UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – SERVICE CHARGES – assured tenancy – whether landlord prevented by s.11, Landlord and Tenant Act 1985 from recovering cost of repairing the lift in a block of flats from assured tenants – appeal allowed

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

ANCHOR HANOVER GROUP

Appellant

-and-

MR KENNETH COX

Respondent

Re: 42 Tony Law House,
1 Betts Way,
Penge,
London SE20

Martin Rodger KC, Deputy Chamber President

12 January 2023

Mr Justin Bates, instructed by Anthony Hesford, in-house solicitor, for the appellant
The respondent, *Mr Kenneth Cox*, represented himself

The following cases are referred to in this decision:

Campden Hill Towers v Gardner [1977] 1 QB 823

Edwards v Kumarasamy [2016] UKSC 40; [2016] AC 1334

Grand v Gill [2011] EWCA Civ 554; [2011] 1 W.L.R. 2253

Liverpool City Council v Irwin [1977] AC 239

Introduction

1. Does section 11 of the Landlord and Tenant Act 1985 prevent a landlord from recovering service charge contributions towards the cost of repairing the lift in a block of flats from its assured tenants of the flats in the building?

2. That is the only question raised in this appeal from a decision of the First-tier Tribunal (Property Chamber) (the FTT), issued on 15 June 2022. The FTT determined that costs incurred by Anchor Hanover Group in repairing and maintaining the lift at Tony Law House in South London, could not be included in the service charge payable by Mr Kenneth Cox under his tenancy of flat 42. The FTT recognised that the ability of a landlord to recover such costs raises an important issue, and it granted permission to appeal its decision.

3. At the hearing of the appeal the appellant was represented by Mr Justin Bates (who had not appeared before the FTT) and Mr Cox represented himself. I am grateful to them both for their research and submissions.

The facts

4. Tony Law House is a four storey, purpose-built independent living retirement development of 51 flats for those aged 55 and over. It is owned by Anchor Hanover Group (Anchor), a non-profit registered provider of social housing, and all of the flats in the building are occupied under assured tenancies under the Housing Act 1988. Mr Cox has occupied his flat on the fourth floor of the building since February 2010.

5. Tony Law House is described by Anchor as a sheltered housing scheme, and Mr Cox explained that many of the tenants are elderly or infirmed and have to use wheelchairs, walking stick or Zimmer frames. A properly functioning lift serving all floors of the building is an essential facility which many tenants rely on and without which they would be unable to continue living in their flats.

6. By paragraph 2a in Part B of Mr Cox's tenancy agreement the parties agreed that Anchor would provide the services set out in a schedule and that Mr Cox would pay a service charge for them. The schedule of services includes the repair, maintenance and insurance of the lift serving the building.

7. Anchor's responsibilities as landlord are listed in Part C of the tenancy agreement. They include repairing the structure and outside of the premises (paragraph 3), maintaining and repairing installations for supplying heating, water, gas and electricity (paragraph 4), and repairing and maintaining any communal (shared) areas (paragraph 5). Although the lift is not specifically mentioned it is agreed that it falls within paragraph 5.

8. On 23 June 2021 Mr Cox applied to the FTT under section 27A, Landlord and Tenant Act 1985, for a determination of his liability to pay service charges for the years from 2010 to 2022. The service charge budget for the building for 2021-22 included a total sum (to which all tenants contribute a proportion) of £2,860 towards the cost of a new lift installed in 2018,

together with the cost of a lift servicing contract (£758), lift inspection (£224) and lift repairs (£446). Mr Cox identified similar costs in previous years (although the FTT limited the period under consideration to the years 2016 to 2022). He emphasised in his application that he is an assured tenant and argued that, for that reason, he should not be required to contribute towards the cost of repairs to the structure of the building including the cost of the lift.

9. Mr Cox based his main argument on section 11 of the Landlord and Tenant Act 1985 which, as he pointed out, prevents the landlord under a tenancy to which it applies from recovering the costs of certain repairs from its tenants. He argued that those repairs included the cost of work to the common areas of a building, including entrance halls, stairs and lifts. Mr Cox also challenged his liability for other charges, including for tree maintenance and a warden service, and took issue with the rate at which the cost of services had increased when compared to the rate of inflation and the rates of increase in the state pension on which most residents of Tony Law House rely.

