FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LSC/2023/0037**
Property	**:**	**First Floor Flat, 8 Moore Park Road, London SW6 2JS**
Applicant	**:**	**Lawrence Kelly, D Kelly and others (acting through the executors of the Estate of Bernard Kelly)**
Representative	**:**	**Leverets, solicitors**
Respondent	**:**	**Mr Christopher Birkert**
Representative	**:**	**Mr Tom Birkert**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Pittaway** **Ms A Flynn MA MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**8 August 2023**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(2) The Tribunal makes no determination in respect of the service charge period from June 2010-June 2011 (£1,108.74) for which a service charge account was provided in the bundle. It was not included in the Service Charge Statement which itemises the sums of service charge claimed in the County Court, and the Respondent confirmed that this amount was not disputed.

(3) The Service Charge Statement referred to Fire Safety Remedial Works payable by the Respondent of £6,502.32 and External Steps Works of £5,190. Both these sums had been paid by the Respondent to the Applicant on 11 May 2022 and the Respondent stated that these sums were not in dispute.

(4) Since the tribunal has no jurisdiction over ground rent, county court costs and fees, this matter should now be referred back to the Wandsworth 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 Applicant / Respondent in respect of the service charge years from June 2011 to June 2023.

2. Proceedings were originally issued in the Wandsworth County Court under claim no. J01WT730. The claim was transferred to this tribunal, by order of District Judge Daley on 5 January 2023.

The hearing and subsequently

3. The Applicant was represented by Ms Davies of Leverets, solicitors at the hearing and the Respondent was represented by his son, Mr Tom Birkert.

4. There were no witness statements in the bundle before the Tribunal. During the hearing the Tribunal heard evidence from Mr Christopher Birkert, Mr Tom Birkert and Ms Caul and Mr Wilson of Cochrane & Wilson Limited, the Applicant's managing agents. The Tribunal also heard submissions from Mr Tom Birkert and Ms Davies.

5. After the hearing the Tribunal asked the parties to make representations as to what consultation had occurred in relation to the work to the tiles at the front of the property carried out in or around 2010. Leverets did so in a letter of 27 Juluy 2023.

The background

6. The property which is the subject of this application is a flat on the first and second floor of 8 Moore Park Road (the '**Building')**. There were no official copies of the freehold or leasehold titles in the bundle. Ms Davies confirmed to the Tribunal that the flat on the lower ground and ground floor of the Building is not the subject of a long leasehold interest. It is owned freehold by the Applicant and is let out on short lets. The Tribunal heard evidence that the communal parts of the Building consist of the areas at the front of the Building, the common entrance hall and the stairs to the subject flat.

7. 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 will be referred to below, where appropriate.

The issues

8. At the start of the hearing the Tribunal stated that it was unable to consider service charge costs that were not the subject of the referral from the County Court. Ms Davies confirmed to the Tribunal that the Service Charge Statement in the bundle dated 6 June 2022 was the Schedule upon which the County Court claim was based and that is the Schedule to which the Tribunal has had regard.

9. The Respondent's statement of case referred to general failure by the landlord to repair the property, a double charge for repair to the chimney stack and the issues arising from mice and bed bug infestations.

10. The Tribunal invited the Respondent to identify, with reference to the Service Charge Statement (being that on which the County Court claim was based) and the accounts set out in the bundle before the Tribunal the items of service charge being challenged by the Respondent, and adjourned the hearing to enable the Respondent to do this. The Respondent identified the following items of service charge set out in the Service Charge Statement as being for determination by the Tribunal as to payability and/or reasonableness;

Date	Item	Amount

June 2011-2012	Tiles for steps outside	£1,550.00
June 2012-2013	Lock Change	£71.25
	Lock Repair	£24.75
June 2013-2014	Beaverpest x 8 treatments	£478.80
June 2014-2015	Beaverpest x 8 treatments	£409.80
June 2015-2016	Beaverpest x 8 treatments	£568.80
June 2016-2017	Beaverpest x 8 treatments	£488.00
1 June 2016	Chimney stack repair	£1,200.00
June 2017-2018	Beaverpest x 8 treatments	£615.96
June 2018-2019	Beaverpest x 5 treatments	£403.32
June 2019-2020	Beaverpest	£322.66
June 2020-2021	Beaverpest x 4	£333.96
June 2021-2022	Beaverpest x 4	£333.96
	Communal doorbell	£54.00
June 2022-2023	Beaverpest x 4	£345.60
	Management fee for organization of P & R Roofing/Fireplus Ltd	£803.30

11. The Respondent initially queried whether some of the sums listed in the Service Charge Accounts were 100% or 50% of the sums incurred. The Applicant confirmed that each sum represented 50% of the sum in question. The Respondent then withdrew his challenge to a charge for a Health & Safety Report of £405 incurred in service charge year June 2013-2014.

