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

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| **Case Reference** | : CHI/29UQ/LSC/2014/0043<br>CHI/29UQ/LDC/2014/0020 |
| **Property** | : Second and third floor flat, 5 Grove Avenue, Tunbridge Wells, Kent TN1 1UP |
| **Applicants** | : Mr M A Inglehearn, Mrs A E Inglehearn, &<br>Ms J Dokmanovic |
| **Representative** | : Nicola Muir, instructed by Berry & Berry LLP |
| **Respondent** | : Mr C R Slatford |
| **Representative** | : None |
| **Type of Application** | : Payability of service charges under s.27A Landlord and Tenant Act 1985<br>Dispensing with consultation requirements under s.20ZA Landlord and Tenant Act 1985<br>Disregarding costs of proceedings under s.20C Landlord and Tenant Act 1985 |
| **Tribunal Members** | : Judge A Johns (Chairman)<br>Mr B H Simms FRICS (Surveyor Member)<br>Miss J Dalal (Lay member) |
| **Date and venue of Hearing** | : 20 October 2014, Hotel du Vin, Crescent Road, Tunbridge Wells, Kent TN1 2LY |
| **Date of Decision** | : 17 November 2014 |

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**DECISION**

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Introduction

1. The applicant landlords acquired the freehold of the building at 5 Grove Avenue, Tunbridge Wells, Kent TN1 1UP ("the Building") on 22 June 2012. Until a payment made shortly before the hearing, the respondent tenant of the second and third floor flat ("the Flat"), Mr Slatford, had made no payment of ground rent or service charge for the years 2012, 2013, or 2014. The landlords therefore apply for a determination as to the sums payable for those years and seek a dispensation from the consultation requirements in respect of two sets of major works; works to the rear roof and guttering in early 2013, and works to the front roof and guttering and a chimney stack in early 2014.

Procedure

2. Mr Slatford responded to these proceedings served by post to the Flat with a request that this case be dealt with without a hearing as he lives in Laos and that any papers be sent to his email address. No postal address was given. The Tribunal directed on 23 June 2014 that all documents were to be served on Mr Slatford by email but that the case would be disposed of at a hearing given the issues and the need for an inspection. There was a specific direction, intended to address any prejudice to Mr Slatford, that the landlords would not be entitled to introduce new evidence at the hearing.

3. In addition to the schedule of disputed items on which each side had noted its case, the directions also made provision for a reply from Mr Slatford. He availed himself of that opportunity with a 4 page email dated 27 July 2014 to which the Tribunal has had regard.

Inspection

4. The Tribunal inspected the Building immediately before the hearing. It is situated in a cul-de-sac in a residential area of Tunbridge Wells very close to

the town centre. It is built of brick with a pitched and mansard roof covered with slates. The windows are timber casements.

5. The Tribunal viewed the rear of the Building from the rear garden and the front from an adjoining elevated park. It could be seen that work had been done to the rear and front roofs and to the chimney stack. But the remainder of the Building is only in fair order. There is erosion to the mortar joints on the rear elevation, some of the window frames are affected by wet rot and exterior decorations are overdue for renewal. A further chimney, being a party chimney, is in poor condition. The Tribunal was shown a large tree stump very close to the front door of the Building.

Jurisdiction and law

6. By s.27A of the Landlord and Tenant Act 1985 (as amended by the Transfer of Tribunal Functions Order 2013) the Tribunal may determine whether service charge is payable and in what amount. S.19 of the Act provides that costs shall be taken into account in determining the amount of a service charge only to the extent that they are reasonably incurred and only if the works or services are of a reasonable standard.

7. By s.20ZA of the Act the Tribunal may make the determination to dispense with all or any of the consultation requirements which would otherwise limit the payability of service charge under s.20 of the Act if satisfied that it is reasonable to dispense with them.

8. The Supreme Court has recently made clear in *Daejan Investments Ltd v Benson* [2013] UKSC 14 that the purpose of the consultation requirements is to ensure that tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, and that the Tribunal's focus on an application under s.20ZA must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.

Lease and factual background

9. The lease of the Flat is dated 7 February 1992 and was made between Martina Rabbess as landlord and Mr Slatford as tenant and is for a 99 year term from 29 September 1985. It provides for a ground rent, during the first 33 years, of £50 per annum. Mr Slatford is also liable by the lease for one-third of the cost of insuring the Building and a maintenance contribution equal to one-third of the landlord's specified expenses in relation to the maintenance and management of the Building. Nothing turns on the detail of those service charge provisions.

10. It is necessary to say something about the historic ownership of the Building and the circumstances in which the applicant landlords acquired the freehold.

