FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LSC/2023/0429**
Property	**:**	**9 Holland Road, London W14 8HJ**
Applicant	**:**	**Paul Anthony Cleaver (FTT appointed manager)**
Representative	**:**	**Lazarev Cleaver LLP**
Respondent	**:**	**Nicolas Michael Gustave Kullman and Galina Vladlenova Kullman**
Representative	**:**	**In person**
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 Dutton** **Mrs E Flint FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR by paper determination**
Date of decision	**:**	**5 March 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £8,378.22 is payable by the Respondent in respect of the on-account payment of the service charges for the years 2023 relating to the basement extension.

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

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

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 Respondent in respect of the service charge year 2023 in respect of the repair and maintenance of the extension to the rear of the basement at the building 9 Holland Road, London W14 8HJ (the Building).

2. The issues we are required to determine are set out in the directions issued on 1 December 2023. They are whether the repair and maintenance of the rear basement extension falls within the landlord's responsibility under the terms of the lease for flat D at the Building (the Property) and whether an on-account payment of £8,378.22 is payable in respect of such works.

3. The directions provided for this matter to be determined on the papers and no party sought a hearing or an inspection of the Building.

4. We have been provided with a bundle of documents running to some 295 pages, together with a clean copy of the lease for flat 9B at the Building and, although not provided for in the directions a response from the Respondents' to the Applicant's response. We have noted these documents and exhibits and taken the contents into account when reaching our decision.

The background

5. The property which is the subject of this application is a four-floor period building converted into three residential flats and a nursery as described in the application. The Respondents are the leaseholders of the Property under the terms of a Deed of Surrender and Regrant dated 23 December 2019 (the New Lease) made under the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act). The term was extended from that granted under a lease dated 6 February 1989 made between

Caroline Anne Norris (1) and Caroline Anne Norris and Robert Cairo Wilson (2) as varied by a deed of variation (not provided to us) dated 15 August 1990 between the said C A Norris and Aaron Bowen. Together they are referred to as the Existing Lease in the lease of the Property to the Respondents.

6. The New Lease is granted on the same terms and covenants contained in the Existing Lease, except as modified as to the terms as set out in the New Lease, which are not relevant to the matters we need to consider.

7. The Existing Lease is to be found at page 57 onwards of the bundle supplied to us. The Building is defined as being held under title number 316588, a copy of the register being included in the papers, but sadly not the official filed plan. The definition says "*..the freehold land together with the building erected thereon known as 9 Holland Road in the London Borough of Kensington & Chelsea.*"

8. The Property is described in the First Schedule Part I to the Existing Lease and excludes *"any of the main timber and joists of the building or any of the walls bounding the Demised Premises or any of the structural walls lying within the Demised Premises…"*

9. At Part III of the First Schedule under Excepted Rights at paragraph 6 is the following "*Full right and liberty for the Lessor in the Landlord's absolute discretion to deal as the Lessor may think fit with any lands or premises adjoining adjacent or near to the demised premises and to erect thereon any building whatsoever and to make any alterations and carry out any demolition rebuilding or other work which the Lessor may think fit or desire to do whether such works shall or shall not diminish the light or air which may now or at any time during the term hereby granted to be enjoyed by the Tenant"*. The plan to the existing lease is not helpful.

10. We were provided with a copy of the lease for flat B dated 23 December 2013 and made between the same parties as the Existing Lease. The property is described as the ground floor and basement of The Building edged in red on the plans but excluding service media which did not exclusively serve the property and *the roof, roof space, the foundations, and all external structural or load bearing walls, columns, beams, joists, floor slabs and supports of the building"*. The plans to this lease clearly show the basement extension in existence at the time of the grant. The lease also allows the use of the property for a nursery/office as well as residential.

<u>The issues</u>

11. The Applicants statement of case submitted by Lazarev Cleaver LLP dated 22 December 2023 argues that the rear extension works demand is payable by the Respondents.

