FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LSC/2024/0192**
Property	**:**	**33c Sherriff Road, London NW6 2AS**
Applicant	**:**	**Mr Floyd Bruno**
Representative	**:**	**In person**
Respondent	**:**	**London Borough of Camden**
Representative	**:**	**Mr Tetstall Counsel, instructed by Judge & Priestly Solicitors**
Type of application	**:**	**An application under section 27A Landlord and Tenant Act 1985**
Tribunal	**:**	**Mr C Norman FRICS Valuer Chairman** **Ms S Phillips MRICS**
Venue and Date of Hearing	**:**	**18 November 2024** **10 Alfred Place London WC1**
Date of Decision	**:**	**9 February 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal finds that the disputed invoices 1103527649 for £3,324.14 and 1103817396 for £277.95 are payable, subject to credit adjustment following final account for the work of £964.20.

(2) The applications for orders under section 20C of the Landlord and Tenant Act 1985 and Para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 are refused.

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 payability of service charge invoices 1103527649 relating to an interlinked fire alarm system and a new lighting system and the payability of invoice 1103817396 relating to a fire assessment associated with the fire alarm work. The applicant also seeks costs protection orders under section 20C of the 1985 Act and an Order under Para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act").

The hearing

2. The Applicant appeared in person and the Respondent was represented by Mr Tetstall, counsel.

3. The parties had been unable to agree a hearing bundle and had each submitted their own. The applicant's bundle was 196 pages and the respondent's bundle 253 pages. The applicant had sought a direction as to which bundle would be used. The tribunal announced that each party could rely on its own bundle.

The background

4. The property which is the subject of this application is a two-bedroom split level flat in a converted house.

5. 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.

6. 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 applicant's case

7. Mr Bruno provided a detailed submission which may be summarised as follows. In 2018 Camden proposed to install an interlinked fire alarm and a new emergency lighting system. His lease did not contain wording to allow the freeholder to recover costs of the maintenance repair and safety improvements to common areas, including measures. His lease made him responsible for contributing to the cost of lighting and electricity of the communal areas, not the installation of new lighting systems. Para 12 of the Third Schedule of the lease does not assist the respondent (see below).

8. An interlinked fire alarm system is a financial burden for the applicant. There was no cost benefit analysis from Camden, or evidence that they explored alternatives. It will require ongoing maintenance and expense. The costs are not reasonably incurred. The flat had an existing fire alarm system which was sufficient protection. There is no evidence that the new system is more effective than the previous system. The freeholder had not complied with the Fire Safety Order 2005 [Regulatory Reform (Fire Safety) Order 2005 ("the 2005 Order")], and it was therefore unreasonable to pass the costs of compliance on now to the applicant.

9. The Thorlux emergency lighting which has been installed functions as security lighting as it stays on continuously instead of activating during power failures. The emergency lighting is unnecessary as there is sufficient external street lighting. Paragraph 6 of Third Schedule does not cover the installation of a new lighting system.

10. The applicant also disputed electrical works including installation of a new consumer unit, metal clad socket, use of fire-retardant paint and decorating a cupboard. These areas did not require redecoration or renewal. Fire retardant paint and the other electric works were unnecessary and provided no benefits to the leaseholder. These works fell outside of Paragraph 1 of the Third Schedule.

11. A door renewal cost of £79.30 was not chargeable. Camden had confirmed in 2018 that the fire doors were not chargeable. Fire stopping seals were not chargeable on the basis that they were unnecessary.

12. The associated project costs £1476.85 were also disputed as being consequential to the principal items in dispute.

13. The fire risk assessment £277.95 invoice 1103909673 was disputed because a fire risk assessment had already been carried out previously as shown on invoice 1103527649. As the cost exceeded £200 the applicant should have been consulted.

14. Camden had failed to demonstrate that these works fell within the scope of the lease and the applicant should therefore not have to pay any interest or legal costs.

15. In his Reply to the respondents the applicant made additional points which may be summarised follows. The lease does not allow costs that arise from changes in the law. This is outside paragraph 12 of the Third Schedule. Camden had not sufficiently engaged with the applicant. The respondent could not imply obligations beyond those expressly stated in the lease. Further to rely on replacement, a previous system had to exist. Compliance with the 2005 Order does not override specific contractual terms of the lease. It does not translate into a blanket authority to pass costs onto leaseholders unless the lease explicitly allows.

