



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

Case reference : **MAN/00BY/LSC/2021/0076**

Property : **Flat 42 North House, 11-17 North John Street, Liverpool, L2 5QY**

Applicant : **Mr. Luca Sutera**

Representative : **Louise Price - Taylor Rose MW**

Respondent : **North John Ground Rents Limited**

Representative : **Richard Moss – Richard Moss Solicitors**

Type of application : **Landlord and Tenant Act 1985 – s 27A
Landlord and Tenant Act 1985 – s 20C
Commonhold and Leasehold Reform Act 2002 – Schedule 11, Para 5A**

Tribunal member(s) : **Tribunal Judge J. E. Oliver
Tribunal Member J. A. Platt
Tribunal Judge L. F. McLean**

Date of determination : **22nd July 2022 on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

Date of decision : **25th July 2022**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £4,501.58 is payable by the Applicant to the Respondent by way of service charge for the year 23.06.2021 to 22.06.2022 in accordance with the demand dated 24th June 2021.**
- (2) The Tribunal refuses the Applicant's application under Section 20C Landlord and Tenant Act 1985.**
- (3) The Tribunal refuses the Applicant's application under Commonhold and Leasehold Reform Act 2002, Schedule 11, Paragraph 5A.**
- (4) The Tribunal refuses the Applicant's application for costs pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.**
- (5) Pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal orders that the Applicant must pay the Respondent's reasonable legal costs of responding to the application, summarily assessed in the sum of £5,524.00, such sum to be paid within 14 days of delivery of the Tribunal's decision to the parties.**

The application

1. The Applicant seeks a determination pursuant to s.27A Landlord and Tenant Act 1985 as to whether he is required to pay to the Respondent the sum of £4,501.58 in respect of the service charge demand for the year 23.06.2021 to 22.06.2022. Specifically, the Applicant avers that the element of the demand which relates to an estimated total cost of £80,000 for major works should be reduced to £250 unless and until the Respondent complies with the consultation requirements set out in Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 or the Tribunal grants dispensation in relation to the same.
2. The Applicant seeks an order under Section 20C Landlord and Tenant Act 1985 that all or any of the costs incurred, or to be incurred, by the landlord in connection with these 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 Applicant.
3. The Applicant seeks an order pursuant to Commonhold and Leasehold Reform Act 2002, Schedule 11, Paragraph 5A, reducing or extinguishing the Applicant's liability to pay administration charges in respect of litigation costs.

4. The Applicant seeks an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the Respondent to pay the Applicant's reasonable legal costs of the application.
5. The Respondent opposes all of the applications referred to above. The Respondent seeks an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the Applicant to pay the Respondent's reasonable legal costs of responding to the application.

Background

6. The Applicant is the tenant of Flat 42 North House, 11-17 North John Street, Liverpool, L2 5QY ("the Property") by virtue of an underlease made on 25th January 2019 for a term of 250 years from and including 1st January 2018 and made between the Applicant and North House Property Management Limited ("the Underlease").
7. The Respondent is the Applicant's landlord of the Underlease, having acquired the reversionary interest in the Property immediately expectant upon determination of the Underlease, on or around 6th June 2019.
8. The Property is a two bedroomed flat on the first floor within the building known as North House, 11-17 North John Street, Liverpool, L2 5QY ("the Building"). The Building comprises a ground floor restaurant beneath 43 residential units including the Property. It is common ground between the parties that the Building was recently renovated for its present residential use, and it appears that the Underlease was granted following completion of the renovation.
9. The Underlease provides for the Respondent to provide a range of services and to keep the retained parts of the Building in repair. The Underlease also provides for the Applicant to pay a service charge in relation to the Respondent's costs of providing the services and carrying out the repairs. There is no substantive dispute between the parties regarding the scope of the Respondent's repairing covenant, nor the basis on which the service charge is to be demanded and paid, the relevant provisions of which are set out in the parties' respective statements of case.
10. On 24th June 2021, the Applicant was sent a service charge demand in the sum of £4,501.58 ("the Demand") by the Respondent's managing agents, Casserly Property Management Limited ("Casserly"). The Applicant disputed the demand and refused to pay it. The Applicant subsequently instructed Taylor Rose MW as his legal representative, who corresponded with various employees of Casserly to dispute the Demand. It was established by email correspondence that a substantial proportion of the sum set out in the demand related to an estimated cost of £80,000 for major works on the basis that the lifts within the Building required refurbishment. The Applicant's solicitors asserted that this element of the Demand was not recoverable from

the Applicant beyond the statutory limit of £250 imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 unless and until the Respondent complied with the consultation requirements set out therein (“the Consultation Requirements”) or the Tribunal granted dispensation in relation to the same.

