11262

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OOBY/LSC/2015/0044**
Property	:	**Apartment 13 Basil Grange, 3 North Drive, Sandfield Park, Liverpool L12 1LG**
Applicant	:	**Basil Grange Management Company Ltd**
Respondent	:	**Mr Gary Ellis**
Type of Application	:	**S27 Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge J Murray LLB** **Mr I James**
Date of Decision	:	**14 January 2016**

ORDER

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ORDER

1. The Service Charges payable by the Respondent are as follows:
   (a) Year Ending 31 March 2013: £1223.73
   (b) Year Ending 31 March 2014 : £2490.40
   (c) Service Charges sought on account Year Ending 31 March 2015: £450

2. No Order as to costs

3. Order under s20C that no costs of these proceedings may be added to the service charge.

INTRODUCTION

4. On the 8th September 2014 the Applicant issued proceedings numbered A1QZ145D in the County Court against the Respondent for "Management Fees and charges" totalling £2615 relating to his liability for payments under his lease of Apartment 13, Basil Grange, 3 North Drive West, West Derby, Liverpool L12 1LG ("the Property") together with interest under the County Courts Act 1984 at 8% a year from 28 March 2013 to 4 September 2014.

5. The Respondent filed a defence within the County Court proceedings stating that he had been paying an agreed monthly charge but would not pay additional charges as works to his property had not been completed, including damp in his bathroom due to a leaking roof and a hole in his bedroom floor which he said was due to rotting floor joists.

6. The matter was referred to the Tribunal by the County Court at Stoke on Trent by Order dated 3 March 2015 for determination. The Tribunal is empowered under Rule 28 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to determine the issues that had been placed before the Court.

THE PROCEEDINGS

5. Directions were issued by Judge J Holbrook on 15 April 2015. The parties complied with the Directions.

6. A First Tier Tribunal was appointed. An Inspection was carried out on the 14 September 2015 at 10.00am.

7. The hearing of the application was on 14 September 2015 at 11.30am at the Liverpool Civil Justice Centre. The Applicant Company was represented by Mr. Stephen Whalley. The Respondent appeared in person.
8. The Respondent asked the Tribunal to make an order under s20C Landlord and Tenant Act 1985.

THE PROPERTY

9. The Property, a first floor flat, is entered via a communal internal carpeted staircase. It is one of 15 flats of varying sizes in a converted and extended Victorian Villa situated just off Queens Drive in Liverpool.

10. The main Villa was built in the mid nineteenth century it was extended in the early 1990s with two wings and a central spur all of two storeys in a sympathetic style. The main building is of red sandstone, and the extensions rendered and painted to complement the stone. A slate roof covers the main building and extensions.

11. The Tribunal was shown inside Flat 13, which is currently let out by the Respondent on a short term tenancy. The Respondent directed the Tribunal's attention to two areas which he said demonstrated a breach of covenant on the part of the Applicant:

    (a) The Bathroom: The bathroom had been installed inside the original stone tower of the Villa. The tower itself was situated directly above the shower, being open to a height of approximately 25 feet above floor level. The walls above the shower are of the exposed original sandstone. Single glazed, inoperable, narrow leaded windows provided some secondary light. There was evidence of mould growth and staining to the sandstone which was dark in colour.

    (b) The Bedroom: The second bedroom floor was covered with laminate/wood flooring, but there was evidence of collapsing in a corner, with a hole down to the joists, visible over an area measuring approximately 24" by 12"

THE LEGISLATION

11. The relevant legislation is contained in s27A Landlord and Tenant Act 1985 which reads as follows:

    s27A Liability to pay service charges: jurisdiction.

    (1) An application may be made to a [First tier tribunal (Property Chamber)] 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 amount which is payable,

        (d) the date at or by which it is payable, and

        (e) the manner in which it is payable.

    (2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a [First tier tribunal (Property Chamber)] for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to— .

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and .

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant, .

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, .

(c) has been the subject of determination by a court, or .

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a [First tier tribunal (Property Chamber)] in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

12. Costs: Schedule 12 Para 10 CLRA2002

THE LEASE

9. The Property is held on a lease dated 12 August 2004, for a 125 year term from 1 April 2004. A ground rent of £150 per annum is payable to the Landlord, Warriston Developments Limited (WDL). WDL are now in liquidation, and the position in respect of the Freehold is unclear.

10. The Applicant Management Company is a named party with rights and obligations under the lease in terms of management of the Building.

11. Under Clause 7.2 of the Lease, the Applicant Management company is obliged to keep in good and substantial repair reinstate replace and renew the Retained Parts (being essentially common parts not wholly demised under any of the leases) once put on notice of them. The Applicant is obliged by Clause 7.3 to decorate external parts and the interior communal parts of the Building and to clean, heat and light the internal communal parts. Clause 7.4 obliges the Applicant to insure the Building.

12. The Service Charge is defined as the Tenants Proportion of the Common Parts Charges, and the Tenant's Proportion of the Service Charge is defined at one fifteenth of the expenditure on the Estate, with provision to vary.

13. The Common Parts Charges are set out in Part 1 of the Second Schedule, and payable in accordance with the provisions of Part II in the Second Schedule.

14. Part I of the Second Schedule defines the Common Parts Charges as being costs incurred in connection with obligations under clause 7 of the Lease in so far as they relate to the Building the Estate or the Retained Parts; in the provision of service facilities amenities improvements and other works for the general benefit of the Building or the Estate, in the payment of bank charges and interest, and in the payment of expenses of management of the Estate, administration of the Management Company, and fees of surveyors or agents appointed by the Management Company.

15. Part II of the Second Schedule includes various other costs of purchasing and looking after tools appliances materials and other things which the Management Company considers desirable.

16. The Tenant is obliged to pay the Estimated Service Charge by equal instalments in advance on the Payment Days, defined as the 1st January and the 1st July each year.

17. The Applicant is obliged as soon as convenient after the end of each Accounting Year to prepare and submit a written summary to Tenants ("the Statement") setting out the Service Charge certified by a Qualified Accountant as being in his opinion a fair summary complying with this requirement and sufficiently supported by the accounts receipts and other documents produced to him.

THE ISSUES

14. The Applicant had issued proceedings for a global amount for service charges and administration charges in the County Court for service charges for the years ending 31 March 2013 2014 and 2015. The service charges claimed for the incomplete year 2015, were for service charges on account, together with interest at the County Court rate of 8%.

15. The Respondent denied that he owed the amount sought, saying that he had already paid sums over, and that he wanted to "set off" damages for breaches of lease by the Respondent.

16. The Tribunal was required by the County Court to determine the amounts payable by the Respondent in accordance with s27A Landlord and Tenant Act 1985.

17. The Tribunal had already made a determination in case number MAN/OOBY/LSC/2014/0062 on 12 June 2015 for the service charge years ending 2012, 2013, and 2014. Consequently the Tribunal had already made findings in relation to the years ending 2013 and 2014.

18. Both parties were in possession of a copy of the order made in that case, in which the service charges in issue in the present case had been reviewed, unfavourably in some instances to the Applicant. The Parties were asked at the outset of the hearing if they had any comment to make in relation to that order that might make a material difference to the overall service charges sought by the Applicant, given that contributions are identical between the fifteen flats.

19. Both parties confirmed that they did not. The Respondent specifically confirmed that he had no particular issue with the amount of the gross service charges sought by the Applicant, save that he wanted to raise the issue of perceived failings by the Applicant in repairing his apartment, by way of a counterclaim/set off against service charges sought. Both parties confirmed that they would abide by the findings of the Tribunal on 12 June 2015 in relation to the level of service charges. The Tribunal was therefore only asked to consider whether to reduce service charges sought as a result of any breaches of covenant by the Applicant.

THE EVIDENCE AND SUBMISSIONS

Submissions of the Respondent

20. The Respondent in his submissions stated that no Summary of Tenants Rights and Obligations had been served, in accordance with s20 Landlord and Tenant Act 1985. Copies of the same were however included in the Bundle.

21. The Respondent confirmed that he had no issue with the findings of the Tribunal in respect of service charges in the order of 12 June 2015.

21. He felt that two issues within his property, both of which he said had been in existence since 2009 when he purchased, were the responsibility of the Applicant and justified him withholding monies. He was frustrated with the lack of action.

22. The dampness in his bathroom in particular had resulted in his losing tenants, time and again, as the bathroom deteriorated particularly in the winter months. He felt very strongly that the dampness was caused by a leaking roof.

23. He told the Tribunal that water was seeping into the bathroom "tower" from the roof causing wetness mould and mildew. He said he had seen water running down the walls in particularly wet weather. He disagreed with the Applicant's report. He did not believe it was condensation as it appeared even when the apartment was not occupied.

24. In relation to the sunken/holed floor within the bedroom, the Respondent indicated that Mr. Whalley on behalf of the Applicant had inspected the floor in 2014 and agreed to rectify it, admitting liability on behalf of the Applicant as dampness appeared to be attacking the joists, but had subsequently failed to carry out repairs.

Submissions of the Applicant

25. Mr. Whalley on behalf of the Applicant confirmed that he also had no issue with the findings of the Tribunal in respect of service charges in the order of 12 June 2015.

26. The Applicant produced copies of summaries of rights and obligations which he had served with each invoice.

33. Mr Whalley on behalf of the Applicant accepted that statements had not been prepared by accountants in accordance with the lease. However since the Tribunal hearing in June 2015 in relation to Flat 1, he had altered the arrangements to accord with the lease which ought to make matters more readily understandable for all parties.

34. In response to the Respondent's allegations of breaches of lease the Applicant relied upon a copy of an email from Charlie Cave of Burleigh Stone, at page Y1 of the bundle. Mr. Cave confirmed he had inspected the damp and staining to the upper internal walls of the bathroom, though not the roof. In his view the dampness was caused by condensation as a result of inadequate ventilation to the bathroom.

35. Mr Whalley said that he did not recall the tower leak being discussed by the Respondent until 2012. Roofing Contractors, All In One, who had carried out roofing works during 2013 had inspected the roof tower from above during that time and could find no fault with the roof or the lead flashing. Mr. Whalley said that in the light of the findings of All In One and Burleigh Stone, he could not justify the expense of scaffolding or a cherry picker (estimated at £800 or 900) to

carry out further investigation when expert evidence had suggested condensation was likely. As a gesture of goodwill he had been prepared to paint the walls to the bathroom, but did not accept there was any penetrating dampness.

36. Mr. Whalley believed that he had been notified of the hole in the bedroom flooring in 2012, and understood that the freeholder was responsible for repair of the joists. The flooring had only been taken up in one area, so it was not possible to see the extent or the cause of the damage, although he assumed water was penetrating from outside. He had agreed that the Respondent might carry out the work and knock off the cost of that work from his service charge due, in the light of cash flow problems the Applicant had - he said that there had only been £2.60 in the bank account at that time. He had also agreed to paint the walls as a gesture of goodwill, but did not accept that there was penetrating damp.

37. The Respondent indicated he did not want to carry out the works, as he would not know the extent of the problem until the floor was fully taken up, and it could be an expensive and time consuming exercise.

THE DETERMINATION

38. The Tribunal's jurisdiction is to determine the reasonableness and payability of the service charges sought for the years 2012 to 2014. The Tribunal had already assessed the amounts in case number MAN/OOBY/LSC/2014/0062 on 12 June 2015 and the Parties agreed that they both accepted that determination and that the service charges sought might be restricted to those awarded in the June Tribunal.

39. The sole issues to be determined by the Tribunal therefore were whether it was appropriate to set off any potential counterclaim for breach of covenant that the Respondent had against the Applicant.

40. The Tribunal was not satisfied that there was any evidence of dampness as a result of breach of covenant. The layout and design of the bathroom, and the location of the ventilating fan, overall lack of ventilation, sealed single glazed windows, the high walls and ceiling of the tower directly above the shower area with exposed (cold) stone walls, would in the Tribunal's expert opinion, tend to lead to condensation dampness which would manifest as mould on the walls. Without independent expert evidence of where water might be penetrating from the Tribunal could not find any breach of covenant on the part of the Applicant.

41. Similarly there was no evidence before the Tribunal of the condition of the joists, or any evidence that they were damp, or the causation of such dampness. In the circumstances there was no evidence of any breach of covenant on the part of the Applicant, who had suggested, rightly or wrongly, that the Applicant would pay for the works by deducting them from service charges due from the Respondent.

42. Consequently the Tribunal determined that the service charges should be set at the amounts agreed by the Parties at the outset of the hearing in accordance with the decision of this Tribunal of 12 June 2015.

Costs

43. There were a number of areas of service charge that the Respondent was entitled to challenge, and indeed which had been challenged and allowed in the June Tribunal decision. Mr. Whalley for the Applicant accepted that the Applicant had not been running the service charge accounts in accordance with the lease, which had made matters difficult for the leaseholders to follow.

44. There had been concerns about standards of management, and supervision of works. The Tribunal determined that the Respondent should not pay the costs sought by the Applicant, and nor should those costs be added to the service charge, exercising the Tribunal's powers under s20C Landlord and Tenant Act consistent with the finding of the 12 June Tribunal.