10. The FTT agreed with Mr Cox that the lift is one of the installations in the building covered by section 11(1)(b) of the Landlord and Tenant Act 1985. As a result, Anchor not only was required to keep it in repair and proper working order (which was not in dispute) but the terms of the tenancy agreement which required Mr Cox to contribute towards the cost of doing so were of no effect. The FTT did not accept the other parts of Mr Cox's argument and found that, apart from the costs relating to the repair and maintenance of the lift, he was liable to pay all of the service charges which he had challenged.

11. I will explain the FTT's reasoning in a little more detail after first considering section 11.

Section 11, Landlord and Tenant Act 1985

12. The purpose of section 11 is to require landlords to keep in repair the structure and exterior of dwellings let on short term tenancies and the installations providing services for them. It does so by implying statutory repairing covenants into all tenancies to which the section applies; these implied covenants override any provision of a tenancy agreement which would have the effect of placing the same obligations on the tenant. Importantly for this appeal, section 11 also overrides any provision of an agreement which would otherwise require the tenant to contribute towards the cost of the landlord complying with the implied obligations.

13. The tenancies to which section 11 applies are identified in sections 13 and 14, 1985 Act. The general rule is that that the statutory repairing covenants apply to a lease of a dwelling-house granted on or after 24th October 1961 for a term of less than seven years (section 13(1)). Exceptions are made to the general rule by section 14, but none of them apply in this case. The words "lease" and "tenancy" have the same meaning when used in the 1985 Act (sections 59(1) and 60), so section 11 applies to a tenancy of a flat.

14. The implied covenants are imposed by section 11(1), which provides as follows:

> 11.— Repairing obligations in short leases.

> (1) In a lease to which this section applies (as to which, see sections 13 and 14) there is implied a covenant by the lessor—
>
> (a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),
>
> (b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and
>
> (c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

15. In their original form the implied covenants were limited to the structure and exterior of the dwelling-house, and installations in the dwelling-house, but this narrow focus on the unit of accommodation itself was eventually found to be too narrow in the case of flats. This first became apparent in *Campden Hill Towers v Gardner* [1977] 1 QB 823 a case concerning the predecessor to section 11, section 32 of the Housing Act 1961 which was in effectively identical terms. In *Campden Hill Towers* the Court of Appeal ruled that the only part of the exterior structure of a block of flats which was covered by the first implied covenant was the exterior structure of the flat itself. In *Liverpool City Council v Irwin* [1977] AC 239 it was common ground that the second implied covenant applied only to installations in the dwelling-house itself, and the House of Lords had to rely on the necessity of having a functioning lift in a tower block in order to imply a contractual term requiring the landlord to keep the lift in repair.

16. Although the limitations of the original implied covenants were already causing problems by the time the Landlord and Tenant Act 1985 was enacted, it was not until the Housing Act 1988 that a solution was found. With effect from 15 January 1989 the scope of the statutory covenants was extended to cover other parts of a building containing a dwelling let on a tenancy to which section 11 applies. Subsections (1A) and (1B) were added to section 11 and provide as follows:

> (1A) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if—
>
> (a) the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and
>
> (b) any reference in paragraphs (b) and (c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either—
>
> (i) forms part of any part of a building in which the lessor has an estate or interest; or
>
> (ii) is owned by the lessor or under his control.

> (1B) Nothing in subsection (1A) shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee's enjoyment of the dwelling-house or of any common parts, as defined in section 60(1) of the Landlord and Tenant Act 1987, which the lessee, as such, is entitled to use.

17. Subsection (1B) refers to the definition of "common parts" in section 60(1) of the Landlord and Tenant Act 1987, which states that "common parts" in relation to any building or part of a building, includes the structure and exterior of that building or part "and any common facilities within it".

18. In this context the "structure" of a building means those elements of the building which give it its "essential appearance, stability and shape" (the cases which establish this proposition were reviewed by the Court of Appeal in *Grand v Gill* [2011] EWCA Civ 554).

