FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Wandsworth, sitting at 10 Alfred Place, London WC1E 7LR

Tribunal reference	**:**	**LON/0000BJ/LSC/2021/0032**
Court claim number	**:**	**F01WT735**
Property	**:**	**Flat 14 Cyril Mansions, Prince of Wales Drive, London SW11 4HR**
Applicant/Claimant	**:**	**Cyril Mansions Limited**
Representative	**:**	**Ms Brooke Lyne – Counsel with Mr Hugo Lawrence-Smith Chartered Surveyor of Aspect Property Management Limited, managing agent for the Applicant**
Respondent/Defendant	**:**	**Anthony James Dowling and Selma Dowling (nee Basic)**
Representative	**:**	**Mr Dowling with Mrs Dowling**
Tribunal members	**:**	**Judge Dutton & Mr S D Johnson MRICS**
In the county court	**:**	**Judge Dutton with Mr S D Johnson as assessor**
Date of decision	**:**	**26 July 2021**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVP Video. A face to face hearing was not held because it was not practicable and no-one requested same and further that issues could be determined in a remote hearing.

The documents that we will refer to are in a bundle of some 564 pages.

DECISION

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

Summary of the decisions made by the Tribunal

1. The following sums are payable by the Respondents to Applicant by 6 September 2021

   (i) Service charges: £9,262.87

Summary of the decisions made by the Court

   (ii) The assessment of costs and interest will be dealt with as provided for in this decision.

PROCEEDINGS

1. Proceedings were originally issued against the Respondents in the County Court Money Claims Centre on 9th December 2019. The matter was subsequently transferred to the County Court at Wandsworth with a claim number FO1WUT735. The issues fee was £1,023.73. The claim was subsequently transferred from the County Court at Wandsworth to the First Tier Tribunal by an order dated 21st January 2021 from Deputy District Judge Lucas.

2. Subsequently on 8th March 2021 Judge Martinski issued directions for this matter to come on full hearing on 18th June 2021.

3. There followed bouts of interlocutory jousting over the timetable, but the hearing date remained.

HEARING

4. The Applicant, Cyril Mansion Limited a tenant-owned management company, was represented at the hearing by Ms Brooke Lyne, Counsel instructed by

Guillaumes Solicitors. With her was Mr Hugo Lawrence-Smith a Chartered Surveyor and senior Property Manager at Aspect Property Management Limited, agents for the Applicant.

5. The Respondents, Mr and Mrs Dowling represented themselves.

BACKGROUND

6. The subject property, Flat 14 Cyril Mansions is situated in a block of 86 apartments held under long leases. It appears that the Applicant Company acquired the freehold from the then owners and a board of directors of which there are currently six was set up to deal with the management. Of the 86 flats it appears there are a mix of owner-occupiers and some held by investors.

7. The Respondents hold under the terms of a lease which was to be found at page 508 of the bundle which was subject to an extension by a lease dated 25th January 1985 at page 522 of the bundle. The extension lease contained certain provisions which do not impact on this application. The earlier lease dated 22nd May 1974 contains provisions for the landlord to provide services and for the Respondents to pay for same.

8. No inspection of the Property was carried out because of the Covid restrictions but it was not considered that such an inspection would have assisted in any event.

DOCUMENTATION

9. We were provided with a bundle of documents running to some 564 pages. This included the witness statement from Mr Hugo Lawrence at page 457 and a witness statement made by Mr Dowling at page 230 of the bundle.

10. Of particular relevance was a fire safety letter from the London Fire & Emergency Planning Authority dated 25th April 2017 setting out concerns and providing a notice under Regulatory Reform (Fire Safety) Order 2005 dealing with certain deficiencies discovered on an inspection. The intention to carry out works is evidenced in a round robin letter dated 16th October 2017 from the Applicant.

ISSUES

11. At the start of the hearing Miss Lyne told us that the only dispute that we needed to consider was an internal levy for the period 2018/19 in the sum of £2,7780.60.

