11359

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00ML/LSC/2015/0055**
Property	:	**48/48A Saxon Road, Hove, East Sussex, BN3 4LF**
Applicants	:	**(1) Mr Edmond Warner** **(2) Mrs Maureen Lane**
Representative	:	**Mr Mark Bowles, Classic Property Management**
Respondent	:	**Mr James Quinn**
Representative	:	**Mr William Nixon**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal Members	:	**Judge I Mohabir** **Mr N I Robinson FRICS**
Date and venue of Hearing	:	**16 December 2015** **Citygate House, Brighton**
Date of Decision	:	**16 December 2015**

DECISION

Introduction

1. This is an application made by the Applicants under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the reasonableness of service charges contributions demanded from the Respondent for the year 2014/15.

2. The service charges in issue are the actual cost of £250 for the renewal of the porch roof and £2,700 for the cost of external redecorations and associated works ("the external redecorations"). However, at the hearing the Applicants explained that, although the total cost of renewing the porch roof came to £1,500, they were limiting the Respondent's service charge liability to £250 because they had not carried out statutory consultation under section 20 of the Act with him prior to the commencement of the works. The Respondent agreed the sum of £250 in relation to the cost of renewing the porch roof. Therefore, the only cost that fell to be determined by the Tribunal was the cost of the external redecorations and associated works.

3. The Respondent is the leaseholder of the property known as 48 Saxon Road, Hove, BN3 4LF ("the property") pursuant to a lease dated 13 January 1964 for a term of 999 years from 29 September 1963 ("the lease"). The Respondent does not contend that he is not contractually liable under the terms of the lease to pay a service charge contribution for the costs in issue. It is, therefore, not necessary to set out the lease terms that gives rise to that liability. It is sufficient to note that under clause 3(K) of the lease the Respondent is liable to pay a half share of the costs.

4. It was common ground that, prior to commencing the external redecorations, the Applicants had validly carried out statutory consultation under section 20 of the Act. The Respondent responded to the Notice of Estimates by contending that the estimated cost of the external redecorations was excessive. He stated that he would be submitting estimates himself but he did not do so. The lowest tender

estimate of £5,550 provided by Henfield Homes Ltd to the Applicants was accepted. The works commenced in April 2015 and were completed in May 2015.

5. The Respondent did not pay the service charge demand that was subsequently served on him by the Applicants and continued to contend in correspondence that cost of the external works was excessive having regard to the specification. By an application dated 7 August 2015, the Applicants applied to the Tribunal seeking a determination that the cost of the external works is reasonable.

Relevant Law

6. This is set out in the Appendix annexed to this Decision.

Decision

7. The hearing in this matter took place on 16 December 2015, following the Tribunal inspection of the exterior of the building and an internal inspection of the rear kitchen wall of the property. The Applicants were represented by Mr Bowles, the managing agent from Classic Property Management. The Respondent appeared in person and was assisted by Mr Nixon, a friend.

8. Mr Bowles explained the chronology relating to the statutory consultation carried out, the tendering process and the time taken to carry out the external redecorations. The actual cost incurred was £5,400, of which the Respondent had a half share liability of £2,700. He submitted that the cost was, therefore, reasonable.

9. In contrast, the Respondent submitted the cost of the external redecorations was excessive having regard to the works carried out and it was unreasonable. This was based on his knowledge and experience as a carpenter and joiner in the building trade. He accepted that the external redecorations were necessary.

10. The Respondent contended that the external redecorations took too long and should have been carried out by two painters taking 5 days (10 working days) to complete the work. He also contended that a reasonable amount for the work would be approximately half the sum claimed by the Applicants. He had prepared a breakdown showing how he had arrived at this figure[1]. When asked by the Tribunal, the Respondent said that his breakdown was simply a rough guide to illustrate that the cost incurred by the Applicants was excessive.

11. The Respondent also sought to introduce the issue of damp found on the rear kitchen wall of the property. He argued that this should have been dealt with by the Applicants prior to the external redecorations being carried out and his requests to do so had simply been ignored by them.

12. The Tribunal explained that the alleged failure on the part of the Applicants to remedy the damp problem in the property could not be included as part of its determination because it did not form part of the specified work and no costs were being claimed against him by the Applicants in this regard. Therefore, it fell outside the Tribunal's jurisdiction. The allegation made by him may amount to a breach of covenant under the terms of the lease and, if so, such a claim had to be made in the County Court.

13. Having inspected the property, the Tribunal was satisfied that the standard of the external redecorations was reasonable.

14. As to the cost of the external redecorations and associated works, the Tribunal also found this to be reasonable also. It did so for the following reasons.

15. The Respondent's case that the cost of the external redecorations was excessive and unreasonable was simply based on his assertion in those

[1] see page 10 of the bundle

terms supported by his breakdown of the estimated cost he contended for. The Tribunal attached little or no weight to this evidence because it was not independent evidence nor was it prepared on a 'like for like' basis as the estimate provided by Henfield Homes Ltd. For example, it was based on the bare cost of providing painting materials and labour costs. It did not include the cost of the associated works carried out and any additional cost for overheads and profit element for the contractor. Neither did it allow for scaffold access where necessary.

16. Under the repairing covenant in the lease, the landlord is obliged to repair and maintain the building. It is not obliged to do so at the cheapest cost at all times. The position is analogous to effecting buildings insurance, where it is now settled law that all the landlord has to do is to ensure that the cost within a reasonable range of premiums obtainable to satisfy the test of reasonableness in section 19 of the Act. Having carefully considered the evidence, the Tribunal was satisfied that the cost of £5,400 incurred by the Applicants for the external redecorations and associated works fell within a reasonable range of cost having regard to the specification and the time taken (two and a half weeks) to carry out the work.

17. Accordingly, the Tribunal found the sum of £5,400 incurred by the Applicants for the cost of the external redecorations and external works was reasonable. It follows, therefore, that the Respondent's half share service charge contribution of £2,700 is payable by him.

Section 20C & Fees

18. No application had been made by the Respondent under section 20C of the Act.

19. As to the fees of £315 paid by the Applicants to have this application issued and heard, the Tribunal orders the Respondent to refund this amount to the them forthwith on the basis that the application has

wholly succeeded. Therefore, it is just and equitable that "costs should follow the event".

Judge I Mohabir

16 December 2015

Appeals

1. Any party 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 which application must:-

    a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

    b. 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

2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(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.

Section 19

(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 provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(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 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 leasehold valuation tribunal 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).