



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

Case reference : **CAM/00MB/LSC/2023/0054**

Property : **Flat B, Red Lion House, 5 Church Street,
Theale, Berkshire, RG7 5BU**

Applicant : **Alison Lewis**

Representative : **In person**

Respondent : **Assehold Ltd**

Representative : **Sam White, Counsel instructed by
Eagerstates Limited**

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
Mr Roland Thomas, MRICS**

Venue : **Cloud Video Platform (CVP)**

Date of Hearing : **14 March 2025**

Date of Decision : **17 March 2025**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1,854 charged for the removal of waste from drains within the service charge account for March 2022/23 is not payable under the Lease.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
- (3) The Tribunal makes an order under the Commonhold and Leasehold Reform Act 2002, Schedule 11 paragraph 5A, that there is no liability to pay the landlord's administration charge in respect of litigation costs for the reasons set out in this decision.
- (4) The Tribunal determines that the Respondent shall refund to the Applicant the Tribunal application and hearing fees that the Applicant has paid within 28 days of this Decision.

The Application

1. The Applicant sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") that the service charge of £1,854 within the service charge account for March 2022/23, and described as "tanker for waste removal from drains and CCTV", was not payable.

The Hearing

2. The hearing took place via Cloud Video Platform (CVP). The Applicant appeared in person. The Respondent was represented by Sam White, Counsel.
3. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issue in dispute.
4. The Tribunal was provided with a bundle of documents prepared by the Applicant. The bundle consisted of 11 sections with pages marked A1 to A86. The Respondent confirmed receipt of this bundle and also accepted that the Respondent had not provided the Applicant or the Tribunal with any documents in accordance with the Tribunal's directions.

The Background

5. The building which was the subject of this application was a former public house that had been converted into one freehold house and six leasehold flats.
6. The Applicant held a long lease of Flat B, Red Lion House, 5 Church Street, Theale, Berkshire, RG7 3TH (the Property). The lease was dated 15 March 2019 and made between Blue Fern Homes Limited, Red Lion and Applewood Management Company Limited and Alison Lewis for a term of 125 years from 1 December 2018 (the Lease). A copy of this Lease was within the bundle at section 1, A1 to A33. The Lease required the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The Issue in Dispute

7. There was one issue in dispute and that was the payability and reasonableness of the service charge of £1,854 which was described as “the cost of a tanker for waste removal from drains and CCTV”. This charge formed part of the March 2022/2023 service charge account (a copy of which was at section 2, A34-37 of the bundle).

The Applicant’s Position

8. It was the Applicant’s position that the 2022/2023 charge of £1,854 for the cost of a tanker for waste removal from drains and CCTV was not payable under the Lease.
9. The Applicant told the Tribunal that when she had received the service charge account dated 6 March 2023, she had been surprised to see a charge of £1,854 for work described as “tanker for waste removal from drains and CCTV”. The Applicant had therefore written to Eagerstates Ltd (the managing agent for the Property) on 15 March 2023 to ask for an explanation. A copy of the letter was at A-38 of the bundle and the relevant section of this letter was as follows:

“Tanker for waste removal from drains and CCTV:
our drainage system was all replaced when the development was built four years ago. There have been no issues whatsoever, therefore I would like to know the reasoning for this costly visit. Furthermore, your tanker would not have been able to access our drains for waste removal as the drains for the development are in the private gardens. Please forward evidence of this visit, including the relevant CCTV footage.”

10. By letter dated 28 March 2023, a copy of which was at A-40 of the bundle, the Applicant confirmed that she had made payment for the disputed service charge, but that this payment was made under protest.

11. The Applicant told the Tribunal that, despite sending a further letter on 31 March 2023, which had sought clarification about the waste removal from drains (A42 of the bundle), a reply had not been received from the Respondent until 11 April 2023. This response had been an email from Mr Gurvits on behalf of Eagerstates which had attached receipts, invoices and photographic evidence to substantiate the 2022/23 service charges. A copy of this reply was at page A44 of the bundle.
12. As part of this information sent on 11 April 2023, the Applicant told the Tribunal that there had been invoices, a job report and photographs from Aquevo Drainage and Water company (Aquevo). The Applicant confirmed, and it was not disputed by the Respondent, that Aquevo were the company who had completed work described as “tanker for waste removal from drains and CCTV” at the cost of £1,854.
13. At page A56 of the bundle, the Applicant produced a copy of Aquevo’s job report. This report stated that the following work had been completed:

“Attended site to carry out pre planned maintenance. On arrival found no access to any foul drainage and believe they are in the back gardens. Lifted surface water manhole at front and found full of leaves and mud, tanker required to remove.”
14. On the same page (A56) under the heading “what works are recommended?” The following entry was made:

“Tanker to suck out surface water manhole at the front of the property”.

