FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00CT/LIS/2023/0030**
Property	**:**	**7 Claremont House, 15A Poplar Road, Dorridge, Solihull, B93 8DD**
Applicant	**:**	**Anthony John Matthews**
Representative	**:**	**None**
Respondent	**:**	**Danesdale Land Limited (substituted as the Respondent in place of Flex Property Services t/a Remus Management Ltd)**
Representative	**:**	**Mr Hall for Remus Property Management**
Type of application	**:**	**Application for a determination of liability to pay and reasonableness of service charges (1)** **Application for an order limiting payment of landlord's costs under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (2)**
Tribunal members	**:**	**Judge C Goodall** **Mr R P Cammidge FRICS**
Date and place of hearing	**:**	**Video hearing on 17 July 2024**
Date of decision	**:**	**29 July 2024**

DECISION

Background

1. This is an application by Mr Matthews ("the Applicant") for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") of the reasonableness and payability of service charges demanded from him in respect of his flat at 7 Claremont House, 15A Poplar Road, Dorridge B93 8DD ("the Property").

2. The application form is dated 16 July 2023. The Applicant challenges three demands for payment of service charges being:

    a. 8/4/21 £387.75 – supplementary invoice for lift maintenance.

    b. 7/7/22 £813.94 – balancing charge for 2020/21.

    c. 29/12/22 £418.90 – balancing charge for 2021/22.

3. The Applicant has also applied for an Order under s20C of the 1985 Act (Limitation of service charges: costs of proceedings) and for an Order under Paragraph 5A of Schedule 1 to the 2002 Act (Limitation of administration charges: costs of proceedings).

4. The Tribunal commenced consideration of the application on 1 March 2024, but was unable to fully understand the nature of the Applicant's challenge. Further directions were therefore issued and eventually the Tribunal directed an oral hearing. That took place by video on 17 July 2024. The Applicant and a representative from the Respondent's management company attended and both gave evidence.

5. This is our decision on the application with reasons.

Facts

6. The Property is one of twelve flats in a purpose built block of flats on three floors (ground, first and second) at Poplar Road, known as Claremont House, built in around 2003/04. There is a similar (or even identical) block of a further twelve flats next door to Claremont House, known as Rosemont House. There are thus twenty four flats on the estate. Each of Claremont House and Rosemont House contains a lift serving the first and second upper floors. The Applicant owns a leasehold interest in a flat on one of the upper floors.

7. The flats are let on long leases each of 125 years from 1 July 2003 with an obligation upon the Respondent to provide services for which an annual service charge is payable. All twenty-four lessees contribute towards the costs of both buildings on the estate, so that the lessees in Claremont House contribute (in their respective proportions) to the costs incurred on Rosemont House and vice versa.

8. The mechanism for the operation of the service charge is:

a. The Applicant has to pay one twenty-fourth of the service charge costs excluding any costs in connection with the lifts and one sixteenth of the service charge costs in connection with the lifts;

b. The service charge year runs from 1 July to the following 30 June;

c. The Respondent is to estimate the annual service charge and may make demands for one half of the annual estimate on each of 1 July and 1 January in each service charge year "or such other dates as the Lessor may in its absolute discretion determine and notify to the Lessee" (paragraph 23 of the Particulars and Definitions clause);

d. At the end of the service charge year, the amount of the charge for that year must be ascertained by the Respondent and notified to the lessees in the form of a certificate;

e. If the amount spent in any service charge year exceeds the amount estimated for that year, the Respondent may demand an additional service charge to cover the excess. That is the effect of paragraph 10 in the Sixth Schedule to the lease, which provides:

"As soon as practicable after the signature of the Certificate the Lessor shall provide the Lessee with an account of the Service Charge payable by the Lessee for the year in question due credit having being given for all Interim Service Charge payments made by the Lessee in relation to the said year and upon the provision of such account the Lessee shall forthwith pay to the Lessor any excess of the Service Charge over the payments made during the relevant Service Charge Year. Any amount which may have been overpaid by the Lessee by way of Interim Service Charge payment shall be credited against the liability of the Lessee to payment of the Service Charge for the following year"