16. Mr Bruno also referred to a number of decided cases. *Forcelex v Sweetman and Parker* [2001] 2EGLR 173 (LT) emphasised that service charges must be reasonably incurred. *Phillips v Francis* [2012] EWHC 3650 affirmed that substantial upgrades required specific lease provisions. In *Cravecrest Ltd v Trustees of the Will of WS Etherington* [2004] EWCA Civ 1590 it was held that landlords cannot unilaterally extend lease terms to recover costs unless explicitly stated. The applicant was not challenging the reasonableness of the costs as that was irrelevant to the case. He was challenging the reasonableness of passing on costs not within the scope of the lease.

17. In his oral submission Mr Bruno also referred to additional authorities on the definition of repair including *Waaler v Hounslow [2017]* EWCA Civ 45*, Post Office v Aquarius Properties* [1987] 1 All ER 1055 and *Arnold v Britton*. [2015] UKSC 36.

The respondent's case

18. A statement of case on behalf of the respondent was submitted by Mr Simoen Simeonov, a Foreign Qualified Lawyer employed by the respondents' solicitors. The salient points may be summarised as follows. The lease commenced on 22 September 1986. On 20 June 2018 statutory notice was given to the applicant in respect of the respondent's intention to carry out works relating to a fire risk assessment. The Respondent stated that this was necessary to maintain and protect the fabric of the building; this included any necessary renewals and redecoration. The works were to comply with the 2005 Order and recommendations of the Fire Risk Assessment. The applicant was advised that the work may include replacement of non-compliant doors and fixings, electrical work, signage, maintaining emergency exits, painting communal areas with fire retardant paint, installation or maintenance of smoke detectors and alarms and any additional related works.

19. The estimated costs were £3167.50. On 16 September 2020 invoice 11035276494 £3320.14 was issued to the applicant. On 13 September 2021 invoice 11038173964 for £277.95 was issued to the applicant. There was also an invoice on 23 September 2019 11031754084 £75.95 and on 16 September 2022 110410196X £8.36. On 16 July 2024 the respondent issued its final account resulting in a credit of £964.20 being applied to the applicant reducing the total liability for the contract to £2722.20. The respondent removed charges for dwelling alarms, FETs, Winkhaus locks and fan lights.

20. Mr Simeonov referred to Paragraph 2(2) of the Lease which states that the Tenant herby covenants with the Corporation as follows:

> *"To pay the Corporation without any deduction by way of further and additional rent a proportionate part of the reasonable expenses and outgoings including all VAT incurred by the Corporation in the repair and maintenance renewal decoration and insurance and management of the said building and the provision of services therein and the other heads of expenditure as the same are set out in the Third Schedule hereto such further and additional rent (hereinafter called the "Service Charge)…"*

21. The Third Schedule sets out the expenses and outgoings and other heads of expenditure in respect of which the Leaseholder is to pay a proportionate part by way of Service Charge. Paragraph 1 of the Third Schedule states:

> *"The expenses of maintaining repairing redecorating and renewing amending cleaning repointing painting graining varnishing whitening or colouring the said building and all parts thereof including the glass in all windows (other than the interior surface of the windows of the flat) and all the appurtenances apparatus and other things thereto belonging and more particularly described in clause 3(2) hereof."*

22. Paragraph 6 of the Third Schedule states:

> *"The cost of carpeting re-carpeting or providing other floor covering cleaning decorating and lighting the passages landings staircases and other parts of the said building enjoyed or used by the Tenant in common with others and of keeping the other parts of the said building used by the Tenant in common as aforesaid and not otherwise specifically referred to in this schedule in good repair and condition."*

23. Paragraph 12 of the Third Schedule states:

> *"The cost of taking all steps deemed desirable or expedient by the Corporation for complying with making representations against or*

otherwise contesting the incidence of the provisions of any legislation or orders or statutory requirements thereunder concerning town planning public health highways streets drainage or other matters relating or alleged to relate to the said building for which the Tenant is not directly liable hereunder."

24. It was the Respondent's position that the lease did allow for this work to be charged to the Leaseholders of the Building. In combination of the provisions set out above, the Respondent has an obligation pursuant to the lease to maintain and renew the building, including common parts of the building, but also the responsibility of complying with provisions of any statutory obligations or legislation related to health for which the tenant would not be directly responsible for.

25. The 2005 Order requires all landlords to carry out Fire Risk Assessments on their properties with shared communal areas. The recommendations of the Fire Risk Assessment must be considered and acted on to mitigate the risk of smoke and fire to all residents. This places a burden on the Respondent to ensure the Building is compliant with fire safety regulations and legislation. Given they are responsible for the communal elements of this Building, the works were determined necessary and reasonably incurred.