12. We have noted the paragraphs relating to the Property, the Parties and the factual background, which in truth, although expanded upon by the Respondents is not greatly challenged. We have noted the steps taken to consult and the changing costings and the review of the lease.

13. It is put to us that the sole question for us to determine is whether the Respondent is liable to contribute to the costs of repairing and maintaining the rear extension and thus contribute to the costs as sought. We are referred to a number of authorities and to Woodfall on Landlord and Tenant. We have noted the contents.

14. The Respondents' statement is dated 19 January 2024. It gives some additional, history concerning the Building and states, as would seem to be the case, that the extension was not erected at the time of the Existing Lease, but it does not seem to be disputed that it was constructed sometime after 2003 and would certainly seem to be in situ at the time of the grant of the lease for flat 9B for a term of 999 years in 2013.

15. It is alleged that the extension was built without planning permission, although it is said that retrospective consent has been given. However, there appears to be a dispute about the usage of the flat roof. The Respondents argue that the definition in the Existing lease, being the 1989 and 1990 lease/variation means that they cannot be held responsible for the works to the extension. Alternately there are issues raised about the commercial use of the extension and proportionality and reasonableness of the service charge. It is said that the extension is used solely for commercial purposes and cannot therefore be a service charge for residential property.

16. There then follows complaints concerning the conduct of the managing agents, both past and present and the alleged misuse of the roof terrace above the extension by the Landlady and her husband.

17. We have a response prepared by Counsel for the Applicant, the contents of which we have noted. We have also considered the cases to which we were referred and the extract from the textbook, Woodfall.

Findings

18. As was suggested by Mr Cleaver one has some sympathy for the Respondents. However, it is clear from the case of Maunder Taylor v Blaquiere that the question of set off cannot apply against the manager. It is a claim that, it would seem, should have to be against Caroline Anne

Norris as Landlord, or her and Mr Wilson as the leaseholders of flats A and B.

19. The obligation on the part of the Applicant under the lease to the ground and basement property are to be found inter alia at clause 10(1). This includes the requirement to *"maintain in good repair decoration and condition the main structure including the roof foundations main structural walls and timbers of the Building and Service media serving the Building which are owned by the landlord and are not the responsibility of the tenant or owner or occupiers of the other flats*". The Building is defined as 9 Holland Road, London W14 8HJ and cites the same registered title number 316588. However, in this case there are annexed to the lease, clear plans showing the extent of the Building, which, in our finding, clearly includes the basement extension. This lease is dated 23 December 2013.

20. We find therefore that the Applicant, as the managing agent, has an obligation to repair the extension, it being part of the Building when this lease was granted in 2013. The question is whether the Respondent must contribute.

21. They hold under the terms of the New Lease. This is dated 23 December 2019, some 6 years after the lease was granted for the basement and ground floor. This New Lease would be on the same terms as the existing lease but on the same terms as apply at the relevant date, the date of any notice under the 1993 Act. Although it is not clear whether this procedure was followed, clearly the New Lease was granted under the provisions of the 1993 Act. Further it seems to us that the Landlord would be under an obligation to provide services and repairs under the lease for Flat B and that accordingly the Respondents would expect to have that obligation going forward.

22. In those circumstances we find that the Respondents do have to contribute the repair costs associated with the rear basement extension. There is no real challenge to the costs of the works being sought. On the basis of the papers before us we determine that the Demand is payable in the sum of £8,378.22. Such sum is to be paid within 4 weeks of the date this decision is sent to the parties. This is without any prejudice to their rights, if any, arising from any alleged breaches of covenant either by the Landlord or the tenants' of the basement.

Application under s.20C and refund of fees

23. In the statement of case the Respondents applied for an order under section 20C of the 1985 Act. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines it will not make an order under s20C of the 12985 Act.

Name: Judge Dutton **Date:** 5 March 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 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).