FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BD/LSC/2022/0296.**
Property	**:**	**Flat 2, Garrick's Villa, Hampton Court Road, Hampton, Middlesex TW12 2EJ**
Applicant	**:**	**Boudicca Scherazade**
Representative	**:**	**In person**
Respondents	**:**	**Garrick Estate Limited**
Representative	**:**	**Gregsons Solicitors**
Type of application	**:**	**Application under S.27A Landlord and Tenant Act 1985**
Tribunal	**:**	**Tribunal Judge Hansen & Alison Flynn MRICS**
Date of Decision	**:**	**28 February 2023**

DECISION

Determination

(1) The Tribunal determines that the Applicant is liable to pay the sum of £3,433.01 in respect of the balcony reconstruction works.

(2) The Tribunal makes no order under paragraph 5A of the Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Reasons

1. By an application dated 22 September 2022 the Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 of her liability to pay the costs of "balcony reconstruction works" in the sum of £3,433.01.

2. This matter has been dealt with by way of a paper determination with the consent of both parties, and the Tribunal having formed the view that it was appropriate and proportionate to deal with the matter on the papers.

Background

3. The Applicant is the long lessee of Flat 2, Garrick Villa. The original lease was one dated 15 May 1969 ("the Lease") for a term of 99 years from the Christmas Quarter Day in 1967. Flat 2 is on the first floor of the building identified in the Lease as "Garrick Villa" which comprises 9 flats. The original lessor was Penard Associates (Developments) Limited and the original lessee was one Nora Reynolds Veitch. There was a surrender and regrant on 27 October 1995 for a term of 999 years from the original commencement date, by which time the lessor was the current Respondent, Garrick Estate Limited. The residue of the term of years is now vested in the Applicant.

4. Importantly for present purposes, the regrant expressly provided that "*This lease is made upon the same terms and subject to the same provisions (including the proviso for re-entry) in all respects as those contained in the Lease save as varied hereby*".

5. Materially, and in our view of decisive importance to the outcome of this application, are the following terms of the Lease.

6. Firstly, recital (c) to the Lease provides as follows:

> *"All windows and doors and the balcony of the Flat shall belong to the Flat but the responsibility for … maintaining the Balcony shall belong to the Lessors"* (emphasis added)

7. Secondly, Clause 2, which contains the lessee's covenants, includes a covenant on the part of the lessee as follows at Clause 2(1)(a):

> *"To pay the rent and service charge hereby reserved and made payable at the times and in manner aforesaid without any deduction and to pay the Lessors on demand the cost from time to time of repairing and renewing the balcony"* (emphasis added)

The Dispute

8. By her application the Applicant asks the tribunal "*to determine the amount of the liability for the works to the balcony carried out [between] April [and] August 2022 as per service charge allocated share*". She goes on to complain in her application that the Respondent did not obtain "*multiple quotes for this phase of the work*" and contends that she is "*not wholly liable for this cost – it has always historically previously been a division between all the lessees as is stated in my lease – in the same manner as regular annual service charges*". She also appears to suggest that the cost of this work should be borne by the sinking fund to which she has contributed.

9. In her supporting evidence, the Applicant also suggests that the balcony was damaged by water ingress caused when the Fire Brigade attended to put out a fire in 2008. She also says this:

> "*The top surface had not been removed since it was installed in 1969 during the Penard estates development of the flats. Does the tribunal now feel that It is fair that I must bear the brunt of costs of incomplete works in the past that is the main reason that this problem has escalated and we are in this situation today?"*

10. The Respondent maintains that the lease terms are clear and that the cost of repairing the balcony is the Applicant's sole responsibility.

Discussion

11. The principal issue in this application concerns the proper interpretation of the Lease. The Applicant maintains that the balcony is not demised to her and that the balcony falls to be treated in the same way as any other service charge item. The Applicant also makes the point that she has always historically paid her share and says, in relation to the disputed charge in this case, that she has "*never disputed*" her liability to pay "*my apportioned share*" for the balcony work.

