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

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| **Case reference** | **:** | **LON/00AL/LSC/2022/0128** |
| **Property** | **:** | **10 Egremont House, Russett Way, London, SE13 7NE** |
| **Applicant** | **:** | **Adam Libah** |
| **Representative** | **:** | **The Applicant did not appear at the hearing and was not represented.** |
| **Respondent** | **:** | **Royal Borough of Greenwich** |
| **Representative** | **:** | **Philip Marriott, Counsel** |
| **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 Bernadette MacQueen**<br>**Tribunal Member Marina Krisko, FRICS** |
| **Venue** | **:** | **10 Alfred Place, London WC1E 7LR** |
| **Date of hearing** | **:** | **19 June 2024** |
| **Date of Decision** | **:** | **8 July 2024** |

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**DECISION**

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## Decisions of the Tribunal

(1) The Tribunal determines that the estimated service charges of £8,259.82 for window replacement, £1,033.83 for communal door entry system, and £8,272.82 for Communal Lighting, Electrics and Communal Decoration work are payable by the Applicant.

(2) The Tribunal makes the determinations as set out under the various headings in this Decision.

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or paragraph 5 of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

## The Issues

1. By application dated 10 April 2022 the Applicant applied to the Tribunal for a determination in relation to the payability/reasonableness of service charges for replacement windows and associated work (invoice 0250024236 dated 01/04/2022), and door entry system (invoice 10475716 dated 01/04/2022).

2. Within his witness statement (pages 23 and 24 of the bundle) and schedule, the Applicant also added communal lighting, electrics and communal decoration (invoice 10510903 dated 01/04/2023). Whilst the Respondent's primary position was that this was not part of the Applicant's application and should therefore not be considered, the Respondent had prepared their case on the basis that the Tribunal would allow this issue to be included. The Tribunal determined that, as the issues in dispute were the same in relation to all three disputed invoices, it was in the interests of justice to include this additional matter, The Tribunal found that there was no prejudice to the Respondent and they had prepared their case in relation to this additional disputed matter. The three issues for the Tribunal were therefore the payability and/or reasonableness of service charges in respect of:

    a. replacement door entry system

    b. replacement windows

    c. works on communal lighting, electrics and communal decoration

## Attendance at the Hearing

3. The Applicant did not appear and was not represented at the hearing held on 19 June 2024. Prior to the hearing, on 17 June 2024, the

Applicant had emailed the Respondent and the Tribunal and hadnstated that because of personal reasons and professional commitments, he was unable to attend the hearing in person on 19 June 2024, but that he could attend by Cloud Video Platform (CVP) later. In reply, the Tribunal had confirmed that notification of the hearing had been sent to the Applicant on 21st March 2024. The Tribunal had further stated that because no detail had been provided as to the nature of the Applicant's personal and professional commitments, there was not sufficient information before the Tribunal to change the hearing date or venue. The Tribunal had explained that if the Applicant was requesting a postponement or for the hearing to be converted into a CVP hearing he would need to make an application setting out his reasons. On 18 June 2024 at 16:56 the Applicant had emailed the Tribunal to ask that the hearing proceed in his absence.

4. The Tribunal was satisfied that the Applicant was aware of the hearing and had chosen not to attend and therefore found that it was in the interests of justice to proceed in his absence.

5. Philip Marriott, Counsel, appeared on behalf of the Respondent.

## Documentation before the Tribunal

6. The Tribunal had before it a bundle of documents for use at the hearing (the Bundle), consisting of 268 pages. Additionally Counsel for the Respondent had produced a skeleton argument and bundle of authorities. The Tribunal was satisfied that these documents had been served on the Applicant.

7. Within the Bundle was a witness statement made by the Applicant (pages 23-24) and, on behalf of the Respondent, witness statements made by Christopher Mills, Project Manager for the Communal lighting works, Jackie German, Project Manager for the door entry works, and Hardev Sandhu, Service Charge and Property Accounts Manager. In addition, the Tribunal heard oral evidence from Christopher Mills, Jackie German, and Hardev Sandhu. Having heard this evidence and considered all of the written documents provided, the Tribunal made determinations on the various issues as follows.

## The Background

8. Egremont House (the Building) consisted of 50 flats, 27 of which had 2 bedrooms and 23 of which had 1 bedroom. 10 Egremont House (the Property) was the subject of this application and was a 2 bedroom flat.

9. 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.

10. The Respondent was the Applicant's landlord under an agreement dated 13 June 2016 and made between The Royal Borough of Greenwich and Adam Libah for a term of 125 years (the Lease). The Lease related to Flat 10, Egremont House, Russett Way, Lewisham, London, SE13 7NE (the Property). The Lease required the Respondent (landlord) to provide services and the Applicant (tenant) to contribute towards their costs by way of a variable service charge.

