



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : LON/00AY/LSC/2023/0407

Property : Flat 62 Lulworth House, Dorset Road,
London SW8 1DR

Applicant : Ares Kyriakos Zaimes

Representative : n/a

Respondent : Notting Hill Genesis

Representative : n/a

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 N O'Brien, Tribunal Member
S Phillips MRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 13 June 2024

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the actual sum of £20.32 is payable by the applicant for the year 2021-2022 in respect of the external electricity supply and lift maintenance costs for Lulworth House.
- (2) The tribunal determines that the estimated sum of £20.32 is payable by the applicant for the year 2022-2023 in respect of the external electricity supply and lift maintenance costs for Lulworth House.

- (3) The tribunal determines that the percentage payable in respect of the lift servicing costs and electrical supply costs for Lulworth House under the terms of the applicant's lease is 1.18% of the total.
- (4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as the respondent has confirmed that it has not incurred any legal costs in relation to these proceedings.
- (5) The tribunal determines that the respondent shall pay the applicant £300 within 28 days of this decision, in respect of the reimbursement of the tribunal fees.

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 applicant in respect of the service charges for the years 2021-2022 in respect of lift service and maintenance costs and external electricity supply for Lulworth House. He also applies for a determination in respect of his liability in relation to the estimated costs for the year 2022-2023 and for future years up to 2028- 2029.

The hearing

2. The tribunal heard the application on 3 June 2024. The applicant appeared in person at the hearing and the respondent was represented by Mr Christopher Milson, the respondent's head of service charges.

The background

3. The property which is the subject of this application is a first floor two bedroom flat in Lulworth House, a purpose built block on a wider mixed tenure estate known as Bolney Meadows. The estate was originally built by and owned by the London Borough of Lambeth but Lambeth's interest in the estate was transferred to the respondent in 2009.
4. 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.
5. 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 will be referred to below, where appropriate.

The issues

6. The applicant disputes the method that has been used by the respondent to apportion the costs of lift servicing and maintenance and external electricity supply for Lulworth House for the year 2021 -2022 and 2022-2023. He also seeks a determination as to the correct method of apportionment for this charge for all subsequent years to 2029.

7. Clause 2.2 of the lease requires the tenant;

“to pay the council at all times and in manner aforesaid without any deduction by way of further and additional rent a rateable and proportionate part of the reasonable expenses and outgoings incurred by the council in the repair maintenance improvement renewal and insurance of the building and the provision of services therein and all other heads of expenditure as the same are set out in the fourth schedule hereto such further an additional rent (hereinafter called the ‘service charge’) being subject to the same terms and provisions of the fourth schedule hereto”

8. Paragraph 1 of the 4th Schedule to the lease defines the expenses to which the tenant must contribute as follows:

All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respective current or future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements improvements rebuilding cleansing and decorating to or in relation to the Building and in particular but without prejudice to the generality of the foregoing all such costs charges and expenses in respect of the following:

...

2. *the cost of periodically inspecting maintaining overhauling improving repairing renewing and where necessary replacing the whole of the heating and domestic hot water system serving the building and the lift shafts and machinery if any.*

9. Paragraph 4 to the 5th schedule of the lease provides;

“The annual amount of Service Charge payable by the Tenant as aforesaid shall be calculated as follows ;

- 4.1 *by dividing the aggregate of the said expenses and outgoings incurred by the Council in respect of the matters set out in Part 1 of the 4th schedule hereto in the year to which the certificate*

relates by the aggregate of the rateable value in force on the 31st of March 1990 of all the flats [excluding caretakers accommodation if any] in the building and then multiplying the resultant amount by the rateable value [in force at the same date] of the flat [hereinafter called "the building element"]

10. It is common ground between the parties that the proportion payable by the leaseholder of flat 62 pursuant to paragraph 4.1 of the 5th Schedule to the lease in respect of the total building costs for Lulworth House is 1.18 %.
11. At some point in 2020 the respondent apparently decided that it would be fairer if leaseholders on the ground floor of Lulworth House were not charged for the costs of running servicing and maintaining the lifts on the basis that they derived no benefit from them. This resulted in the annual percentage of the total lift costs and electrical supply payable by the applicant being increased from 1.18% to 4.23% of the total. This increased the sum claimed from the applicant in respect of those costs from £20.32 to £72.89 for the years 2021-2022, with a similar estimated cost for the year 2022-2023.
12. In its response to the applicant's case as set out in the Scott schedule completed by both parties, the respondent appears to accept that it has departed from the lease when it calculated the proportion of the lift costs payable by the applicant for the years 2021-2022 and 2022-2023. It states *'for the purposes of settling this matter only NHG agrees to repay the amount of £52.55' for both years'*.
13. In his witness statement Mr Milson explains that this new method of apportionment was introduced as the respondent did not consider that it was fair that the ground floor leaseholders should contribute towards the cost of the lifts. He appears to accept that the respondent's new method of calculating the charges payable by the applicant was not in accordance with the terms of the lease and states that the applicant would be reimbursed. He appears to reserve the respondent's position in respect of future years when he states *'However we will work with the resident during 2024-2025 to explain our reasoning around the use of the core costs in the hope of coming to agreement on this usage in the future'*.
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal is satisfied that the respondent's method for calculating the applicant's share of the lift costs for the years 2021-2021 is different to the method provided for in the lease. There is no legal basis for this new apportionment method. The correct and only method is as set out in paragraph 4.1 of Schedule 5 to the lease, and unless the lease is varied, this will remain the correct method of apportioning all the building costs for all future years for the remainder of the term.

Application under s.20C and refund of fees

11. In the application form the applicant applied for an order under section 20C of the 1985 Act and for an order under paragraph 5A of Schedule 11 to the 2002 Act. In his witness statement Mr Milson states that NHG have not incurred any legal costs in relation to this dispute and so would not be seeking to recover such costs from the applicant. Consequently no order under either provision is required. The respondent resisted the making of an order reimbursing the applicant's tribunal fees on the basis that they had offered to settle the claim amicably. However while it is true that the respondent did offer to reimburse the applicant in respect of the years 2021-2022 and 2022-2023 they did not unreservedly accept that they had made any error and appeared to reserve their position in relation to apportionment in future years. In the circumstances we consider that the applicant was justified in issuing and pursuing this application and should recover his fees.

Name: Judge N O'Brien

Date: 13 June 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).