FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AF/LSC/2023/0127**
Property	**:**	**1 Crompton Court, St Marks Square, Bromley, BR2 9UY**
Applicant	**:**	**Isaac McCullough**
Respondent	**:**	**Cathedral (Bromley 2) Limited**
Representative	**:**	**Mr T Hammond of Tanfield Chambers**
Type of application	**:**	**For the determination of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge H. Lumby** **Mr S Mason BSc FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR (by VHS)**
Date of hearing	**:**	**20 November 2023**
Date of decision	**:**	**20 November 2023**

DECISION

Decisions of the tribunal

(1) The tribunal determines that sums incurred by the Respondent in relation to the two lifts connected to the car park beneath the Property in respect of the service charge years ending 31 December 2020 and 2021 should be calculated on the same basis as in the service charge year ending 31 December 2022.

(2) The tribunal determines that the following sums are payable by the Applicant in respect of window cleaning (inclusive of Value Added Tax):

a. Service Charge year ending 31 December 2020 - £225

b. Service Charge year ending 31 December 2021- £150

c. Service Charge year ending 31 December 2022– £156

(3) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

(4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicant as lessee through any service charge.

(5) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under the Applicant's Lease.

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 in respect of the service charge years ending 31 December 2020, 2021 and 2022 in respects of lifts and window cleaning. The total amount stated to be in dispute is £1,435.28.

The hearing

2. The case was initially scheduled to be determined on the papers but the tribunal decided that it could not do so without hearing from the parties. This has been an online hearing, with the parties attending by VHS.

3. The documents that we were referred to are in a bundle of 661 pages together with supplementary submissions by both parties, the contents of both of which the tribunal have noted.

4. We heard from the Applicant in person and from Mr Hammond of counsel and Mr Paul Atkins of Living City Asset Management Limited on behalf of the Respondent.

The background

5. The Property is a duplex flat with a double height upper floor in a block of six duplexes, called Crompton Court. It is part of a wider purpose built development comprising five blocks. Keeping Court adjoins Crompton Court and comprises nine flats. Other blocks are higher rise, comprising Dewey Court (37 flats), Varney Court (62 flats) and Brouard Court (62 flats). There is commercial space on the ground floor and a car park beneath comprising both public and private parking. The development was completed in around 2018 with the Applicant acquiring his flat in 2020.

6. The Applicant holds a long lease of the Property pursuant to a lease dated 20 February 2020 between the Respondent and the Applicant for a term of 250 years (less 15 days) from 3 May 2013.

7. The landlord is required to provide various services pursuant to the lease with a service charge payable by the Applicant. It provides that the tenant is to pay a just proportion fairly attributable to the Property of certain costs the landlord is obliged to pay pursuant to the superior lease. In addition, it is to pay a Service Rent pursuant to Schedule 3 of the lease. This is a just proportion fairly attributable to the Property of reasonable and proper costs incurred in relation to certain services, including sums payable to the superior landlord for estate services.

The issues

8. The parties had prior to the hearing each completed a Scott Schedule identifying the items in dispute. Three separate items of dispute were initially identified, being the costs of contributions towards lift repairs, a contribution towards hawking services and the costs of window cleaning services. The tribunal had previously declined to determine the reasonableness and payability of hawking services as these amounted to a de minimis amount.

9. The amounts in dispute in relation to the lifts comprise £268.89 in respect of the service charge year ending 31 December 2020 and £8.78 in respect of the following year. The amounts in dispute in relation to window cleaning comprise £601.26, £398.58 and £157.77 respectively in respect of the service charges years ending 31 December 2020, 2021 and 2022.

10. The Applicant has not challenged the standard of the works in any of these cases. He is questioning the apportionment of the lift charges and the reasonableness of the window cleaning services.

Tribunal analysis

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

Law

12. It is clear from a reading of the relevant sections of the 1985 Act that the service charge provisions contained in a residential lease must be read subject to the effect of those sections. Section 18 of the 1985 Act defines "*relevant costs*" as including payments for services and management, and under section 19 of the 1985 Act "*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*".