11. As appears from the lease, a Ms Rabbess was the freeholder on 7 February 1992. But it seems that was for just one day. Mr Slatford was otherwise the freeholder until a point in 2009. The reason for vesting ownership in Ms Rabbess for a day was no doubt the grant of a lease to Mr Slatford; he being unable to grant a lease to himself.

12. But that was not the end of Ms Rabbess' involvement. She became the freeholder again in 2009 by virtue of a transfer from Mr Slatford. There must, though, have been a failure to observe the requirements of the Landlord and Tenant Act 1987 giving lessees a right of first refusal on a transfer of the freehold, because the current landlords were successful in proceedings brought in their capacity as lessees of the other two flats in the Building against Ms Rabbess in the Tunbridge Wells County Court to acquire the freehold. The ownership of the Building was transferred to them on 22 June 2012. They are still the lessees of the other 2 flats in the Building. Ms Rabbess has long been and remains in occupation of the Flat.

13. As reflected in that history of ownership and occupation, the Tribunal finds that there is a close connection between Mr Slatford and Ms Rabbess such that the landlords could reasonably expect correspondence addressed to Mr

Slatford and sent to the Flat to reach him. The following further factors point in that direction:

13.1 After he transferred the freehold to her, Mr Slatford acted as agent for Ms Rabbess. The Tribunal's papers included a service charge demand dated 1 October 2010 from Mr Slatford acting for Ms Rabbess. No separate address was given for Mr Slatford.

13.2 Mr Slatford responded to these proceedings sent to the Flat.

13.3 His communications with the Tribunal do not refute a close connection with Ms Rabbess. His letter of 17 June 2014 anticipated the landlords making the point that it was reasonable to assume Mr Slatford would receive correspondence addressed to him at the Flat and responded as follows: "It is not for me to explain the complexities of my relationship with Ms Rabbess. Such matters are private. Human relations are beyond understanding."

14. Having acquired the freehold, the landlords wrote to Mr Slatford at the Flat by letters dated 22 August 2012. In addition to seeking ground rent and contributions to service charge and insurance they gave a summary of significant works proposed including "Repairs to the rear roof including the mansard tiles and replacement of the guttering" planned for 2012/2013 and "Repairs to the front roof including the mansard tiles and replacement of the guttering" planned for 2013/2014. That letter continued "We will obtain estimates for the work and advise you of the cost prior to any work being carried out and invite you to give your input with regard to the proposed schedule of work required and any contractors you would recommend we use or would prefer we avoid. It is intended that we will obtain estimates for the rear roof within the next 2 months, you are of course entitled to obtain your own estimates".

15. They then wrote again on 23 October 2012 with three estimates for the first set of works, namely to the rear roof, tiles and guttering, and indicating that they would proceed with the lowest quote in the sum of £2880 plus VAT. In the event, further work was found to be necessary and the roofer's final invoice was in the sum of £3750 plus VAT.

16. There was storm damage to the Building at the end of 2013 and the necessary repair work was carried out at the cost of the insurer, subject to an excess, using the same roofer. The landlords took the sensible decision to have the second set of works, namely to the front roof, tiles and guttering, carried out while the scaffolding was in place.

17. They wrote to Mr Slatford at the Flat to that effect by letter of 30 January 2014 and giving details of the proposed works and estimated costs; being £2100 plus VAT for the previously planned works and a further £875 plus VAT for replacing the lead covering on the front dormer windows.

18. Again, some further work was found to be necessary, principally to a chimney stack, so that the final invoice was in the sum of £5245 plus VAT. The landlords wrote to Mr Slatford at the Flat on 12 February 2014 notifying him of the need for that further work and its likely cost.

Hearing

19. The hearing followed the inspection. The landlords were represented by Ms Nicola Muir, instructed by Berry & Berry LLP. Mr Slatford did not appear and was not represented. In accordance with the directions already given, the landlords did not adduce any further evidence. Mr Inglehearn gave the evidence in his witness statement. He also helped by answering some questions from the Tribunal, though those answers have not affected the Tribunal's decision.

20. The sums claimed by the landlords were helpfully set out in a list forming part of Mr Inglehearn's statement and appearing on pages 127 and 128 of the hearing bundle.

21. That list included ground rents. Ms Muir for the landlords accepted that the Tribunal had no jurisdiction to make a decision on those sums; its relevant jurisdiction being confined to service charges.

22. The list also included many charges on which, in the event, no dispute was raised by Mr Slatford in the schedule prepared in accordance with the Tribunal's directions.

23. For the disputed charges, it is convenient to set out Mr Slatford's objection to each charge and the Tribunal's decision on it in turn.