12. The Respondent initially challenged a charge of £29.97 in respect of 'communal lock' in the service charge year June 2018 -2019 but having heard from Ms Caul that this did not relate to the replacement of the lock but its repair withdrew the challenge.

13. There was correspondence in the bundle in relation to a fire proof door installed by the Respondent to his flat. The Applicant stated that this cost was a matter for the Respondent under the terms of his lease and it was confirmed to the Tribunal that the door had been installed at the tenant's cost. This was therefore not a service charge item before the Tribunal to determine.

14. Having heard the evidence and submissions from the parties and considered all the documents provided, the tribunal has made determinations on the various issues as follows.

Step tiles: June 2011-June 2012

The tribunal's decision

15. The tribunal determines that the cost of tiles for steps should be limited to £250.

Reasons for the tribunal's decision

16. At the hearing Mr Birkett stated that in 2011 he had not had notice before the actual work was carried out to the floor tiles at the front of the property. He submitted that the cost was not payable because he had not been given notice that the work was to be carried out, with the result that he was unable to obtain access to his flat, and that he had not given permission for it to be done.

17. The Applicant submitted that it was unreasonable for the Respondent, who had not previously challenged this cost, to do so now.

18. At the hearing Mr Birkert did not make it clear whether he had been consulted before the works were carried out. In the bundle before the Tribunal there is a letter from Mr Birkett written in 2012 in which he states that he was not consulted before the work was carried out (p.271). This was not drawn to the Tribunal's attention at the hearing, but raised the question as to whether Mr Birkett was consulted before the work was carried out, as required by s20 of the 1985 Act. The Tribunal therefore invited evidence from the Applicant as to such consultation. By a letter of 27 July 2023 Leverets stated that the managing agents had no records given the length of time since the cost was incurred. It submitted that Mr Birkert should not be entitled to challenge this cost as he had paid the service charge in question and the sum was not being claimed by their clients.

19. The cost of the 'tiles for steps outside' in the sum of £1550 is included in the demand for the period June 2011-June 2012, which is included in the service charge statement of 6 June 2022 which Ms Davies had confirmed to the Tribunal was the Schedule upon which the County Court claim was based and is therefore within the jurisdiction of the Tribunal to consider.

20. By reason s27A(5) of the 1985 Act Mr Birkett is not taken to have agreed or admitted any matter by reason only of having made any payment, so the fact that Mr Birkert may have paid for the work is not conclusive.

21. In its response of 27 July Leverets stated that the managing agent of the property is no longer in possession of the paperwork relating to these works carried out some 13 years ago.

22. On the evidence before it the Tribunal finds that Mr Birkert was not consulted before the work to the tiles was carried out.

23. S20 of the Act provides the contribution a tenant must pay by way of service charge to qualifying works is limited unless the relevant statutory consultation requirements have been satisfied or have been dispensed with by the Tribunal.

24. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if it is planned to carry out qualifying works which would result in the contribution of any tenant being more than £250, and that any tenant's contribution is limited to £250 where the consulation requirements are not met or dispensed with.

25. The Tribunal therefore limits the cost of this work to £250.

Lock change and lock repair: June 2021-2022

The tribunal's decision

26. The tribunal determines that the amount payable in respect of these items is £71.25 and £24.75 respecively.

Reasons for the tribunal's decision

27. The Respondent objected to these charges on the basis that the lock changed was not that to the door of his flat.

28. In light of the evidence that the Tribunal heard that a similar repair charge in service charge year June 2018 -2019 was to the communal

lock rather than the lock to the Respondent's flat, and there was no evidence before the Tribunal that the work was not carried out, the Tribunal find that the charges are payable and reasonable.