19. In *Edwards v Kumarasamy* [2016] UKSC 40, the Supreme Court decided that section 11 did not oblige a landlord to repair a paved area in front of a block of flats, despite the fact that the area provided the only means of access to the communal front hall at the entrance of the building. The tenant of one of the flats, Mr Edwards, had tripped on a raised paving stone when emptying his rubbish bin and claimed damages for his injuries. The first issue considered by the Supreme Court was whether the area leading to the front door where the accident had occurred could be described as part of the structure and exterior of the building (or as part of the exterior of the hall). Lord Neuberger (with whom the other Justices agreed) concluded that it was not possible, as a matter of ordinary language, to describe the paved path leading to the front door as part of the exterior of the building, or part of the exterior of the front hall. At paragraph 18 of his judgment, he warned against the temptation to give the statutory language an unnaturally wide meaning, saying this:

> "There is some force in the argument that a purposive approach to the words of section 11(1A)(a) suggests that they should be given a wide, rather than a narrow, effect, as one might have expected that Parliament intended those parts of a building or its curtilage which are not included in an individual residential demise, and which are in any way enjoyed by the tenant in question, would be within the ambit of the landlord's statutory repairing covenant. However, given that the section imposes obligations on a contracting party over and above those which have been contractually agreed, one should not be too ready to give an unnaturally wide meaning to any of its expressions. Quite apart from that, the fact that one might have expected words in a statute to cover a particular situation is not enough to justify giving those words an unnatural meaning in order to ensure that they do so. In this case, such a wide reading would be very difficult to reconcile with the wording of section 11(1A)(a), especially in the light of the limitation to "the building". Further, the fact that section 11(1)(a) is specifically extended to cover "drains, gutters and external pipes" tends to support the notion that when it refers to the "exterior", the word is to be given a natural, rather than an artificially wide, meaning."

20. Section 11(2), which limits the work which the landlord can be required to carry out, section 11(3), which is concerned with the standard of repair, and section 11(3A) which provides a limited defence in respect of some claims, are not relevant to this appeal.

21. Section 11(4) provides that "a covenant by the lessee for the repair of the premises is of no effect so far as it relates to the matters mentioned in subsection (1)(a) to (c) …". Any attempt to use a term of a tenancy agreement to make the tenant responsible for repairing the structure of the flat or the service installations would therefore be ineffective.

22. The meaning of the expression "a covenant by the lessee for the repair of the premises" used in subsection (4) is then supplemented and widened by subsection (5) so that it includes not just any obligation which would make the tenant carry out repairs which are the responsibility of the landlord, but also any covenant by the tenant to pay money on account of repairs by the landlord. In other words, a service charge clause in a tenancy agreement has no effect so far as it would require the tenant to contribute to the cost of work carried out by the landlord which falls within the landlord's implied repairing covenants.

The FTT's interpretation of section 11

23. The FTT began its explanation of why the appellant could not pass the cost of lift repairs on to its tenants by noting that section 11(1A) extends the statutory repairing covenant beyond the dwelling itself to any other part of the building in which the landlord has an interest. It referred to section 11(1A)(b) extending the landlord's obligation further by providing that any reference in paragraphs (b) and (c) of section 11(1) to any installation in the dwelling-house includes an installation which directly or indirectly serves the dwelling-house and is under the control of the landlord. From this the FTT directed itself that:

> "For section 11 to apply, the lifts must either be part of the structure or must be an installation which directly or indirectly serves the dwellinghouse. Section 60 of the Landlord and Tenant Act 1987 quoted above defines common parts in relation to any building or part of a building as including the structure and exterior of that building or part and any common facilities within it. There can be no doubt the lift is a common facility."

24. The FTT doubted that the lift was part of the structure of the building, and it continued its reasoning on the assumption that it was not:

> "40. There can be no doubt that the lift forms part of the common parts of the building as being a common facility for the purpose of section 60 of the 1987 Act. We further consider that the lift is an installation which indirectly serves the dwellinghouse and therefore comes within the scope of section 11.
>
> "41. We recognise that section 11(1)(b) refers to certain essential installations but not to other fixtures fittings or appliances. We consider that, in the context of a sheltered housing scheme where the residents must be over 55, a lift is an essential installation and comes within s.11(1)(b). In a sheltered housing

scheme of 52 flats, it must be expected that at any time, a proportion of the residents will be of limited or impaired mobility."

