FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOBJ/LSC/2022/0260**
Property	**:**	**Flat 3 Charles Court , London, SW156XP**
Applicant	**:**	**Charles Court Management (Putney) Limited**
Representative	**:**	**Murray Hay Solicitors**
Respondent	**:**	**Florin Zdroba**
Representative	**:**	**In person**
Type of Application	**:**	**Determination as to reasonableness and payability of service charges.**

Tribunal Members : **Judge Shepherd**

Date and venue of Hearing : **Paper hearing on 13/12/22**

DECISION

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1. In this case the Applicant, Charles Court Management (Putney) Limited ("The Applicant"), the landlord of Flat 3 Charles Court, 345 Upper Richmond Road, Putney, SW15 6XP (The premises) seeks a determination as to the payability and reasonablenes of service charges pursuant to section 27A of the Landlord and Tenant Act 1985. The Respondent to the claim is Florin Zdoba who is the lessee of the premises. The claim is a discrete claim in that it concerns service charges of £250 which relate to lift works in the building in which the premises are located. On the application the landlord states that the amount in dispute is £250 yet it would appear that the landlord is also seeking costs which are referred to below.
2. In the application it states that the issue relates to a lift brake overhaul repair invoice dated the 15th of March 2021 and the sum is £250 pounds being the 9th shared due.

3. Directions were issued by the Tribunal on the 26th of August 2022. Amongst other things it was stated in the directions that they had been drafted on the papers without an oral hearing and that a party may apply to the Tribunal for a variation of the directions within seven days of the date of the directions. In

addition, the Tribunal identified the issues to be determined as the service charge for the year 2021 and whether the Applicant is liable to pay a contribution of £250 being 1/9 of an invoice for lift brake overhaul. Secondly whether the Respondent is liable to pay the Applicant's legal costs of £610. Neither party made an application to vary the directions and therefore the issues to be determined remain.

4. As part of the Respondent's case he sought permission to rely on an expert surveyor's report which was filed and served immediately before my consideration of the case. The surveyor's report does not relate in anyway to the issues that I am deciding (see above). The report relates to disrepair that is alleged in the building which is allegedly affecting the premises. There is no identifiable connection between the service charges that the Applicant is seeking and this report. For example, there is no suggestion that the lift repairs relate in some way to historical neglect by the Applicant and in any event the survey report doesn't address the lift. In order to be accepted as expert evidence at a late stage the Tribunal would need to be satisfied that this is relevant information. I am not satisfied that the information is relevant at all to the issues being resolved by me and accordingly I refuse permission to include the expert evidence. It may be that at a later hearing either in the Tribunal or in the County Court they Respondent may wish to try and re - introduce this evidence but I refuse permission in this instance.

5. As already indicated the issue at hand is the cost of the lift repairs. The building consists of nine flats under the lease the Respondent is required to pay 1 ninth of the expenses and outgoings incurred by the lessor in any year or part of the year in respect of the items of expenditure specified in the fourth schedule to the lease. The 4th schedule provides that the lessee is to contribute to expenses and outgoings incurred by the lessor contained in clause 6 of the lease. Clause 6 (5) refers to the covenant to maintain cleanse repair and when necessary renew various items including in the relevant sub paragraph (d) the lift situated in the building. In the present case the clause appears to apply to the work involved and indeed there is no challenge by the Respondent in relation to the payability of the charge under the lease. Accordingly, I determine that the sums are prima facie payable under the lease. The next question is whether the sums are reasonable?

6. The need for the lift brake overhaul repair was described to tenants of all flats in an e-mail dated the 26th of January 2021 which also set out details of the cost and the £250 contribution required from each of the nine flats. The Respondent challenged whether the sum should have been claimed on insurance but the Applicant says this was not relevant because the lift repairs were required as a result of wear and tear and were not covered by any insurance. The repair was completed on the 15th of February 2021. An invoice

was issued to the Respondent and other flats on the 15th of March 2021 and a formal reminder was sent on the 10th of September 2021. The Respondent brought up the issue of the tenant's summary of rights and obligations under section 21B of the Landlord and Tenant Act 1985 being left out from the demand but this was rectified by the reissue of the relevant invoice accompanied by the relevant information on the 20th of April 2022. The effect of this is that although the requirement for payment was suspended this suspension was effectively lifted on the 20th of April 2022 and the payment was due from that date. The Applicant states that out of nine leaseholders only the Respondent and one other have failed to pay the lift repair invoice.

