

UPPER TRIBUNAL (LANDS CHAMBER)



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UTLC Case Numbers: LRX/143/2018, LRX/145/2018**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***LANDLORD AND TENANT – SERVICE CHARGES CONSTRUCTION OF THE LEASE
– OBLIGATIONS TO REPAIR AND DECORATE***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER
TRIBUNAL (PROPERTY CHAMBER)**

BETWEEN:

BUTTERMERE COURT FREEHOLD LTD

Appellant

and

DAVID GOLDSTROM

And

ANDREW PARISSIS

Respondent

**Re: Buttermere Court,
Boundary Road,
London, NW8 6NR**

BETWEEN:

BLAIR COURT FREEHOLD LIMITED

Appellant

and

ANDREW PARISSIS

Respondent

**Re: Blair Court,
2 Boundary Road,
London, NW8 6NT**

Determination on written representations

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Introduction

1. This is the Tribunal’s decision on appeals from two decisions of the First-tier Tribunal (“the FTT”); those decisions were made on applications by the respective freeholders of Blair Court and Buttermere Court, both on Boundary Road, London NW8 6NT. The applications were for a determination of the liability of the lessees of the 77 flats at Buttermere Court and the 78 flats at Blair Court to pay a service charge in respect of the repair, maintenance and decoration of the internal front doors of the flats and the meter cupboards adjacent to those doors. The FTT had to construe the leases so as to decide whether the front doors, and the meter cupboards, were within the demise to the tenant in each case, and then to decide the parties’ obligations in the light of the terms of the leases.
2. The leases are in identical terms – so far as is relevant to the applications - in both blocks. The grounds of appeal in respect of both decisions have been drafted in identical terms for both appellants by Mr Edward Denehan of counsel. On 20 March 2019 the Deputy President made orders in both matters that they be managed and determined together under the Tribunal’s written representations procedure.
3. The appellants acquired their freeholds through collective enfranchisement; not all of the lessees in each block are shareholders in the freeholder company. Only one of the leaseholders, Mr Parissis of Flat 14, participated in the proceedings before the FTT in relation to Blair Court. Of the lessees of Buttermere Court only Mr Parissis (who holds a flat there too, flat 77) and Mr Goldstrom (flat 67) took part in the proceedings. Both Mr Parissis and Mr Goldstrom have submitted respondents’ notices in these appeals.

The decision in the FTT

4. The application to the FTT relating to Blair Court sought a determination of the ownership, and the responsibility for repair, maintenance and decoration, of the entrance doors to the flat and the meter cupboard doors. The application relating to Buttermere Court set out more comprehensive questions about the ownership, and the responsibility for maintenance, repair and decoration, of the entrance doors of the flats, the meter cupboards excluding their doors, and the doors of the meter cupboard.
5. The premises demised to the leaseholder are defined in each lease by reference to a plan and a description, but there is no mention either of the entrance doors (or internal front doors) or of the meter cupboards. The demise includes:

“the plaster and finish on the external walls and any internal walls separating the flat from other parts of [the building] (but not the walls themselves).”

6. So, for example, the lease includes the plaster, inside the flat, on the internal wall separating it from the corridor, but not the wall itself. As to repair and maintenance, the tenant covenants to repair, maintain and decorate the interior of the flat.

7. The landlord is obliged to repair and maintain the main structure and common parts of the building,

“and all sewers, drains pipes wires cables and conduits the use of which is not confined solely to the premises”

and to:

“paint and decorate ... consistent with a high class flat development those parts of the interior of [the building] not demised by any Estate Lease...”

8. The Buttermere Court application was determined by the FTT after a hearing; the Blair Court application was determined on the basis of written representations. Despite the different terms of the two applications the FTT took the view that the same issues were raised in each; it produced two decisions in almost exactly identical terms¹ and it is convenient to refer to the two decisions together in the singular. The FTT decided, first, that the internal front doors to each flat were part of the demise to the tenant and that the tenant was responsible for their repair and decoration. The FTT made no distinction between the inner and out surfaces of those doors. The entire door in each case (and of course its lock) belongs to the tenant. Second, the FTT found that the meter cupboards were not part of the demise, and that they were therefore the landlord’s responsibility.