25. As I understand the FTT's reasoning it was that the lift was a common part or common facility and engaged section 11(1B) through the definition of "common parts" in section 60, 1987 Act, which covers "any common facilities" in the building; it was also an installation which indirectly served Mr Cox's flat; although it was not mentioned specifically in section 11(1)(b) it fell within that limb of section 11(1) because in the context of this building it was an essential installation. Applying section 11(4) and (5) it followed that Mr Cox could not be required to contribute towards the cost of repairing the lift.

Discussion

26. It is clear to me that the FTT went astray in its analysis of section 11. Nobody would quarrel with its finding that a lift is a common facility, or that it is essential to the residents of this building, but the leap from identifying something as a common facility and concluding that it is therefore an installation to which section 11(1)(b) applies is insupportable. The FTT treated section 11(1B) as introducing an additional covenant, which obliged Anchor to repair common parts of the building, and *via* section 60, the common "facilities" including the lift. The fault in this chain of reasoning is that it treats section 11(1B) as an additional free-standing obligation, whereas its true purpose is to narrow rather than to widen the scope of section 11(1A).

27. Subsection (1B) does not add a new implied repairing obligation, and specifically it does not add the common parts of the building to the subject to the landlord's obligations under subsection (1) and (1A). The subject matter of the covenants remains, first, the structure and exterior of the dwelling-house and the building in so far as it belongs to the landlord, and secondly, the specific types of installation identified in section 11(1)(b) and (c) (whether inside the dwelling-house or in another part of the building) provided they directly or indirectly serve the dwelling-house. Instead, subsection (1B) qualifies the obligation to repair the structure and exterior of the building and the relevant installations so that it arises only if the disrepair affects the lessee's enjoyment of the dwelling-house or the common parts.

28. The effect of subsection (1B) is that, if some part of the structure of the building is in disrepair, the landlord is required to repair that part of the structure only if the disrepair is affecting the tenant's enjoyment of their own flat or the common parts; if the common parts themselves are in disrepair the landlord's obligation applies only if the part in disrepair is also part of the structure of the building. To give an example, if the carpet on the floor outside the tenant's flat has a large hole in it, section 11 would not oblige the landlord to repair it, because the carpet is not part of the structure or exterior of the building; but if there is a large hole in the floor itself section 11 would require the landlord to deal with it because the floor is part of the structure of the building.

29. The FTT's analysis imposed an additional implied covenant requiring the landlord to repair the common parts of the building, including common facilities and essential installations, whatever their nature. I have reached the conclusion that that interpretation went too far.

30. The appropriate place to begin the analysis is with section 11(1), not with section 11(1B).

31. The lift is clearly not part of the structure or exterior of Mr Cox's flat and so does not fall within subsection (1)(a); nor is it an installation in the flat for the supply of water, gas, electricity or sanitation, or for space heating or heating water, and so does not fall within subsection (1)(b) or (c). It is neither in the flat, nor the sort of installation which is covered by the obligation.

32. The next question is whether the statutory covenant applies to the lift through subsection (1A).

33. The first thing to note about subsection (1A) is that it is stated to be "subject to subsection (1B)". But leaving that important qualification to one side for the moment, the effect of subsection (1A) is to modify subsection (1) by extending the implied repairing covenant to parts of the building which are not also parts of the dwelling-house. Thus, by subsection (1A)(a) the obligation in subsection (1)(a) now additionally requires the landlord to repair the structure and exterior of any part of the building in which it has an interest. By subsection (1A)(b) the service installations which the landlord is required by subsection (1)(b) and (c) to keep in repair now additionally include any installation of the sort already mentioned if, directly or indirectly, it serves the dwelling-house and is either part of a building in which the landlord has an estate or interest, or is owned by or under the control of the landlord.

34. An example of a situation in which subsection (1A)(a) would impose an obligation would be where foundations of the building were in need of repair and posed a risk of damage to flats on the upper floors, such as Mr Cox's flat. The foundations are not part of the structure and exterior of Mr Cox's flat, and before the introduction of subsection (1A) a landlord would not have owed the tenant of that flat an implied repairing obligation. But by subsection (1A)(a) Anchor now owes a duty to Mr Cox to repair the foundations if they threaten the stability of his flat, because they are part of the structure of the building.