**The Lease**

11. Clause 5.1 of the Lease required the Applicant to pay the Respondent in advance on 1 April in every financial year (1 April to 31 March) such sum on account of the service charge attributable to the flat in that year as the Respondent required in accordance with the provisions of the fourth schedule to the Lease.

12. Clause 5.3 of the lease stated:

> "If the Landlord shall make any repair or reasonable improvement to the Building or the Estate or any part thereof the Tenant shall upon written demand by the Landlord pay to the Landlord such proportion of the cost of any such repair or improvement as the Rateable Value of the Flat shall bear to the aggregate Rateable Value of the Building or the Estates (as the case may be) (or based on such other calculation as the Landlord shall reasonably require)"

13. Rateable Value was defined in clause 1.1 of the lease as:

> "the relevant value or band for rating purposes on the 1st April of the relevant Service Charge year but if in any year there shall not for any reason whatever be a relevant value or band then the floor area of the Flat and the Building and the floor area of all the dwelling houses forming part of the estate (as the case may be) shall be substituted for "Rateable Value" for the purposes of this Lease"

14. Paragraph 3.1 of the fourth schedule to the Lease set out that when calculating the service charge, the Applicant paid the proportion of the relevant service charge as the Rateable Value of the flat on 1 April of the year:

"3. The Service Charge attributable to the Flat in any financial year shall be the aggregate of:

> 3.1 "in relation to costs expenses and provisions incurred or made in relation to the Building such proportion of the relevant Service Charge as the Rateable Value of the Flat on the 1 April of that year bears to the aggregate Rateable Value on that date of all the flats (including the Flat) then in the Building (or based on such other calculation as the Landlord shall reasonably require."

Clause 3.2 was drafted in the same terms in relation to the Estate.

**Issue in Dispute**

15. It was the Applicant's position that he was charged disproportionately more than a neighbouring 1 bedroom flat. The Applicant stated that he was charged between 29% to 25% more, but to say that he would receive a 29% to 25% increase in benefit from having windows replaced, or communal front door entry system or lighting replaced was nonsensical, unreasonable, unjustified and irrational.

16. It was the Respondent's position that under the terms of the Lease, the Respondent was entitled to charge the Applicant and the share of the costs was determined by the ratio of the rateable value to the Property to the aggregate rateable value of all the flats in the Building.

17. The Respondent confirmed to the Tribunal that the costs in relation to all three disputed items were estimates. In terms of the process, the Respondent confirmed that, after a period of time for defects to be rectified, the Respondent woukd receive the final costs and then make adjustments to the amounts charged, but it could often take 18 months before final invoices were sent.

18. The amounts before the Tribunal were therefore estimates. The Respondent confirmed that the door entry work and window replacement work was complete, but the final invoice would not be sent until the defect period ended (this would be after 9 February 2025 for the door entry work). Regarding the communal lighting, electrics and communal decoration, this work was scheduled to finish in September 2024. There would then be a defect period before the final invoice was sent.

19. Turning to each disputed item in turn, the Tribunal found as follows:

**Invoice 10475898 – 1/4/22 – Replacement Windows (£8,259.82)**

20. The Applicant's position was set out in the schedule (pages 21 and 22 of the Bundle), and his witness statement (pages 23 and 24 of the Bundle). The Applicant stated that the cost of replacement of the windows was unreasonable, unjustified and irrational considering that the Applicant's Property was a 2 bedroom flat and had one extra window when

compared to a one bedroom flat. The 1 bedroom flats were charged £6,263.69 whereas the 2 bedroom flat was charged £8,259.82. The Applicant stated that the 1 bedroom flats were paying 29% less. The Applicant asked the Tribunal to reduce his service charge liability for this item by 29%.

21. The Respondent told the Tribunal that in or around 2019, it was necessary to replace the windows throughout the estate because the age of the existing windows had meant that carrying out repairs was difficult as replacement parts were hard to source. The Respondent's position was that the amount demanded was reasonable, had been reasonably incurred and correctly demanded.

**The Tribunal's Decision - Invoice 10475898 – 1/4/22 – Replacement Windows (£8,259.82)**

22. The Applicant did not challenge that the works fell within the service charges provisions of the Lease or that the works needed to be carried out. However, for completeness, the Tribunal considered clauses 6.2 of the Lease that required the Respondent to keep the structure and exterior of the Property and Building in repair, and that this obligation included windows of the Lease, clause 5.3 of which required the Applicant to pay the service charge (set out in full above) and schedule 4 which set out the service charge provisions, and found that replacing windows was payable under the Lease. Further, the Tribunal accepted the evidence of the Respondent that the windows needed to be replaced because of their age and the difficulty in sourcing parts to make repairs.

