FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal reference	**:**	**LON/00BK/LSC/2023/0063**
Property	**:**	**Flats 726, 211a, 315, 507 and 311a, Clive Court, 75 Maida Vale, London W9 1SG**
Applicants	**:**	**Marilena Volosinovici (1)** **Madiha Alam (2)** **Norma Dove-Edwin (3)** **Omalara & Omobolanle Sodeinde (4)** **Ademola Taiwo (5)**
Representative	**:**	**Mr H J Kearney represented Marilena Volosinovici (Flat 726)**
Respondent	**:**	**Clive Court (Maida Vale) Freehold Limited**
Representative	**:**	**Mr Jeff Hardman of Counsel, instructed by Mills Chody Solicitors**
Type of application	**:**	**Application under s.27A Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge N Hawkes** **Mr S Mason BSc FRICS**
Dates and venue of hearing	**:**	**11 and 12 December 2023 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**2 January 2024**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes the determinations under the various headings below.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicants seek determinations under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether certain service charges are payable.

2. The Applicants also seek an order for the limitation of the Respondent's costs in the proceedings under section 20C of the 1985 Act.

3. The Tribunal has been informed that Clive Court is a residential mansion block, built in the 1920s, which is situated in Maida Vale, London W9, and which contains 154 flats ("Clive Court").

4. The Applicants are the long lessees of flats 726, 211a, 315, 507 and 311a Clive Court. The Respondent landlord is a lessee owned company which owns the freehold of Clive Court.

5. The Tribunal has been informed that the percentage of the service costs which are payable by each of the Applicants is as follows:

Flat number	% payable
211a	0.977
315	0.549
507	1.1161
311a	0.962
726	0.55

6. An inspection was not requested, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The hearing

7. The final hearing took place at 10 Alfred Place, London WC1E 7LR on 11 and 12 December 2023. None of the Applicants attended the hearing in person. Mr Kearney represented the First Applicant, who is the lessee of Flat 726 Clive Court, and Mr Hardman of Counsel represented the Respondent landlord.

8. Mr Kearney was accompanied by Ms Morrison, who assisted him by taking notes. Mr Hardman was accompanied by three directors of the Respondent company, Dr Baghaei-Yadzi, Ms Mansour and Mr Shrivani. A number of observers who played no part in the proceedings also attended the hearing. The Tribunal heard oral evidence of fact from Mr Kearney and from Dr Baghaei-Yazdi.

9. The Second to Fifth Applicants did not attend the hearing, and they were not represented. They had been joined as applicants prior to the hearing and, whilst the Respondent sought to make various observations concerning their joinder, no application had been made to set aside the directions by which the Second to Fifth Applicants were joined as applicants, and no application had been made pursuant to rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") in accordance with rule 7 of the 2013 Rules, for a direction removing them as applicants. Accordingly, no issues concerning the joinder of the Second to Fifth Applicants were before this Tribunal.

10. The Tribunal's jurisdiction under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") is limited to determining the reasonableness and payability of service charges. The disputed matters were set out by the parties in a Scott Schedule and, insofar as the reasonableness and payability of service charge items is in dispute, the Tribunal has made the determinations which appear under the various headings below.

11. Any matters which do not concern the reasonableness and/or the payability of service charges fall outside the Tribunal's jurisdiction under section 27A of the 1985 Act and the parties may wish to take independent legal advice as to whether or not they may have other remedies.

The Tribunal's determinations

2019 Roof works

12. The Respondent states as follows:

"The Respondent instructed TE Nunn to carry out roofing work, at a cost of £14,750. This work was due to take place above flat 726. It is understood that the Applicant's Representative, assumed to be Mr Kearney, began shouting at the contractors following the commencement on the site. They left, but not before sealing the roof to make it watertight. They invoiced the Respondent for the work carried out, being £5,889.99."

13. Whilst giving oral evidence, Dr Baghaei-Yazdi clarified that the sum of £5,889.99 was in fact a deposit which had been paid to the contractors in advance. Mr Kearney denies that he shouted at the contractors. He also states that the roofers were failing to comply with health and safety requirements and that they have referred to an inspection chamber which does not exist.

