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HM COURTS & TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL

REASONED DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Landlord and Tenant Act 1985 - Sections 27A and 20C

Property:	23, Croftlands Road, Wythenshawe, Manchester M22 9YE
Applicant:	Mr.S.Stephenson
Respondent:	Willow Park Housing Trust
Tribunal members:	Mrs.C.Wood (Chairman) Mr.D.Bailey Mr.J.Murray
Date of decision:	12 June 2012

DECISION

Background

1. By an application dated 17 October 2011, ("the Application"), the Applicant requested the Tribunal to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act") on the reasonableness and liability to pay pay service charges in respect of the years 2004 to 2010.

2. At a Pre-trial Review held on 6 February 2012, the Applicant confirmed that his application related only to the amounts charged as service charge for re-pointing works during the service charge year 1 April 2010 to 31 March 2011, and roofing works during the service charge year 1 April 2011 to 31 March 2012.

3. Directions dated 16 February 2012 were issued to the parties pursuant to which the the following documents were filed by the parties:

3.1 Applicant's Statement of Case received 2 March 2012;
3.2 Respondent's Statement of Case received 5 March 2012;
3.3 Applicant's Statement of Case received 3 March 2012;
3.4 Respondent's comments received 2 April 2012.

4. At the Tribunal's request, the Respondent also submitted information relating to the allocation of service charge by letter dated 18 May 2012. This letter also contained a photograph of the Property said to have been taken in April 2012 evidencing the painting of the Property and commenting: "This picture also shows the poor condition of the roof with signs of worn/slipped slates and piecemeal repairs". This evidence had not been requested by the Tribunal.

Inspection

5. The Tribunal made an external inspection of the Property on 14 May 2012. The Respondent represented by Ms.D.Scappaticci and Mr.R.McDougall attended the inspection.

6. The Property is one of four flats in a single building. The Property is on the first floor. The garden to the side and rear of the building is included in the demise to the Applicant.

The Lease

7. A copy of the lease dated 23 February 2007 made between the Respondent (1) and the Applicant (2) in respect of the Property ("the Lease") was contained in the Tribunal Bundle prepared by the Respondent's solicitors at pages 65 - 84 (inclusive).

8. Clause 16.1 of the Lease contains a covenant by the Lessee to pay the Service Charge Charge which is defined, in clause 5.2, as "...a reasonable part of the costs of the the repairs and services for which the Lessor is herein responsible...such Service Service Charge to be calculated and paid in the manner and on the days as herein herein provided".

9. Under clauses 8, 9 and 10, the Lessor covenants as follows:

9.1 " To keep in repair the structure and exterior of the Premises and the Building (including drains gutters and external pipes) and to make good any defect affecting that structure", (Clause 9);

9.2 " To keep in repair any other property of the Lessor over or in respect of which the Lessee has any rights by virtue of this Lease".

10. Clause 7 provides that the Service Charge shall be paid during each year ending on the Assessment Date (defined in clause 1.2 as 31 March) by estimated equal instalments on 25 March, 24 June, 29 September and 25 December in each year

The Law

11. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(1) in the following provisions of this Act "service charge" means "an amount payable by a tenant of a dwelling as part of or in addition to the rent –
(a) which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –
(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

12. Section 19 provides that –

(1) relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

13. Section 27A provides that -

(1) an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –
(a) the person by whom it is payable
(b) the person to whom it is payable
(c) the date at or by which it is payable, and
(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.
(3)....
(4) No application under subsection (1)...may be made in respect of a matter which -

(a) has been agreed by the tenant.....
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

14. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common common sense meaning [letter K].

The Hearing

15. The Applicant attended the hearing in person. The Respondent was represented by by Miss Duke of Anthony Collins, Solicitors. In attendance from the Respondent were were Ms.D.Scappaticci, Leasehold Finance Officer , Mr.P.Bertenshaw, Finance Officer Officer and Mr.R.McDougall, Project Manager.

16. The Applicant stated as follows:

16.1 he had bought the Property in 2004. He understood that the annual service charge, which he had paid from 2004 – 2010, would cover everything. However, in recent times he had been asked to pay an additional £1700 for re-pointing works, and £5200 £5200 for roofing works. In respect of both items, he had made it clear to the Respondent that he did not want the works to be done;

16.2 in response to a question from the Respondent's solicitor, the Applicant confirmed that he was not disputing the quality of the works done but the need to do them in the first place and the costs;

16.3 with regard to the roof, he said that the last time there was a leak from the roof was in 2005. It had been repaired by the Respondent at the time. He disputed that there was any need to do the roofing works but that, if they were going to go ahead, they could have got them done cheaper.

