



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

Case reference : **CHI/OOHB/LSC/2023/0164/BS**

Property : **17 Garmond Court, Somerset Street,
Redcliffe, Bristol, BS1 6FH**

Applicant : **Sarah Smith**

Representative : **None**

Respondent : **Livewest Homes Ltd**

Representative : **None**

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 : **R Waterhouse FRICS, C Barton MRICS**

Venue : **Remote Determination on Papers**

Date of decision : **27 September 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1307.28 is payable by the Applicant in respect of the service charges for the year 2023.
- (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.
- (4) The Tribunal does not make an order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (5) The Tribunal does not make an Order for the Respondent to reimburse the Applicant for their Tribunal fees.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)] as to the amount of service charges payable by the Applicant in respect of the service charge year 2023, in respect of an item concerning the replacement of an intercom system for the block. .

The Hearing

2. The issue was determined on the papers by remote hearing. The Tribunal had the benefit of a bundle comprising 185 pages. The Tribunal has carefully considered the documents within the bundle.

The background

3. The property which is the subject of this Application is a ground floor one bedroom flat with private entrance within a purpose-built block of 30 flats.
4. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionated 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 and will be referred to below, where appropriate.

The issues

6. Prior to the hearing the parties, on papers, identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 2023 relating to replacement of an intercom system for the block within which the flat is situated.
7. Having considered evidence and submissions from the parties by way of documentation provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's decision

8. The Tribunal determines that the amount payable in respect of replacement of the intercom system is £1307.28. ~~(00)~~ .

Reasons for the Tribunal's decision

9. For an item within a service charge to be payable, the lease must provide that the item is an item that the landlords have responsibility to maintain.
10. In this case an intercom system was in place, and it was being replaced by a new and upgraded system.
11. The relevant lease provides that the leaseholder covenants;

Clauses 3.2.2 and 7.2 - the leaseholders covenants to pay a service charge.

The leaseholder Hereby covenants with the landlord:

3.2.2 To pay the Service Charge in accordance with Clause 7.

7.2 The Leaseholder Hereby Covenants with the landlord to pay the Service Charge during the term by equal payments in advance at the times at which and in the manner in which rent is payable under this lease...

Maintenance

5.4 That (subject to payment of the rent and service charge and except to such extent as the leaseholder or the tenant of any other part of the Building shall be liable in respect thereof respectively under the terms of this Lease or of any other lease) the Landlord shall maintain, repair, redecorate, and renew:

5.4.1 the roof, foundations and main structure of the Building and all external part thereof including all external and load-bearing walls, the windows and doors on the outside of the flats within the Building (save the glass in any such doors and windows and the interior surfaces of walls) and all parts of the Building which are not the responsibility of the Leaseholder under this Lease or of any other lessee or tenant in the Building Provided always the Landlord shall redecorate as necessary the outside doors of the Premises;

5.4.2 the pipes, sewers, drains, wires, cisterns and tanks and other gas, electrical, drainage, ventilation and water apparatus and machinery in , under and upon the Building (except such as serve exclusively an individual flat in the Building and except such as belong to British Telecom or any public utility supply authority); and

5.4.3 the Common Parts.

Service charge item & amount claimed

12. The Applicant in their Application asserts; the intercom is ancillary to the building, not essential, and not an integral part of the building. Further that their flat, is on the ground floor, with a private entrance, and so has no requirement for the intercom, nor does it have one.
13. The Applicant poses three questions for the Tribunal to decide; (i) should the subject flat be liable at 1/30 of the overall cost of the installation (ii) if it is not liable should maintenance charges be reimbursed, and (iii) likewise with future maintenance charges.
14. The Applicant in their “Applicant second statement”, asserts that; (i) a “common sense approach” should be made to the interpretation of “electrical apparatus”., (ii) there may be grounds to vary the lease and (iii) that the apportionment is unfair.

Should the leaseholder be liable for an item that they specifically do not have dedicated use of?

