FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AA/LSC/2023/0378**
Property	**:**	**Flat 4, Amen Lodge, Warwick Lane, London EC4M 7BY**
Applicant	**:**	**Mr Juan Lorenzo**
Representative	**:**	**Mr T Arnold**
Respondent	**:**	**Citybrim Limited**
Representative	**:**	**Mr Anthony Williams and Mr David Gilmour (directors)**
Type of Application	**:**	**Determination of the liability to pay service charges under section 27A the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Dutton** **Mr A Fonka** **Judge Samuel**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1 7LR on 15th January 2025**
Date of Decision	**:**	**3 February 2025**

DECISION

DECISION

1. The Tribunal makes the determination set out under the various headings in this decision.

2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) 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 determines that the Respondent shall pay to the Applicant one half of the Tribunal fees namely £160.

The Application

1. The Applicant seeks the determination pursuant to section 27A of the Act as to the amount of service charges payable by the Applicant to the Respondent in respect of service charge years as set out in the application, from and including the year ending March 2016 to the year ending March 2024. The application is dated 15th September 2023.

2. On 14th February 2024 the Tribunal issued directions in the case intending initially for the matter to be dealt with on the basis of the documents provided. However, on 12th July 2024 Regional Judge Vance ordered that the matter should be dealt with by way of a face-to-face hearing and issued further directions concerning the production of documentation. In due course the matter was set for a hearing on 15th January 2025 and came before us on that date.

3. Prior to the hearing we were provided with a number of documents contained in a hearing bundle running to some 230 pages. This contained the original application, directions, a schedule of items in dispute, statements made by the Applicant originally and in response to the Respondent's statement and a further response from the Respondent. A copy of the lease was included as were numerous emails, miscellaneous documents and other matters, which had limited relevance to the matters that we were required to determine.

Hearing

4. At the hearing the Applicant appeared in person and was represented by his friend Mr Arnold. The Respondents appeared through two directors Mr Williams, who acted as advocate, accompanied by Mr Gilmour.

The Background

5. In the bundle of documents were a number of photographs, which were helpful in understanding the make up on the building. An inspection was not requested but the photographs were very helpful. Mr Lorenzo's apartment is somewhat of an adjunct to the main building. It runs at right angles and consists of a single floor above the entrance, which we assume is to the car park to the rear, and has its own front door leading up to the apartment. The remainder of the building appears in a block of some five floors with a penthouse at the top floor level. There is an

alternative entrance to the main building when viewed from Warwick Lane. The photographs had been helpfully coloured we assume by Mr Lorenzo to show the clear differentiation between his apartment and the remaining building.

6. The Applicant holds a lease dated 21st February 1978 running for a period of 99 years less three days from 24th June 1961. Ground rent is payable and in addition the lessee is obliged to pay by way of reserve rent a service charges at a rate of 5.41%. We shall refer to such other passages of the lease as are relevant to the issues that we need to determine.

7. Mr Arnold told us that there were essentially three issues, although a fourth one was also explored between us, which we will deal with separately. The three service charge issues were as follows:

- The withdrawal of porterage to Mr Lorenzo
- The lack of window cleaning to Mr Lorenzo's common parts
- The wrongful use of percentages for the means of determining the service charge payable.

8. We were told that the freehold to the property was acquired in 2018 by Amen Lodge Freehold Limited, a company owned by the residents who chose to participate in the acquisition of the freehold. We were also told that Citybrim holds under a 99-year lease and deals with the services. Every leaseholder is a member of Citybrim Limited. It is right to record that Mr Lorenzo declined to take an interest in the freehold company.

9. A schedule annexed to the original directions had been completed by the parties, but it was largely repetitive. The same issue arose each year. This was the percentage overcharge; it being said that Mr Lorenzo was being charged 5.575% instead of 5.41% as provided for in the lease. There was also an allegation that the service was not provided in respect of porterage or window cleaning. These complaints went on for the years March 2015 through to 2024.

10. In a somewhat discursive and lengthy original witness statement running to some ten pages dated 30th April 2024, Mr Lorenzo set out his concerns relating to the three specific issues but raised also in some detail in the 'background' section historic issues relating to the reserve fund account, the replacement of windows and his concerns as to the funding of the reserve fund. We will return to this matter in due course.

