



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

Case Reference	: LON/OOBE/LSC/2022/0048
Property	: Sarawak Court, 47 Consort Road, London SE15 3SS
Applicant	: Notting Hill Genesis(1) Notting Hill Home Ownership(2)
Representative	: Devonshires
Respondent	: Leaseholders at Sarawak Court
Representative	:
Type of Application	: Determination of payability pursuant to s 27A Landlord and Tenant Act 1985
Tribunal Members	: Judge Jim Shepherd Louise Crane MCIEH
Date of Determination	: 27 th June 2022

Determination

1. In this case the Applicants Notting Hill Genesis and Notting Hill Home Ownership Limited (“The Applicants”) seek a determination by the Tribunal as to where responsibility lies for the replacement of component parts of a heating

system. For the reasons given here the Tribunal has decided that responsibility lies with the Applicants themselves and that they are entitled to recover the cost from their leaseholders.

Background.

2. The case concerns premises at Sarawak Court, 47 Consort Road, London, SE15 3SS (“The premises”). The premises consist of 26 flats and 1 house. The Freeholder of the premises is Notting Hill Genesis and the Head Lessee Notting Hill Home Ownership Limited. Both organisations are part of the same group of companies but are separate legal entities. The leaseholders at the premises are shared ownership lessees originally granted by Presentation Housing Association who merged with Notting Hill Housing Group.
3. There is a communal heating system at the premises providing heating and hot water to the flats. The flats each contain a Heat Interface Unit (HIU) which exchanges hot water. The HIUs are an integral part of the communal heating system and if one breaks down the whole of the system malfunctions.
4. There have been intermittent faults with the heating and hot water systems. Works carried out by the Applicants in 2020 identified an erosion in the heating and hot water pipework. An independent consultant identified various means of addressing the issue most of which required the replacement of the HIUs. In August 2021 one of the central boilers failed and a temporary boiler had to be installed. This is still in situ and the need for a new heating system is now urgent.
5. The Applicants require clarity as to the lease interpretation before embarking on the major work of replacing the heating system including replacing the HIUs which are in the individual flats. Pausing here it is important to stress that this is not an application for dispensation pursuant to s.20ZA of the Landlord and Tenant Act 1985. The Applicants will need to consult the leaseholders under s.20 of the same Act unless such dispensation is granted.

6. Some leaseholders have in their response to the application raised the issue of the reasonableness of the cost of the forthcoming works in light of their argument that there has been neglect by the Applicants in the past in dealing with the heating and hot water system. Whilst the Tribunal has sympathy with this argument it is not relevant to the issue at hand which solely concerns the interpretation of lease terms in order to determine who is the liable part to pay for the works.
7. The leaseholders retain all of their rights to challenge the reasonableness of the charges that may be sought from them by way of s.27A Landlord and Tenant Act 1985.

The lease clauses

8. Under their leases the leaseholders covenant to keep the interior of their flats in good and substantial repair. Expressly under clause 3(3) the interior includes “all radiators and water and sanitary apparatus and gas and electrical apparatus of the premises and all pipes drains and wires”.
9. The landlord’s covenant (here being the immediate responsibility of the head lessee) requires them to “maintain, repair...and renew the pipes , sewers, drains, wires cisterns and tanks and other gas electrical drainage ventilation and water apparatus and machinery in under and upon the building (*except such as serve exclusively an individual flat in the Landlord’s estate*)(clause 5(3) (b)).
10. The landlord is able to recover service charges to meet the cost of meeting this responsibility (clause 7).

11. These lease clauses are mirrored in the lease between the Head Lessee and the Freeholder -i.e. the Applicants.

Determination

12. It is tolerably clear that the HIUs do not *exclusively serve* the flats because they form part of the wider communal heating system. This is the practical and sensible interpretation of the lease terms. If it were not so the individual leaseholders would need to maintain the HIUs in their flats. If they failed to do this the whole of the heating and hot water system would malfunction. Further it is possible to interpret the head lessee's repairing obligation such that it includes the HIUs which are part of the heating and hot water *machinery* which they must maintain.
13. The consequence of this interpretation is that the the Applicants are responsible for replacing he HIUs and can recharge the cost of the work from the leaseholders. This is the determination of the Tribunal. It must be again stressed however that this is not a decision as to the reasonableness of any forthcoming costs that the leaseholders will be asked to bear and they are able to challenge this if they wish in the future.

Judge Shepherd

27th June 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.