FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BN/LSC/2020/0044**
Property	**:**	**Flat 33 Princess House, 144 Princess Street, Manchester, M1 7EP**
Applicant	**:**	**Dr Lellis F Braganza (in person)**
Respondent	**:**	**Princess House Management Limited**
Representative	**:**	**LMP Law Limited – Mr Green**
Type of Application	**:**	**Landlord and Tenant Act 1985, s.27A, Landlord and Tenant Act 1985 – s 20C**
Tribunal Members	**:**	**Tribunal Judge Professor Caroline Hunter Regional Surveyor Niall Walsh**
Date of Video Hearing	**:**	**21 April, 2021**
Date of Decision	**:**	**13 May, 2021**
Date of Determination	**:**	**19 May,2021**

DECISION

Summary Decision

1. The Tribunal finds for the years ending 2015 - 2021:

   (1) The Respondent, Princess House, is in breach of the lease in failing to providing the accounts on a yearly basis from January – December and final service charge contributions within 21 days of certified accounts;
   (2) If the parties cannot agree the January -December accounts and final service charge contributions (the yearly balancing charge or credit) within 28 days of the decision either can apply to Tribunal for further directions for a final hearing on the amount payable by Dr Braganza
   (3) The form of accounts provided are sufficient to comply in the lease;
   (4) Clauses 7.3 and 7.4 of the lease require the applicant, Dr Braganza, to pay the service charges and the service charges are payable;
   (5) The amounts spent on the lift were reasonable and were repairs not improvements;
   (6) The management fees are reasonable as were the demands for the sinking fund;
   (7) A section 20C order is made;
   (8) An order to reimburse Dr Braganza's fees under the Tribunal Procedure (First-tier Tribunal) (Property Chamber Chamber) Rules 2013, r.13(2) is not made.

Application

2. On 7 April 2020 the applicant, Dr Braganza, applied to the Tribunal for a determination of liability to pay and the reasonability of service charges for his flat, 33 Princess House, 144 Princess Street, Manchester, M1 7EP (the flat). The respondent is Princess House Management Limited (Princess House) which is the named Management Company in the lease. The application covers the years demands and service charges accounts for the years April 2015–2016 to April 2020-21.

3. Directions were made on 2 October 2020, and further to those directions both parties provided a statement of case and reply and further information.

4. The Directions provided for the case to be determined following a Video-hearing and decided that an inspection of the property was not necessary.

5. Two preliminary matters were raised before the hearing. The first was raised in the Princess House's statement on behalf of the respondent. They sought to strike out the application on the basis that it wrongly named Timothy David Greening-Jackson as the respondent, rather than Princess House Management Ltd. Timothy David Greening-Jackson is the Secretary of Princess House. Before the hearing the Tribunal indicated that the case would be struck-out unless Dr Braganza applied to add or substitute Princess House Management Ltd. as the respondent. Dr Braganza made that application by email on 22 December 2020.

6. On 30 December 2020 the Tribunal wrote to both parties as follows:
   The Tribunal does not consider this error on behalf of the Applicant to be an unreasonable or unexpected minor mistake for a litigant in person to make, and so we neither consider it appropriate nor just to strike out the Applicant's application for this mistake, nor indeed to make a determination against the Applicant for costs under Rule 13 of the Tribunal Procedure Rules. This procedural error has now been remedied and this case will soon be listed for a one-day video hearing.

7. The second preliminary matter was a request from Dr Braganza for further information to be included in Princess House's statement. In an email to the Tribunal dated 20 April 2021 he wrote:
   Without prior consultation, I received the Respondent's proposed hearing bundle for the first time on 19th April 2021 and cannot agree to the same at such short notice.

   Several documents requested during these proceedings do not appear including inter alia:

   - A complete log recording the nature of the work carried out by the lift maintenance company on their visits to repair the broken down lift since 22.09.2015 including the number of days the lift was unavailable on each occasion (see paragraphs 24 & 25 of my SoC dated 10th November 2020 and paragraph 29 of my supplementary SoC dated 8th December 2020)

   - A copy of the lift maintenance contract in place on 4 February 2020 and the one in place now (see paragraphs 26 of my SoC dated 10th November 2020)

   - A copy of the independent ILECS consultant report on the malfunctioning lift (see paragraph 24 & 25 of my SoC dated 10th November 2020 and paragraphs 29 & 31 of my supplementary SoC dated 8th December 2020)

   - Copies of statutory lift inspection certificates (see paragraphs 22 & 27 of my SoC dated 10th November 2020 and paragraph 30 of my supplementary SoC dated 8th December 2020).