23. Turning to whether the costs were reasonable, the Tribunal found that the Lease had a fixed mechanism for calculating the apportionment to the tenants, in particular at schedule four and paragraph 3.1 (set out in full above).

24. The Tribunal accepted the evidence of Hardev Sandhu, Service Charge and Property Account Manager, who gave evidence as to how the service charge was calculated. In particular, the Tribunal considered his witness statement at pages 68 to 77 of the Bundle where at paragraph 22, page 71, Hardev Sandhu stated that when calculating the share of costs, the Respondent relied on the table of rateable values of individual flats of the Building and that the aggregate rateable value of the Building was 11188 and the rateable value of the Property was 240. At paragraphs 37 to 39 (pages 72 to 73 of the Bundle), Hardev Sandhu set out the calculation method the Respondent had used. The Tribunal found that the amount was calculated in accordance with the Lease, namely using the apportionment applicable to a 2 bedroom flat. The difference in amount charged between a 1 bedroom flat and a 2 bedroom flat was therefore because of the difference in rateable value. The Tribunal found that the Respondent had correctly applied the terms of the Lease and the amount charged was therefore reasonable.

25. The Applicant did not raise any other objection but, for completeness, the Tribunal accepted the evidence of Hardev Sandhu who told the Tribunal that the Respondent had carried out consultation and had invited three contractors to submit tenders. The contract had been awarded to the cheapest contractor, and the detail of this process was set out in paragraphs 30 to 36 of Hardev Sandhu's witness statement.

26. Whilst noting that the amount charged was only an estimated sum, the Tribunal determined that the amount payable in respect of replacement windows was therefore reasonable. It would, of course, be open to the Applicant to return to the Tribunal once the final bill was submitted if he disputed the amount charged, however a fresh application would need to be made.

**Invoice 10475716 – 1/4/22 – Door Entry System**

27. The Applicant stated that he was charged £1,033.00 for this work whereas the charge for his neighbour's 1 bedroom flat was £783.36. The Applicant stated that all flats, regardless of how many bedrooms they had, benefited from the same external door entry system, however the 1 bedroom flat was charged 25% less than the charge made to the 2 bedroom flat. The Applicant asked the Tribunal to reduce his service charge liability by 25% for this item.

28. The Respondent confirmed that, in or around 2019, a new door entry system had been installed because of anti-social behaviour. It was the Respondent's position that the demand was reasonable in amount and had been reasonably incurred and correctly demanded.

**The Tribunal's Decision - Invoice 10475716 – 1/4/22 – Door Entry System**

29. The Applicant did not challenge whether the works fell within the service charges provisions of the Lease or whether the works needed to be carried out. However, for completeness, the Tribunal considered clauses 6.3 of the Lease and found that this work fell within the Respondent's obligation to "keep in good repair and condition the Common Parts", and further found that this would include the entrance doors. Clause 5.3 and schedule 4 of the Lease set out the Applicant's obligation to pay a service charge in relation to this. The Tribunal accepted the evidence of the Respondent that the door entry system had needed to be replaced because of the anti-social behaviour.

30. Turning to whether the cost of the works was reasonable, the Tribunal found Hardev Sandhu to be a credible witness and accepted his evidence. In particular, at paragraph 22 of his witness statement (page 71 of the Bundle), he stated that the Respondent relied on the table of rateable values of individual flats of the Building; according to the table, the

aggregate rateable value of the Building was 11188 and the rateable value of the Property was 240, whereas the rateable value for a 1 bedroom property was 182. The Tribunal found that the Respondent used the mechanism within the Lease for calculating the apportionment to the tenants. In particular, at paragraphs 19 to 25 of the statement (page 71 of the Bundle), the calculation used by the Respondent was set out. The Tribunal found that this calculation was made in accordance with the Lease. The calculation would result in a difference in the amount paid by a 1 bedroom and a 2 bedroom flat, but this was in accordance with the terms of the Lease that the Applicant had entered into.

31. The Applicant did not raise any other objection; however, for completeness, the Tribunal noted that the Respondent had carried out extensive consultation and tendered the work, selecting the cheapest contractor. The Tribunal found Jackie German to be a credible witness as she gave the Tribunal a detailed account of the consultation that had taken place as well as the works that had been completed. In particular the Tribunal noted her witness statement at pages 48 to 50 of the Bundle which set out the reasons for the works, the consultation process and the extent of the works.