9. Each of Claremont House and Rosemont House have a lift. Mr Hall said he believed they were as originally installed when the flats were built, so they are now over 20 years old. To that extent, he said it is to be expected that maintenance expenditure is likely to increase as the equipment ages. Expenditure on the lifts in 2020/21 amounted to £17,925.32. In 2021/22, the expenditure on lifts was £7,406.40. Under the leases, the Applicant's contribution is 6.25%, or one sixteenth of that expenditure.

10. Invoices for the lift expenditure were provided. They are set out in the tables below:

Table 1 – Lift invoices for 2020/21

	Date	Invoice number	Amount (£)	

1	27/07/2020	38167	1,620.00	
2	23/07/2020	38139	4,740.00	
3	24/08/2020	362364938	750.07	
4	17/10/2020	39233	325.78	
5	22/10/2020	39396	514.33	
6	23/10/2020	478149785	236.40	
7	10/11/2020	39569	2,140.20	
8	01/12/2020	39804	2,976.00	
9	01/12/2020	39803	3,228.00	
10	18/02/2021	362376965	750.07	
11	26/11/2020	362370957	750.07	
12	25/05/2021	362383780	764.33	
13	19/05/2020	362359073	750.07	
			(855.67)	Reduction on £1,620 being invoice "Deltron 38167" above
			(764.33)	Remove invoice "Schindler 362383780" as a credit note is due
			17,925.32	

Table 2 – Lift invoices for 2021/22

1	22/07/2021	42821	1,620.00	
2	04/08/2021	42969	180.00	
3	10/08/2021	43042	297.00	
4	19/08/2021	362390569	764.33	
5	20/09/2021	43779	2,264.40	
6	23/09/2021	362396375	764.33	
7	04/01/2022	45390	1,236.00	
8	09/06/2022	47952	189.00	
9	23/06/2022	48258	1,620.00	
10			(764.33)	Remove "Schindler 362390569" per PM review awaiting credit note
11			(764.33)	Remove "Schindler 362396375" per PM review awaiting credit note
	Total		7,406.40	

11. In the 2020/21 year, invoice 4 is for attendance on site by a lift engineer at Claremont House on 17 October 2020 following a report of a trapped passenger. There was no trapped passenger, but the car door contacts were out of alignment, they were adjusted, and the lift was tested and left in service.

12. Invoice 5 was for visits on 21 and 22 October 2020 to the lift at Rosemont House by a company called Deltron, as the lift was stopping intermittently. The problem was not resolved on either visit.

13. Invoice 6 was for a visit to Rosemont House lift on 17 October 2020 (so before the visits in invoice 5). The lift was left in service. The lift company billing for the work on that occasion was Schindler.

14. Invoice 7 is for the supply and fitting of new auxiliary blocks and contactors for the Rosemont House lift on 30 October 2020.

15. Invoice 8 is for supplying and fitting of new cable conduits, emergency lighting, and shortening of main suspension ropes for the Claremont House lift, which was carried out on 30 November 2020.

16. Invoice 9 is for similar work as in invoice 8 for the Rosemont House lift but the work was carried out a month earlier, on 30 October 2020.

Law

17. Sections 18 to 30 of the Landlord & Tenant Act 1985 ("the Act") contain statutory provisions relating to recovery of service charges in residential leases. Normally, payment of these charges is governed by the terms of the lease – i.e. the contract that has been entered into by the parties. The Act contains additional measures which generally give tenants additional protection in this specific landlord/tenant relationship.

18. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

    a. The person by whom it is or would be payable

    b. The person to whom it is or would be payable

    c. The amount, which is or would be payable

    d. The date at or by which it is or would be payable; and

    e. The manner in which it is or would be payable

19. Section 19(1) of the Act provides that:

    "Relevant costs shall be taken into account in determining the amount of the service charge payable for a period –

    (a) Only to the extent that they are reasonably incurred, and

    (b) Where they are incurred on the provision of services and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly."

