FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/29UQ/LSC/2022/0117**
Property	**:**	**Flat 26 Post Office Square, London Road, Tunbridge Wells Kent, TN1 1BQ**
Applicant	**:**	**Diana and Ian Macfarlane**
Respondent	**:**	**Office Square Management Ltd**
Reprsentative	**:**	**DWF Law LLP**
Type of Application	**:**	**Section 27A Landlord and Tenant Act 1985**
Tribunal Member	**:**	**Judge D Dovar**
Date of Decision	**:**	**1st June 2023**

DECISION

Introduction

1. This an application for the determination of the payability of service charges for the costs of a lift for the year ending October 2023. The total value in dispute is £3,847.

2. The Property is a two bedroom flat in a building containing 32 flats on an estate known as the Former Head Post Office, Vale Road, Tunbridge Wells, TN1 1BQ ('the Estate'). The Applicants as long lessees of the Property have the sole use of one of the 6 lifts on the estate, Lift No.6. The other 5 lifts are shared. In effect, Lift No.6, which is the lift that the Applicants have the exclusive use of, is their lift, albeit the Respondent has an obligation to maintain and repair it, passing on 100% of those costs to the Applicants.

3. The Applicants' challenge their liability to pay: £3,000 for lift charges for the year; and £847 for a contribution to the reserve fund. That contribution is a percentage of the total service charge payable by them, with the result that if they are successful in their challenge to the lift costs, their contribution to the reserve fund will also fall.

Lease Terms

4. The Applicants' lease of the Property is for a term of 999 years from 1st January 2001 at a rent of a red rose on a Midsummer's Day (if demanded). The demise includes at Schedule B.1 '*The right for the Lessee …the right of access to and egress from the Apartment through*

along any by any Core …lift … as affords access thereto." Lift No.6 is only accessible from and only serves their apartment.

5. Schedule F contains the Lessor's covenants regarding repair and maintenance. It is not controversial that the Respondent as Lessor, has an obligation to maintain in good and substantial repair condition and keep in good working order, the lifts, including Lift No.6.

6. Under Schedule D, the Applicants as Lessee covenant to pay their proportion of the Services Charges, which are set out in Schedule J. That sets out proportions for 7 heads of expenditure including:

   '*Lift No.6: operational and maintenance costs and electricity supply: 100%*'.

7. Schedule H sets out the Service Charge Provisions. H.3 permits a reserve fund. H.7 to H.9 provide for interim charges and further interim charges, based on estimates of expenditure. H.10 then provides that if any interim charge exceeds the Lessee's share of the actual service charge costs in any accounting period, then the surplus is to be carried forward and credited to the Lessee when the Lessor computes their share in succeeding accounting periods. Clause H.12 then provides the information that the Lessor must provide the Lessor as soon as practicable after the accounting period, which includes a breakdown of the actual service charge costs, the amount demanded by way of interim payment, and the surplus or deficit between the two.

Lift Charges

8. For the year end October 2023, the Applicants have received an interim demand, which includes £3,000 for lift costs, which comprises:

    a. £960, as a 1/6th share of a lift contract which covers all the lifts on the Estate;

    b. £1,040 for estimated electricity costs; and

    c. £1,000 for estimated costs of spare parts, servicing, cleaning and maintenance.

9. The same estimated charge has been applied to each of the 6 lifts on the Estate. The Applicants consider that that is not a fair estimate of the actual cost given that unlike the other lifts, they have the exclusive use of theirs and therefore suggest that the wear and tear and electricity should be less than 1/6th. They point out that the other lifts serve more floors and between 3 and 9 Apartments; one even has a double set of doors. It is said they are not equal '*in terms of maintenance, operational and electricity costs and functional complexity*.' In addition the Applicants say they are resident out of the jurisdiction for tax purposes, do not let their flat and so the lift actually gets very little use in the year. They can only visit the flat 6 weeks in the year or else presumably there would be adverse tax consequences for them.

10. The Respondent points out that this is an estimated demand, with the result that s.19(2) of the Landlord and Tenant Act 1985 applies.

    "(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."

11. The Respondent claims their estimate is reasonable, being based on expenditure incurred for the previous year.

12. In his evidence in support of the Respondent's case, Mr Labrum, the Manager and Company Secretary for the Respondent states that

> *"The electricity supply for the whole estate is charged to a single meter, so the cost of running each individual lift is unknown and estimated. The annual landlord's electricity supply is in the region of £20,000 p.a. It is estimated that the minimum power used for each lift is in the region of £20 per week or £1040 per annum. Any costs over and above the £20 per week are paid from the utilities budget. There is a single service contract for the lift maintenance charged at £4,800 plus VAT per year i.e. £5,760, which equates to £960 per lift. Each lift is serviced quarterly, in accordance with the contract regardless of use.*
>
> *An allowance of £1000 pa is made for each lift to cover any parts required outside contract, together with cleaning, decorating, lighting, electrical certificate, lift insurance, flooring and keeping the lift in good order.*
>
> *Lift maintenance contract £960.00*

Lift additional maintenance items £1000 pounds

Electricity use based on at least £20 per week £1040

any additional electricity costs are paid by the overall bill for the state and are known.