32. Whilst noting that the amount charged was an estimated sum, the Tribunal determined that the amount payable in respect of the door entry system was therefore reasonable. It would, of course, be open to the Applicant to return to the Tribunal once the final invoice was submitted if he wished to dispute the amount charged, however a fresh application would need to be made.

**Invoice 10510905 – Communal Lighting, Electrics and Communal Decoration (Invoice dated 01/04/2023)**

33. The Applicant's position was that his liability for the service charge was different to that of his neighbours who lived in a 1 bedroom flat. The Applicant had been charged £8,272.82 for this work, whereas his neighbour who lived in a 1 bedroom flat had been charged £6,273.56. The Applicant's position was that all flats benefited equally from this work. The Applicant asked the Tribunal to reduce his liability by 25% for this service charge item.

34. The Respondent told the Tribunal that in or around 2018, they had entered into a framework agreement with 3 contractors to cover long-term works. In or around August 2022, the Respondent had commenced consultation for works on communal lighting, electrics and communal decoration as part of this framework agreement. The Respondent's position was that the amount demanded was reasonable, had been reasonably incurred and correctly demanded.

**The Tribunal's Decision - Invoice 10510905 – Communal Lighting, Electrics and Communal Decoration**

35. The Applicant did not challenge whether the works fell within the service charges provisions of the Lease or whether the works had needed to be carried out. However, for completeness, the Tribunal considered clause 6.3 of the Lease and found that this work fell within the Respondent's obligation to "keep in good repair and condition the Common Parts", and further found that this would include the communal lighting, electrics and communal decoration. Clause 5.3 and schedule 4 of the Lease set out the Applicant's obligation to pay a service charge in relation to this.

36. Turning to whether the cost of the works was reasonable, the Tribunal found that the Lease had a fixed mechanism for calculating the apportionment to the tenants. As set out above, the Applicant's share was determined from the rateable value of the Property to the aggregate rateable value of all the flats in the Building. At paragraphs 51 to 54, Hardev Sandhu, Service Charge and Property Accounts Manager ,set out the calculation that the Respondent had made (page 75 and 76 of the Bundle). The Tribunal found that the Respondent had calculated in accordance with the Lease. The Respondent had used rateable values of the flat as a proportion of the rateable values of the whole Building multiplied by the cost of the works. The Tribunal accepted the evidence of the Respondent and found that the difference in the rateable values of a 1 bedroom flat and a 2 bedroom flat was the reason why there was a difference in the amount of service charge; this was in accordance with the terms of the Lease.

37. The Applicant did not raise any other objections; however, for completeness, the Tribunal noted that the Respondent had entered into a framework agreement with three contractors to cover long-term work. In or around August 2022, the Respondent had commenced consultation for this communal lighting, electrics and communal decoration work as part of that framework agreement. The detail of the consultation was set out in the witness statement of Christopher Mills, Project Manager (pages 25 to 28 of the Bundle), in particular the extent of the work completed and the justification for it was set out at page 26. The Tribunal accepted this evidence and found Christopher Mills to be a credible witnesses in the way he presented the Tribunal with a detailed account of the consultation process and works.

38. Whilst noting that the amount charged was an estimated sum, the Tribunal determined that the amount payable in respect of communal lighting was therefore reasonable. It would, of course, be open to the Applicant to return to the Tribunal once the final invoice had been submitted if he wished to challenge that amount, however a fresh application would need to be made.

**Application under s.20C and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002**

39. In the application form the Applicant appeared to answer "yes" and "no" to the question "if you are a tenant do you wish to make a section 20C application?" The Applicant was not at the hearing and had not provided the Tribunal with any written documentation to clarify his answer. The Applicant's position was not clear, the Tribunal nevertheless considered whether an order under section 20C of the 1985 Act should be made.

40. Additionally, in the application form, the Applicant confirmed that he did wish to make an application under paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

41. In reply to these applications the Respondent confirmed at the hearing that they would not apply costs under section 20C or paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

42. In light of the submissions made by the Respondent, and in light of the findings made, the Tribunal found that it was not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Tribunal made this decision because it found that the Respondent had correctly applied the provisions of the lease when determining the service charge amounts.

*43.* For the avoidance of doubt, the Tribunal has determined that the reason why 1 bedroom flats were charged less than 2 bedroom flats was because the Respondent had correctly applied the terms of the Lease. The amounts were different because of the apportionment in the Lease which was based on different rateable values depending on the size of the property. Whilst, when the Applicant receives a final invoice from the Respondent, it would be open for him to challenge that amount if he considered this to be unreasonable, given this Tribunal has determined that the apportionment (in other words the amount each property pays) has been correctly applied, this argument would not be open to the Applicant to bring back to the Tribunal.

**Name:** Judge Bernadette MacQueen **Date:** 8 July 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).