8. As can the seen from the email Dr Braganza had previously asked for this information. In their Respondent's Statement, Princess House had responded to some of these requests as follows:
   The Applicant also uses their Statement of Case to request various pieces of information, the purpose of these proceeding is not a fishing exhibition [sic] and as such the ManCo [Princess House] has limited their responses …to the issues highlighted in the Application'.

9. Given that the main complaint by Dr Braganza was about the lift we were surprised by the stance taken by Princess House. The timing of Dr Braganza's email meant that it was too late to consider any further directions. In the hearing Mr Green made the point that the original directions did not require this information nor was the information necessary to respond to the case made by Dr Braganza. However at the request of the Tribunal, Mr Green did produce

the independent ILECS consultant report at the Tribunal hearing. We have considered it in making this decision.

Background

10. The flat is in a property that was originally constructed as an office building. In the late 1990s it was converted to flats, with 67 apartments and an underground car park.

11. The flat is a two bedroom flat on the fourth floor of ten. Dr Braganza purchased the leasehold of the flat on 22 September 2015. He purchased it for his and his family's use. At the moment his daughter resides in it.

12. The property has only one lift. Issues about the lift is one of the applicant's principal complaints.

13. The line with the lease (see below, para. 16) managing agents have been appointed by Princess House. Throughout the relevant years the agents have been Revolution Property Management Ltd.

The lease

14. The lease is dated 4 May 2004 and is for a term of 999 years from 1 January 2000. It is in a common format with 3 parties, the lessor (the freeholder), the management company and the lessee. We set-out here the main relevant clauses. Before going to that, we note of the nature of the management company, Princess House. The lease simply names the company as 'Princess House Management Ltd' with a registered office (that has since changed). It does not record that the Company is owned by the lessees of the property. In its statement on behalf of the respondent at para. 9 it is asserted that Princess House is a residential management company *owned the leaseholders* (emphasis added). Dr Braganza indicated in the hearing that he has never been provided with share certificate nor invited to an Annual General Meeting of the company. There is no evidence before the Tribunal that Princess House is a leaseholder owned company.

15. Turning to the covenants, the lessee's (ie Dr Braganza) covenants are set out in Clause 7, including the covenant to pay the Service Charge. The relevant clauses on payment are:
    (3) To pay the Service Charge within 14 days of written demand
    (4) To pay on account of the Lessee's obligations under Clause 7.1(3) by equal half yearly instalments in advance on 1 April and 1 October in every year (or such sums such other instalments as the Management Company acting shall for time to time specify) such sum or sums as the Management Company shall reasonably estimate to be the likely amount of the Lessee's contribution for that year…
    (5) Within 21 days after the service by the Management Company on the Lessee of a notice in writing stating the Lessee's contribution for that year to which the Notice relates (certified in accordance with Schedule 3) to pay to the Management Company the amount by which the certified contribution exceeds the said payments on account.

16. The management company, ie Princess House, covenants to perform the covenants in Part 1 of Schedule 2 (see Clause 10). These include insurance, repair to common parts, to keep in working order the lifts serving the Property, and to comply with the requirement for accounting in Schedule 3. Part II of Schedule 2 provide for further expenses which Princess House may incur. It allows for the employment of managing agents (para. 2) and of 'a competent person or firm and qualified accountant pursuant to Schedule 3' (para. 3). 'Improvements' are allowed but only if the following conditions are fulfilled:
    (1) the improvements comprises works which do not constitute repairs as defined by this Lease
    (2) one month's notice of the improvement proposed together with quotations for the work has been given to the lessee of each flat and the Management Company has determined by a majority vote at a duly called general meeting to carry out such work
    (3) the improvement can reasonably be considered to benefit the Property as a whole

17. The lease include a definition of 'keep in repair' that includes
    'maintaining renewing and where necessary rebuilding or replacing parts that require to be rebuilt or replaced and where parts require to be replaced includes replacement with such changed and or improved means or materials as shall the reasonable having regard to the expense of replacement changes in building practices and the reasonable protection of the character and amenities if the property'.