Discussion of disputed charges

24. The first dispute was as to the charge of £1100 representing Mr Slatford's contribution to the cost of the works to the rear carried out in 2013 after deducting a sum from the reserve fund.

25. Mr Slatford's case was that these works were overpriced and that the consultation requirements were not met.

26. As to the contention that they were overpriced, the works proceeded at the lowest of three quotes. And Mr Slatford produced no lower estimate. Given that, and having had the benefit of inspecting the works, the Tribunal is satisfied that the cost of the works was reasonable.

27. As to consultation, Ms Muir accepted that the consultation requirements had not been strictly complied with but asked for dispensation. The Tribunal is satisfied that there should be such dispensation. The consultation requirements are there, as has recently been stated by the Supreme Court, to protect tenants from (i) paying for inappropriate works or (ii) paying more than would be appropriate. The failure to comply strictly with the requirements in this case has, in the judgment of the Tribunal, led to no prejudice in either respect. The Tribunal is satisfied that neither the works nor their cost would have been any different had the consultation requirements been met. The works needed doing, and they were carried out at the lowest quoted cost.

28. Even if wider considerations were to be relevant for the purposes of s.20ZA, such would have pointed, in the view of the Tribunal, to dispensation. The letters written by the landlords to Mr Slatford contained much that mirrors the consultation requirements and it was, in the Tribunal's judgment, a reasonable course to write to him at the Flat. The landlords had, as the Tribunal finds, only one other postal address for him, namely Copthall Farm, Furnace Lane, Lamberhurst, and copy letters were sent there. The Tribunal is satisfied they were not then aware of any email address for him. As already indicated, it was reasonable to expect that letters addressed to Mr Slatford at the Flat would reach him and, had it been necessary to reach a decision on the question, the Tribunal would have found that these letters did on the balance of probabilities reach him having regard to the close connection with Ms Rabbess.

29. There was also a dispute as to a tree removal fee for that year of £300. Mr Slatford's only comment by way of objection was that he did not know the cost. The Tribunal is satisfied from the evidence of Mr Inglehearn and having seen the tree stump both that the cost was incurred and that it was a reasonable figure. Mr Slatford's objection to the management charge of 10% of that cost was limited to his point on the cost of removal and it therefore follows that the objection to the management charge also fails.

30. The remaining disputes were as to the charges of £840, £350, £780, and £128 (and the 10% management charges on top) representing Mr Slatford's contributions to the cost of the various components of the works to the front carried out in 2014.

31. Mr Slatford's points on these charges were as follows:

31.1 That the costs were excessive, not having been the subject of competitive quotes. But Mr Slatford produced no alternative estimates. The works were carried out by the same contractor that had undertaken the work to the rear, having provided the lowest quote. Given that and, again with the benefit of having inspected the works, the Tribunal is satisfied that the figures are reasonable.

31.2 That the replacing of lead on the dormers was necessary only because of damage done, supposedly deliberately, by the builder. It was clear to the Tribunal from the photographs in the hearing bundle that this was not so. The lead had failed and needed replacing. Accordingly, the cost of this work was reasonably incurred.

31.3 That the consultation requirements had not been met. That is right but, in the Tribunal's judgment, there should be dispensation from the requirements in this case. As with the first set of works, the Tribunal is satisfied that neither the works nor their cost would have been any different had the consultation requirements been met. Again, the works needed doing. They were carried out by the contractor that had already shown himself to be the most cost effective. Finally, the Tribunal takes the same view of the wider considerations in the case of this second set of works.

32. Mr Slatford's objection to the management charges of 10% of the cost of the second set of works was, as with the tree removal, limited to his point on the cost of those works and it therefore follows in the same way that the objection to these management charges also fails.

Section 20C

33. Mr Slatford applied for an order under s.20C of the Act, which provides that the Tribunal may make such order as it considers just and reasonable on an application that costs incurred by a landlord in connection with proceedings before it 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.

34. There should be no such order in this case. The landlords have been successful in the proceedings and had no option but to bring them given Mr Slatford's failure to pay any sum in respect of the last 3 years.

Summary of decision

35. From the above, the Tribunal determines that:

35.1 The consultation requirements are dispensed with in respect of the first and second set of works.

35.2 The service charges claimed for the years ending 29 September 2012, 29 September 2013, and 20 September 2014 (totalling £5348.35) are payable.

35.3 The application under s.20C of the Landlord and Tenant Act 1985 is dismissed.

Appeal

36. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

37. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

38. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

39. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge A Johns (Chairman)
Dated 17 November 2014