The time required for this work to be completed was said to be 1 hour.
15. At page A57 the Applicant produced a photograph of the drain that the work related to. The Applicant confirmed in her evidence to the Tribunal that the location of the drain was on the pavement at the front of the building, which included her Property. This drain was not within the boundary of the Property and the Applicant stated that it was actually in the public pavement and therefore not the responsibility of the leaseholders.
16. The Applicant confirmed that Aquevo had been right to state that it was not possible for the tanker driver to gain access to the drains to complete waste removal as these drains were at the rear of the Property, in the secured gardens. The Applicant’s evidence was therefore that it would be impossible to carry out waste removal from the drains that fell under the Lease without arranging access.

17. Further, the Applicant told the Tribunal that for non-urgent work, the Lease required three days' notice to be given, but as this notice had not been given, the leaseholders had not been aware that Aquevo were attending the Property and therefore arrangements had not been in place for them to enter the secured gardens. Paragraph 3 of the Fourth Schedule of the Lease provided for the Lessor as follows:

“The right at any time during the said term with or without workmen and others at all reasonable times upon giving three working days' previous notice in writing (or in the case of emergency without notice) to enter into and upon the Premises for the purpose of:

- (i) Inspecting repairing cleansing maintaining or renewing any such storage tanks sewers drains watercourses cables pipes wires and other media as aforesaid.”

18. In reply to a question from counsel for the Respondent, the Applicant confirmed that she knew that access had not been granted for Aquevo to enter the secured gardens as this was confirmed by the tanker driver's report (page A56). Further, she confirmed that the leaseholders used a WhatsApp group chat and through this she had been able to confirm that no leaseholder had granted access to Aquevo.
19. It was therefore the Applicant's evidence that Aquevo had been unable to gain access to complete waste removal from the drains and so instead had completed work to a drain on the public pavement. Aquevo's own description of the work had been that it was work to a surface water manhole and therefore it was the Applicant's position that the tanker driver did not complete waste removal from drains and consequently £1,854 was not payable as a service charge under the Lease.

The Respondent's Position

20. The Respondent did not provide the Tribunal with any documents. However, the Tribunal allowed counsel to make submissions. Counsel accepted that this was a narrow issue where the Tribunal had to determine whether the work was chargeable under the lease.

The Tribunal's Decision

21. The Tribunal determines that the sum of £1,854 for work described in the service charge account March 2022/23 as “payment for tanker for waste removal from drain and CCTV” is not payable under the Lease and therefore this amount must be refunded by the Respondent.

Reasons for the Tribunal's Decision

22. The Tribunal finds the Applicant to be a credible witness who had taken a great deal of care to produce for the Tribunal a bundle of relevant documents. The Tribunal accepts the evidence of the Applicant and finds that £1,854 is not payable under the Lease. Aquevo's own description of the work at page A56 of the bundle was work "to the surface water manhole". Further, the photograph of the relevant manhole to which the work was completed was shown at page A57. The Tribunal accepts the Applicant's evidence that this manhole was on a public footpath and therefore finds that Aquevo did not complete work to remove waste from drains as described in the service charge account.
23. Further, the Tribunal accepts the evidence of the Applicant that the tanker driver was not able to access the secured gardens as notice had not been given to the leaseholders. Indeed, Aquevo's own description of the work states that on arrival at the property there was no access to any of the foul drains as they were in the back garden. The Tribunal was not presented with any evidence to explain why Aquevo then completed work on the public pavement to the surface manhole. However, whatever the explanation for this might be, it is clear that this work is not the responsibility of the leaseholder under the Lease.
24. The Tribunal therefore finds that the charge of £1,854 is not payable under the Lease and that any payments made for this work should be immediately returned to those who have paid this charge.

Application under Section 20C and Paragraph 5A(1) of Schedule 11 Commonhold and Leasehold Reform Act 2002

25. In the application form, the Applicant applied for an order under section 20C of the 1985 Act and paragraph 5A(1) of Schedule 11 Commonhold and Leasehold Reform Act 2002.
26. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, and paragraph 5A(1) of Schedule 11 Commonhold and Leasehold Reform Act 2002 so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Refund of Tribunal Fees

27. The Applicant made an application for a refund of the fees that she had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid to the Tribunal by the Applicant within 28 days of the date of this decision.

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).