FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LSC/2023/0029**
Property	**:**	**45B Philbeach Gardens, London, SW5 9EB**
Applicant	**:**	**Miss Adriana Schwab**
Representative	**:**	**Callum MacDonald – Pro Bono Counsel from the FCA together with representatives from the University of Law**
Respondents	**:**	**Housing for Women**
Representative	**:**	**David Mold – Counsel instructed by Devonshires solicitors**
Type of application	**:**	**Payability of service charges – s.27A of the Landlord and Tenant Act 1985**
Tribunal	**:**	**Judge Dutton** **Mr D I Jagger MRICS**
Date of Hearing	**:**	**22 August 2023**
Date of Decision	**:**	**23 August 2023**

DECISION

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The tribunal determines that of the two outstanding issues relating to Gardening charges and Health and Safety (Fire equipment) are assessed at £26.64 per annum for gardening and £19.14 per annum in respect of the service charges relating to Fire equipment and associated matters as set out below.
The Tribunal makes an order under s20C of the Landlord and Tenant Act 1985, considering it just and equitable so to do.

Background

1. This application was made by Miss Adriana Schwab the tenant of 45B Philbeach Gardens, London SW5 9EB (the Property) on 14 January 2023. The Property is a basement flat in a converted house of nine units. The Landlord is the Housing for Women. Her challenge was in respect of the estimated service charges for the year 2022 /2023. Originally, she sought to challenge several items. However, with the assistance of the University of Law, Legal Advice Clinic, those issues were narrowed to only gardening, health and safety and pest control, with the latter being conceded by the Respondent.

2. We were provided with a bundle running to some 244 pages, together with a supplementary bundle from the Respondent. These bundles contained, inter alia, the application, directions, statements of case from both sides, a witness statement of Alyshia Watson on behalf of the Respondent, the Applicant's reply and amended statement of case. We have noted all that was said although much became redundant as a result of the sensible approach taken by both sides to the issues.

3. Matters were complicated following the lodgement of a skeleton argument by Mr Mold on behalf of the Respondent. For the first time he sought to argue that the service charge was fixed and that accordingly we did not have jurisdiction to determine the claim. In support he sought to rely on what purported to be a later tenancy agreement entered into in 2015, which stated that the service charges were fixed as set out at clause 1.2 of this later agreement.

4. There was no application to amend the existing Respondent's statement of case lodged by Devonshires, their solicitors in May 2023, which stated at clause 9 that the service charges were variable. Further the tenancy agreement we had been provided with was one dated 17 October 2014, effective from 1 November 2014, in respect of which Mr Mold accepted that it provided for a variable service charge.

5. Miss Schwab accepted that she had signed some document in 2015 but when she had asked for a copy all she was provided with was an agreement which was missing the first four pages and indeed the agreement relied upon by the Respondent, which was produced in a supplementary bundle is incomplete, with no details inserted. It would certainly seem that at the time the Statement

of Claim was lodged on behalf of the Respondent they were working from the 2014 agreement.

6. Dealing with this preliminary point we make the following findings. We are satisfied that we do have jurisdiction to determine this dispute. We are not satisfied that the Respondent can seek to introduce a completely new submission by way of a skeleton argument. The Statement of claim should have been amended if this point was to be taken. Although we may be a 'creature of statute' as suggested by Mr Mold it is not for us to raise such a point without giving the parties a chance to respond. In any event we are not satisfied that the Respondent has proved the existence of the 2015 agreement. The one before us in lacking any details. No one from the Respondent attended the hearing to explain and Miss Schwab said she has always relied on the 2014 agreement, which Mr Mold conceded contained a variable service charge.

7. Turning then to the issues. As we have indicated, through the skeleton argument the Respondent conceded the figures put forward by Miss Schwab for cleaning, utilities, pest control and refuse (see paragraph 38 and 39 of the skeleton argument). Those are the figures that should apply for the period in dispute.

8. This left gardening and Health and Safety. Echoing the Respondent's concessions Miss Schwab told us that she wanted there to be gardening and would accept the need to pay for same. The Respondent indicated a willingness to accept Miss Schwab's suggested figure of £26.64.

9. On the question of Health and safety Miss Schwab accepted the need for a fire assessment, it seems one has not been conducted for some time, and what is referred to as 'Active Works' as set out at paragraph 21 of Alyshia Watson's witness statement. However, Miss Schwab disputed the annual cost of £22.45 to be found at paragraph 20 of the witness statement and considered that the cost should be £15.84 as in previous years before 2021/22. . Mr Mold told us the charge for Legionella was not pursued by the Respondent. The inflated cost appears to relate to works undertaken in 2021/2 to replace the emergency lighting at a cost of £2,088. Firstly, Miss Schwab considered this to be an unreasonable estimate as this was a one off and secondly, there are specific headings in her tenancy agreement both for Fire Equipment and Communal Lighting and this cost of £2,088 related to lighting and not Fire Equipment.

10. The difference between the figure in Alyshia Watson's witness statement (£22.45) and Miss Schwab's view (£15.84) is minimal, £6.61 in fact. Exercising the judgment of Solomon, we find that the correct figure for the year for the Health and Safety element should be £19.14 per annum. Certainly, Miss Schwab was content with this approach.

11. The final issue was the costs under s20C of the Landlord and Tenant Act 1985 (the Act). Mr MacDonald for Miss Schwab argued that she had been successful, and that the Landlord should not be able to recover the costs. Mr Mold was without instructions but did concede that the tenancy agreement

before us did not provide for the recovery of costs for defending an action by a tenant. We find that it is just and equitable to make an order under s20C of the Act that the Respondent cannot recover the costs of these proceedings as a service charge, notwithstanding that we do not see provisions for them to be recovered in any event.

Judge Dutton 23 August 2023

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.