14. Neither party has requested permission to rely upon expert evidence. Accordingly, there is no expert opinion before the Tribunal concerning whether or not the roofers complied with health and safety requirements or as regards the standard of their work.

15. The role of this Tribunal is to determine whether the sum of £5,889.99 is within the reasonable range for the work which the roofers carried out before they left site. It is not the role of the Tribunal in these proceedings to make determinations in respect of all matters in connection with the roof which are in dispute between the parties. Accordingly, the Tribunal makes no determination as to whether or not further work to the roof should have been carried out or as regards any other issues which fall outside the Tribunal's jurisdiction pursuant to section 27A of the 1985 Act.

16. Mr Kearney accepts that the roofers should receive some payment for the work they carried out; the dispute before the Tribunal concerns how much they should be paid. Dr Baghaei-Yazdi gave oral evidence of fact that he personally saw part of the roof being removed and a quantity of equipment being brought up to the 8th floor of Clive Court by the roofers. He stated that the payment they received covered preparatory work; time spent bringing equipment onto the roof, time spent on the roof; and the removal of the equipment. He stated that the roofers left after around 2 days and that they could not be persuaded to return (the intention had been that they would install a new mastic asphalt roof). However, that the roof was watertight following their departure. The Tribunal accepts this oral evidence on the balance of probabilities.

17. The Respondent argues that, a deposit of a third of the contract price having already been paid, it is not reasonable to expect the Respondent to incur legal fees in pursuing the contractors which for the return of part of the deposit.

18. Applying our general knowledge and experience as an expert Tribunal and doing our best on the limited evidence available, the Tribunal finds that the sum paid to the roofers is outside the reasonable range of charges for the work described by Dr Baghaei-Yazdi. Accordingly, the process followed by the landlord in paying a deposit of a third of the contract price in advance has not led to a reasonable outcome. In all the circumstances, we find that the total sum payable falls to be reduced to £3,600 (including VAT).

19. The sums payable by the lessee(s) of each flat under this heading are therefore as follows:

Flat number	Sum payable
211a	£35.17
315	£19.76
507	£41.80
311a	£34.63
726	£19.80

2019 CCTV works

20. The Respondent states as follows:

"The Respondent refers to 4 separate quotations for CCTV works, which is included in the bundle [396]. The quotation from Keko Building & Construction of £25,200 was preferred rather than the slightly lower quotation as Keko offered two years free warranty on parts and labour."

21. Mr Kearney contends that Keko is associated with the directors of the Respondent company and that the costs are unreasonably high because Keko has been paid £5,710 more than the lowest tender. The Respondent does not accept the assertions made concerning Keko's lack of independence and submits that there is, in any event, no requirement for all contractors who tender to be unconnected with the landlord. Dr Baghaei-Yazdi gave evidence, which the Tribunal accepts, that the company which gave the lowest tender did not provide a two year warranty and that the warranty which has been provided by Keko has been used.

22. The tenders for the CCTV works were £19,490.40, £25,200, £28,314.00, and £34,465.50. No alternative quotations have been provided by the Applicants and there is no expert evidence before the Tribunal that relevant standards have not been complied with.

23. There is no obligation on a landlord to choose the cheapest contractor, or to ensure that all contractors are wholly unconnected with the landlord (see below). Whilst the contractors have quoted on the basis that different types of equipment will be used, the provision of CCTV is

an area in which it is usual for different types equipment to be used by different contractors in order to achieve the same desired performance.

24. In all the circumstances, the Tribunal is not satisfied on the balance of probabilities on the basis of the evidence before it that Keko's charges fall outside the reasonable range.

25. The total cost of the CCTV is £25,200. The sums which have been demanded from the Applicants in respect of CCTV are £138.60 from Flat 726; £242.42 from Flat 311a; £292.57 from Flat 507; £138.35 from flat 315 and £246.20 from flat 211a. The Tribunal finds that these costs are reasonable and that they are payable in full save in respect of charge to Flat 507.

26. The Tribunal accepts Mr Kearney's contention that the statutory consultation requirements pursuant to section 20 of the 1985 Act apply in respect of work carried out to Clive Court where the contribution of any tenant is more than £250 (see the Service Charges (Consultation Requirements) (England) Regulations 2003/1987, regulation 6: "Application of section 20 to qualifying works").