11. **Dealing firstly with the percentage**, the lease is quite clear that the percentage allocated to Mr Lorenzo is 5.41%. We heard from Mr Williams that this meant that there was a shortfall in the service charges that could be recovered. In his witness statement Mr Williams told us that he had purchased 3 Amen Lodge in 1999 and Flat 2 Amen Lodge in 2008. He had been a director of Citybrim, the Respondent, since about 2000 and served as company secretary for a period and again from 2020 to date. On the question of the percentages, he told us that Citybrim had retained external managing agents to deal with the recovery of service charges. This stopped because the Respondent considered that they could deal with the collection of service charges at a much cheaper rate. Mention is made of Mr Arnold

who owned the subject property it seems until April of 2014 when it was gifted to Mr Lorenzo. During that period Mr Arnold was a director of Citybrim Limited and indeed company secretary for a period. It is said by Mr Williams that at no time did Mr Arnold raise any issues on the level of service charges that was made. He did confirm that it seems that since October of 2023 all service charges have been paid and there are now no arrears. Indeed, Mr Lorenzo has now become a director of the Respondent company.

12. In the bundle Mr Williams produced a letter from Stiles Harold Williams who were the managing agents on 11th February 2024 (the date of the letter), which explained the service charge situation. They indicated in that letter that utilising the service charges contained in the lease meant that they were only recovering 93.67% of the total. They had therefore grossed up the percentages increasing in Mr William's case his lease percentage of 5.85% to 6.2453%. This it was said resulted in the service charges adding up to 100%. Mr Williams did not query this and accepted the position.

13. In his witness statement at paragraph 36 he seeks to explain the percentages indicating that the total came to 93.67% but *"with the balance being apparently attributable to the porter's flat. As the service charge payable on the porter's flat would be recoverable by the service charge, this resulted in a somewhat circular calculation as the total service charge payable would need to be added to the service charge payable on the porter's flat to calculate the service charge payable by individual owners."* In any event, for reasons that are not wholly clear in his witness statement, the service charges were dealt with by grossing them up as had been undertaken by the previous managing agent and somehow it seems ignoring the service charge payable on the porter's flat. He says in his statement that the Applicant's claim is misconstrued. Further he submits that this had been the established practice for at least 25 years and it is therefore binding on all leaseholders.

14. Our finding on this point is that the history relating to the service charges is not wholly clear and it is difficult to follow the logic that is put forward by Mr Williams that in somehow omitting the service charge for the porter from the calculation and grossing up the percentages, this is the correct way of dealing with the matter. We do not agree.

15. **Our decision** is that the lease is the lease, and it states that the percentage payable by the Applicant is 5.41%. What may have been paid by Mr Arnold, his predecessor in title, is one thing and we do not consider that to be binding on Mr Lorenzo. Accordingly, our finding in this case is that the percentage set out in the lease is the correct one and that this should be applied to the service charges which are in dispute. This will impact upon by our findings in respect of the porterage and the window cleaning, although the amounts involved in those heads are not great.

16. We will also comment in due course as to the period for which we think the Applicant is entitled to challenge these service charges, which again will have an impact on the final figures.

17. The next matter we consider is in respect of the **porterage charges**. These are set out in each year in the accounts, which are in the bundle. They include what is euphemistically referred to as notional rent. Mr Arnold sought to argue that 'notional rent' was not within the terms of the lease. What the lease actually says at clause 2(iv) is as follows: *"The cost of employing and maintaining the service of a porter including the rent of a flat in the said building (should he occupy one)."* We were told that the porter does occupy a flat in the building, which with his property makes 13 flats. Mr Arnold's argument appeared to be that the word rent excluded notional rent.

18. We were told by Mr Williams that the accounts are dealt with on the basis that a notional rent is charged but that this notional sum goes back to the company's assets which is defrayable between the members of the company and/or goes into the reserve fund. Either way, it would seem from what Mr Williams was saying, that the rent that is "charged" for the porter's flat comes back into the company in the form of a transfer from the service charges, which are paid by each lessee.