12. In the Respondent's statement, which is at page 218 of the bundle, the Respondents say that they have attempted to make payments in connection with sums due but have been refused and refunded by the Applicant. Details of those payments and refunds are set out. At paragraph 6 of the Respondent's statement, the Respondents say that of the sum charged by the Applicants totalling £9.262.87 they have accepted liability in so far as the sum of £6,482.72 is concerned leaving the internal levy sum outstanding. It is said that that is not payable because the Applicant has not met the terms and conditions of clause 4(c) of the lease. This is the original lease. It is denied that forfeiture is

appropriate, and interest is disputed indicating that if payable an appropriate rate would be 2% per annum. The document then goes on to list a counter claim representing damage caused to the Respondent's flat, which they have repaired themselves at a cost of £1,297.36. It is said that a request for insurance details was made to deal with these costs but the insurance information was not provided by the Applicants. In addition, there is also a claim in the sum of £859.00 in respect of damages to an induction hob at the flat with a further sum of £110 for the installation and removal.

13. The statement of case goes on to allege failures in respect of some double glazing at the Property, failure to investigate water penetration to the dining room and to the north elevation windows. The counter-claim seeks special damages in the sum of £2,266.36 and general damages to be assessed.

14. Mr and Mrs Dowling gave evidence that they relied on Clauses 4(b) and 4(c) of the lease. Clause 4(b) provides that payments on account can be made by reference to an estimate prepared by the lessor or its managing agents in respect of items at part 1 of the 3rd schedule to the lease, which sets out the lessors' expenses and outgoings and can be found at page 518 of the bundle.

15. At clause 4(c) of the lease are the provisions for payment of service charges subject to terms and conditions. They are as follows:

4(c)

(i) At the end of each year ending 29th September the actual amount payable in respect of the service charge shall be ascertained and certified by a certificate signed by the lessor, (or the lessor's managing agent) by reference to the actual expenditure incurred in the items in part I of the said schedule during the proceeding period of 12 months and the actual expenditure incurred during the period on items in part II of the said schedule together with the amount which represents part of the lessor's anticipated expenditure on part II items in subsequent years.

(ii) Upon receipt of the copy of the said certificate the lessee shall pay to the lessor on demand any balance payable in respect of the difference between the amount of the said estimate and the amount shown in the said certificate provided but if the amount paid by the lessee exceeds the amount shown in the certificate the lessee shall be entitled to a credit with the excess.

16. Mr and Mrs Dowling took us to page 321 of the bundle showing a demand from Aspect Property Management dated 1st September 2018 relying on the service charge budget of £410,000 which was shown at page 320 of the bundle. However, we were directed to Mr Lawrence-Smith's statement, which is at 457 in the bundle, which contained at table A dates of demands, the periods and the sums claimed. Our attention was drawn to a series of demands starting at page 476 dated 7th September 2018 showing the sum claimed of £13,336.05. This is followed with a further demand on 7th March 2019 which includes that earlier sum and half yearly service charge in advance for the period to 28th September 2019 of £2,850.12 giving a total due of £16,186.17. That sum is then carried

forward into a demand dated 22nd October 2019 numbered 8179 where the money in advance for the period September 2019 to March 2020 of £2,989.15 is added giving a total due of £19,175.35.

17. We were taken then to page 334 of the bundle which is a demand for payment bearing demand number 81759 dated 22 October 2019 showing the sum of £9,262.87 as being due. This was we pointed out in direct contrast with the demand at page 478 showing a sum of £19,175.83 as being due. This conflicting information is carried forward by Mr Lawrence-Smith in his statement at page 459 showing the greater demand on 22nd October at £19,175.35.

18. It was with this background of conflicting demands that Mr and Mrs Dowling raised their concerns. Reference was made to the final account at page 390 of the bundle and they confirmed that the major works under section 20 consultation were not in dispute.

19. Mr and Mrs Dowling's assertion was that they had paid the sums in respect of the 2017/18 accounts which are shown at page 232 of the bundle, and they accepted that part payments would include this initial internal levy. He said, however, that they had been asking for certification since 2019 but received the final accounts for 2019 in May of 2020 and 2021. They had in fact been asking for the accounts after completion of the works, which he thought had taken place in 2020. All he was asking for he said was clarity of the amount that they were being asked to pay and the period for which payment was being sought.