Total minimum estimated costs of maintaining each lift £3,000"

13. Mr Labrum has exhibited the service contract, which supports the costs and timing of the servicing and maintenance. That provides for a '*comprehensive service contract*' for 6 lifts, consisting of '*regular examination of equipment, oiling, cleaning and greasing … and if our opinion conditions warrant, repair or replace any of said equipment free of charge.*'

14. He has also provided the Respondent's bank statement showing payments to British Gas. Presumably this is for electricity, but it is not clear how this supports his figure of £1,040 for each lift.

15. He does state that each lift has the same amount of maintenance regardless of use. He further states that the Respondent had offered to instal a separate meter for electricity for the Applicants' lift, but they refused.

What is payable?

16. The Respondent is correct in that the demand they have served is an estimated one and accordingly the sum charged is capped by s.19(2) as what is reasonable to charge on account.

17. Taking each cost item in turn:

    a. Although an estimated demand, the contract cost is a known amount. It is £4,800 plus VAT, so £5,760. The division of that amount by 6, for each lift, result in an allocation to Lift No.6 of a cost of £960, of which the Applicants pay 100%. That approach cannot be faulted. The Respondent is entitled to put a maintenance contract in place for lifts; the Applicants do not appear to suggest otherwise. Given the nature of the contract, i.e. regular inspections, there is no good reason not to divide the cost equally, notwithstanding that Lift No.6 may not get as much use as the others, it still requires regular inspection. A lack of use can have a deleterious impact on machinery in that parts may seize up and harden. Further, the fact that for now the Applicants do not use it more than 6 weeks at a time because of their tax status is not a factor which I consider is relevant as to whether it is reasonable for Respondent to take out a contract for the servicing of these lifts. Therefore this amount is payable in full;

    b. The maintenance items are a little harder to justify given that it seems on the high side. The Respondent has also not provided any evidence of actual cost incurred in previous years. This is despite saying that their estimate is based on historical actual cost. I am

also concerned that given the service contract includes parts, what additional cost for parts would be incurred. However, again this is only an estimated amount, should one item need replacing, I can well see that such costs could easily be incurred. Further, I note that it also includes cleaning, insurance and certification. I also take into account that as an estimated amount at the end of the year a reconciliation will be done and so ultimately, the Applicants will only be charged for this on a cost incurred basis as they contend they should. At the end of the accounting year the Applicants should be provided with a breakdown of the actual costs which will not only result in a credit to them if there is an underspend, but should also give the parties a basis for understanding any future budgeted amount. Accordingly, this amount is allowed in full;

c. For similar reasons the electricity estimate, although on the high side, is not so high as to fall outside the ambit of s.19(2). Again the budget looks forward to covering the costs of what might reasonably be incurred. Whilst the Applicants say they only use the flat 6 weeks of the year, they may well decide to loosen their self-imposed travel restriction and visit more often. If they do not, then in terms of actual usage, it does appear that they are being overcharged and before the final reconciliation is carried out, the Respondent should instal a meter in order to measure their actual usage. Accordingly, this amount is allowed in full;

d. Finally, the reserve fund. That is set at 10% of the service charges in total. Given that that is a percentage of the total service charge and that in my view the other sums are reasonable, 10% is a sensible level at which to set the reserves and it follows that no deduction is made for that amount.

Conclusion

18. The Applicants have purchased a flat with the exclusive use of a lift, they should be responsible for bearing the costs of the same, which may well be disproportionate to their enjoyment of it, if in fact they only use the flat 6 weeks in the year; but that is their choice. As a result, they may well lose out on economies of scale, in that notwithstanding their limited use, it is perfectly reasonable for the Respondent to incur the costs of maintenance contract for that lift and to make sufficient provision for both the anticipated costs of insurance, parts and electricity. Further, given that the demand in question is one on account, the Respondent is entitled to assume fuller use than the Applicants project, given that their plans could change at any moment and any underspend will be credited to the Applicants on a reconciliation.

19. It follows that I do not think that the challenge is warranted. Particularly to an on account demand. Given that it has failed, I decline to make any orders under Section 20C of the 1985 Act, nor under paragraph 5A of Schedule 11 of the 2002 Act. The Applicants have also said that they may have reconsidered making such an application if they had known that the Respondent would get legal representation. That is not a reason for

restricting recovery of costs, the Respondent is entitled to obtain advice and representation if it wishes and that is always a potential outcome if an application is made. There was also nothing in the history of this dispute to make me consider that the any order should be made restricting costs.

JUDGE DOVAR

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.