19. Our finding on this is that the lease clearly provides for a rent to be paid. As the flat is included within the building this can only be a notional rent, and we assume has the effect of reducing the porter's salary on the basis that he is provided with essentially rent-free accommodation. It seems to us perfectly reasonable for the matter to be dealt with on this basis because the notional rent that is charged comes back as a credit either to the company through the company finances or through the reserve fund. Mr Lorenzo is a member of the company and therefore would get the benefit of this notional rent either being a member of the company or it being added to the reserve fund to meet other expenses. In those circumstances, we find that the porter's charge is perfectly reasonable.

20. However, the concerns relating to the porter were not limited to this particular aspect. It is said that because Mr Lorenzo did not pay his service charges, he was not entitled to expect to receive the services of the porter. The Respondents rely on clause 5(1) of the lease that says as follows: *"Subject to the payment by the lessee of the contribution herein before provided to maintain repair redecorate and renew (a) structure … (b) gas and water pipes … (c) the main entrance and passageways …"* In addition, the services provided include heating and lighting and it would seem hot water, the insurance of the building, the maintenance of the boilers and the lift and the usual services that one would expect to see in a building of this nature. It includes also the services of the porter which in the lease are to cleanse the entrance hall stairs passages attend to lighting and extinguishing of the lights and to remove domestic refuse from the building.

21. Part of Mr Lorenzo's complaint was that the services of the porter exceeded that which was set out in the lease.

22. On page 189 of the bundle the porter's duties are outlined. They are extensive. They include the cleaning of common parts as well as dusting of woodwork, vacuuming, removal of refuse, review of exterior areas, sweeping the front entrance and cleaning certain areas, sweeping and hosing down the car park, replacing lights and clean light fittings as well as to clean and hose down the bin room. In addition to the above, there appears to be an obligation to distribute post and to sign for deliveries, to check rooftop drains, provide maintenance and repair

tasks when within capabilities, supervise contractors, ensure access and generally clean and maintain all common parts. The expectation was that the porter would undertake these works four hours a day, five days a week but there would be some flexibility.

23. It was Mr Lorenzo's complaint that this far exceeded the matters contained within the lease. It was drawn to his attention that by reference to clause 2(ix) there was provision in the following wording*: "The cost of all other services which the lessor may at his absolute discretion provide or install in the said building for the comfort and convenience of the lessees."* It appeared to be accepted that this meant that the Respondents could determine the services that could be provided over and above those which may have been set out in the lease.

24. The Applicant also accepted that the lease did allow for the stopping of services if the service charge costs were not paid. When asked whether figures for the porterage or window cleaning had ever been put to the Respondents, this was met with a negative response. In addition to the complaint concerning the work that the porter was required to do and the provision of accommodation for him, we were also addressed on the lack of work that the porter actually did directly for Mr Lorenzo, in particular cleaning his common parts, which were used only by him.

25. In his witness statement he states that the detailed descriptions of various aspects of cleaning were never carried out on the staircase leading to his flat save a burst of cleaning that followed the meeting with a Mr Tim Williams on 6th August 2019. A complaint was made that although he understood that the removal of rubbish by the porter had stopped, that was still an issue and that it was not until January of 2024 that an email was circulated indicating that because of the porter's illness people were asked to remove their own rubbish. This Mr Lorenzo considered was false information that had been given to him which contributed to the breakdown of trust. In any event, he finishes the section of his statement in this way *"in any event Flat 4 at no time received any benefit from the porter's observance of this part of his duties*." We think this relates to the rubbish.

26. In his statement, Mr Williams indicated that there had been problems between Mr Lorenzo and the porters. It appears that a Mr Quirk who had been in post from June of 2016 until his death in March of 2024 had suffered from the Applicants tendency to be abrupt and rude. An incident is referred to in November 2023 when the Applicant claimed that Mr Quirk had not cleaned the stairs for over a year, this purportedly left Mr Quirk shaken by the encounter and an email from him to Mr Williams was included within the bundle. It is said that because the Applicant does not reside at Flat 4, he is not aware of when the stairs are regularly cleaned and had "adopted an unnecessarily confrontational style with the porter."