7. In his bundle the Respondent has included a large amount of information which is irrelevant to the issues at hand. This concerns correspondence from his solicitors to the landlord's solicitors in relation to alleged disrepair and proposed major works in the building which do not relate to the lift. Again, whilst I determined that this information is all irrelevant to the present application it may be that it can be used by the Respondent at a later date in separate proceedings. Amongst that information however was correspondence from the Respondent's solicitor stating that the Respondent would pay the lift repair cost. This is a letter dated 18th of October 2021 which states *given the modest amount involved our client is prepared to make payment of the £250 pounds in order to draw a line under the matter*. This has not happened.

8. The Respondent also raises issues in relation to the governance and management of the landlord. I do not regard this as relevant to the central question of whether the lift repair costs are reasonable. Neither is the suggestion, which is not evidenced, that the Applicant has in some way got a vendetta against the Respondent. Finally, the reference to another leaseholder who has not paid the sum is irrelevant to whether the Respondent is liable for that sum. In amongst the Respondent's information is the suggestion that the Applicants should have consulted in relation to the proposed works to the lift. This is misguided as the requirement for consultation for qualifying works only kicks in if the landlord is seeking costs of over £250 per unit.

9. I need to look objectively at the invoice from Arrow Lift Engineers Limited dated the 15th of February 2021. The invoice states that the engineer attended site and suspended the lift service. The engineer landed the counter weight and suspended the lift car on appropriate lifting tackle. He/she stripped down the main break and removed the brake coil and brake cheeks to the factory. He/she removed and disposed of the worn linings in accordance with the current waste management directives. He/she supplied and fitted new linings, pre checked and inspected the brake coil, cleaned and inspected all parts tested it electrically, checked manual inspection which revealed electrical short between 2 phases and stripped windings rewind to class F insulation. He/she stoved and

varnished the windings. He/she returned all parts to site and rebuilt the brake and set up for correct operation. He/she rehung the lift car and returned the lift to service. He/she adjusted the brake to give optimum floor levelling. The contractor then returned to the site after one week later to readjust the brake following initial bedding in. The costs for completing all of the above works for £2357 pounds excluding VAT. On its face these sums appear eminently reasonable. Lift maintenance is well known to be expensive and if the replacement of a lift can be avoided then the costs are being kept below the substantial amounts that replacement requires. Neither is it surprising that the Applicant needed to go back to leaseholders to ask for further sums to meet the additional cost of the lift repair. Lifts are quite simply very expensive to maintain. The Applicant chose to limit the demand to £250 per leaseholder. Accordingly, I determine that the costs are reasonable as well as payable.

10. The Applicant also seeks costs and relies on Clause 3(21) of the lease that provides that the lessee will pay to the lessor all costs charges and expenses incurred by the lessor (a) in or in contemplation of any proceedings under section 146 and 147 of the Law of Property Act 1925 and (c) in relation to the recovery of arrears of rent. Also clause 3 (3) provides that the costs expenses and outgoings incurred by the lessor in any year or part of the year in respect of items set out in the fourth schedule shall be recoverable as rent in arrear. It seems to me the legal costs are recoverable however it is difficult to ascertain what costs have been incurred in relation to the lift repairs only.

11. In summary I determine that the sum of £250 (service charges) is due and payable by the Respondent. The Applicant has 7 days (20/12/22) to send to the Tribunal and the Respondent a properly prepared schedule of costs. The Respondent has 14 days thereafter (2/1/23) to challenge in writing to the Tribunal copied to the Applicant the costs claim after which the claim will be determined.

Judge Shepherd

13th December 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal