



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

Case Reference : **MAN/00FD/LSC/2014/0128**

Property : **Flat 2, Yew Tree Court, 87 Scawby Road,
Scawby Brook, Brigg DN 20 9JU**

Applicant : **Three Keys Properties Limited**

Respondent : **DJ Hilldrith and HL Hilldrith**

Type of Application : **Landlord and Tenant Act 1985 – s 27A**

Tribunal Members : **Judge JM Going
Deputy Regional Judge J Holbrook**

Date of decision : **8 April 2015**

DECISION

THE DECISION

The contribution to the cost of major works payable by the Respondent to the Applicant in respect of the property for the year ending on the 31 December 2010 amounts to £2380.54.

REASONS

Background

1. The Applicant applied on 13 November 2014 to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination as to whether service charges in respect of the Property are payable and/or reasonable. The application concerns the 2010 service charge year.
2. The Tribunal issued directions to the parties stating that the matter would be dealt with on the basis of the written evidence without the need for an oral hearing, unless either party requested the opportunity to make oral representations. Neither party requested an oral hearing.
3. Each party provided written submissions with their statements of case which were copied to the other.
4. The Tribunal convened on the 1 April 2014, without the parties, to make its determination.

Facts and Submissions

5. The property is a 2 bedroomed flat on the ground floor of a 3 storey mid terrace house converted into 5 self-contained flats.
6. The Respondents are the owners of the property which is held under a Lease dated the 30 day of September 2005 and made between Kingcastle Limited of the one part and the Respondents the other part and whereby the property was leased to the Respondents for the balance of a 125 year term which began on 25 of March 2005 (“the Lease”).
7. The Lease provides for the Respondents to pay a maintenance rent defined as one 5th of the costs and expenses that the lessors incurs pursuant to its covenants to carry out the works and other matters referred to in the 2nd schedule to the Lease.
8. The 2nd schedule of the Lease refers to the following works and matters: –
 - “1. Maintaining and keeping in good and substantial repair and condition:
 - (i) the main structure of the property including the foundations and the roof thereof with its gutters and rainwater pipes and the balconies but excluding the window frames thereof.

- (ii) all such gas and water pipes drains and electric cables and wires serving the property as are enjoyed or used by the lessee in common with the owners or lessees of the other flats comprised in the property
- (iii) the common entrances passages landings and staircases of the property
- (iv) the common television and/or radio aerial system or other similar apparatus in the property other than serving only one of the flats comprised in the property
- (v) the forecourt at the front of the property

2. Maintaining a sinking fund for future expenditure in accordance with the advice tendered by the lessors managing agents or surveyor.

3. Redecorating the exterior of the property (including window frames) and the internal common parts thereof in every 3rd year of the term in the manner in which the same is at the time of this demise decorated or as near thereto as circumstances permit.

4. Paying all outgoings in respect of the property including water rates not separately assessed on each individual flat in the property.

5. Keeping the common parts of the property in a clean condition and properly swept and lighted.

6. Keeping in a tidy and cultivated condition any communal gardens within the property.

7. Maintaining an entry phone system for the property together with maintenance and insurance thereof (at the landlord's total discretion)

8. Maintaining and repairing all external boundaries of the property.

9. Keeping the property insured against loss or damage by fire storm and other insured risks (including 2 years loss of rent of all of the flats comprised in the property) and against damage or breakage arising from any cause whatever in the full reinstatement value thereof for the time being in some insurance office of repute and in each case of destruction or damage or by any cause to the demised premises (unless the insurance moneys become irrecoverable through any act or default of the lessee) to rebuild or reinstate the same as speedily as possible and provided that the lessors obligations under this covenant shall cease if the insurance shall be rendered void or voidable by reason of any neglect or default of the lessee.

10. Employing any workmen necessary for the proper maintenance of the property and a managing agent solicitor accountant surveyor or other professional adviser in connection with the management of the property including maintenance rent calculation and collection.

11. The cost of the foregoing services shall be ascertained and certified by the lessors managing agents (whose certificate shall be final and binding on the parties hereto) to the maintenance year end and payment shall be made within one month of the production of such certificate and until verified by the managing agent the lessee shall pay on account of the maintenance rent the amount of the on account payment by equal payments on the payment dates in each year and shall receive credit therefore against the next maintenance rent payment.

12. If in the opinion of the lessors managing agents the amount of the on account payment shall be insufficient to cover the costs of the items contained in this schedule they shall be entitled to serve one month's notice requiring an increase in the on account payment which shall upon the expiry of such notice become the future on account payment."
9. The Applicant has asked for a determination that the Respondent be liable to pay the sum of £2830.54 in respect of the Respondent's share of the cost of carrying out major works to the property in the year to 31 December 2010.
10. The Applicant confirmed that that sum had been determined on 15 January 2013 by a Leasehold Valuation Tribunal ("the 2013 Tribunal") in a case under reference MAN/00FD/LIS/2012/0024 ("the 2013 decision") made in respect of flat 5 in the same house as the property, which the Applicant submitted was entirely comparable with the present application.
11. A full copy of the 2013 decision was included with the Applicant's statement of case.
12. The papers also showed that in 2010 Barron surveying services, a firm of chartered surveyors, had been employed by the Applicant to provide a detailed schedule of repairs, and that following the appropriate statutory consultation with the Leaseholders, tenders were sought, before a contract was agreed with the company that provided the lowest tender. Various works were then completed under supervision of Mr Barron MRICS and that it was the cost of those works and their supervision which made up the main part of the 2010 service charge.
13. The Respondents confirmed that they had been in dispute with the Applicant about the works carried out in 2010 due to issues relating to damp within the building, and stated their belief that "the main cause for a large proportion of the works during 2010 and the present date was the issue of damp/rising damp and until this was resolved any remedial works would be pointless due to a recurrence of the issue." The Respondents also referred to various works undertaken in 2010 not having been carried out to a satisfactory standard. The Respondents included copies of various emails to the Applicants and also correspondence in 2014 with local Council's environmental health officer who had identified various deficiencies at the property including a number detailed under the heading of damp and mould.
14. In reply the Applicants stated that the treatment of any rising damp was not included within the accounts for the 2010 service charge year and that the issue had been specifically referred to in the 2013 decision.
15. The Applicants also provided a copy of a letter and report which referred to Mr Barron inspecting the property in April 2010 following complaints by the Respondent as to damp within the property.
16. In his report Mr Barron stated that "I can see no evidence of significant penetrating or rising dampness through the building fabric..."

I feel that the mould growth occurring on the internal walls and surfaces is resultant from condensation.... The solution is to improve the ventilation and heating to the area..."

The Law

17. Section 27(a) of the 1985 Act provides that:-

- (1) An application may be made to the tribunal for a determination whether a service charge is payable and, if it is, as to:-
 - (a) the person to whom it is payable
 - (b) the person by whom it is payable
 - (c) the amount which is payable
 - (d) the date at or by which it is payable
 - (e) the manner in which it is payable
- (2) Sub-section 1 applies whether or not any payment has been made.....
- (3) But the tenant is not to be taken to have agreed or admitted any matter by reason of having made any payment.

18. Section 19 of the 1985 Act confirms that :-

- (1) Relevant costs shall be taken into account in determining the amount of a service charge ...
 - (a) only to the extent that they are reasonably incurred
 - (b) when 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.

The Tribunal's Reasons and Conclusions

19. Section 19 of the 1985 Act imposes a general requirement of reasonableness in relation to service charge expenditure.

20. The initial questions to be asked are whether the works in question were reasonably necessary; whether the amount of the costs incurred in carrying out the works are reasonable, and whether the works are of a reasonable standard.

21. Dealing firstly with the question as to whether the works in question were reasonably necessary, the Tribunal noted that there had been a detailed inspection from a qualified person before the preparation of a schedule of works, followed by statutory consultation, and tenders.

22. The Tribunal found that the works in question were reasonably necessary.

23. Moving to the next questions as to whether the amount of the costs were both reasonable and whether the works were of a reasonable standard.

24. The Tribunal again considered all the evidence before it and in this context was particularly assisted by the detailed reasons set out in the 2013 decision.

25. The Tribunal noted that the 2013 Tribunal had set out extensive reasons for its findings. It was also noted that, save for expressing concerns about damp, the Respondents had not given reasons why they considered those findings to be incorrect. In consequence, the Tribunal found no reason why it should not adopt the findings of the 2013 Tribunal when deciding whether the works carried out in 2010 had been completed to a reasonable standard and at a reasonable cost. The Tribunal was also conscious that any inspection now would be over 4 years after the works were effected.

26. The Tribunal noted that the 2013 Tribunal had concluded that the 2010 service charges then claimed by the Applicant in respect of flat 5 should be reduced from £3161.32 to £2380.54 and had provided detailed reasons and calculations as to how it had arrived at that figure, after it had decided that not all the works had been fully carried out to a reasonable or adequate standard.

27. The Tribunal carefully considered whether the Respondents' evidence as to damp at the property should affect the calculation of the 2010 service charges. It was noted in the 2013 decision that the treatment of rising damp had not been included as part of the specification of works undertaken in 2010. The Tribunal also had regard to the report provided by Mr Barron in 2010 when he had concluded that the damp problems were principally due to condensation and matters relating to the property itself, rather than necessarily those which are the responsibility of the Applicant. The Tribunal concluded that the matter had clearly been addressed by the 2013 Tribunal when making the 2013 decision, and that this was not a matter which should cause the Tribunal to deviate from the 2013 decision.

28. The Tribunal noted that the Lease stated that it was intended that all the Leases of the 5 flats in Yew Tree Court should be on similar terms, and that the Lease requires the Applicant to pay a one 5th of the costs of the service charges for the house which is the same proportion as that which was due from the owner of flat 5 and as referred to in the 2013 decision.

29. The Tribunal has therefore decided that the amount of the contribution to the cost of major works due and payable from the Respondent in respect of the property for the 2010 service charge year was £2380.54.