9. The freeholders asked for permission to appeal that decision and on 20 March 2019 the Deputy President refused permission so far as the front doors of the flats were concerned. Both freeholders then wrote to the Tribunal to ask for a decision on a matter that it said the FTT had been asked to decide and had left undecided, namely whose responsibility it is to decorate the outer face of each door; this is a concern for them because they want to be able to provide a uniform appearance for the front doors of all the flats.

10. Paragraph 28 of the FTT’s decision relating to Blair Court, and paragraph 27 of the decision relating to Buttermere Court each reads as follows:

“It follows from the finding that if the internal doors are demised the tenants are obliged under the First Schedule to repair, maintain and decorate them because they form part of the flat as defined in the leases.”

¹ The Buttermere Court decision differs only in the addition of a reference to works carried out to remove asbestos from the meter cupboards.

11. So the point was decided, and no permission was sought to appeal that decision. The decision is unsurprising; the landlord's obligation is only to decorate the parts of the building that are not demised to tenants. In case it may be thought that there is any ambiguity in the decision, I observe that there is only one entrance door to each flat – it is not the case that there is an inner and outer door at the entrance; it is clear from the rest of the decision that the expression “the internal doors” refers to the front doors of the flats to which the applications related. The FTT made no distinction between the inner and outer surfaces of the doors. There is therefore no scope for the Tribunal to say anything further about responsibility for the decoration of the internal front doors.

12. As to the meter cupboards, in relation to which permission to appeal has been given, the FTT's decision was that they are not demised to the tenants, and that responsibility for their maintenance, repair and decoration therefore lies with the landlord of each block.

13. The meter cupboards are outside each flat and adjacent to the internal front door of each; the tenant holds the key. They contain, obviously, electricity and gas meters. They are not mentioned in the leases, but they are within the red edging on the lease plans. On that basis, the respondents argued that they are within the demise.

14. The FTT took the view that the plan might not be accurate. It regarded as problematic the absence of any mention of the meter cupboards in the leases, as well as the absence of any specific rights or obligations in relation to them. It found that the meter cupboards were not demised under the leases, because:

- (i) Some of the wires in the cupboards are shared with other parts of the building. The landlord is obliged to maintain all wires and cables in the building that are not used solely by individual flats (see paragraph 7 above); so the cupboards needed to remain in the landlord's possession because the wires within it fall within its repairing obligations.
- (ii) The cupboards were never intended to be used as “habitable space”; they just contain the meters. That is why they face into the internal corridors of the building and not into the flats.
- (iii) If they were part of the demise the landlord “would potentially face difficulty” in taking enforcement action against a tenant who had allowed the meters to fall into disrepair and to pose a serious health and safety risk to others.

15. The FTT therefore found that the meter cupboards were not part of the demise. They therefore fell to be repaired and maintained by the landlord.

The appeal

16. The appellants challenge the FTT's decision in relation only to the interior of the cupboards, which they say belongs to the lessees; they accept the FTT's decision so far as the doors of the cupboards are concerned. The appellants' arguments on appeal, as to the ownership of the interior of the meter cupboards, are as follows:

- (i) First, they say that the FTT should not have ignored the lease plan which clearly shows the cupboards to be part of the demise. They accept that it is not definitive, since the demised premises are not said to be "more particularly delineated and shown" on the plan (nor is the plan said to be for the purposes of identification only). No reason is given as to why the plan might be wrong, and it plainly shows the cupboard as part of the demise.
- (ii) The FTT's concern about the absence of express rights and obligations is said to be misplaced; there is no more need for express rights over the meter cupboard than for express rights over the kitchen, because both are part of the demise.
- (iii) The ownership of wires in the cupboard is not decisive of ownership of the cupboard. Wires that serve the flat are within the tenant's repairing obligations, and wires that do not solely serve the flat are the landlord's responsibility; it is not the case that the scope of the landlord's obligations is confined to the outside of the demised premises. The tenant covenants in the lease to allow the landlord entry where necessary, precisely for the purpose of maintaining wires etc "the use of which is enjoyed by parts of [the building] not included within the premises." Accordingly the FTT's reasoning that the cupboards fall outside the demise because the wires within them are the landlord's responsibility is flawed.
- (iv) The cupboards do not have to be "habitable" in order to be part of the demise.
- (v) The fact that the doors face the corridors is irrelevant; they do so to allow meter readings to be taken without having to enter the flat.
- (vi) There is no more difficulty in enforcing the tenant's obligations to repair the meter cupboard than there is in enforcing any other obligation relating to the interior of the flat.