20. The law on the requirement to consult, and a landlord's right to request dispensation from that requirement is contained in section 20 and 20ZA of the Act. Section 20 provides:

> **Section 20 Limitation of service charges: consultation requirements**
>
> (1) Where this section applies to any qualifying works …, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
>
> (a) complied with in relation to the works or agreement, or
>
> (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

21. "Qualifying works", in section 20, are defined (in section 20(ZA)(2)) as "works on a building or any other premises".

22. The relevant contribution is the amount a tenant may be required to contribute under his lease (sub-section (2)).

23. Sub-sections (6) and (7) of section 20 limit the tenants "relevant contribution" to an "appropriate amount", which is currently £250 (see SI 2003/1987, reg 6).

24. The consultation requirements are contained in the Service Charges (Consultation Requirements) (England) Regulations 2003.

25. If the consultation requirements are not complied with, a landlord may seek dispensation from consultation under section 20(ZA) of the Act.

26. The approach to identifying the extent to which the cost of works needs to be aggregated with other costs to identify one single amount spent on "works on a building" was considered in *Phillips v* Francis [2014] EWCA Civ 1395. In that case, the Master of the Rolls gave guidance on what factors are to be taken into consideration in deciding what a single set of qualifying works comprises. This is to be determined in a "common sense way". Relevant factors are likely to include (i) where the items of work are to be carried out; (ii) whether they are the subject of the same contract; (iii) whether they are to be done at more or less the same or different times; and (iv) whether the items of work are different in character from, or have no connection with, each other. In any given case, it will be a question of fact and degree.

The Applicant's challenge

27. At the hearing, the Applicant confirmed that he does not challenge the reasonableness of any service charge expenditure. In other words, he did not maintain any challenge under section 19 of the Act. His only challenge, he confirmed, was to the lack of consultation under section 20 of the Act in respect of any of the costs of lift maintenance.

28. His challenges can therefore be summarised as follows.

29. In relation to 2020/21, they are that:

    a. consultation should clearly have been carried out in respect of invoice 2 for £4,740.00;

    b. invoices 8 & 9 were in effect for one set of works and should be aggregated. They therefore comprised total expenditure on that set of works of £6,204.00 which was also above the statutory cap;

    c. invoices 4, 5, 6, and 7 were also in effect one set of works and should be aggregated.

30. In relation to 2021/22, the Applicant did not claim that any of the service charge invoices on lifts attracted the need to consult under section 20. He did, however, raise a new point, in that there is an expenditure item in the 2021/22 accounts of £4,559.00 for "insurance repairs" which were unexplained and might also need to have been consulted on.

31. An additional issue, raised by the Tribunal in relation to one of the three invoices initially challenged in the application, was that the first of those invoices was a supplementary invoice raised during the service charge year, which appeared not to be permitted under the lease.

The Respondent's case

32. Mr Hall accepted, in relation to paragraph 29a above, that consultation should have been undertaken on the expenditure in that invoice. The excess over and above the statutory cap was small and the work was urgent, and the executive dealing with the works had taken the view that a tribunal would grant dispensation, but no dispensation application had in fact been made.

33. In respect of points 29b and 29c above, Mr Hall's case was that the works for those groups of invoices was separate and distinct and should not be aggregated.

34. On the insurance repairs issue in 2021/22, Mr Hall said that the insurance repair cost had been offset by an insurance receipt, shown in the accounts, of £4,059.00, so the net cost was £500.00 which was well below the threshold for consultation.

35. On whether the supplementary invoice for lift repairs was permitted under the lease, Mr Hall accepted that the executive responsible may have

misinterpreted the lease. He did not argue that it was in fact a permitted invoice.

