigate complaints concerning the cleaning (which she did not receive).
65. The age and condition of the lifts, the location and condition of the pipework, and the conduct of other residents at Eleanor House caused considerable difficulties for the Applicant and his witnesses. These problems were not caused by Mrs Main and the Tribunal is satisfied that she took reasonable steps appropriate to her role as a Property Manager to respond to complaints. In all the circumstances, the Tribunal is satisfied that Mrs Main managed the block to a reasonable standard during the relevant period and that the management fees do not fall to be reduced.

The budgeted service charges for the year 2019-2020

66. The Applicant and all of the lessees who gave evidence are of the view that the budgeted service charges are too high. However, the Applicant accepted that he did not have any alternative quotations or expert evidence which could be relied upon as demonstrating that the budgeted costs fall outside the reasonable range.
67. Accordingly, whilst the Applicant reserves his right to challenge the actual service charges for the year 2019-2020, his only challenge to the service charge budget related to the window cleaning. The Applicant is aware that he may be able to obtain free, independent legal advice from the Leasehold Advisory Service concerning any future service charge matters.

Window cleaning

68. The Applicant submitted that it was not reasonable to budget for carrying out window cleaning when, as Mrs Main explained in oral evidence, there was a shortfall in the service charge funds available. No window cleaning was in fact carried out.

69. Mr Rose submitted that it was reasonable to budget for carrying out window cleaning because it is reasonable to assume that the lessees will pay their service charges and window cleaning is a service which the landlord is required to provide under the terms of the Lease.
70. By Schedule 7 Part 1 of the Lease, the Services include “cleaning the outside windows of the Building”. By clause 4.1 of Schedule 6 of the Lease, the provision of the Service is subject to the Tenant paying the Service Charge. However, the Tribunal considers that it was reasonable to budget on the basis that the funds should be available for window cleaning and notes that, during the course of the hearing, the lessees were critical of the landlord’s decision not to arrange for the external areas of the block to be cleaned due to a lack of funds.

The costs of the Tribunal proceedings

71. At the conclusion of the hearing, Mr Rose confirmed that the Respondent (i) will not pass any of its costs incurred in connection with these proceedings through the service charge and (ii) will not seek to recover its costs of these proceedings from any individual lessee.

Name: Judge N Hawkes

Date: 11 September 2020

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).