12. Clause 1 of the Lease provides for the lessee to pay, firstly, an annual ground rent, and, secondly, by way of service charge:

> *"… the proportion from time to time certified by the Lessors Surveyor (whose certificate shall be final and binding on the Lessee) as being the proportion properly attributable to the Flat of the expenditure from time to time incurred … by the Lessors in respect of the matters specified in the Third Schedule hereto…"*

13. We have set out Clause 2(1)(a) above and underlined the words which are of particular relevance to the present case.

14. Clause 3(3) contains a Lessor's covenant ("*subject to payment by the lessee of the service charge and the cost of maintaining repairing and renewing the balcony*") as follows:

> *"To keep the external walls … and balcony in good repair and condition".*

15. The Third Schedule identifies at paragraph (4) thereof "*the cost from time to time of inspecting cleansing maintaining repairing and renewing all the external walls and columns and the foundations roofs and other parts of Garrick Villa not included in the Flat or any other flat*".

16. In approaching the question of construction that arises in this case, we apply the well-known principles of construction set out by Lord Neuberger in *Arnold v Britton* [2015] AC 1619 at [15]-[23], in particular at [15] where he said this:

> *"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] AC 1101, para 14. And it does so by focusing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions".*

17. Against this background, and applying those principles, the proper interpretation of the Lease is clear. It is clear that the Applicant has strong feelings on the subject but the Tribunal is unable to accept her submissions. Flat 2 is the only flat with a balcony. The balcony *is* clearly part and parcel of Flat 2. The contrary is not seriously arguable. The recital at (c) makes this clear but so do the basic underlying facts – the balcony is only accessible from Flat 2. The Lessor is responsible for repairing and renewing the balcony but the lessee is responsible for the *entire* cost of any such work to the balcony. Again, we regard this as entirely clear from the terms of the Lease. Contrary to the Applicant's primary submission, the balcony is *not* treated in the same way as other general service charge items. The Lease terms make that very clear: see Clauses 2(1)(a) and 3(3) and paragraph (4) of the Third Schedule. For the avoidance of doubt, insofar as there is any inconsistency in the Lease, and we should emphasise that we consider the meaning of the Lease clear, we consider that the intention of the parties as discerned in accordance with the principles set out above is entirely clear and accords with our interpretation.

18. The Applicant prays in aid what she describes as the historic position in relation to the treatment of such costs, but we have seen no evidence to suggest that the Lease has been varied or that the landlord is estopped from relying on the strict terms of the Lease.

19. Insofar as the Applicant alleges that the problems with the balcony stem from what she describes as "*incomplete works*" by the original developer, again there is no evidence to make good this contention and it would not avail the Applicant in any event given the terms of the Lease.

20. Insofar as the Applicant complains that the lessor did not obtain "*multiple quotes*" for the work, she has produced no rival costings of her own and we have seen nothing to indicate that the modest sum claimed of £3,433.01 is anything other than reasonable. Following a section 20 consultation and tendering exercise, the Respondent engaged contractors to carry out a programme of external decorations and repairs of a cyclical nature. During the course of those works, it was discovered that the balcony had rotted floor joists, skirtings, mouldings and floorboards. The surveyors were instructed to provide a costed schedule of works which we have seen and consider reasonable. The work was then undertaken and the costs thereafter demanded from the Applicant in accordance (so we find) with the terms of the Lease. The fact that the Applicant had already paid a substantial sum by way of service charge in connection with the programme of works being undertaken does not absolve her from this liability. We have carefully considered all the points raised by the Applicant and we determine that that she is liable to pay the sum of £3,433.01.

21. The Applicant sought an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. However, in view of the conclusions we have reached, we do not consider it just and equitable to make any such order and we therefore decline to make such an order.

Name: Judge W Hansen **Date:** 28 February 2023