



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

Case reference : **LON/00BK/LSC/2022/0292**

HMCTS code (paper, video, audio) : **P: PAPER DETERMINATION**

Property : **Flat 3, 193 Queen's Gate, London SW7 5EU**

Applicant : **Louis Al-Dhahir**

Representative : **In person**

Respondents : **193 Queensgate Limited**

Representative : **Adnan Kronfol**

Type of application : **For the determination of the liability to pay service charges under S.27A Landlord and Tenant Act 1985**

Tribunal members : **Judge N Hawkes
Ms M Krisko FRICS**

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

Date of decision : **29 November 2022**

DECISION

PAPER DETERMINATION

This has been a paper determination which has not been objected to by the parties. The form of remote determination was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that the Tribunal was referred to are contained in a bundle of 80 pages (including index). The order made is described below.

Decision of the Tribunal

The Tribunal determines that the sum of £791.21 is payable by the Applicant in respect of the service charges for the supply of gas in the service charge year 2019.

The background

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges which are payable by the Applicant for the supply of gas in the service charge year 2019.
2. Directions of the Tribunal were issued on 13 October 2022. Time for compliance with some of the Directions has not yet expired but the Tribunal has been informed that both parties have provided all of the documents which they rely upon and are content for a paper determination to be made in the week commencing 28 November 2022.
3. The Applicant is the long lessee of Flat 3, 193 Queen’s Gate, London SW7 5EU and the Respondent is his landlord. The Tribunal has been informed that 193 Queen’s Gate London SW7 5EU (“the Building”) is a mid-Victorian terraced building which was converted into 12 flats in the 1980s.
4. In 2019, the Respondent’s managing agents were Warwick Estates Property Management Limited (“Warwick Estates”). The service charge percentage payable by the Applicant in respect of the service charges for the supply of gas is 7.95%.

The Tribunal’s determination

5. The Applicant contends that the service charges for the supply of gas were unreasonably high in the year 2019 because Respondent unreasonably failed to enter into a fixed price contract for the supply of gas at a lower rate than the standard variable tariff.

6. The Applicant relies upon the price payable for the supply of gas to the Building in the year 2020 pursuant to a fixed price contract as evidence of the likely cost in 2019 had a fixed contract price been entered into.
7. The Tribunal has had sight of a Property Ombudsman Case Review in which possible reasons why Warwick Estates did not enter into a fixed price contract are referred to. These reasons are not, however, relied upon by the Respondent, on whose behalf Warwick Estates was acting.
8. In these Tribunal proceedings, there is no dispute of fact that the Respondent unreasonably failed to enter into a fixed price contract for the supply of gas to the Building in 2019. Further, the Applicant's assertion that, had a fixed price contract been entered into in 2019 the likely price payable for the supply of gas would be that paid in 2020, and the Applicant's calculation of the resulting loss are unchallenged.
9. The Respondent's Statement of Case provides:

"In response to the Applicant's case, I am writing to confirm that I agree in principle with him.

I have attached TPO ruling that is mentioned by the Applicant and in the Conclusion of the ruling (page 8), it is clear that TPO has upheld the complaint that Warwick Estates did not act upon the instructions given to them to place the Landlord's gas supply for 193 Queen's Gate into a contract as soon as possible after taking over as the managing agents in September 2018.

Furthermore, TPO ruling also confirms that even though I was informed by email by the Warwick Estates property manager in Jan 2019 that a gas supply contract for 193 Queen's Gate had been placed in January 2019, this was misleading and that a contract was not actually placed until the start of January 2020.

In my opinion, the only question to be decided is the precise quantification on of the additional gas costs imposed on the service charge payers at 193 Queen's Gate, including the Applicant, because of:

- the inability of Warwick Estates to comply with the instructions given to them in 2018 and

- waiting until the Summer of 2020 to admit that they had not complied with the instructions until the start of January 2020 and

- waiting until 2021 to communicate their difficulties in placing the gas supply contract during 2019."

10. Having considered the unchallenged evidence supplied by the Applicant, the Tribunal is satisfied, on the balance of probabilities, that the service charges demanded from the Applicant in respect of the supply of gas in 2019 were unreasonably high because the Respondent unreasonably failed to enter into a fixed price contract.
11. The Tribunal has not been provided with evidence concerning the potential fixed price contracts which were available for the year 2019. We also note that the invoice on page 69 of the bundle, although in line with previous invoices, is said to be an “estimate” notwithstanding that it followed an earlier actual “smart” reading on 31 December 2019.
12. However, doing our best on the limited evidence available and noting that the Applicant’s case that the 2020 rate should be applied to the service charge year 2019 is not challenged, we find that a reasonable charge for the supply of gas in 2019 is the sum charged under the 2020 price fixed contract.
13. Accordingly, the Tribunal finds the sum of £791.21 (£9,478.39 plus VAT at 5%, divided by 7.95%) is reasonable and payable by the Applicant in respect of the service charge for the supply of gas in 2019.

Name: Judge N Hawkes

Date: 29 November 2022

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).