35. An example of the application of subsection (1A)(b) would be in the case of a communal central heating system with a boiler in the basement and individual radiators in each flat. Maintenance of the individual radiators would fall within subsection (1)(c), because they are installations in the dwelling-house for the supply of space heating. The boiler in the basement would not be covered by subsection (1)(c), because it is not in the dwelling-house, but it would be within subsection (1A)(b) because it directly or indirectly serves the dwelling-house and forms part of the building.

36. That brings me back to the important qualification in subsection (1A), namely that it is "subject to subsection (1B)". Subsection (1B) is a limitation on the operation of subsection (1A). That is clear from the opening words: "Nothing in subsection (1A) shall be construed as requiring …" . It introduces an additional condition, namely that the disrepair or lack of maintenance which would otherwise be caught by subsection (1A) must be "such as to affect the lessee's enjoyment of the dwelling-house or of any common parts, as defined in section 60 of the Landlord and Tenant Act 1987, which the lessee, as such, is entitled to use."

37. One illustration of the effect of subsection (1B) would be a building with a central heating system served by two boilers in the basement providing heating to flats in different parts of the building, with boiler X heating flats 1 to 10, and boiler Y heating flats 11 to 20. If boiler X broke down, the tenants of flats 1 to 10 would be affected in their enjoyment of their flats, so under subsection (1)(c) as extended by subsection (1A)(b), the landlord would owe those tenants an obligation to repair boiler X. But the landlord would owe no obligation to the tenants of flats 11 to 20 to repair boiler X, because the disrepair of boiler X would have no effect on their enjoyment of their flats.

38. Do subsections (1A) and (1B) have the effect, as the FTT concluded, of imposing an obligation on Anchor to repair the lift, so preventing it from recovering the cost from Mr Cox and his neighbours through the service charge?

39. In my judgment the FTT was right to consider that the lift was not part of the structure or exterior of the building. It is not one of the components which give the building its "essential appearance, stability and shape" and so it does not come within the ordinary understanding of "structure". It is also within the building, and obviously not part of the exterior. It follows that subsection (1)(a) does not apply, even as extended by subsection (1A)(a).

40. The lift is an installation, but it is not an installation for the supply of water, gas, electricity or sanitation, or for space heating or heating water, and so it does not fall within subsection (1)(b) or (c) as extended by subsection (1A)(b).

41. The FTT treated subsection (1A)(b) and (1B) as applying subsection (1)(b) to any installation which was a common facility. That interpretation is not justified. Subsection (1A)(b) extends the installations covered by subsections (1)(b) and (c) so that they are not limited to installations in the dwelling-house but it does not change the sort of installations which are within the scope of the covenant; they must still be installations for the supply of water, gas and electricity or for sanitation or space heating. Nor does subsection (1B) add additional types of installation; it imposes an additional condition which narrows the application of the implied covenants.

42. Mr Cox referred to advice from a number of different sources in support of his case that a landlord could not recover the cost of repairs to a lift. I have read all of the material he relied on. Some of it is very general or relates to the policies of a particular housing association, but some of it is specific and directly in point. Having considered it carefully I have come to the conclusion that the published advice Mr Cox relies on is incorrect.

43. The first source to which Mr Cox turned was the website of Shelter, the housing charity. The advice given by Shelter is as follows:

> "Under section 11 of the Landlord and Tenant Act 1985 a landlord is required to keep in repair the structure and exterior 'of any part of the building' (including drains, gutters and external pipes) in which they have an estate or interest.

> As such, a landlord's implied repairing obligations extend beyond the flat (or other dwelling) let to a tenant for their exclusive possession and includes obligations to repair common parts of the building (such as a communal front hall or a lift). This obligation only applies to tenancies that began on or after 15 January 1989."

44. Mr Cox also drew my attention to the analysis on the website of Citizens Advice, which is to similar effect. After referring to the landlord's obligation to repair the structure and exterior of the tenant's home and gas, water and heating installations, the author continues:

> "For tenancies that began on or after 15 January 1989, these repair responsibilities extend to the common parts of a building too, for example, entrance halls, stairs and lifts."

45. Both of these expert advice agencies take the view that the statutory implied repairing covenant extends to lifts. The basis of Shelter's analysis is that the landlord's obligation covers the structure and exterior 'of any part of the building' in which the landlord has an interest, and that that includes the whole of the common parts. Citizens Advice seems to base its conclusion specifically on the fact that a lift is part of the common parts of a building and on an understanding that the repairing obligation covers all of the common parts.