13. Any service charge sum certified as payable under the Lease is therefore still subject to section 19 of the 1985 Act and is only payable to the extent that it has been reasonably incurred and the service in question is of a reasonable standard.

Lift services

14. There are two lifts beneath Crompton Court at ground floor level. Lift 1 goes directly to the car park below the block. Lift 2 (which is marked as being an Apartments lift) goes between the car park and ground level in the same way as Lift 1 but can also be used to access Crompton Court and Keeping Court above – all leaseholders of those blocks have a fob enabling them to use the lift in an upwards direction. Once on the floor above, it is possible to access the flats in both Crompton Court and Keeping Court.

15. Members of the public can utilise both lifts between ground and car park level and there is no priority in use of Lift 2 for the courts above. Only fob holders can make Lift 2 rise above ground level. Leaseholders of Crompton Court and Keeping Court can also access their blocks direct by use of stairs.

16. Lift 1 is maintained by the superior landlord and the costs of its maintenance form part of the estate service charge (towards which the Applicant and the other leaseholders of Crompton Court and Keeping

Court make a small percentage contribution). That arrangement was also adopted for Lift 2 from the service charge year ending 31 December 2021 and the only charge for that year as part of the block service charge was a contribution to an internet connection for the lift until terminated by the landlord and taken over by the superior landlord. However, in the service charge year ending 31 December 2020, the full cost of the maintenance of Lift 2 was charged to the leaseholders of Crompton Court.

17. The Applicant argues that it is not reasonable for Crompton Court to bear the full cost of the lift maintenance where it is being used by the public and leaseholders in Keeping Court.

18. The Respondent argued the costs can be assigned in whatever manner is just and fair. The sign on Lift 2 means that members of the public will tend to use Lift 1 and leaseholders of Keeping Court are more likely to use the stairs to access their block.

19. The tribunal agrees with the Applicant's arguments. It accepts that it is for the landlord to determine a just and fair allocation of costs but allocating all of these to Crompton Court is not just and equitable. The sign on Lift 2 makes no impact on which lift is summoned and the leaseholders of Keeping Court can easily gain access to their properties via the lift rather than climbing the stairs. The fact that Lift 2 has now been transferred to the estate service charge demonstrates what is a much more sensible approach. The landlord, by not apportioning the costs on a fairer basis before, has acted unreasonably.

20. The tribunal also finds that the cost of the internet connection is part and parcel of the lift maintenance and so should be treated in the same way.

21. The tribunal therefore determines that the costs associated with Lift 2 contained in the service charge years ending 31 December 2020 and 2021 should be apportioned and charged to the Applicant in the same manner as those were charged in the service charge year ending 31 December 2022.

Window cleaning costs

22. The Applicant disputes the level of costs of cleaning the windows in the Property, contending that they are unreasonable. He argues that they were not properly tendered and the allocation of costs between different blocks has not been carried out on a just and fair basis. He cites as evidence that an ad hoc clean was carried out of the block and Keeping Court in 2022 at a cost of £360 including VAT when the cost charged normally by the same contractor is normally around £1000 plus VAT. In addition, he points out the allocation means that leaseholders of Crompton Court are each charged around £230 per clean whilst the

leaseholders of Brouard Court only pay £39 per clean, even though their cleaning is performed by abseiling whilst the cleaning of Crompton Court is done by telescopic hose. He also points out that there are no residential windows at the rear of the block but play is made by the managing agents about how difficult the rear is to access and clean. Finally, he argues that cleaning should occur only twice per year.

23. The Applicant has obtained five quotations for doing window cleaning, all at substantially lower cost than the amount being charged by the current contractors. He argues that these should be the levels charged, indicating in the Scott Schedule that he would be prepared to pay £69 per year for two cleans.