17. The Respondent's solicitor stated as follows:

17.1 the Applicant had confirmed that the Application related only to service charges incurred in respect of the re-pointing and re-roofing works;

17.2 there is an obligation on the Lessor to repair and maintain the Property, the costs of which are recoverable through the service charge;

17.3 the Applicant had confirmed that he was legally advised on the purchase of the Property;

17.4 the Respondent had undergone a consultation process under section 20 of the Act: it was explained that the Applicant is the only leaseholder of the 4 flats in the building and was,therefore, the only one consulted;

17.5 of the 2 estimates obtained, the Respondent had chosen the cheapest contractor;

17.6 it was after the contract had been awarded that the Applicant raised concerns in respect of the roofing works. He did not, at that time, raise any concerns in respect of the re-pointing works;

17.7 the Respondent had responded to the Applicant's concerns: reference was made to the letter dated 6 September 2011 (page 160 of the Bundle);

17.8 at page 156 of the Bundle there is a list of repairs undertaken at the Property which includes, in 2007, "renew slates to rear roof – tnt reporting leak"; 2008: "roof leaking"; and 2009, " water pouring from gutter, when raining rear of". However, in response to a question from the Tribunal, the Respondent acknowledged that there had been no repairs since 2009;

17.9 the Respondent has a programme of repairs for the estate within which the Property is situated. Reference was made to the extract on page 158 from a report from Savills obtained by the Respondent, and, in particular, to the life cycle of 80 years years attributed to slate roofs of the same type as at the Property;

17.10 the Applicant is not disputing the quality of the works undertaken;

17.11 the Respondent had chosen the cheapest contractor, and whilst acknowledging that no evidence had been submitted of the comparative quotes, still believed that the costs incurred were reasonable;

17.12 the Respondent had apportioned the costs for both the re-roofing and re-pointing works over 5 years;

17.13 the Respondent had sought to engage the Applicant in discussions but without success;

17.14 that the Applicant was not being required "to pay twice" for the same works as claimed;

17.15 that the amount in arrears was complicated by the repayments made by the Applicant for the double-glazing.

18. In response to questions from the Tribunal and the Applicant, the Respondent's solicitor stated as follows:

18.1 there was evidence in the repairs history for the Property (page 156) that the roof needed repairing and re-pointing necessary. There was also the extract from the Savills report (page 158) which estimated costs between £2700 - £5200;

18.2 there is a breakdown of the roofing costs on page 152 and of the re-pointing costs on page 29;

18.3 that after the Property had been re-pointed, it was cleaned again;

18.4 noted the Tribunal's comments that, on inspection, the work to move cables had not been completed;

18.5 that the item "liaison activity during course of works" referred to a visit by Linda Bradshaw from the Respondent to the Applicant.

19. In summing-up, the Applicant again queried why he had been billed for these works when he had been paying his service charge and those monies should have been applied in discharge of these amounts.

20. In summing-up, the Respondent's solicitor stated as follows:

20.1 the Respondent has billed for sinking fund items. The sinking fund balance is in deficit because monies paid have been applied towards the double-glazing repayments. However, the Applicant will not be double-charged;

20.2 the Applicant has not questioned the reasonableness of the works undertaken;

20.3 the Respondent has undertaken a s20 consultation, chose the lowest estimate and offered terms of repayment over a number of years;

20.4 that to undertake the works was a reasonable act by a reasonable landlord who had obtained expert reports and who determined that it was preferable to anticipate the need to do works than wait for problems to arise.

21. It was agreed that the Respondent would submit further information to the Tribunal as follows:

21.1 clarifying the amounts invoiced by the Respondent, paid by the Applicant and allocated by the Respondent to the Applicant's account.

21.2 confirming what was involved in the items "Tenant Notification (liaison activity during course of works)" and "paint stripping brickwork";

21.3 aggregate costs of the re-roofing works, the Applicant's share and the works involved.

22. This information was provided by the Respondent's solicitors in their letter dated 18 May 2012 in which was also enclosed a photograph of the building in which the Property is situated said to have been taken in April 2011.

23. The Tribunal notes that the photograph was not requested by it and,if the Respondent wanted to submit it as evidence,they should have done so in accordance with the Directions. However, In the interests of justice, the Tribunal was prepared to admit it.

24. At the hearing, the Respondent conceded that it would be just and equitable in the circumstances for the Tribunal to grant the Applicant's application under section 20C of the Act.

The Tribunal's Determination

25. The Tribunal must apply a three stage test to the application under section 27A: 27A:

(1) Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction and interpretation of the lease.

(2) Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?

(3) Are there other statutory limitations on recoverability, for example consultation requirements of the 1985 Act as amended?

26. The Tribunal determines as follows:

26.1 that, having regard to the evidence submitted to the Tribunal, including, without limitation, the photograph of the Property taken in or about April 2011, the re-roofing and re-pointing works constituted improvements to the Property rather than repairs;

26.2 that there is no provision in the Lease entitling the Respondent to recover as service charge costs incurred in making improvements to the Property;

26.3 that the Applicant is not liable to pay the costs so incurred;

26.4 that the application by the Applicant under section 20C of the Act is granted.

Catherine Wood
Chairman
Dated 12 June 2012