27. The consequence of this is that "*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*" (subsection 20(7) of the 1985 Act). Mr Hardman also agreed with this analysis.

28. It is common ground that no section 20 consultation took place in respect of the CCTV work. Accordingly, the charge to Flat 507 is limited to £250. Mr Hardman indicated that the Respondent may seek to apply for dispensation from the statutory consultation requirements.

2019 Fire alarm system

29. The total sum of £34,800 was paid for a fire alarm system. Mr Kearney stated that the fire alarm system does not conform to British Standards but he accepted that there is no expert evidence before the Tribunal to this effect. As stated above, neither party sought the Tribunal's permission to rely upon expert evidence. No alternative quotations have been provided by the Applicants and there is no expert evidence that relevant standards have not been met. On the evidence available, the Tribunal finds that these costs are reasonable and payable save insofar as they exceed £250 per flat because it is common ground that no section 20 consultation took place.

30. The sums which have been demanded from the Applicants in respect of the fire alarm system are: £191.40 in respect of Flat 726; £334.78 in

respect of Flat 311a, which the Tribunal limits to £250; £404.03 in respect of Flat 507, which the Tribunal limits to £250; £191.05 in respect of Flat 315; and £340 in respect of Flat 211a, which the Tribunal limits to £250. Mr Hardman indicated that the Respondent may seek to apply for dispensation from the statutory consultation requirements.

2020 Fire doors

31. The total sum of £118,232 was paid for fire doors in 2020. The Respondent obtained quotations from TEK, Keko, and Active Fire Safety and chose TEK to undertake the works. TEK had provided the lowest quotation.

32. The First Applicant contends that the consultation process was flawed. If, which is not agreed by the Respondent, Keko is connected with the Respondent's directors this will not invalidate the statutory consultation process. Paragraph 4 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 includes provision that *"At least one of the estimates must be that of a person wholly unconnected with the landlord*" and it is not contended that the other contractors are connected with the landlord.

33. Mr Kearney also raised the fact that one of the contractors appears to have priced on the basis of another contractor's blanked out estimate rather than on the basis of a professionally prepared specification. This is not ideal but it does not invalidate the section 20 consultation process on the facts of this case because there is no evidence that the second contractor was aware of the first contractor's figures. No alternative quotations are relied upon by the Applicants and there is no expert evidence that relevant standards have not been complied with.

34. In all the circumstances, Tribunal finds that the sums claimed under this heading are reasonable and payable in full.

2021 Entry phone system

35. Mr Kearney contends that the statutory consultation process is flawed because the quotations are not like for like. Whilst the contractors have quoted on the basis that different types of equipment will be used, the provision of entry phone systems is an area in which it is usual for different types equipment to be used by different contractors in order to achieve the same desired performance. No alternative quotations are relied upon by the Applicants and there is no expert evidence that relevant standards have not been complied with.

36. In all the circumstances, Tribunal finds that the sums claimed under this heading are reasonable and payable in full.

Gas charges

37. Mr Kearney's contention that, on a true interpretation of the First Appellant's lease, *"Allowed by the Lessor to the Lessee"* at subparagraph (h) on page 9 means credited to the lessee was agreed by the Respondent. The First Applicant and the Respondent then reached an agreement concerning the gas charges demanded from the First Applicant. In the absence of any submissions to the contrary, the Tribunal finds that the gas charges demanded from the Second to Fifth Applicants are payable in full.

Insurance costs

38. The First Applicant and the Respondent reached an agreement concerning the insurance costs. In the absence of any submissions to the contrary, the Tribunal finds that the insurance costs demanded from the Second to Fifth Applicants are payable in full.

Application pursuant to section 20 of the Landlord and Tenant Act 1985

39. In light of the findings above and the limited degree of success of the Applicants, the Tribunal determines that it is not just and equitable in all the circumstances to make an order under section 20C of the Landlord and Tenant Act 1985. Further, the Tribunal notes that the Respondent is a lessee owned company which the Tribunal has been informed has no independent assets to potentially cover a shortfall.

Name: Judge N Hawkes **Date:** 2 January 2024

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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber
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).