20. His view was that the levy really was a contribution to the reserve fund. The works included fire prevention works and the levy was originally based on the works that were to be done within two years as raised by the Fire Authority. Those works, however, extended over a longer period and could have been raised by increases through the service charges over four years instead of by levy.

21. They were then asked questions by Ms Lyne who concentrated on the counterclaim, as in truth it did not really seem that Mr and Mrs Dowling were querying the levy of £2,780.60, they just wanted certainty as to the sums they owed and correct demands.

22. In questioning from Ms Lyne, Mr Dowling accepted that the hob was a fixture within the flat and under the terms of the lease agreed that the hob constituted a potential landlord's fixtures and fittings in or about the flat not expressly excluded from the demise. It was to taken to clause 2(c) which was the tenant's covenants to well and substantially maintain and keep clean and in good repair the flat and lessor's fixtures and fittings therein. Further it was put to him that it was not the landlord who had caused the damage to the hob. Mr Dowling's real complaint in this regard was that he was not provided with insurer's details to enable him to make the claim.

23. He was then asked about the claim in respect of the windows, accepting that they were demised to the tenant. However, the position was that the windows had been replaced by the landlord, with Mr and Mrs Dowling's agreement. There is evidence of exchanges in 2012 from a Mr Pickering a director of Aspect Property Management with Mr Dowling talking about the replacement of the windows and

Mr Dowling agreeing to pay the difference between single glazing and double-glazed. It was Mr Dowling's view that a FENSA certificate should have been available and this would have covered problems that he is now suffering. It was conceded that in respect of the general damage claim in the counter-claim no loss had yet been occasioned.

24. Miss Lyne then went on to ask Mr and Mrs Dowling about payments that they had made. It was their view that the Applicants had refused to accept payments so that they could continue with the claim for forfeiture. Mr and Mrs Dowling had made many attempts to narrow the issues but had been rebuffed by the advisors for the Applicant. Mr Dowling did not think that forfeiture was proportionate the more so as the Property was subject to a mortgage. There was, he said, nothing in their behaviour or correspondence indicating that they were not going to pay the sums subject to clarification as to the amounts that were correct as evidenced by the continuing indication from Mr Lawrence-Smith that the liability of the Respondents was in excess of £19,000. Asked why they had not made a payment into court Mr Dowling confirmed that if he did so he considered he could be liable for costs, which he disputed.

25. We then heard from Mr Lawrence-Smith whose witness statement is at page 457 of the bundle. He wished to clarify that he was not a director of the Applicant Company. He also confirmed that the hob would not be covered by the landlord's building insurance and that he would write a letter to Mr and Mrs Dowling to confirm this and also provide a copy of the building insurance. We were told that if this could be done Mr and Mrs Dowling would be able to make a claim on their own contents policy as apparently the insurers wanted to confirm first that the damage to the hob could not be claimed elsewhere. We understand that during the course of the hearing this letter was sent which should remove the concerns Mr and Mrs Dowling have in relation to their ability to claim for the costs of the hob.

26. Asked about Table A in his witness statement he confirmed that he thought it was correct to the best of his knowledge. However, these details were prepared by the accounts department. He did accept that the amount that was being claimed was £9,262.87 and he had no explanation for the sum of £19,175.32 appearing in Table A.

27. Asked about Table B in his witness statement which appeared to be a list of payments made and refunds, he confirmed that he did not fully understand the contents. He did, however, accept that the applications for payments appeared to be incorrect.

28. There then followed questions as to the water leaks at the Property which he thought had happened in August of 2019. He agreed that he had received notification of the claim and the request for insurance details but did not respond because legal advice given to him was that he should not respond with the information as this may affect the Applicants ability to proceed for a breach and thus forfeit the lease. He also thought, in any event, that the totality of the claim was below the insurance excess.

29. Asked about the lack of FENSA certificates he was requested to explain why he had not engaged with the window company who did the fitting. Apparently the works had been done in 2012 and enquiries had been made with the contractor about the FENSA certificate but that had not been pursued. He reminded us that he had commenced work with Aspect in April of 2019 and therefore these works were before his time. He did however think that the contractor still existed and had tried to get a copy from that contractor of the FENSA certificate but was unsuccessful. He confirmed that the contractor had not been asked to return to site and carry out works.