18. Schedule 3 provides for the Management Company's accounts. Paragraph 1 allows for Princess House to carry a reserve fund 'as may be reasonable by way of provision for future expenses liabilities or payment whether certain or contingent and whether obligatory or discretionary.'

19. Para 2 requires Princess House to:
    'keep (and shall the entitled to employ a competent person of firm, whether or not the Management Company is a partner or member of the same, to keep) proper books of account of the Management Company's expenses and an account shall be taken on… the 31st day of December in every …year during the continuance of the Lease and the determination of this Lease of the Management Company's expenses incurred since….the date of the preceding account as the case may be'.

20. Para 3 continues:
    'The account taken in pursuance of the last preceding paragraph shall be prepared and audited by a qualified accountant as defined in section 28 of the Landlord and Tenant Act 1985 who shall certify the amount the total of the said expenses (including the audit fee of the said account) for the period to which the account relates and the Lessee's contribution'.

21. Princess House are required to provide the account in para 2 within two months of a notice in writing stating the total amount and the Lessee's contribution in accordance with the para. 3: para.4.

The Law

22. The applicable statutory provisions are set out in the Appendix of this decision. In summary, the applicant alleges the service charges have not the levied in accordance with the lease and/or the services changes linked to the lift are unreasonable. In effect we are being asked to decide whether the service charges are payable under the lease at all (1985 Act, s.27A) and whether they are reasonable both in being incurred and in relation to the standard provided (1985 Act, s.19).

23. In addition by section 20C, 1985 Act a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before the First-tier Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application. Dr Braganza makes such an application.

The submissions

24. Dr Braganza in his submissions raised 4 issues. We will take each separately.

Budgeting and accounts

25. Princess House have provided the budgets for the 2015-2016 to 2019-20, the service charges demand sent to Dr Braganza for 2017- 2021 and the service certificates for 2014-2015 to 2019-20. The issue for the Tribunal is whether these comply with the terms of the lease in Clause 7 and Schedule 3 and, if so, the consequences of any failure.

26. The practice of Revolution Property Management Ltd., the agents for Princess House, appears from the evidence to have been to account from April – March in each year. Before April a budget is provided to lessees. Service charge demands are sent to lessees splitting into monthly payments. No notices under clause 7(5) of the lease are sent. In effect only on-account charges are demanded. However at the end of the March year accounts are sent to lessees. These accounts are prepared by accountants. The accountants certify that they have 'examined the service charge summaries…together with the invoices and other documents provided to us by the managing agents…'. Further they provide their opinion that the 'summary is a fair summary of expenditure incurred on behalf of the tenants being sufficiently supported by invoices and other document which has been produced to us'.

27. Dr Braganza made two points:
    (1) that the accounting year ends on 31 December, however, demands, budgets and certificates are all based on a financial year ending March. In particular Dr Braganza pointed to Clause 7(5) of the lease and the requirement to certify the service charges at the end of the year and 'to provide a notice in writing stating the Lessee's contribution for that year'. He cited the decision in *Leonora Investment Co v Mott MacDonald* [2008] EWCA 875 as an example of a landlord's contractual having to be fulfilled before a service charge is payable.

(2) The lease requires a yearly statement audited and certified by a qualified accountant. He argued that the statement, that are certified by a firm of accountants are not sufficient – a proper 'audit' requires, so include for example checking whether there are proper internal controls.