Discussion

36. In our view:

    a. It is clear that invoice 2 in the 2020/21 year was for works on a building on which consultation should have taken place. Inevitably, we therefore have to determine that that the amount claimed from the Applicant for that invoice is limited to £250.00. Accordingly, the Applicant is entitled to a credit on his service charge account of the amount he paid for that invoice (one sixteenth of £4,740.00 = £296.25) fess £250.00, which is £46.25, unless or until the Respondent obtains dispensation under section 20(ZA) of the Act;

    b. We do not accept that the works invoiced in invoices 8 & 9 in 2020/21 are one set of works on a building. Although the work was similar, it was carried out at different times on different buildings, and it appears under different contracts. The two invoices should not be aggregated, and accordingly there is no obligation to consult on this expenditure;

    c. In like vein, we do not agree that the four invoices spent on lifts and numbered 4 – 7 in the 2020/21 service charge, even if it is correct that they relate to the same issue, require the Respondent to consult, as they are collectively below the consultation threshold;

    d. Quite apart from the fact that the challenge to expenditure on insurance repairs was not raised until the hearing, it is, in our view, without merit. It is clear the actual cost to the service charge was net £500.00, and there could have been no obligation to consult;

    e. Our view is that the issuance of the invoice referred to in paragraph 2a above is not permitted under the lease. Under the lease, the Respondent is not permitted to demand additional sums at will outside of the contractual arrangements for collection of service charges. It appears the Respondent misinterpreted the definition of the service charge years dates (see paragraph 8c above) by deciding that the definition allowed additional service charge invoices to be raised on further dates at the Respondent's discretion. The definition does not do that. It only allows the Respondent to change the service charge year dates. We therefore determine that this invoice is not payable;

    f. Of course, if a shortfall in available funds arises because of an unexpected lift repair bill, that shortfall would normally be funded from other budgets that may be underspent, reserves (if not specifically allocated), or borrowing, until the end of year accounts were finalised, and the shortfall could be claimed from service charge payers under paragraph (10) of the Sixth Schedule. It will be for the Respondent to consider whether it can issue an amended invoice to

cover the shortfall arising from our determination in the preceding sub-paragraph.

Decision

37. In respect of the three invoices in dispute as identified in paragraph 2 above:

    a. Invoice 2a is not payable by the Applicant;

    b. Invoices 2b and 2c are payable in full;

    c. The Applicant is entitled to a credit on his service charge account of £46.25 unless or until the Respondent obtains dispensation from consultation in respect of invoice 2 in Table 1 above.

Costs

38. The Applicant has applied for orders under section 20C of the Act and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

39. Our jurisdiction is to make such orders under these provisions as we consider just and equitable in the circumstances.

40. We have not explored whether the lease allows the Respondent to charge its costs of this case through the service charge to all service charge payers, or in whole to the Applicant. If it does, it does. If it doesn't, it doesn't. That is for the Respondent to determine and for the Applicant to challenge if he disagrees.

41. The question for us is whether we should disturb the contractual provisions the parties have entered into.

42. The Applicant has succeeded in his application but only to a very limited extent and probably at disproportionate cost. Our view is that he should make his contractual contribution to the Respondents costs as it would be inequitable, having put the Respondent to cost, for him to be isolated from the consequences to his fellow service charge payers, who are highly likely to have to contribute. We refuse the application for a section 20C order.

43. Whether it would be fair and equitable for the Applicant to bear the whole of the Respondents costs if it decides to seek them in whole from the Applicant is a rather different question. On two small points, the Respondent has lost this case. But if it has the mind to do so, and the lease permits it, we do not consider it just for the Respondent to be wholly unable to pursue the Applicant for its contractual costs by us making an order under paragraph 5A extinguishing the Applicant's liability for a costs administration charge, but equally we do not consider it just for the Applicant to be wholly protected from his contractual obligation to pay any costs administration charge (if any). Therefore, under paragraph 5A,

we order that 50% of any litigation costs sought from the Applicant by the Respondent be extinguished.

Appeal

44. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)