30. At this point we should also record that Mr Lawrence-Smith confirmed he would contact the contractor and arrange for them to inspect Mr and Mrs Dowling's windows within the next seven days. Indeed he went on to say that he would arrange for an inspection of the flat to investigate the ingress of water to the Respondent's dining room provided the Respondents gave details of access for the week following between the periods 8am to 12.30pm which they said they would do.

31. He then went on to deal with the internal works levy which did arise from the section 20 consultation, a copy of which was at page 481 in the bundle showing the tenders that had been returned and those that had been accepted. The section 20 works related to internal refurbishment including fire safety following the inspection by the fire officer. The section 20 costs were paid by the existing reserve and the levy.

32. At this point a further issue arose concerning the inability of the Applicants to obtain confirmation of compliance from the Fire Officer. It was said that this was as a result of the Respondents refusing to have the fire door and interlinking fire detector installed in their property. Mr and Mrs Dowling's response was that they already had a compliant fire door and internal works had been carried out to ensure their flat was compliant with fire safety issues. However, they did confirm they would be happy to allow the fire door that the Applicant appeared to have in stock to be installed provided the Applicants make good and also to install the fire protection system. Mr Dowling did say he wished to use his own contractor, which apparently was acceptable to the Applicants provided they were able to inspect thereafter. He could also use his own door if he wished but it must be compliant as must the wiring and the alarms. Mr Dowling said he was happy to do that and would do so at his own costs. Mr Lawrence-Smith confirmed he would send details of specifications to Mr Dowling so that he knows what is required.

33. Matters then returned to the accounting aspects and Mr Lawrence-Smith agreed that a number of demands appeared to be wrong and maybe required review.

34. In answer to a question from the Tribunal he confirmed that financial details were either sent by email or by hard copy. Insofar as the delivery to those people living in the block were concerned, it was his view that they were delivered by courier and then distributed by the porter. Those lessees not in occupation certainly had the documents posted to them.

35. In closing submission Miss Lyne said that the only item in dispute was the £2,870.60, the balance of £6,482.27 being admitted by Mr and Mrs Dowling as being due and owing. The Respondent says payments were not accepted, a County Court order was asked for the balance. Insofar as the lease was concerned it was her view that paragraph 4(b) dealt with estimated costs under part I only and that 4(c) would create the internal levy in respect of on account demands. The lease did not deal with part II expenditure.

36. On the question of the counter-claim she reminded us that the windows were demised to the Respondents. As to the water penetration in the dining room, there was no proof as to where this came from and no loss. She accepted that water ingress could be a breach but the source of the leak had not been established and when it had been the Applicants would accept liability under the terms of the lease and the matter would become a service charge issue. She also confirmed that Mr Lawrence-Smith will arrange for inspections to take place. Insofar as the costs were concerned these are claimed under a contract and she referred us to clause 2(k) of the lease which says as follows: *"To pay the lessor on demand all costs charges and expenses (including legal costs and surveyor's fees) which may be incurred by the lessor or otherwise become payable by the lessor under or in contemplation of any proceedings in respect of the flat under section 146 or 147 of the Law of Property Act 1925 or in the preparation or service of any notice thereunder respectively not withstanding that forfeiture is avoided otherwise than by relief granted by the Court."*

37. In response Mr Dowling's view was that during their period of occupancy there were several times when there were nil balances, the last appearing to be on 5th September 2017. In respect of the demands, he said that if they were under 4(c) they should have been received after certification and not before. His view therefore was that the internal levy demand was not property requested.

38. In respect of the counter claim he took us to the invoices from Pimlico in the sum of £980 which he had paid and also from H2 Property Services in the sum of £121.36 again that he had paid. He felt that in respect of the windows there should have been a FENSA certificate available and as they were only fitted in 2012 should have been covered. The dining room leak was a continuing problem and a report was needed to deal with the outstanding reasons for such leak.