28. Mr Green for Princess House carefully took us through the lease. He relied on the Upper Tribunal decision in *Elysian Fields Management Company Limited v Nixon* [2015] UKUT 0427. The terms of the leases in that case were similar to lease in this case, with in the 5th Schedule the following terms (see paras. 14 and 17 of the judgment):

> 1. To pay (by standing order if required) to the Management Company on the 1st October in every year (or on such other appropriate date or dates to be determined by the Management Company acting reasonably) the amount of the Service Charge estimated by the Management Company as being required to enable the provision of the Services during that year and forthwith upon demand to pay to the Management Company any underpayment in respect of the provision of the Services for any previous calendar year and if such Service Charge shall not be paid the Lessee hereby acknowledges that it shall be recoverable as rent in arrears…
> 5. To keep proper books of account of all costs charges and expenses incurred by it in carrying out its obligations under this Schedule and an account shall be taken as at the 30th day of September (or an appropriate date to be determined by the Management Company) in every year during the continuance of the Term Provided That
> (a) the Management Company shall be entitled to appoint managing agents and/or accountants to carry out all or any of its obligations contained in this Lease and the fees of such managing agents and/or accountants for acting in accordance with and pursuant to such appointment shall be deemed an expense properly incurred under this Lease
> (b) the accounts prepared in pursuance of this Schedule shall be prepared and audited by a competent chartered accountant who shall certify firstly the total amount of such costs and expenses (including the fees for such preparation and audit of the said accounts and the fees of the managing agents referred to in the last preceding sub paragraph) for the period to which the account relates and secondly the proportionate part due from the Lessee to the Management Company pursuant to clause 1 of the Fifth Schedule and such certificates shall be final and binding upon the parties thereto
> 6. Within one month of the dates of such certificates as are provided for in clause 5(b) of this Schedule to serve on the Lessee a notice in writing stating the said total and proportionate amounts specified …

29. In *Elysian Fields* the leaseholder had not been provided with a budget or statement at the correct time. The FTT decided that the failings meant the services charges were not payable. The Upper Tribunal took the view that FTT's findings was in effect service of a certificate complying with clause 5 and 6 of Schedule 7 was a condition precedent to any liability to make payment for the service charge (para. 35). Judge Behrens continued (para. 36):

> … such an interpretation is not in accordance with clause 1 of Schedule 5. Clause 1 clearly provides for payment based on a determination of the amount estimated to due by the Management Company. There is nothing in clause 1

which requires the provision of the audited accounts and there is no reason to imply such a term.

30. Mr Green submitted in the light of the *Elysian Fields* and Clauses 7(3) and (4) of the lease the service charges are payable. Clause 7(3) requires payment with 14 days of demand and interim service charges under clause 7(4) have been demanded. Under clause 7(4) Princess House is entitled to changes the six-month demand to any 'other instalments as the Management Company acting shall for time to time specify'. His also submitted that there had been no breach of Clause 7(5). He submitted that the Tribunal should interpret the lease, and clause 7(4) in particular, as allowing the Princess House to move the audited year from January – December to April – March. The lessees had not been prejudiced by the move to an April year start.

31. In terms of the auditing, he submitted that the accounts provided complied with the requirements of the lease.

Failure to repair the lift/ payment for the lift

32. It is clear from the ILECS consultant report (dated 3 October 2019) there are some issues about the lift, in particular with the works undertaken in 2014, but no more than you would expect in a lift of this age. We also had evidence of a number of call-outs to the lift engineers.

33. In his statement of case Dr Braganza complained of three particular costs spent on the lift:
    (1) 2016: Elevator maintenance - £13,560
    (2) 2018: Lift door control upgrades - £3,456
    (3) 2020: Lift upgrades - £9,216

34. Dr Braganza argued that these sums were not reasonably given the on-going problems with the lift. For example, in April 2017 there were two lift entrapments.

35. In addition, Dr Braganza argued that these sums were improvements which required in accordance with the lease (see para. 16, above) one month's notice together with quotations for the work that have been given to the lessees of each flat and which a majority of lessee have voted for at a general meeting. These sums were spent on 'improvement' and not did constitute repairs.

36. Mr Green suggested that sums were reasonable given the need to respond to the issues – which had different causes. Further the evidence showed that in some cases the causes were misuse of the lift by residents. The amounts spent were not improvements but keeping the lift in repair.

Management fees

37. In each year in question the service charges have include fee for the managing agents – for example in 2019-20 the budget for the agents was £16,311. Dr Braganza argued that the fee should be reduced by 50% for each of the years in question because of failure of the agents to manage the issues about the lifts.