26. Mr Simeonov also addressed the applicant's initial position that the costs were unreasonable in amount. He submitted that they had been reasonably incurred, and that the applicant had not provided any alternative quote. [However, it was clear by the hearing and in light of the applicants reply [A45][1] that this point was not pursued.] The respondent also sought its costs pursuant to clause 2.6 [2(6)] of the lease.

27. In oral submissions, Mr Tetstall submitted that *Phillips v Francis* was concerned with repair, not keeping in good repair and condition. He also provided a spreadsheet showing the interrelationship of invoices. Apportionment within the building had been carried out on a rateable value basis.

28. Mr Tetstall then called Mr Bernard de Mel being the respondent's project manager. Mr de Mel had provided a witness statement verified by a statement of truth. His evidence was that Article 8(1)(b) of the Order required that the property had *such general fire precautions as may be reasonably required in the circumstances… to ensure that the premises are safe*. Article 13(1)(a) required that the property was "*equipped with appropriate firefighting equipment and with fire detectors and alarms*" and Article 14 (h) required that the property had *"emergency routes and exits… with lighting of adequate intensity in the case of failure of their normal lighting."*

[1] Square brackets denote bundle pages with prefix A and R denoting the parties respectively.

29. The preliminary inspection had found that the lighting in communal hallway and staircase did not comply with the Order and that the property was not equipped with a centralised and connected fire detection and alarm system. Therefore, not all occupants would be warned of a fire in one part of building. The respondent appointed Thorlux to design and install a compliant lighting system and separately Ei electronics to design install and maintain a centralised connected fire alarm system. Before and after photographs were exhibited. Use of fire-retardant paint was necessary. The reference to door renewal related to communal service/electrical cupboard doors and not entrance or exit flat or communal doors. Supervision fees and project overheads related to costs of a consultant in administering and valuing the work undertaken. Overheads relate to the costs of setting up the site for constructing the works storage of materials on site management fees. These are all necessary.

30. During cross examination, Mr de Mel disagreed that standard battery alarms would be adequate. His evidence was that only interlinked alarms were appropriate. He also stated that adding a secondary lighting circuit just for emergency use would be more expensive.

Discussion

31. During the hearing the tribunal referred the parties to paragraph 10 of the Third Schedule which states *"the cost of installing maintaining repairing and renewing any television and radio receiving aerials answer entry phone* ***fire alarm systems*** *telephone relay systems and used or capable of used by the tenant in common as aforesaid" (*emphasis added).

32. The Tribunal found that Mr del Mel was a credible witness and accepts his evidence. It finds that all the relevant works were undertaken to comply with the 2005 Order. It finds that all such works fell within paragraph 12 of the Third Schedule, being works "*deemed desirable or expedient by the Corporation for complying with… the provisions of any legislation or orders or statutory requirements concerning… public health… or other matters relating… to the said building for which the tenant is not directly liable hereunder."* In addition, the Tribunal finds that replacement of the lighting falls within paragraph 1 of the Third Schedule being *"renewal of appurtenances apparatus and other things."* It also finds that the cost of lighting in paragraph 6 includes emergency lighting. Para 10 also expressly refers to the cost of installing and maintaining fire alarms. Further, absent these works the common parts would not be in good condition as referenced at Paragraph 6.

33. The Tribunal finds that the construction overheads were part of the cost of the works. It finds that there was no duty to consult in relation to commissioning a fire risk assessment. The meaning of the Third Schedule was clear, and it is unnecessary and disproportionate to refer to all the authorities that had been cited. However, the Tribunal had

considered the lease and Third Schedule as a whole in accordance with *Arnold v Britton*. It did not find that *Waaler* was relevant as these works were not discretionary improvements. It did not consider the distinction between repair and improvement to be relevant because the disputed works are to comply with statutory requirements concerned with fire safety.

34. For these reasons, the Tribunal finds that the invoices 1103527649 £3,324.14 and 1103817396 £277.95 are payable in full, subject to adjustment following final account for the work. The Tribunal notes that a credit has now been applied to those sums of £964.20.

Applications under s.20C and Par 5A Sch 11

35. In the application form the Applicant applied for an order under section 20C of the 1985 Act and under Para 5A of Sch 11 of the 2002 Act. Taking into account the determinations above, the Tribunal finds that there is no basis for such orders to be made.

Application for Costs

45. The Tribunal has no power to make a general costs order in the cause, in leasehold management cases.

46. In the event that an administrative charge for litigation costs is levied by the respondent against the applicant, under clause 2(6) of the lease, the Tribunal has power to assess its reasonableness and payability under Para 5, Schedule 11 of the 2002 Act. That would require a separate application.

Name: Charles Norman FRICS **Date:** 9 February 2025

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).