17. However, the appellants also say that the doors of the meter cupboards do not form part of the demise, because they are attached to, and form part of, the walls separating the demised premises from other parts of the building (namely the corridor). They are therefore not part of the demise (see paragraph 7 above), and the landlord is obliged to repair and decorate them, recovering the cost through the service charge.

18. As to the respondents, Mr Parissis maintains that the meter cupboards are demised to the tenant. Mr Goldstrom's submissions are more complex. His concern is not so much with ownership as with the responsibility for the removal of asbestos. He points out that in 2016 the landlord of Buttermere Court required the lessees to take responsibility for the cost of removing asbestos from the cupboards, which was a pre-requisite to the re-wiring that was about to take place and to the decoration of the common parts. He is content for the cupboards to be regarded as not within the demise, so that the landlord can take responsibility for asbestos removal in those cases where it has not yet been carried out and so that other projects such as decoration can be carried out on a communal basis.

Discussion and conclusions

19. The FTT's task was to construe the leases, by reference to what the leases (including their plans) said. Only if the leases are ambiguous is it permissible to refer to other evidence of the intentions of the parties at the time the lease was granted. The approach adopted by the courts in the context of boundary disputes (*Pennock v Hodgson* [2010] EWCA Civ 873 at [12]) is equally relevant here: in construing the lease the court or tribunal must ask itself what the purchaser with the plan in their hand, on the day of the grant of the lease, would think they were buying.

20. Put like that the answer is relatively simple. The lease is not ambiguous. It does not mention the cupboards, any more than it mentions the kitchen or the bedroom, but the cupboards are unambiguously within the red edging on the plan. It is difficult to see why there was any need to go further. I agree with the appellants that the absence of specific obligations relating to the cupboard does not cast doubt on this, and that the landlord's obligation to repair wires inside the cupboard does not indicate that it must belong to the landlord. There is no need for the cupboards to comprise "habitable space"; and there would be no special difficulty for the landlord in enforcing obligations of the tenant relating to the interior of the cupboard.

21. The appellants argue that the FTT's decision should stand so far only as the cupboard doors are concerned; they say that the doors of the meter cupboards are part of the walls separating the flat from the rest of the building and so must be excepted from the demise (see paragraph 5 above). I reject that argument; a door is not a wall. Just as it makes no sense for the front doors of the flat to be excluded from the demise, so it is not plausible to suppose that the tenant could be lessee of the cupboards and not of the cupboard doors.

22. Accordingly I take the view that the FTT's reasons for rejecting the unambiguous evidence of the plan were irrational and its decision must be set aside.

23. There is no purpose in remitting these two applications to the FTT. Instead I re-make both decisions: the cupboards (including their doors) are within the demised premises for each lease in the two buildings.

24. I note that that is consistent with the position adopted by the appellants, and accepted by many leaseholders, so far as the removal of the asbestos is concerned (although the dispute about that removal, and Mr Goldstrom's many concerns about the management of Buttermere Court, are not relevant to the Tribunal's decision). I note that there may be concerns about consistency of decoration with the buildings, but with some goodwill and co-operation it will be possible to devise practical solutions to that. The Tribunal's decision rests squarely on the drafting of the leases and their plans, which cannot be shown to have been mistaken or inaccurate.

Elizabeth Cooke

18 July 2019