24. The Respondent explained that when the managing agents took over in 2019, the windows had not previously been cleaned. They argue that a tender took place and the costs were higher in 2020 due to engrained dirt. A chemical treatment to assist was recommended and carried out. The following year (2021), with the windows being cleaner and not requiring chemical treatment, the cost came down and only increased by 4% in 2022. They believe that three cleans a year are reasonable and say they are merely following the allocation across the estate put forward by the contractors. Finally, they argue that the costs are reasonable, due to the amount of glass to cover in respect of the Crompton Court duplexes. The five quotes are not comparable as at least four are residential window cleaners and none visited site to quote.

25. The tribunal accepts the block needed additional cleaning in 2020 as a first clean and that the use of chemicals was within the landlord's reasonable discretion and so recoverable in principle. We also agree that three cleans a year are within its reasonable discretion and note that the landlord does not have to employ the cheapest contractor.

26. On the other hand, it also notes the disparity between blocks and the resulting imbalances between what leaseholders pay. The extent of the disparity leads the tribunal to find that there has been a misallocation between blocks by the contractor which the managing agent has wrongly accepted. Similarly, it is noted that the agents have on occasion split costs equally between blocks of different sizes without adjusting to reflect the sizes. It therefore finds that the amounts being charged to the Applicant in the relevant years are all unreasonable.

27. The tribunal has therefore considered what a reasonable charge might be. The information available to it is limited and it makes its assessments using that information as best it is able. Reallocating amounts between blocks on the information available is not possible and we have therefore assessed by reference to what is a reasonable amount for a leaseholder to pay.

28. The charge of £360 including VAT provides a useful starting point. That charge related to both Crompton Court and Keeping Court but may have had an element of cross subsidy as gutter cleaning was undertaken at the same time. A charge of £360 including VAT to clean Crompton Court is reasonable, especially if the rear is omitted. Three cleans a year at that level would give an annual amount total for the block of £1,080.

29. The Applicant pays 13.893% of block costs so the amount payable by him would be £150. £50 per clean is a reasonable contribution. It therefore concludes that £150 is the correct amount payable by the Applicant for 2021, the first normal year of cleaning.

30. The tribunal also notes that the fee charged by the contractor rose by 4% between 2021 and 2022 and accepts this rise is reasonable. This means that the amount payable by the Applicant for 2022 should be £156.

31. Finally, the tribunal also accepts that the first clean would have been more expensive due to residual dirt and the use of chemicals was reasonable. It therefore concludes that there should be a 50% uplift in the amount payable by the Applicant for that year and so determines the amount payable by him as £225 for the service charge year ending 31 December 2020.

32. The tribunal therefore determines that the amounts payable by the Applicant towards window cleaning are £225 in respect of the service charge year ending 31 December 2020, £150 in respect of the service charge year ending 31 December 2021 and £156 respect of the service charge year ending 31 December 2022.

Applications under s.20C and paragraph 5A and refund of fees

33. The Applicant made an application for a refund of the fees that he had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

34. The Applicant has applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("**Section 20C**") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

35. The relevant part of Section 20C reads as follows:-

(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 … the First-tier Tribunal … 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…".

36. The relevant part of Paragraph 5A reads as follows:-

"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".

37. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicant or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicant as an administration charge under the Lease.

38. In this case, the Applicant has been successful on the substantive points. The arrangements in relation to the lifts was changed in subsequent years to a fair and equitable basis and it was unreasonable for the Respondent not to make similar adjustments for all lift costs for the service charge years ending 31 December 2020 and 2021. Similarly, the Respondent through its agents persisted in adopting an inequitable split of window cleaning costs that produced a patently unfair result. In both cases, this case could have been avoided if the agents had engaged constructively with the Applicant instead of holding onto a patently indefensible position. Having heard the submissions from the parties and taking into account the determinations 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. The tribunal therefore make an order in favour of the Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

39. For the same reasons as stated above in relation to the Section 20C cost application, the Applicant should not have to pay any of the Respondent's costs in opposing the application. The tribunal therefore makes an order in favour of the Applicant that, to the extent that the same are chargeable as administration charges pursuant to the lease, none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under the Lease.

Name: Judge H Lumby **Date:** 20 November 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).