27. It appears to be accepted by the Respondents that the porter did not undertake his duties to the same degree that he did for the remainder of the building. At paragraph 18 of Mr Williams' witness statement, he says as follows: *"At all materials times from October 2014 the Applicant was in arrears of his service charge except for a few days in March 2019 and from 29th September 2023. Therefore, due to the Applicant's own payment default, he was not entitled to any cleaning services provided*." It is said by Mr Williams that if the Applicant had wished to ensure that he received the porterage charges he could have paid the

service charges under protest but that by June of 2023 the arrears stood at some £14,645 and accordingly Citybrim was entitled to withhold the porterage services. Mr Williams' witness statement goes on to set in some detail the steps undertaken by the porters, which mirrored the document, we referred to above.

28. As with Mr Lorenzo's witness statement his became somewhat discursive and wordy although in part it was to deal with the issues that Mr Lorenzo had raised. It does seem, however, that certainly from 2024 there are no issues with regard to the porterage and indeed Mr Lorenzo is now fully up to date with his service charges.

29. **Our decision on the question of porterage** is that the provision of the notional rent as we have indicated above is perfectly reasonable and therefore the actual charge for porterage is acceptable and payable. There does seem to be some concern as to the provision of the porterage services to Mr Lorenzo. The lease certainly indicates that services can be withdrawn if the service charges are not paid although this is not a step that is frequently followed by somebody in Citybrim's position. The historic reasons for non-payment of the service charges are an issue that we will return to in due course. We did hear from Mr Williams that he considered that the extent of the services provided by the porter could be broken down as to 40% in respect of cleaning and other issues and 60% as to the remainder of the items shown on the list we have referred to above. This was put to Mr Arnold who thought it was the alternative split, that is to say 60% cleaning and 40% administration.

30. Having seen the list of the works required to be undertaken by the porter which seem to be beyond the norm, including indeed some service charge arrangements, we are in agreement with Mr Arnold that a 60/40 split in favour of the cleaning responsibilities as opposed to the admin, is reasonable. We have therefore on the attached schedule calculated what we consider to be the correct position with regard to the contribution that Mr Lorenzo must make in relation to the porterage charges. We have taken the porterage costs for each year, ignoring the notional rent and any other expenses, multiplied that by a 60% figure and applied Mr Lorenzo's leasehold liability of 5.41%. We have then assessed what we consider to be the level of services received by Mr Lorenzo taking into account the written statements and the evidence at the hearing. Doing the best we can we find that Mr Lorenzo did receive some cleaning services and if he was not living at the property, as is alleged although not put to him, it would be difficult to police. We consider a figure of 50% of the sums we find would be payable is appropriate and is reflected on the schedule. We do not consider that Mr Lorenzo should contribute to the administration charges purportedly incurred in the use of the Porter. There is little or no evidence on this point although no management charges appear in the relevant accounts. It was put to us that taking the management away from a commercial entity saved the Respondent money.

31. We then turn to the question of the **window cleaning**. We can take this quite shortly because Mr Williams in his evidence to us confirmed that he accepted that the windows had not been cleaned. To be fair to the contractors the entrance to Mr Lorenzo's flat has little in the way of windows to clean. There appears to be glass above the door and to the side and if it were not made clear to the contractors that this separate entrance should also be included within the window cleaning

exercise, one can see how this may have been omitted. Accordingly, we have taken the window cleaning for the years that we consider should be taken into account and have removed 5.41% of that sum which gives an amount shown on the schedule annexed.

32. The last matter we should address is the period for which we consider Mr Lorenzo can seek to challenge service charges. There is a history regarding the use of reserve fund monies to replace windows at the building. It appears that Mr Lorenzo's flat windows were not replaced and there was a good deal of correspondence and meetings to reach some form of compromise in this regard. We do not propose to go behind the agreement that was reached between the parties. This is evidenced in the accounts which are in the bundle, in particular at page 82. This shows an account headed invoice dated 28th March 2019. This shows that on 25th March 2019 a credit of £8,394.79 was applied to the account and a payment was made by Mr Lorenzo of £3,145.86 on 28th March 2019. This appeared to create a nil balance at that time. Subsequently, demands were made for service charges which were still not paid until a payment was made on 23rd September of £1,900 which appeared to reduce the amount outstanding to just under £13,000 and that by October of 2023 the outstanding balance had been cleared as on 1st March 2024 there appears to be a demand only for the half year service charge on account.

