FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2023/0427**
Property	**:**	**60 Gilbert Road, London SE11 4NL**
Applicant	**:**	**Ms Penelope M D Wall**
Representative	**:**	**Mr Edward Brown**
Respondent	**:**	**Dryden Court Freehold Limited**
Representative	**:**	**Mr Sprackman-Counsel, also in attendance Ms Mollie Donnelly Solicitor**
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 Daley** **Mr J Naylor FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**4 June 2024**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the cost of electricity attributed to the Boiler for blocks DC1 & DC2, are not reasonable and payable for the year ending 2021.

(2) The calculation of this sum, to be undertaken by the respondent, within 28 days of this decision. If this sum is not agreed, by the applicant the sum may be determined by the Tribunal.

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

The application

1. The Applicant by an application dated 1.11.2023, sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable for the year 2021, the applicant also sought an order limiting the service charges payable for legal costs in this application. The application was made under Schedule 5 of the Commonhold and Leasehold Reform Act 2002.

2. Directions were given by the Tribunal on 6 December 2023. The directions were drafted on the papers without an oral hearing. The issues were as follows:

3. On 16 April 2024, the respondent made an application to debar the Applicant on the grounds that the applicant had not particularized her claim in the Scott Schedule, and on the grounds that the Applicant was seeking to widen the scope of her application to include service charges for major works in relation to the communal boiler for 2015/16 onwards and service charges for the years 2016-2023. This application was refused, however Judge Martynski in paragraph 2 of his directions set out that the Tribunal would consider the issue to determine as that set out in the directions, "that being the question of [A]'s liability in respect of the boiler. **The Tribunal will not consider any other issues or any other years.**

The hearing

Preliminary Matters

4. The Applicant did not attend the hearing however, she was represented by Mr Brown. The respondent was represented by Mr Spackman counsel, also in attendance on behalf of the applicant was Ms Mollis Donelly- Solicitor. The Tribunal asked Mr Brown about the capacity in which he attended, and asked why the Applicant was not present. Mr Brown told the Tribunal that he was not a legal representative, however he had knowledge and experience of Dryden Court which had been gained in various capacities, he had undertaken work on behalf of the board, and had garages located near the premises. In answer to the Tribunal's questions, he explained that the Applicant was not in attendance as she was on holiday. She was aware that the hearing was due to take place, however she had not sought an adjournment or asked for permission to attend by video link from abroad. Mr Brown was not instructed to seek an adjournment.

5. The issue was whether the Tribunal should proceed in her absence.

6. Mr Spackman had no objections to the Applicant being represented by Mr Brown in her absence he did not consider an adjournment to be necessary, as he considered that all the issues were issues on which the Tribunal would make its decision based on submissions.

7. The Tribunal decided that as no adjournment was being sought by either party, and the applicant was represented, that it was reasonable and proportionate to proceed with the hearing.

8. Although the Tribunal did not frame it in this way it took account of rules 3 (the overriding objective) and rule 34 (hearing in the absence of a party) of The Tribunal Procedure (First Tier) (Property Tribunal) Rules 2013.

The background

9. The property which is the subject of this application is that 60 Gilbert Road is a one-bedroom ground floor flat converted from a gymnasium in a former mixed-use building. It is part of Dryden Court ("DC"), which the Tribunal understand is comprised of three courts DC1 and DC2 which were constructed as part of the original building in the mid to late 1960s and DC3 which was constructed from commercial units in the late 1970s.

10. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

11. Prior to the start of the hearing, the tribunal was provided with a Skeleton argument on behalf of the respondent, which reiterated the scope of the hearing as the respondent understood it to be.

12. The Tribunal asked Mr Brown to clarify, what he was seeking from the Tribunal considering the representations which we heard as the scope was limited to the electricity charge, as related to the boiler for DC1 and DC2, which the respondent accepted was not payable by the applicant. He told the Tribunal that the costs of the boiler works had been wrongly attributed to the applicant and 37 other leaseholders and that the sums for the replacement boiler had been taken from the reserve fund and loaned to the boiler fund as the applicant had contributed to these work by reason of her service charge contributions to the reserve, He was seeking a determination in relation to the charges so that they could be credited to the applicant, either by a reimbursement of the reserve fund or in some other way in which she would be credited with these funds. He also sought to have determined the costs of the electrics which had been paid by her as a service charge as this was not payable by the tenants in DC3.

13. He considered this to be within the scope of the service charges for 2021, as this was the year that the applicant stated that the respondent through their property manager had acknowledged that this sum was repayable. However, he questioned whether the sum due was accurate and whether it had been repaid.

14. The Tribunal heard from Mr Spackman in reply, and he set out the limit of the Tribunal's jurisdiction to go beyond what was within the application and determined to be the issues by the direction. He asked the Tribunal to either dismiss the application or make a finding based on the respondent's concession that it was repayable but the sum repayable was yet to be determined.

15. The Tribunal heard from Mr Spackman that even if the Tribunal wished to widen the scope there were no witnesses or witness statements or evidence upon which the Tribunal could make a wider finding.

16. The Tribunal asked Mr Brown to clarify what he was seeking in relation to the schedule 5 Admin charges CLARA 2002, application. Having heard from him the Tribunal determined that he had sought to make an application under section 20C of the 1985 act. As Mr Spackman had not prepared for this application the Tribunal gave him 7 days to respond to this application and should further evidence be provided the applicant had 7 days thereafter to respond.

17. The Tribunal also reserved the issue to whether the application and hearing fee should be repaid until after further representations.

18. The Tribunal received written submissions on behalf of the Respondent dated 10 May 2024, setting out the Respondent's opposition to a section 20 C order being made. The written submissions of counsel relied upon the Applicant's knowledge that the Respondent accepted that the sums had to be apportioned in respect of the electricity and had been in the process of doing so prior to the application having been made. He also referred to the Applicant's failure to attend the hearing without providing a written explanation. He submitted that no order should be made under Section 20 C of the 1985 Act.

19. No further submissions or response to the Respondent's written submissions was received from the Applicant.

20. Having heard evidence and submissions from the parties and considered all the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

21. The Tribunal determined that the service charges in respect of the electricity that supplies the boiler for DC 1 & 2 was not payable by the applicant on account of the respondent's concession that it had been wrongly charged to her service charge account.

22. As this amount was not yet ascertained the respondent is to provide a figure and its calculations within 28 days of this decision. Should the parties be unable to agree the sum, then the tribunal will determine the amount on written submissions to be sent to the Tribunal within 42 days of this decision.

Application under s.20C and refund of fees

23. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard considered the oral request from the Applicant's representative and considering the written submissions

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

dated 10 May 2024, received from the Respondents. The Tribunal then considered its findings as set out in its decision above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

24. The Applicant Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that in view of the merits of the application it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act,

Name: Judge Daley **Date:** 4.06.2024

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).