Beaverpest charges: all years from service charge year June 2013-2014

The tribunal's decision

29. The tribunal determines that only part of these charges are a service charge item. It determines that in each year 10% of the total cost should be attributed to the common parts and therefore the service charge and 50% of that cost recovered from Mr Birkert.

Reasons for the tribunal's decision

30. The Respondent challenged his liability to pay these sums on the basis that Beaverpest had undertaken no treatment in any of the years in question. There were no traps laid in any part of the common parts or evidence of other treatment by them. The Respondent submitted that the infestation of mice of which he had complained emanated from the ground floor flat, in particular when work was carried out to it.

31. For the Applicant Ms Caul stated that Beaverpest did attend at the Building and that the work they undertook was to the common parts. Mr Wilson confirmed the extent of the common parts, limited to the areas at the front of the Building, the common entrance hall and the stairs to the subject flat. Ms Caul said that Beaverpest laid poison not traps.

32. The bundle before the Tribunal contained a letter from the managing agents to Mr Birkert dated 24 July 2013 which stated that Beaverpest had identified that mice were entering the Property through the communal area.The invoice from Beaverpest in the bundle dated 24 July 2013 (p.257) refers to

- Initial treatment of installing three tamperproof metal rat stations (two at the back and one at the front) £149 plus VAT
- Initial treatment for installing one large air vent cover and then blocking all holes/ gaps at basement level £49 plus VAT
- Quotes a fee of £115 plus VAT for eight inspections and treatments to Flats 1,2 and communal areas at the Property.

33. The service charge demand for the period June 2013 -June 2014 refers to 'Beaverpest x 8 treatments'. It does not seek to recover any part of the initial treatments referred to above.

34. The bundle contains a treatment report from Beaverpest following a visit on 5 March 2018. This refers to a first floor trap, refreshment of bait where needed and recommends a deep clean of the top floor flat.

35. The bundle contains an invoice from Beaverpest dated 7 February 2023 for the period from 7 February 2023 to 6 May 2023 referring to a charge of £151.21 plus VAT for pest control services and a nil charge for the eight treatments per annum covered by the contact.

36. The Fourth Schedule of the Respondent's lease defines the 'Service Charge' as expenditure arising under clauses 3(2) and 3(3) of the lease. Clause 3(2)(a) provides for the landlord to keep specified structural elements of the Property in good and substantial repair, clause 3(2) (b) provides for a reserve fund for future expenditure on the items referred to in clause 3(2)(a) and clause 3(2)(c) provides for the landlord,

'*as far as practicable light and to keep clean and carpet as and when the Lessor shall deem necessary (and at least once every seven years) to redecorate the common entrance hall and staircase and to keep the same in good and substantial repair.*'

Clause 3(3) relates to insurance by the landlord.

37. The tribunal find that the wording of Clause 3(2)(c) entitles the landlord to recover from the Respondent the cost of pest control in the common parts, to the extent that this is necessary to keep the common parts in good and substantial repair.

38. There is no obligation on the tenant in the lease entitling the landlord to recover from him the cost of pest control within his flat by way of service charge.

39. From the evidence before it the Tribunal find that Beaverpest are visiting the Property and it accepts the evidence from the invoices in the bundle that it has been attending eight time a year. The Tribunal finds that Beaverpest has been carrying out treatment not only to the common parts but also to Flats 1 and 2. The proportion of the charge referrable to work at the flats is not service charge expenditure and the Respondent is therefore not liable for it. Only a proportion of the Beaverpest charge is recoverable by way of service charge.

40. From the oral evidence the Tribunal heard the Tribunal find that the common parts are not large, and that limited work was carried out in this area. It notes that some of the pest ingress was directly attributed to entry through the common parts.

41. From the evidence available to it the Tribunal finds that it would be reasonable to charge 10% of the Beaverpest charges to service charge.

Chimney stack repair: 1 June 2016

The tribunal's decision

42. The tribunal determines that the amount payable by the Respondent towards the Chimney stack repair is £250.

Reasons for the tribunal's decision

43. The Respondent submitted that he had paid for the chimney stack repair as part of the works carried out in 2010. He submitted that when he had made payment for those works (£6,425) it was conditional on the work being undertaken and he should not be asked to pay for the work undertaken in 2016.

