



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

Case reference : **LON/00BE/LSC/2022/0287**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **95 Talfourd Road SE15 5NN**

Applicant : **Harry Streatfeild & Alexandra Richardson (Flat D)
Rowena Wallace (Flat F)
David Kane (Flat A)**

Representative : **Henry Streatfeild**

Respondent : **Long term Reversion (Torquay) Ltd**

Representative : **Issac Prepah
Parkfords Management Company**

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 D Brandler
S. Johnson MRICS**

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

Date of decision : **2nd March 2023**

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same and all the issues could be determined in on paper. The documents that we were referred to are in the Applicants' bundle of [97] pages, the Respondent's witness statement in response, a the Applicants' response to that witness statement. The contents of which we have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal determines that the Respondent is required to provide services, including the maintenance, repair and/or replacement of the external metal fire escape staircase to the building; and the Applicants are required to contribute towards the cost of those works by way of a variable service charge, reasonably incurred.
- (2) 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 lessees through any service charge.
- (3) The tribunal determines that the Respondent shall pay the Applicants £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The application

1. The Applicants seek 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 Applicants in respect of the service charge years 2022.

The background

2. The property which is the subject of this application is a converted Victorian house on three floors. There are a total of 6 2-bedroom self-contained flats in the building all accessed by the internal stairwell. There is an external metal fire escape staircase at either side of the building that is accessed from the rear door of each upper floor flat. It is the proposed replacement of that staircase that is the subject of this application by the leaseholder Applicants.
3. The dispute relates to the liability for the costs of the installation of fire escape stairs said to be unsafe. The costs for the work of replacement have been include in s20 consultation at an estimated cost of £35,198 plus VAT.

4. The Applicants allege that the requirement to replace this external staircase is as a direct result of the Respondent's failure to maintain that common part of the building. The terms of the lease require the landlord to maintain, repair redecorate and renew the common parts and as well as within every seventh year to repair the exterior ironworks gutters pipes and woodwork of the buildings in a proper and workman like manner and with suitable materials.
5. The Applicants assert that no such work has been undertaken by the current freeholder since they acquired the freehold interest in 2010. Nor has the freeholder been able to show any evidence of repair or maintenance of the of the staircases since the building was converted in 1992.
6. The Tribunal issued directions on 30/09/2022 which were amended on 03/11/2022. They required "*The landlord must by 4 November 18 November 2022 send to the Applicant by email a full statement in response to the allegations of historic neglect made by the Applicant, together with any copies of any previous decisions of a superior court to be relied upon. In addition, copies of all relevant documents relating to the dispute, which must include copies of any surveys relating to the stairs, details of works carried out by way of maintenance and repair in the last 10 years (if any) and the sums paid in respect thereof shall be provided . Details of the costs associated with the works to the stairs must be provided with a specification and tender for the works to be undertaken*"
7. The Respondent's managing agent's position is that they took over the management of the property in 2019, that they were not responsible prior to that time for repairs, that the main applicant in Flat D purchased his flat in 2017 and should have been aware of any defects at that time and that the health and safety report finds no fault with the staircase.
8. The Respondent has not provided any details of works carried out by way of maintenance and repair in the last 10 years, in breach of direction 7 detailed above They rely on a Health and Safety report carried out on 27/02/2017 by Watson Wild & Baker Ltd [19]. The only mention of the external staircase appears at point 3.1 of the risk assessment, some 15 pages into the report, which states merely "*There is an external metal staircase escape route either side of the building which is accessed from the rear door of each upper floor flat.*" [34]. No photographs are included in that report to demonstrate the condition at the time of the report and there is no suggestion that the person inspecting went onto the staircase, or whether he inspected the staircase from top to bottom.
9. In stark contrast to the 2017 report, is a report from Steel Stair Inspector Limited dated 4/08/2019 [44]. Steel Stair Inspector reports

that the two fire escapes are in an extremely poor condition. They report that the stairs are used daily by the occupiers to gain access to the garden, and they recommend that such use is stopped unless in extreme circumstances until repairs or new fire escapes are fitted [45]. Detailed photographic evidence is provided to demonstrate the poor condition of the staircase.

10. To his credit, the Respondent has conducted a s.20 consultation by way of correspondence dated 02/04/2020. Having instructed LBB Chartered Surveyors in July 2020, they respond on 16/12/2020 with four quotations. However, to date no works have been carried out, and there is no evidence of the Respondent attempting to expedite urgent works by making a dispensation application.
11. However, in the face of this application to the Tribunal, the Respondent has withdrawn the quotation and proposed works so that no service charges are demanded from the leaseholder Applicants. This is despite the engagement of LBB Chartered Surveyors and the apparent acknowledgement of the requirement for urgent works.
12. It is the Respondent's position therefore that the Tribunal cannot make a determination under s.27A Landlord and Tenant Act 1985 because there is no service charge demand to assess.
13. The Applicants hold a long leases of the flats within the building which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. This is not in dispute and nor is the apportionment in dispute.
14. The dispute is solely that the landlords have neglected the works required to maintain the external staircase, which has led to it reaching end of life earlier than would have been necessary, but for their neglect, and therefore the landlord should be liable in full for the cost of the staircase.
15. The leaseholders seek to rely on a report from Ian Cullingford dated 17/10/2022 [94-97] Unfortunately that report is missing the header of the letter and is not signed. That aside, it does not provide sufficient information for the Tribunal to determine whether the staircase reached end of life early, how early, what were the Applicants' losses in that regard, taking into account that they had not been required to pay anything for repairs to the staircase in the intervening years.
16. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection, and the tribunal did not consider that one was necessary, nor would it have been proportionate, to the issues in dispute.

The issues

17. The respondent has frustrated the application by withdrawing the quotation and removing the intention to charge service charges for the replacement external fire escape staircase that is required for the safety of the occupiers of the building.
18. On that basis, the Tribunal cannot determine anything other than the legal liability under the terms of the lease for the landlord to carry out the works, and the leaseholders to pay 1/6th each. Those issues are however not in dispute.
19. There is no valid service charge for the Tribunal to determine reasonableness.
20. In the meantime, the occupiers of the building remain without a safe external staircase.
21. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

An uncharged service charge item: for the proposed replacement of exterior stairs

22. Under the terms of the lease the landlords are obliged to carry out the works, and are entitled to recover from each flat 1/6th of the costs that are reasonably incurred.

Application under s.20C and refund of fees

23. The Applicant made an application for a refund of the fees that they have paid in respect of the application.
24. In the application the Applicants applied for an order under section 20C of the 1985 Act.
25. On the basis that the Respondent has frustrated this application by withdrawing the quotation and the intention to carry out urgent remedial works to the external metal fire escape staircase, leaving the Tribunal unable to determine reasonableness and payability, the Tribunal order the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
26. The Tribunal further determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in

connection with the proceedings before the tribunal through the service charge.

Name: Judge D Brandler

Date: 2nd March 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).