38. Mr Green for Princess House submitted that the agents are employed under the lease. There are no complaints apart from the lift and in managing the issues of the lift the agents have responded promptly and reasonably. There was no basis to lower the fee by 50%.

Sinking fund

39. In addition to challenging the amounts spend on the lift, Dr Braganza challenged the sums included in the sinking fund that are not spent. The amounts have grown and are excessive and unreasonable having regard to the actual expenditure and the balance in the fund. Mr Green resisted this attack on the sinking fund pointing to the lease.

Decision

40. We find the accounts provided by the accountants are sufficient to comply in the lease. Dr Braganza stated that an audit required an in-depth review of the managing agents/companies internal processes and reviewing and inspecting every invoice. We do not agree. The general dictionary meaning of an audit is "an official inspection of an organisation's accounts, typically by an independent body". When an independent accountant certifies the accounts they would meet this broad and general description of what constitutes an audit. That has happened in this case.

41. However we find that there has been a breach of the lease in failing to providing the accounts on a yearly basis from January – December and final service of contribution within 21 days of certified accounts.

42. In the light of *Elysian Fields* and clauses 7.3 and 7.4 of the lease, we agree the service changes are payable on account and Dr Braganza's claim that no service charges are payable is not made out. However, in our view (as set-out in para.41) there has not been a final account as required by clause 7.5. Mr Green sought to convince us that the words in parenthesis in cause 7.3 '(or such sums such other instalments as the Management Company acting shall for time to time specify)' allowed Princess House to alter the timing of the final account in clause 7.5. In our view that asks too much of the words.

43. What is the effect of this failure? Section 27A(c) and (d) of the 1985 Act requires us to determine the amount of a service charge which is payable and the date they are payable. We note that in *Elysian Fields* the Upper Tribunal referred the matters back to the FTT to determine the amounts payable (para. 53). In the light of the fact that the management companies are plainly in breach of their obligations and we direct the management company to provide accounts in accordance with the lease (para. 54).

44. We propose that the parties should attempt to agree the accounts and final contributions from January 2015 – December 2020. We hope that the current accounts can be used to agree the position. If the parties cannot agree within 28 days of the decision either can apply to Tribunal for further directions for a final hearing on the amounts payable by Dr Braganza.

45. Turning to the lift, the Tribunal does not find for Dr Braganza. Given the issues with the lift, it was proper for Princess House to spend amounts to repair the lift and there was no evidence that these particular amounts were unreasonable. In our view and looking at the definition 'keep in repair' in the lease were all works to the lift were repairs not improvements.

46. Dr Braganza did not complain about the overall fee for the agents as contracted for, simply that in the light of the lift issues the fee should be reduced. In our view there is no evidence that the agents has not complied with their contract and in terms of the problems with the lift have failed to manage it. There is no basis to find the fees unreasonable in the years challenged.

47. It is not simply sufficient for Mr Green to point to the lease to justify the demands for the sink fund. However, at the moment we are not convinced the amount in the years challenged are at a level that is unreasonable. In each year Princess House has spent a reasonable percentage of the demanded sinking fund charges (some years these were more than the sinking fund amounts demanded and some years less), with a reasonable buffer in case of major works being required.

Section 20C

48. Although we have not found for Dr Braganza on all matters, in our view it is appropriate to make a section 20C order that Princess House's costs in this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by him. We have found that Princess House has been in breach of the lease. Further Princess House's responses to Dr Braganza's requests for reasonable further information on the lifts have been all negative. It was only at the Tribunal's request that the ILECS consultant report was produced at the hearing.

49. Dr Braganza also asks the Tribunal to make order than Princess House reimburse his fees under the Tribunal Procedure (First-tier Tribunal) (Property Chamber Chamber) Rules 2013, r.13(2). Given our findings we do not make an order.

RIGHTS OF APPEAL

50. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

51. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

52. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Tribunal Judge Professor Caroline Hunter
13 May 2021

Appendix – relevant legislation

Landlord and Tenant Act 1985

Section 19
(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
(a) only to the extent that they are reasonably incurred, and 13
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A
(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration
agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, the First-tier Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.