

10451



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

Case reference : LON/00AN/LSC/2104/0522

Property : 44 Godolphin Road, London W12
8JF (the Property)

Applicant : David Cannon Properties Limited

Representative : Crabtree Property Management

Respondent : The leaseholders of the 4 flats at
the Property as set out in the
Application

Representative : None

Type of application : S27A Landlord and Tenant Act 1985

Tribunal member(s) : Tribunal Judge Dutton
Mr N Martindale FRICS

**Date and venue of
determination** : 3rd December 2014 at 10 Alfred
Place, London WC1E 7LR

Date of decision : 3rd December 2014

DECISION

Decisions of the Tribunal

The tribunal determines that the Applicant can recover part of the proposed costs of attending to the communal electricity supply and the costs of the ongoing electricity used to light the communal area at the Property.

The application

1. The applicant seeks a determination pursuant to s27A of the Landlord and Tenant Act 1985 (the Act) as to the recoverability of certain anticipated costs for *"the installation of a communal electricity supply to include a Ryefield board, RCD protected sockets outlet and two maintained emergency lighting and smoke detectors."* We are told, in the application that such work is required *"because the communal supply has been cut off by the lessees with access to it and the works will ensure there is continual electricity supply to the communal areas"*. The two estimates obtained show costs between £3,250 and £2,931.31, in both cases plus VAT. We are asked to determine whether the works can be recovered as part of the service charges. The Applicant confirmed that we are not asked to determine whether the costs are reasonable.
2. Directions were issued on 24th October 2104 and record that a s20ZA application in respect of these works was withdrawn. The case was listed for a paper determination and directions given as to the filing of papers. At the determination we had a bundle of papers filed by the applicant but nothing from the leaseholders who were named as Respondents in the application.
3. The bundle filed contained copies of the application, leases of the four flats, the directions referred to above, certain correspondence and a short statement of case on behalf of the Applicant. This statement of case, after addressing the background and the law set out the questions we were asked to consider by reference to certain clauses in the leases, which appeared to be common to all, save possibly the basement flat. We were asked to find that the Applicant is the responsible party for the works outlined in the application, including the supply of electricity to the communal area and the future upkeep of same and that accordingly the costs could be recovered as a service charge.

THE LEASE

4. It appears that three clauses of the leases of the flats in the Property relate to this matter. They are clauses 3(4), 3(6) and 5(4).

5. Under the lessees covenants set out in clause 3 of the leases owned by the Respondents clause 3(4) says as follows: *"Contribute and pay to the Landlord or to such one or more of the Covenantees as the case may be as shall incur the costs and expenses hereafter mentioned one fourth part of the costs and expenses incurred in keeping in substantial order and condition pursuant to the provisions in that behalf contained or to be contained in the Leases of the other flats forming part of the Block or in the hereinbefore recited Deed of Covenant such of the following parts of the Block as do not form part of a Flat that is to say all roofs.....and such of the following as are enjoyed or used in connection with two or more of the flats forming part of the Block namely...electric cables and wires stair carpets and staircases entrances passages and landings and the cleaning and lighting thereof..."*
6. Clause 3(6) says *"Between dusk and midnight each evening to adequately light and keep lighted the staircase and landings of the Block"*
7. Under the covenants of the Lessor set out at clause 5 of the leases the following wording is to be found *"5(4) Subject to the landlord receiving any moneys hereinbefore covenanted to be paid by the Lessee referred to in clause 3(4) hereof to keep in substantial order and condition all roofs.....and such of the following as are enjoyed or used in connection with two or more of the flats forming part of the Block namely....electric cables and wires stairs and staircases entrance passages and landings and the cleaning and lighting thereof between dusk and midnight each night"*.
8. Although the lease for the ground floor flat indicates that in respect of the basement flat clause 3(6) should be deleted, no such deletion appears to have taken place in what is described in the First Schedule to the lease, as the semi basement flat.

DECISION

9. It is not clear to us what access any of the lessees have to the electricity supply to the common parts and how they can control same. It may be that the communal electricity comes from a specific flat and has been disconnected. That is an unsatisfactory situation, both in respect of the supply and the disconnection of same. It creates, as is set out in the application, a risk to health and safety of the residents. The position should be resolved.
10. The lease terms are confusing. Clause 3(4) is, in our view clear enough. It requires the lessee to each contribute $\frac{1}{4}$ of the costs as set out therein, which includes the electrical wiring and the lighting of the communal area. Quite what clause 3(6) is intended to achieve is not wholly clear. It appears to mirror the provisions of clause 5(4) as to the

obligation to keep the stairs and landings lit, but perhaps not the entrance passages, whatever they may be.

11. Our review of the lease leads us to this conclusion. The lessee has to pay $\frac{1}{4}$ each of the costs incurred under the provisions of clause 5(4) of the respective leases. Such payment would not seem to be due until the cost has been incurred or notice given that the cost was to be incurred. This would include, in our finding, part of the works anticipated by the Applicant and the ongoing costs of the electricity supplied to the communal lighting. We find that the provision of clause 3(6) is a requirement to adequately light the stairs and landings, in effect, not to interfere with the lighting of these areas. In our finding it is more appropriate for the Applicant to take on this responsibility and for the costs associated with same to be recoverable as a service charge. This affords the lessee the protection of s19 and 27A of the Act.
12. However, we do not consider that all the works envisaged are recoverable under the lease. The lease terms contain no provision for improvement and we consider that the installation of emergency lighting, and smoke detectors, whilst eminently sensible, is an improvement which is not recoverable as a service charge. It may be that by agreement the lessees will be willing to pay for these additional items. In the alternative the Applicant, as a responsible landlord, may consider this is an expense which should be borne by it in any event.
13. The remaining works of installing a communal supply, upgraded as it is, would, we find, fall within the provisions of the "keep in substantial order and condition" such as might be the case with, for example as has been held in other cases, the replacement of defunct windows with new modern ones. The sum therefore attributable to these works can be charged as a service charge, once it has been established.

Name: Tribunal Judge
Andrew Dutton

Date: 3rd December 2014