44. Ms Davies referred the Tribunal to the Schedule of Works for which £6,425 had been demanded from the Respondent in 2010 and submitted that there was no reference to chimney stack repair in that schedule.

45. The Tribunal appreciate that Mr Birkert believed that the cost of the work should have been covered by the payment that he made in 2010 but the Schedule of Work for that payment makes no reference to the repair of the chimney stack and there is no evidence in the bundle before the Tribunal that Mr Birkert had made his payment in 2010 conditional upon the cost including repair to the chimney stack and there was no evidence before the Tribunal that any repair work had been carried out in 2010. Mr Birkert does not appear to have taken the matter further until he received the invoice for his repair of the chimney stack in 2016.

46. For the Applicant Ms Caul gave evidence that the work to the chimney stack in 2016 had been carried out at short notice as the Applicant had received a dangerous structure notice from L B Hammersmith and Fulham which required the work to be carried out within 21 days. The Respondent had been provided with a quote for the repair work of which his share was £1,400. The Tribunal enquired as to whether the Applicant had undertaken any action with regard to the need for consultation as required by the 1985 Act. Ms Caul stated that she had not because of the urgency of the work.

47. S20 of the 1985 Act provides the contribution a tenant must pay by way of service charge to qualifying works is limited unless the relevant statutory consultation requirements have been satisfied or have been dispensed with by the Tribunal.

48. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if it is planned to

carry out qualifying works which would result in the contribution of any tenant being more than £250, and that any tenant's contribution is limited to £250 where the consulation requirements are not met or dispensed with.

49. The Applicant admits that the statutory consultation requirments were not met in relation to the chimney stack works nor was dispensation from consultation sought from the Tribunal.

50. Accordingly the Respondent's contribution is limited to £250.

Communal doorbell repair: service charge year June 2021-2022

The tribunal's decision

51. The tribunal determines that the Respondent is liable to pay the sum of £54 to the repair of the communal doorbell.

Reasons for the tribunal's decision

52. The Respondent challenged this payment on the basis that the communal doorbell does not work for his flat. He did not challenge the reasonableness of the cost if the doorbell worked.

53. The Applicant submitted that until the hearing he was unaware that the communal doorbell did not work for the Respondent.

54. The Respondent has not challenged that work was carried out to the communal doorbell, only that it has been unsuccessful in so far as his flat is concerened.

55. The Tribunal find that the charge is reasonable but that the Respondent is entitled to have the communal doorbell working to his flat at no further charge to him.

Management fee for organization of P & R Roofing/Fireplus Ltd: service charge year June 2022-2023

The tribunal's decision

56. The tribunal determines that the sum of £803.30, the management fee payable to Cochrane & Wilson Limited, the Applicant's managing agents for its supervision of fire safety remedial works in the sum of £6,502.32 and external step works of £5,190.00 undertaken in 2021 is reasonable and payable by the Respondent.

Reasons for the tribunal's decision

57. The Respondent submitted that it was not reasonable to charge £803.30 for obtaining quotes for undertaking works to the Building.

58. Ms Caul gave evidence that the fee was for supervising the fire safety works and the external step works. Such supervision was outside the scope of services covered by the annual management fee and had been charged at 7% of the cost of the works.

59. The Tribunal accepts the evidence of Ms Caul that the fee was not for obtaining quotes but for the supervision of work.The Respondent had accepted the cost of the fire safety works and the external step works. Although the Applicant had not included a copy of the management agreement that he has with Cochrane & Wilson Limited he Tribunal find that the supervision of such works by the managing agents is not likely to be by the usual management fees charged by a managing agent. The Tribunal further find, on the basis of its knowledge and experience, that a fee of 7% for the supervision of such works is not unreasonable.

The next steps

60. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Wandsworth County Court.

Name: Judge Pittaway **Date:** 8 August 2023

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

Landlord and Tenant Act 1985

S 20 Limitation of service charges: consultation requirements

(1)Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a)complied with in relation to the works or agreement, or

(b)except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2)In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3)This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4)The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a)if relevant costs incurred under the agreement exceed an appropriate amount, or

(b)if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5)An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a)an amount prescribed by, or determined in accordance with, the regulations, and

(b)an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6)Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7)Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

27ALiability to pay service charges: jurisdiction

(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.