11. The Applicant’s application was submitted to the Tribunal on 21st September 2021.
12. On 22nd October 2021, Casserly sent a letter on behalf of the Respondent pursuant to the Consultation Regulations. The Tribunal has not been invited in this application to determine whether the Respondent has complied with the Consultation Regulations, either in whole or in part, and the Tribunal accordingly makes no finding in that regard.
13. On 17th January 2022, the Tribunal issued directions to the parties for the filing and serving of the Applicant’s statement of case within 21 days, and the Respondent’s statement of case within 21 days thereafter. The Applicant was given permission to file and serve a short reply within 7 days after that. The Tribunal notified the parties that it considered that the application was suitable for determination on the papers provided by the parties and without a hearing. The parties were invited to request a hearing within 21 days of receipt of the directions but neither party chose to do so.
14. The Applicant submitted a statement of case dated 4th February 2022, within a bundle comprising 144 pages which the Tribunal has read.
15. The Respondent submitted a statement of case dated 25th February 2022, within a bundle comprising 259 pages which the Tribunal has read, and which included the Respondent’s Rule 13 application.
16. The Applicant did not file any further documents in response.
17. The members of the Tribunal considered the parties’ written submissions and documents filed in support, by way of a virtual meeting held on 22nd July 2022 and conducted over Microsoft Teams.

Grounds of the main application

18. The Applicant’s grounds of his application were set out in his statement of case. In summary, these were:-
 - a. That he was not required to pay the proportion of the Demand which related to major works beyond the statutory limit of £250 unless and until the Respondent complied with the Consultation Requirements or the Tribunal granted dispensation in relation to the same, and his liability to pay should be reduced accordingly.
 - b. That it was accordingly just and equitable to preclude the Respondent from recovering its legal costs of the application through the service charge.

- c. That the Respondent had acted unreasonably in continuing to demand payment of the service charge and the Tribunal should therefore order the Respondent to pay his legal costs of the application.
19. The Applicant had also referred to Commonhold and Leasehold Reform Act 2002, Schedule 11, Paragraph 5A. However, no particulars of any such administration charges were set out in the Applicant's statement of case.
 20. The Applicant did not challenge any other aspect of the Demand in relation to whether he was liable to pay the balance of the sums demanded.
 21. In response, the Respondent submitted that the Applicant had acted unreasonably in bringing the application in the first place, such that the Tribunal should order the Applicant to pay its legal costs of the application. The Respondent did not seek dispensation from any of the Consultation Requirements.

Issues

22. The issues which the Tribunal had to decide were:-
 - a. Should the Tribunal reduce the Applicant's liability under the Demand by virtue of the Respondent having neither complied with all of the Consultation Requirements in relation to major works, nor obtained dispensation from the same?
 - b. Is it just and equitable to preclude the Respondent from recovering its legal costs of the application through the service charge?
 - c. Should the Tribunal reduce or extinguish any administration charges sought from the Applicant by the Respondent?
 - d. Has the Respondent acted unreasonably in continuing to demand payment of the service charge, such that the Tribunal should therefore order the Respondent to pay his legal costs of the application?
 - e. Has the Applicant acted unreasonably in bringing the application, such that the Tribunal should therefore order the Applicant to pay its legal costs of the application?

Relevant Law

23. The relevant sections of the Landlord and Tenant Act 1985 read as follows:-

19 Limitation of service charges: reasonableness

(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

(b) where they are incurred on the provision 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.

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
- (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

- (a) an amount prescribed by, or determined in accordance with, the regulations, and
- (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

20C Limitation of service charges: costs of proceedings

(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 or 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 the 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 the 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.

24. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides as follows:-

Limitation of administration charges: costs of proceedings

5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

- (3) In this paragraph—
- (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings

Evidence

25. The parties relied on evidence which was included in their respective bundles of documents and which accompanied their respective statements of case.