33. Mr Lorenzo sought to claim service charges going back to 2015 although his application was for the period 31st March 2016 through to 31st March 2024.

34. Mr Lorenzo sought to indicate that, although an agreement had been reached on the sums of money that were either credited or paid by him, there were still some outstanding issues, which Mr Lorenzo set out in his response to the reply by the Respondents on page 12 of the response. He says as follows citing from the terms of settlement which were not produced to us: *"2. Within 7 days the above credit being given I will pay to Citybrim the sum of £3,145.06 and will then following inspection of all relevant documents seek to agree with Citybrim what sum represents a charge for services not received by Flat 4."*

35. We were not aware that any query had been raised by Mr Lorenzo concerning what he considered would represent in effect damages for not receiving the services to his flat for which he had now been given credit. We also bear in mind that Mr Lorenzo withheld the whole of his service charges for the period until March of 2019, which included costs associated with hot water, heating, insurance and other issues which had nothing to do with porterage or window cleaning.

36. We are satisfied on the evidence before us that Mr Lorenzo had reached an agreement with the Respondents, which bars him from making any application in respect of the earlier years before March of 2019. Accordingly his claim in our finding can only be for the period of March 2020 onwards. Section 27A(4) clearly sets out that no application can be made where matters have been agreed or admitted by the tenant, and we consider that him having received a substantial credit and then paying a sum in excess of £3,000 constitutes such an agreement. Accordingly, it is for this reason that we have only considered service charges for the year ending March 2020 onwards and dismiss any claim in respect of service charges prior to that time by reference to section 27A(4).

37. To settle the matter the Respondents will need to revisit the years 2020 to 2023 and recalculate the liability of Mr Lorenzo at 5.41% as opposed the percentage figure they have been using. Once that has been done, they will need to make the amendments we have set out on the schedule attached.

38. The only other matters that we can address relate to the provisions of section 20C. In fact we can see nothing in the lease that would allow the Respondents to recover the costs of these proceedings as a service charge but in any event given the findings we have made in relation to both the porter and window cleaning as well as the percentages payable under the terms of the lease, we are satisfied that it is just and equitable to make an order under section 20C of the Act preventing the Respondents from recovering any costs that they have incurred through the service charge regime.

39. We were also asked to consider a refund of the fees payable by Mr Lorenzo in the amount of £320. We have given this some thought. We consider that Mr Lorenzo has not helped himself by the verbose statements that he has produced containing a large amount of comment which is not relevant to the simple issues for us to determine in this case which were set out in his original application, namely that was porterage, window cleaning and the percentage charge under the lease. He has subsequently sought to include the dispute concerning the allocation of reserve fund monies for window replacement, which did not appear in his application. Whilst we have given that some consideration, we are satisfied that our findings in that regard are correct and that accordingly it would be inappropriate if Mr Lorenzo were to recover all his fees. We think an appropriate way of dealing with this is to order that the Respondents pay half the fees that Mr Lorenzo has paid to the Tribunal, namely £160.

40. We hope that that now settles outstanding matters and that as we indicated at the hearing, there is some rapprochement between the parties. With Mr Lorenzo now being a director of the Respondent company, he can ensure that matters are dealt with in accordance with his reasonable wishes and that further correspondence and/or litigation between the parties can now be avoided.

Judge: Andrew Dutton

A A Dutton

Date: 3 February 2025

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

Schedule of service charges for the years ending March 2020 to March 2023

Porterage		£ allowed @ 50%
March 2020	£9,932.84 x 60% = £5,9597 x 5.41%= 332.42	166.21
March 2021	£10,343.83 x 60% = £6,207 x 5.41% =335.80	167.90
March 2022	£12,204.58 x 60% = £7322.70 x 5.41%= 396.15	198.07
March 2023	£11,758 x 60% = £7,036.80 x 5,41% =380.70	190.32
Total sum payable for porterage by Mr Lorenzo		722.50

Reductions in service charges for non-payment of window cleaning

March 2020	1,469.19 x 5.41% =	79.48
March 2021	970.34 x 5.41% =	52.49
March 2022	300 x 5,41% =	16.23
March 2023	Nill charged	----------
total credit		£148.20