



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

**Case reference** : **LON/00AC/LDC/2019/0052**

**Property** : **Flats 1 – 6 Brinsdale Park,  
Brinsdale Road, London, NW4 1TB**

**Applicant** : **Renee Wasserman**

**Representative** :

**Respondent** : **Loyalart Flat Management  
Company Limited**

**Representative** :

**Type of application** : **For the determination of an  
application under S20C of the  
Landlord and Tenant Act 1985**

**Tribunal members** : **Mrs E Flint FRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **16 July 2019**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that fees of £500 plus VAT and the application fee of £100 shall be added to the service charge account for the block.

## **The application**

1. The Applicant seeks a determination under section 20C of the Landlord and Tenant Act 1985 (“the Act”) in respect of the respondent’s costs incurred in relation to an Application under section 20ZA for Dispensation from the consultation requirements of S20 of the Act.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

3. The property which is the subject of this application is a purpose-built block of six flats. The lift had not been in working order since 2017/2018 due to a mechanical failure.
4. The Applicant is the lessee of one of the flats within the block and the Respondent is the freeholder of the block. The leases provide in the Second schedule that the service charge comprises “*The total of all costs payments sums and expenses incurred by the Management Company in any accounting period in carrying out its obligations*” ...
5. On 4 April 2019 the Respondent made an application for dispensation in respect of the replacement of the lift at the property which was withdrawn on 22 May 2019. This application is in respect of costs of £500 plus VAT claimed by the management company and the application fee of £100.

## **The Evidence**

6. The Applicant stated that the Landlord’s costs should not be recouped from the service charge nor be issued as administration charges. She considered that the Directors and their Agents had not carried out sufficient due diligence on the lessees’ behalf nor had they been completely transparent regarding whether the proposed works were for a new or modernised lift. In those circumstances it is contended that the Landlord should bear the costs of the aborted S20ZA application.
7. The Applicant confirmed that she had had no objection in principle to the dispensation of the s20 consultation. This was based on the

understanding that a new hydraulic lift could be obtained for c£70,000. However, on receipt of the application for dispensation which referred to a figure of £130,000 for a modernised rather than a new lift Ms Wasserman felt it was her duty to object in the best interests of all the lessees. She said another lessee also objected. She was concerned at the discrepancy between what was said at the meeting of the residents when it was agreed that dispensation from consultation should be sought and the cost of the works referred to in the application to dispense.

8. She had spent about a year researching the necessary specification and cost to get the lift working again. She referred to a quote from a global company, which she had contacted, of about £65,000 for the same type of modernisation package to include full project management, one-year free maintenance, VAT and no extra costs.
9. The Applicant further noted that the Directions had not been fully complied with because the dispensation application and directions had not been displayed in the common parts nor were the lessees provided with details of the £130,000.
10. Michael Laurie Magar Limited (MLM), the managing agents, stated on behalf of the freeholder that the costs of £500 plus VAT were truncated costs including disbursements. The costs had been agreed by all the leaseholders at a meeting held on 14 February 2019 held at the offices of MLM prior to the application being made. The application was made with the unanimous agreement of all the leaseholders at the meeting. Further they accepted the cost and proceeded to instruct MLM to make the application. MLM said it would be unfair to the other leaseholders not a party to the s20C application to have to bear the costs if the S20C application were successful.
11. MLM provided a chronology of events and details of meetings with the leaseholders to explain how they would keep the leaseholders informed of the way ahead and the extent of the work required to resume a lift service in the building.

### **The tribunal's decision**

12. The tribunal determines that the cost of £500 plus VAT and the application fee of £100 should be added to the service charge account.

### **Reasons for the tribunal's decision**

13. The leaseholders were concerned at the time scale to undertake full consultation and undertake the necessary work to the lift. MLM advised that a S20ZA application would reduce the timescale and the leaseholders unanimously agreed that such an application should be

made. The application for dispensation does not take into account the reasonableness or otherwise of the cost of the work which can be subject to a further application if necessary. It would be inequitable for the costs of the agent and the application fee not to be added to the service charge account. The costs are said to be truncated and cannot be said to be unreasonable in the circumstances.

14. The tribunal determines that it is just and equitable to add the costs and application fee to the service charge account.

**Name:** E Flint

**Date:** 16 July 2019

### **Rights of appeal**

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.

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.

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.

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.

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.

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

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **20C Limitation of service charges: costs of proceedings.**

(2) 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.

(3) 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.]