DECISION

39. This case eventually became something of a non-event. Mr and Mrs Dowling did not in truth seem to challenge the total of the internal levy but rather the manner in which it had been demanded and the accuracy of those demands. These are justified complaints as we discovered at the hearing. We remind ourselves that this is a tenant-owned company as freeholder and little it seems to us is to be gained by further demands being issued for the internal levy of £2,780.60. Insofar as the balancing charge is concerned of £6,482.27 this has never been in dispute. The Respondents have attempted to pay it. Whilst we appreciate there may be some concern in respect of the possibility to forfeit the lease, in truth the chances of being able to forfeit a residential lease for a liability of under £3,000 is remote in the extreme. We do not understand, therefore, why the Applicants did not accept the payments tendered by Mr and Mrs Dowling in respect of their

admitted liability. Furthermore it would seem to us that more clarification in respect of the accounting issues and maybe a further demand issued after the certification of the accounts would have satisfied Mr and Mrs Dowling as to their concerns.

40. We cannot help but feel that the main cause of concern on behalf of Mr and Mrs Dowling was the problems with regard to their flat. We have some sympathy. The flooding may well be below the insurance excess level. However, the flooding is being caused by circumstances beyond their control and at the very least they should be recompensed from the service charge account. Admittedly they will have to pay a proportion but that is going to be fairly insignificant. We are somewhat surprised, therefore, that the managing agents for the Applicant did not proceed with the matter on that basis. Refusing to disclose the insurance details because they have been advised by solicitors that it might affect the rights to forfeit seems to us to be a poor excuse.

41. Similarly the problems with the window may well arise from the Respondent's liability to maintain but it is clear to us that these works were undertaken by the Applicants, there should have been a FENSA certificate or the very least some form of building regulation approval and there ought to be some comeback against the contractors. The fact that this has been ignored is likely to be frustrating to Mr and Mrs Dowling.

42. In respect of the dining room leak there is no reason why that cannot be investigated and should have been looked into before now. It may well be that it is not a matter that is the responsibility of the Applicants but until such time as they carry out an inspection who will know.

43. We are, however, grateful to Mr Lawrence-Smith during the course of the hearing resolving the issue in respect of the hob, confirming that he would chase the question of the FENSA certificate, dealing also with the question of the fire prevention issues and agreeing that an inspection could be carried out of Mr and Mrs Dowling's property to ascertain the current leaking difficulties. If nothing else has come from this application, at least there is a moving forward on issues and hopefully some form of rapprochement between the parties.

44. We were asked not to deal with the question of costs at this stage but to instead to invite written submissions from the parties as to whether or not costs should be claimed and also the question of interest. It was also left for the use to make any decision on the section 20C application as well as under paragraph 5(a) of schedule 11 to the Commonhold & Leasehold Reform Act 2002.

45. In that regard we issue some directions. The first is that the Applicants will within 28 days of the date of this decision let Mr and Mrs Dowling have written submissions as to whether they believe costs are recoverable under the terms of the lease or in respect of Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

46. We do have the statement of costs in connection with this matter from the Applicants and therefore there is no need for further information to be provided.

47. In respect of any interest claim we will need to have full details as to how that has been calculated, including the time scales and why the rate specified is sought.

48. Within 28 days of the provision of the information above, Mr and Mrs Dowling may respond to any submissions as to costs liability and also to the statement of costs for summary assessment indicating their views as to what sums would be payable if it was found that they had a responsibility. If they consider they have a right under Rule 13 to make a claim then they should carefully study the Upper Tribunal decision in Willow Court Management Company (1985) v Mrs Ratna [2016]UKUT(LC) on guidance as to what constitutes unreasonableness. If a claim for interest is made they should also respond.

49. Within 14 days of the submissions from Mr and Mrs Dowling the Applicants are to lodge copies of those documents that they rely on and those produced by Mr and Mrs Dowling with the Tribunal and within 29 days of such lodgement the Tribunal would meet to consider any applications that there may be outstanding. The matter will be dealt with on the papers unless either party requests a hearing which must be within 56 days of the Applicants' submission, with dates to avoid in the following three months. If that occurs details of any hearing requested will be provided by the tribunal.

Judge: Andrew Dutton

A A Dutton

Date: 26 July 2021

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.

Appealing against the County Court decision

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

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

4. 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.

5. 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.

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.

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

Appealing against the decisions of the tribunal and the County Court

In this case, both the above routes should be followed.