46. I do not agree with either of these approaches, although I acknowledge that Shelter's is a possible construction of subsections (1)(a) and (1A)(a) looked at in isolation. It involves reading the two provisions as producing a covenant "to keep in repair (a) the structure and exterior of the dwelling-house and (b) the structure and exterior of any part of the building in which the lessor has an estate or interest (including in each case drains, gutters and external pipes)." In that way, in the case of a building with a single owner, the covenant might arguably be said to cover the structure and exterior of each and every part of the building, including elements which are not themselves part of the structure or exterior of the building as a whole.

47. This approach seems to me to place too much significance on the reference in subsection (1A) to "any part of the building" and to fail to recognise that a distinction is maintained in subsection (1) between "structure and exterior" and "installations".

48. As Lord Neuberger recognised in *Edwards v Kumarasamy* at paragraph 9, the purpose of the amendments to section 11 by the addition of subsections (1A) and (1B) appears to have been to modify the effect of the Court of Appeal's decision in *Campden Hill Towers* which limited the original subsection (1)(a) obligation to structural parts of the dwelling-house alone. That purpose would be achieved by making the landlord responsible for the structure and exterior of the whole building, whether or not it was also part of the structure and exterior of the particular dwelling-house. It would go further than necessary for this purpose to read the obligation in subsection (1)(a) as covering the "structure" of every part of the building, and thus as extending to the structure of the lift or the fire alarm or the door entry systems. Every part of the building, including those components, could be said to have a "structure and exterior" of its own. But, in ordinary language, and in the context of repairing obligations, those components would not usually be thought of as part of the structure of the

building. The subject of subsection (1)(a) as modified by subsection (1A)(a) remains the structure and exterior of the building. The purpose of referring to "any part of the building in which the lessor has an estate or interest" rather than simply to "the building" was obviously to deal with situations in which the landlord is the owner of only part of the building. It is unlikely to have been intended to erode the distinction between "structure and exterior" and "installations", even though the installations are themselves parts of the building in which the landlord has an estate or interest.

49. I agree with Shelter's statement that the implied covenant includes an obligation to repair the common parts of the building, so long as that is understood as referring only to the common parts which are part of the structure and exterior of the building within the ownership of the landlord. I do not agree that for this purpose the common parts of the building include something which can also be described as an installation (such as a lift). Installations are covered by subsection (1)(b) and (c) and, whether they are in the dwelling-house or elsewhere, in order to be included in the scope of the implied obligation they must be installations for the supply of water, gas or electricity or for sanitation. space heating or heating water.

50. Citizens Advice are less specific than Shelter in explaining why they consider the implied covenant includes the repair of a lift, but it seems to be because the lift is part of the common parts. The only specific reference in section 11 to common parts is in subsection (1B). Through section 60, Landlord and Tenant Act 1987, the definition of common parts includes any "common facilities", and it may be this which Citizens Advice had in mind. But I have already explained that subsection (1B) is a qualification on the effect of subsection (1A) and does not modify the extent of the property falling within subsection (1)(a) or (b) by introducing a new unrestricted obligation to repair the common parts or all installations in the common parts.

51. It is perhaps surprising that the landlord's implied obligation does not extend to the repair of substantial mechanical and engineering installations which form part of the fabric of the building, such as the lift. The repair or replacement of the lift in any building is always a very expensive business, and in a block of flats like Tony Law House the cost is likely to be very difficult for tenants to meet. As Lord Neuberger said in *Edwards v Kurumasamy "*one might have expected that Parliament intended those parts of a building or its curtilage which are not included in an individual residential demise, and which are in any way enjoyed by the tenant in question, would be within the ambit of the landlord's statutory repairing covenant". But the structure of section 11 seems to me to be clear, and to apply the landlord's obligation, so far as its concerns installations, only to installations of the sort described in subsection (1)(b). Lord Neuberger's warning that one should not be too ready to give an unnaturally wide meaning to the implied terms imposed by section 11 applies just as much to lifts within the building as it does to cracked paving stones outside it.

52. Mr Cox also mentioned the tenants' charter and tenants' guarantee, but neither of these general policy statements changes the meaning of section 11.