15. The Applicant cites the decision at First Tier Tribunal (Property Chamber) of *Checoni v London Borough of Lambeth 2021* (LON/OOAY/LSC/2021/0414)
16. In this case the landlord the London Borough of Lambeth renewed an intercom system to a block of flats. At para 23 in the decision,” the lease contained an obligation on the landlord ...to maintain repair, redecorate renew and ...at the council’s absolute discretion.”

17. The Lambeth decision continues; “under clause 3.2.2 the Respondent (Landlord) is therefore under an obligation to the Applicant to repair and renew the intercom to the flat. It has not done so.”
18. This Tribunal distinguishes the case here, because the Lambeth case centred on the Council charging the repair of an item the leaseholder had, that is their own intercom, but their own one had not been repaired. In this case, the leaseholder never had an intercom and so it cannot have been in disrepair, nor could there be failure to repair an item that never existed.
19. The Respondent cites Solarbeta Management Co Ltd v Akindele [2014] UKUT 416 (LC)
20. The case concerned two blocks of flats, Solar and Beta Court in Croydon. The leaseholder who was contending the service charge had no benefit from a lift, the cost of maintenance of which formed part of the service charge. The Upper Tribunal found that the First Tier Tribunal had misdirected itself in ascribing amenity value and so financial liability for the amount of actual benefit or not received by a leaseholder for the particular service in this case the use of the lift. Rather than following strictly whether the leaseholder was specifically liable under the lease.
21. This Tribunal considers this to be a case in point, that irrespective of the amount of benefit the leaseholder may or may not get from the intercom system, the cost of its repair is a matter of the construction of the lease not actual benefit.
22. The lease under 5.4.2 includes “wires” and “other gas, electrical, drainage, ventilation and water apparatus and machinery in, under and upon the Building”.
23. This Tribunal therefore finds that the replacement of the existing intercom system is an item of maintenance covered by the provisions of the lease, 5.4.2, for which the landlord has responsibility and may recover.

Does it matter that the replacement intercom system was an enhanced one?

24. The intercom replacement is an enhanced system, but the Tribunal none the less finds that the primary purpose of replacement is maintenance and the fact the new system has an enhanced specification is ancillary to the maintenance and does not change its purpose.

Is the apportionment of the cost between the flats and levied on the subject flat incorrect?

25. Clauses 3.2.2 and 7.2 - the leaseholders covenant to pay a service charge.

The leaseholder Hereby covenants with the landlord:

3.2.2 To pay the Service Charge in accordance with Clause 7

7.2 The Leaseholder Hereby Covenants with the landlord to pay the Service Charge during the term by equal payments in advance at the times at which and in the manner in which rent is payable under this lease...

26. The Respondent within their Statement of case at paragraph 14, avers that the proportion of costs for each property is therefore one thirtieth of the total cost, nominally £ 39,218.40/30 which is £1307.28.
27. There is no evidence specifically challenging the actual amount of the cost.
28. The Tribunal finds that the apportionment provision is clear that the cost of maintenance should be split between the flats equally in line with the provisions of the lease. This applies to the cost of the replacement of the intercom system and the cost of previous and future maintenance.
29. The service charge provisions do not distinguish on whether a specific leaseholder benefits from a particular service or item. For example, in a theoretical case, one leaseholder may have the right to use a car space, and another not, the repair of the space is a matter for the landlord who may recover it from all the leaseholders. The fact that one leaseholder does not have access to a space has no impact on the apportionment.

Can the lease be amended to change the provisions around the service charge?

30. This is not an Application for variation of a lease and so is outside the jurisdiction of this Tribunal. In considering any Application for a variation of a lease, a Tribunal will need to consider the impact of any proposed change on the others leases in the block.

The Tribunal's decision

31. For the reasons above the Tribunal determines that the amount payable in respect of replacement of the intercom system as £1307.28.
32. The Applicant has not been successful on the points contended and so the Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 that the costs incurred by Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service

charge payable and accordingly the Applicant's application in that regard is dismissed.

33. Similarly, the Tribunal declines to make an order under paragraph 5A of part 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 reducing or extinguishing the Applicants liability to pay an administration charge in respect of litigation costs and accordingly the Applicant's application in that regard is dismissed.
34. Finally, the Tribunal declines to make an order for the Respondent to repay the Applicant their application fees for the same reasons.

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).