FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LSC/2023/0412**
Property	**:**	**12 Barker House, Bowen Drive, Kingswood Estate, London SE21 8NU**
Landlord/Applicant	**:**	**Selina Begum**
Respondents/ Tenants	**:**	**London Borough of Southwark**
Type of application	**:**	**Application for a determination of payability of service charges – s.27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Tagliavini** **Mrs A Flynn MA MRICS**
Date of hearing and venue	**:**	**8 April 2024** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**15 May 2024**

DECISION

The tribunal's decision

1. The tribunal finds:

   (i) The method of apportionment of the applicant's service charges is reasonable and open to the respondent to adopt under the terms of the lease.

   (ii) The applicant is liable to contribute to the lift charges under the terms of the lease.

The application

2. This is an application made by the tenant seeking the tribunal's determination of the payability of service charges in respect of the subject property. Specifically, the applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether past and future service charges are payable for the service charge years 2017 to 2028. In particular, the applicant challenges the charges for lift repairs and maintenance since the Respondent blocked off all access to the lift for ground floor tenants behind a secure door accessible only with use of a fob provided by the respondent landlord.

Background

3. The subject premises comprise a 1 bedroom ground floor flat in a purpose built block ('the property').

4. In the application form the applicant stated:

> Approximately in 2001/2002 they changed the building by adding a secure door and phone entry system to the building, this meant ground floor tenants could longer access the lift as this was behind the secure door, only tenants who live on the 1st floor and above have access to the secure door, lift and dustbin shoot(sic)
>
> I have a ground floor flat with no lift access (please see picture) and have tried several times to discuss the lift cost with Southwark Council, however I have not succeeded.
>
> I have been speaking to other residents who have explained that they do not pay for the lift as they do not have access to the

> lift in their block, confirming they are in ground floor flats as well. Southwark council are charging me for lift repairs and therefore showing discrepancies on how they are charging the residents of Kingswood Estate London
>
> In accordance to my leasehold agreement, it is not appropriate that they are charging me for the lift.

5. Ms Begum claimed a refund of service charges of £1972 paid for lift repairs and maintenance costs. Ms Begum subsequently sought to amend her application and sought to include:

> ...all service charges to me are fair and appropriate. Initially I had requested judgement of the lift charges, but since then it has been bought to my attention that Southwark council are showing discrepancies on all charges within the block. In comparison to service charges between 11 and 12 Barker house it is evident that my charges are bigger - please see attached below 12 Barker house is a one bedroom ground floor 11 Barker house is two bedroom ground floor So you would think my bills would be smaller as it is a smaller property, given that leasehold flats services charges are normally based on square foot/rooms (units)
>
> I would like to request a refund of all unfair charges since 2003 if not then 2006, it is clear that my charges are significantly higher then 11 Barker house. I would like compensation due to financial burden. I would also like to make a request that Southwark council confirm that I was not charged for the entry phone system before 2016 and if so - they refund this.

5. Consequently, the tribunal considered the issues to be determined were:

> (i) The liability to pay service charges for lift repairs and maintenance for the period 2018 to 2024.
>
> (ii) Whether the percentage of service charges is reasonable for the period 2018 to 2024.

The hearing

6. At an oral hearing the applicant represented herself. The respondent was represented by Mr Michael Dobson. The parties relied upon a digital bundle comprising 212 pages. The tribunal heard oral evidence from the applicant. The respondent relied upon a Statement in Response dated 18 March 2024, in which it set out its reasons for objecting to the application and referred to clauses of the lease on which it relied. The relevant parts of the Response stated:

The Lease dated 11th February 2013 ("the Lease") which is made between the Respondent and Applicant is clear, the lift, which is provided and maintained by the Respondent, is chargeable to the Applicant via the service charge mechanism.

the applicable clauses below which clearly states the lift is chargeable: Clause 2 (3) (a) - "the Tenant ["Applicant"] hereby covenants with the Landlord ["Respondent"]… To pay the Service Charge contributions set out in the Third Schedule hereto at the times and in the manner there set out".

Third Schedule –

Paragraph 2 (1) - "Before the commencement of each year (except the year in which this lease is granted) the Landlord shall make a reasonable estimate of the amount which will be payable by the Tenant by way of Service Charge (as hereinafter defined) in that year and shall notify the Tenant of that estimate"

Paragraph 6 (1) - "The Service Charge payable by the Tenant shall be a fair proportion of the costs and expenses set out in paragraph 7 of this Schedule incurred in the year"

Paragraph 6 (2) - The Landlord may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses"

Paragraph 7 (2) - "The said costs and expenses are all costs and expenses of or incidental to… Providing the Services hereinbefore defined" the Services – "means the services provided by the Landlord to or in respect of the Property and other flats and premises in the Building and on the Estate and more particularly set out hereunder (where and when applicable)

(i) Security Services
(ii) Electricity
(iii) Estate Lighting
(iv) Door Entry
(v) Concierge (including CCTV)
(vi) Lift
(vii) TV Aerial
(viii) Unitemised Repairs
(ix) Grounds Maintenance
(x) Care and Upkeep
(xi) Heating
(xii) Water Tanks

7. The respondent also asserted in its Response that:

> The service charges for 2018/19 to 2023/24 are apportioned on a bed-weighting unit system. For clarity and completeness, each property is given four units and one additional unit per bedroom. For example, a one bedroom property is five units and a two bedroom property is six units. The number of units for each block or estate is totalled and divided into the cost to give a cost per unit, and that cost is multiplied by the number of units for each individual property to come to the charge for that property.
>
> For service items such as lifts, door entry systems, water tanks, the costs are equally proportioned to all properties in a block. The Major Works service charge for 2020/21 is apportioned using this method. As there are 24 properties in the Applicant's block, the overall cost is divided by 24, a method which is in accordance with the Lease.

8. The respondent also sought to rely on the evidence of Suganthiny Jeya who made a witness statement dated 15 March 2024, in which the calculation and apportionment of the applicant's service charges was calculated. Confirmation was given that the applicant's service charges had been reviewed since the application had been made.

The tribunal's reasons

9. The tribunal finds the lease unambiguously requires the applicant to contribute towards the cost of the repairs to and maintenance of the lift, regardless of whether she uses it or not. The tribunal understands the applicant had not previously requested a fob in order to pass through the secure door and access the lift but has now been provided with one.

10. In conclusion, the tribunal finds and is satisfied that the lease allows the respondent landlord to determine and adopt a reasonable method of apportioning service charges. The use of a bed weighting system is pone that is commonly adopted by a local authority landlords and cannot be considered to be either unreasonable or inappropriate.

Name: Judge Tagliavini **Date:** 15 May 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).