26. The parties did not raise any material factual issues of dispute in relation to any matters which were relevant to the Tribunal’s deliberations.

Determination

Should the Tribunal reduce the Applicant's liability under the Demand by virtue of the Respondent having neither complied with all of the Consultation Requirements in relation to major works, nor obtained dispensation from the same?

27. The Underlease provides, at paragraph 3.2 of Schedule 6 thereto:-

3.2 Before or as soon as possible after the start of each Service Charge Year, the Landlord shall prepare and send the Tenant an estimate of the Service Costs for that Service Charge Year and a statement of the estimated Service Charge for that Service Charge Year.

28. The Demand was supported by a document entitled "Service Charge Budget 23rd June 2021 – 22nd June 2022". The disputed £80,000 was contained within the list of items which had a "Budget Cost Per Annum". Accordingly, the Demand included an on-account demand in respect of estimated future costs which the Respondent had not yet incurred, as envisaged by paragraph 3.2 of Schedule 6 to the Underlease.

29. The Upper Tribunal provided clarification on the application of the Consultation Requirements to on-account demands, in *23 Dollis Avenue (1998) Ltd v Vejdani* [2016] UKUT 365 (LC). The Upper Tribunal stated at [33b):-

In our view therefore there is no statutory limit to the amount that can be recovered by way of an on account demand under the lease other than under s19(2). It is, in our view, not necessary that there should be a valid consultation process before a sum in excess of £250 can be recovered by way of a service charge in respect of intended works.

30. The Consultation Requirement are, accordingly, of no application to the element of the Demand which relates to the major works scheduled for the lift refurbishment in the building, and the Tribunal is not obliged to reduce the Demand accordingly. In that respect, the Applicant's application under Section 27A is premature.

31. The Tribunal has a discretion to reduce the Demand in accordance with Section 19(2) of the Landlord and Tenant Act 1985. The only reason the Applicant has advanced as to why he considers the Demand to be excessive, aside from the aforementioned issues around the Consultation Requirements, is that the refurbishment of the Building was completed recently and so the Applicant suggests that these costs should not need to be incurred already.

32. In response, the Respondent avers that the lifts are now 26 years old and have exceeded their anticipated lifespan, such that they are in need of prompt refurbishment. It appears that although some refurbishment works have been carried out to the lifts prior to or after the grant of the Underlease, these works have since been deemed to be insufficient. The Respondent has also stated

that there is not a substantial reserve fund. This is to be expected if the Respondent has only been managing the Building since 2019.

33. The Respondent has filed and served the following documents with its statement of case to evidence the maintenance issues with the lifts and in support of the £80,000 estimate:-
- a. Letter dated 3rd May 2019 by A1 Lifts Ltd
 - b. Lift report by Allianz, July 2019
 - c. Survey prepared by John Bentley of LECS UK, August 2020
 - d. Tender Return Analysis, LECS UK, 30th September 2020
 - e. Miscellaneous email correspondence
 - f. Schedule of Refurbishment Works, Cundall, 8th October 2021
34. These documents refer to estimates ranging between £50,000 or £60,000 for just the “right hand” / “firefighting” lift at the lower end to £200,000 for complete replacement of both lifts. It is to be anticipated that commercial contractors may require payment on account and/or in stages before commencing or continuing work. If the Respondent had insufficient funds in reserve to make such payments, the alternative would be to borrow the necessary sums and pay interest on any such loans until they could be repaid following receipt of service charge payments.
35. Based on the parties’ submissions and the evidence relied upon in this application, the Tribunal considers that the sum of £80,000 is reasonable at the present time, for the purposes of Section 19(2), and accordingly the Tribunal determines that the sum of £4,501.58 is payable by the Applicant to the Respondent by way of service charge for the year 23.06.2021 to 22.06.2022 in accordance with the Demand.
36. In the event that the proposed works to the lift(s) proceed and the Respondent then provides a reconciliation to the tenants of the Building in respect of costs actually incurred and deducted from funds held on account, it remains the case that the Respondent must either comply with the Consultation Requirements (or otherwise obtain dispensation from the same) in order to be able to deduct those costs from reserves and/or make a demand for supplementary payment without being subject to the statutory cap of £250 per tenant.
37. Likewise, it remains open to the Applicant to apply to the Tribunal in future (once costs have been incurred) for a determination as to whether the costs are reasonably incurred and/or that the works are of a reasonable standard.

