



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

Case reference : **LON/00AY/LSC/2023/0114**

Property : **Flat 7, 124 Knights Hill, West Norwood,
London SE27 0SS**

Applicant : **Usman Hayat**

Representative : **N/A**

Respondent : **KCG Chaucer Ltd**

Representative : **N/A**

Type of application : **Application for a determination of the
payability of service charges**

Tribunal members : **Judge Tagliavini
Mr Appollo Fonka FCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **1 December 2023**
Date of decision : **4 December 2023**

DECISION

Decisions of the tribunal

1. The tribunal finds the charges for the communal heating and hot water for the period 26/08/2022 to 25/08/2023 are reasonable in amount and are payable by the applicant subject to the re-service of a demand for payment accompanied a Summary of the Rights and Obligations.
 2. The tribunal makes no order under section 20C of the Landlord and Tenant Act or under paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
-

The application

2. The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. (2) The applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish their liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Background

3. The subject premises at Flat 7, 124 Knights Hill, West Norwood, London SE27 0SR ('the premises') comprise a 3 bedroom flat in a new build block of 19 flats. The applicant is an assured shorthold tenant under a lease made between KCG Chaucer Limited and Mr Usman Hayat and Dr Hina Yusef and dated 11/08/22 granting a term of 12 months with effect from 26/08/22 at a rent of £1,800 exclusive of water, electricity, any other fuel charges and telecommunications and broadband services. Clause 8.2 of the lease specified:

Gas/hot water (communal monthly charge to pay to Landlord account on the 1st of the month. Tenants' charges are calculated by the estimated cost charged to the Landlord and dividing evenly between all tenants.)

4. Clause 30.1 of the lease states:

Any notice to be given under Section 47 and 48 of the Landlord and Tenant Act 1987 shall be deemed to be properly served if sent addressed to the Landlord by registered post or Recorded Delivery and deemed delivered upon proof of delivery; or hand delivered and deemed delivered on the next working day; or sent by first class post and deemed delivered two working days

later to KCG Chaucer Limited, 98, Godstone Road, Kenley, CR8 5AB

Any notice shall be deemed properly served if sent to the Tenant by name at the address of the Premises and if sent by registered post or recorded delivery. Such notice will be deemed to have been served upon proof of receipt: or if served by hand delivery will be deemed delivered on the next working day; or if sent by first class post deemed delivered two working days later. A working day excludes Saturdays, Sundays and Bank Holidays.

5. The subject premises at Flat 7, 124 Knights Hill, West Norwood, London SE27 0SR ('the premises') comprise a 3 bedroom flat in a new build block of 19 flats. The applicant was the first occupier of the premises in which the heating is provided by way of underfloor heating from a communal heating/hot water system.

The issues

6. The tribunal has identified that the issues to be determined relate to charges made for the provision of heating and hot water for the period from 26 August 2022 onwards.
 - (i) whether the service charges have been properly demanded
 - (ii) whether the services are within the landlord's obligations under the lease/whether the cost of the services are payable by the leaseholder under the lease
 - (iii) whether the costs of the services are reasonable
 - (iv) whether the costs of the services have been properly allocated between flats
 - (v) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made.
7. Specifically, the applicant challenges the utility charge for communal hot water/heating in the sum of £920 for the period ____ and says variously they have not been charged in accordance with lease; the amount is unreasonable and the amount was not correctly demanded.
8. Clause 8.2. makes express provision for the payment of additional charges of by way of a proportion of any standing charge and for his use of water, electricity (Independent meter) and any other fuel charges

and telecommunication and broadband services as well as a contribution to the communal heating/hot water provided by the landlord.

The hearing

9. On 1 December an oral face to face hearing was held at which both parties attended with the applicant representing himself and the respondent represented by Mr Ben Bullock (Director) and Ms Hedsna Olivetti (Property Manager). The applicant relied upon a bundle of 87 (electronic) pages and gave oral evidence to the tribunal. The respondent relied on a bundle of 75 (electronic) pages and Mr Button and Ms Olivetti also made representations to the tribunal.
10. The applicant asserted the landlord had sought to charge the sum of £1,022.59 for the period 26/08/2022 to 30/07/2023. The applicant asserts there is no gas provision within the building and that the respondent landlord has failed to provide details of the gas supplier or how the sums claimed have been calculated and challenges the allocation detailed by the respondent in an email dated 4/7/2022 setting out the contributions between 1, 2, and 3 bed flats on a proportionate basis.
11. The applicant asserted the respondent in February 2023 switched to a calculation of energy charges through the Heat Interface Unit (HIU) in the 19 flats however, the applicant assert the heating/hot water charges did not noticeably reduce in the warmer months and therefore, the usage reading generated from the HIU appeared to have no relationship with the amount billed, as from May 2023 to June 2023 the units used decreased but the invoice amount increased.
11. Further, the applicant asserted the respondent has used a single gas meter for two different buildings, i.e. 124 Knights Hill, which includes this Property) and 126 Knights Hill (a care home/assisted living business also owned by the respondent, as the bills record the supply address as Unit B, 128 Knights Hill, London, SE27 0SR.
12. The respondent told the tribunal that 124 and 126 Knights Hill is in fact a single building served by a single communal gas heating/hot water system. However, the building is in fact vertically divided on the landings by the use of locked doors which divides the privately rented residential part from the part providing sheltered residential accommodation. The Post Office subsequently provided two addresses for the single building containing a total of 32 flats of which only 2 are 3 bedroom flats.
12. The respondent asserted that the landlord is billed by their supplier (YU Energy) and once received the invoice is split fairly between the 32

occupied units. KCG Chaucer Ltd pays all costs in relation to gas supply to the property, then seeks to recover costs (without profit) from tenants. There are no administration charges added to tenant invoices.

13. As a new development, there were delays in receiving the invoices for gas and at one point one of the two units (Unit B) had not been connected but was still charged for by the supplier. However, on discovery of this omission the unit was connected, a refund made which was credited to the lessees. Once the invoices were received, the cost was proportionally distributed to all tenants based on unit size and length of occupation up to the invoice date (August to December (2022)). We informed all tenants of the delays in receiving invoices for suppliers which is a problem that all tenants had regarding council taxes and electricity invoices too as it was a new development and Lambeth council registration of the new building and relative postcodes took time.

13. From January, following tenant engagement, it was communicated that the charges were going to be changed and now based on the usage of HOT water as we discovered that the HIU (heat interface unit) installed in their flat measured the amount of HOT water entering each unit. It was explained to Mr. Usman that the communal pump will always run to keep a certain amount of hot water in the system to be available when residents request hot water so there is always a minimum usage and charge in the whole system. Since February we have taken all readings at the start and end of the month (all tenants send us a photo) and we divide the total invoice received from YU Energy between all residential flats (all 32 flats) using the total of all HIU readings. Mr. Usman complained that the gas charges are unreasonable although the average per month charged to him since August 2022 comes at £135 per month. The applicant has since entered into a new tenancy agreement in which there is a fixed inclusive charge of £135 per month for communal heating and hot water.

Reasons for the tribunal's decision

14. The applicant conceded at the hearing the lease made provision for the collection of a communal heating/hot water charge. The applicant also conceded that 'equal' in the context of the lease could also mean a balanced and fair proportion of the heating/hot water charges.

15. The tribunal finds that as a new build property it was neither unexpected nor unusual for there to be 'teething problems' in respect of the appropriate apportionment of communal charges. However, the tribunal accepts the respondent reasonably adopted a bed occupancy approach before a HIU metered approach to calculate the lessees' usage and the applicant's reasonable proportion. The tribunal finds the inconsistency in billed amounts was in large part caused by the various

refunds credited to the lessees by the respondent, thereby creating the impression a monthly charge was in the region of £30.00 per month.

16. The tribunal finds the demands for communal heating/hot water charges are reasonable in amount. However, the respondent accepted a Summary of Rights and Obligations was not served with the demands on the applicant and therefore the sums are not payable until a demand for the outstanding payments is re-served together with such a Summary (section 21A Landlord and Tenant Act as amended by section 153 of the Commonhold and Leasehold Reform Act 2002).
17. Although the applicant sought to argue the respondent's conduct in failing to provide the requested information and threatening not to renew the tenancy/serve an eviction notice should be taken in account, when considering the reasonableness of the amount of communal charges, the tribunal has no jurisdiction to take these matters into account. The tribunal considers only whether the service was provided to a reasonable standard and at a reasonable cost i.e. what is reasonably payable in respect of such a service.
18. In conclusion, the tribunal finds the charges for the communal heating and hot water for the period 26/08/2022 to 25/08/2023 are reasonable in amount and are payable by the applicant subject to the re-service of a demand for payment accompanied by a Summary of the Rights and Obligations.
19. The lease makes no provision allowing the respondent to recover legal costs or administration charges and therefore, the tribunal makes no order under section 20C of the Landlord and Tenant Act or under paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Name: Judge Tagliavini

Date: 4 December 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).