Conclusion and disposal

53. I am therefore satisfied that the FTT was wrong, and that section 11 of the Landlord and Tenant Act 1985 does not prevent Anchor from recovering the cost of repairs and maintenance of the lift at Tony Law House from Mr Cox and his fellow assured tenants. I allow the appeal and set aside the FTT's decision.

54. Mr Cox was the only tenant identified in the FTT's decision as a party to the proceedings, although in his statement of case he had described himself as representative of 14 other tenants (whom he did not name). None of those tenants was made a respondent to this appeal by Anchor Hanover Group (Anchor). The position is, therefore, that this decision strictly binds only Anchor and Mr Cox. On the other hand, there is no reason why the conclusion I have reached about the meaning and effect of section 11 of the 2004 Act should not apply equally to all other tenants at Tony Law House.

55. There is one other loose thread. Mr Cox referred to a meeting which he attended between representatives of Anchor and about 30 of its tenants which took place on 20 June 2017 to discuss the replacement of the lift. The representatives included members of Anchor's management team. Minutes of that meeting were prepared by Anchor and circulated to those who had attended, and a recording was also made by the tenants. It was stated clearly in the minutes that both Anchor's asset surveyor and its customer relations manager stated that the cost of replacing the lift was not a service charge item and that Anchor would pay. That statement was not a correct statement of Anchor's rights under the tenancy agreement which allow it to recover the cost of repairs and, as I have found, that entitlement is not interfered with by section 11. I was also shown an undated communication from Anchor (page number 360) specifically addressing liability for the cost of replacing the lift which states clearly that "Anchor will not be paying the bill" and that it would be paid by tenants over a period of 25 years. It is apparent that the lift work had not yet commenced when that document was written, nor had it at the time of the June meeting 2017. I do not know which came first, the meeting or the clarification that the cost would fall on the tenants.

56. Mr Bates had no instructions about the meeting in 2017 and there is no mention of it in the FTT's decision, although the minutes were included in the hearing bundle. Throughout the hearing of the appeal Mr Bates fully discharged his professional obligations when appearing against a litigant in person and conscientiously presented all the arguments he could think of in favour of Mr Cox's position. In the same spirit he suggested that it might be necessary to remit the application to the FTT for it to consider whether what was said at the meeting had any effect on the liability of the tenants who were present.

57. Without something more, a voluntary concession at a meeting will not have changed Anchor's legal rights, especially if what was said by managers was withdrawn in clear terms before the work commenced. Mr Cox complained to the FTT about mixed messaging from Anchor and that statements made at meetings were later contradicted, but he seems not to have made any particular point in his evidence that he or other tenants had been relying on a promise that they would not have to pay for the lift. The FTT referred in its decision to Mr Cox's evidence about minutes of meetings not being reliable but it did not relate that to the issue of liability for the replacement cost of the lift.

58. I have considered whether both parties should be given a further opportunity to take stock, or to make further submissions to the FTT concerning the effect of the meeting on 20 June 2017. Having read the evidence which was available to the FTT and the way the issue of miscommunication was presented to it and dealt with in its decision, I am satisfied that there is nothing to suggest that what was said at the meeting and in the subsequent minutes had any effect on the legal rights and obligations of Anchor or Mr Cox. There is a considerable benefit in achieving certainty as early as possible in this case, and I heard nothing which suggests remitting the case to the FTT for further investigation by it would have any prospect of changing the outcome in Mr Cox's favour. For that reason it would not be appropriate to delay a final decision.

59. In addition to setting aside the FTT's decision, I therefore substitute a new determination that Mr Cox was liable to contribute his share of the costs in connection with the repair and maintenance of the lift which have been claimed through the service charge since 2016 and are recorded at paragraph 8 of the FTT's decision.

60. Finally, at Mr Bates' request, and to reassure Mr Cox that he is not liable to pay any of the appellant's costs of this appeal, I make an order under section 20C, Landlord and Tenant Act 1987 that Anchor may not include costs it has incurred in this appeal in any service charge payable by Mr Cox, and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that any liability on Mr Cox's part to pay any administration charge in respect of the costs of the appeal is extinguished.

Martin Rodger KC,

Deputy Chamber President

17 January 2023

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.