Is it just and equitable to preclude the Respondent from recovering its legal costs of the application through the service charge?

38. Subject to any particular considerations of an individual case, the Tribunal will usually hold that it is just and equitable to grant a tenant’s application under Section 20C Landlord and Tenant Act 1985 if the tenant is substantially successful in their main application.

39. As the Applicant has been wholly unsuccessful in his application under Section 27A, his application under Section 20C is likewise refused.

Should the Tribunal reduce or extinguish any administration charges sought from the Applicant by the Respondent?

40. The Applicant did not particularise which administration charges (if any) he wanted the Tribunal to consider. Accordingly, this application is refused.

Costs

Has the Respondent acted unreasonably in continuing to demand payment of the service charge, such that the Tribunal should therefore order the Respondent to pay his legal costs of the application?

41. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides, so far as is relevant as follows:-

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—
(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
(i) an agricultural land and drainage case,
(ii) a residential property case,
(iii) a leasehold case, or
(iv) a tenant fees case;
[...]

(1A) An order under paragraph (1)(d)(ii) may be made in respect of costs of—
(a) any part of the proceedings in the Tribunal, and
(b) any part of the proceedings which took place in the Upper Tribunal before the transfer (subject to any contrary order or direction by the Upper Tribunal).

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—
(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

[...]

42. For the reasons set out above, the Respondent was entirely justified both in requiring the Applicant to pay the Demand and in resisting his application under Section 27A Landlord and Tenant Act 1985. The Tribunal refuses to make an order for the Respondent to pay the Applicant’s costs.

Has the Applicant acted unreasonably in bringing the application, such that the Tribunal should order the Applicant to pay its legal costs of the application?

43. The same provisions of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 as set out above apply to the Respondent’s application, pursuant to Rule 13 thereof, for an order that the Applicant pay its costs of the application.
44. The presumption is that the First-tier Tribunal (Property Chamber) is a “no cost forum” and the Tribunal does not make Rule 13 orders lightly.
45. The Respondent’s application under Rule 13 was made in its statement of case which was served on the Applicant through his solicitors. The Applicant has chosen not to respond to the Respondent’s Rule 13 application despite having an opportunity to do so as provided for in the Tribunal’s directions.
46. For the reasons set out earlier in this Decision, the Tribunal determines that not only was the Applicant’s application under Section 27A ill-advised, but it was in fact doomed to fail from the outset. The Applicant proceeded with the benefit of legal advice and representation. The Tribunal therefore considers

that no such applicant, properly advised, would have acted reasonably in bringing the application. The application has caused the Respondent to incur avoidable legal costs, and it is not appropriate for the Respondent to be put to the inconvenience of submitting a customised demand for payment pursuant to the terms of the Underlease. Nor would it be equitable for the other tenants of the Building to face the prospect of contributing towards such costs through their own service charge payments. Whilst it is of less significance, the Applicant has occupied the resources of the Tribunal needlessly, including failing to withdraw his application following receipt of the Respondent's statement of case and by which time it ought to have been obvious that the application was going to fail. The Tribunal finds that the Applicant has acted unreasonably and Rule 13(1)(b) applies.

47. The Tribunal considers that the Respondent's Rule 13 application for costs is suitable for summary assessment. The Tribunal has had regard to the Respondent's Statement of Costs dated 20th March 2022. The Tribunal determines that the hourly rates claimed are reasonable, and that the time spent on the various items particularised therein are also reasonable. The Tribunal determines that Counsel's fees claimed are reasonable, in view of Mr Boncey having comprehensively rectified the various factual and legal errors which were contained in the Applicant's statement of case. The Tribunal determines that the overall sum of £5,524.00 is reasonable in all the circumstances, being broadly similar to the amount which the Applicant had himself sought from the Respondent. The Tribunal summarily assesses the costs payable by the Applicant in the sum claimed by the Respondent, payable within 14 days.

Name:

Date: 25th July 2022

Tribunal Judge J. E. Oliver

Tribunal Member J. A. Platt

Tribunal Judge L. F. McLean

Rights of appeal

1. 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.
2. 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.
3. 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.
4. 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.

5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).