10773

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HN/LSC/2014/0122
Property	:	304a Holdenhurst Road, Bournemouth BH8 8AY
Applicant	:	Mr Nicholas Free
Representative	:	
Respondent	:	Mr and Mrs Chatchai & Nathaya Sirinan
Representative	:	
Type of Application	:	Liability to pay service charges and/or administration charges
Tribunal Members	:	Mr D Banfield FRICS Mr J Mills
Date of Hearing		4 March 2015 on the papers submitted
Date of Decision	:	12 March 2015

DECISION

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Decision

1. **That the sum of £2,500 is due from the Lessee to the Lessor.**

2. **No order to be made under S.20C of the Landlord and Tenant Act 1985**

Background

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable.

2. The Applicant also asks the Tribunal to decide;

   - Whether he is entitled to a receipt for Ground Rent payments
   - Whether he can renew his lease without the freeholder objecting

3. The Tribunal identified the following issues to be determined:

   - Whether insurance premiums from 2007 to date are payable and if so the amount
   - Whether the Applicant is permitted to insure the premises
   - What is the charge of £1,800 referred to in a letter dated 28 February 2012 from Frettens Solicitors on behalf of the Respondents?
   - Whether the landlord has complied with any consultation requirements under Section 20 of the 1985 Act
   - Whether the works are within the landlord's obligations under the lease / whether the cost of works are payable by the leaseholder under the lease
   - Whether the costs are payable by reason of Section 20B of the 1985 Act
   - Whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee
   - Whether an order for reimbursement of the application / hearing fees should be made

3. The Tribunal has no jurisdiction to determine matters relating to the payment of Ground Rent.

4. The Tribunal is unable to give advice regarding the renewal of the Applicant's lease.

5. Directions were made on 24 November 2014 indicating that the matter would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days.

6. No request for a hearing was received and the matter is therefore determined on the papers submitted.

7. A timetable for the exchange and submission of documents was also set out in order to assist the Tribunal in the proper determination of the dispute.

8. A bundle of documents was provided by the Applicant. On review of those documents a procedural judge noted that they contained neither party's statements of case or service charge demands. After a request from the Tribunal further documents were received from both parties.

Evidence

9. In his application Mr Free challenges a payment of £3,153.99 for insurance premiums and £1,800 for repairs which are referred to in the letter from Frettens Solicitors of 28 February 2012 demanding these sums. In his reply to that letter he said that they had not been demanded previously and that the previous request for payment was in September 2011 for insurance. He said that he knew of no repair work being undertaken.

10. His challenge to the insurance payments was that he had asked on many occasions for a copy of the policy and as he had not been provided with one he was forced to take out his own insurance cover.

11. In a letter from the Respondents dated 10 December 2014 it became clear that the reference to repairs related to roof repairs in 2005 for £1,700 and Blocked Drain clearing in 2003 for £79.32. It was also noted that the amount demanded for insurance was now £2,605.86 and related to costs from 2006-2014.

12. In the Applicant's letter of 6 January 2015 he acknowledges receipt of copy policies for 2008 -2015 and refers to an invoice from the Respondent dated August 2011 which included insurance for 2010 and 2011 at different amounts to the invoices the Respondent has now provided.

13. In his letter of 6 January 2015 (page 20) Mr Free agrees to pay for the blocked drain charge of £79.32.

14. Mr Free confirms that he has received no consultation under Section 20 of the 1985 Act.

15. At pages 24 to 39 of the bundle is correspondence relating to the roof repairs. At page 24 is a letter dated 15 December 2003 referring to the

leaking roof and indicating that legal action would be taken. By a letter dated 23 June 2004 Mr Free said that he would organise and initially pay for the works himself splitting the cost at a later stage. It appears that Mr Free spent £550 on scaffolding but that although he had told the Freeholder's son it was to be erected the Freeholder himself ordered it to be removed. Following the involvement of Bournemouth Borough Council a letter dated 3 August 2004 under the Housing Act 1985 was sent to Mr Surinam requesting certain works to be carried out including the renewal of the roof and replacement of the windows in the flat.

16. At page 38 is an invoice dated 17 May 2005 requesting payment from the Applicant of £1,675 being half the cost of the roof repairs. A hand written note at the foot of which refers to costs incurred by the Applicant of £550 for scaffolding, half the replacement cost of windows at £885 and half the replacement of Velux at £450. There is also a note of £200 for the repair of a toilet.

17. At page 39 of the bundle is the Applicant's reply dated 22 July 2005 in which he reiterates his demand for half of the costs he has incurred amounting to £1,885 which he suggests is written off against the roof replacement costs. He also advises that he will be insuring the flat himself from 2006 as "the premium that you have secured is too expensive"

18. In an undated statement of case made by Mr Chatchai Sirinan and attached to an email to the Tribunal on 23 February 2015 the Respondent sets out his position.

19. He said that in 2005 Mr Free had approached him regarding roof repairs but he did not have the funds to pay for it at the time and was not confident of receiving Mr Free's 50% share. Mr Free then offered to pay for the works himself and arranged for scaffolding to be erected the location of which he objected to and requested its removal.

20. Bournemouth Borough Council's Environmental Health Department became involved and he arranged for the work to be done but that Mr Free didn't pay his share.

21. He then referred to what he said were unauthorised sub lettings and alterations to the building and nuisance caused by tenants none of which are relevant to the current dispute.

22. The Respondent also provided copies of annual demands for insurance and ground rent from 4 May 2003 to 9 December 2014. The amounts relating to insurance for the period of this dispute are:-

    a. 2006 £358.72
    b. 2007 £358.72
    c. 2008 £394.42
    d. 2009 £224.40

e. 2010 £224.40
f. 2011 £247.40
g. 2012 £257.29
h. 2013 £267.58
i. 2014 £272.93

Decision

23. It is unfortunate that neither party has complied fully with directions. Documents requested have not been forthcoming and the Tribunal must therefore make its determination on the limited information available to it. In particular neither side has provided any invoices from contractors or insurers.

24. Dealing first of all with insurance it is clear from clause 2 of the seventh schedule to the lease that it is the Lessor's obligation to insure and by clause 19 of the Sixth schedule that the Lessee is obliged to contribute 50% of the cost.

25. We have heard that the Lessor failed to make the policy available as required by Clause 2 of the Seventh Schedule. We have also seen the Lessee's reference to insuring the flat himself due to the high cost of insurance arranged by the Lessor. Whatever his dissatisfaction with the Lessor's insurance arrangements the remedy taken by the Lessee was not correct. If dissatisfied with the costs he should have applied to this Tribunal and if being denied copies of the policies an application made to the County Court. He was not entitled to take on the Lessor's obligation to insure.

26. In assessing the amount due to be recovered however we are concerned by the evidence supplied. We have no invoices from insurance companies or brokers but only the Lessor's demands to the Lessee. The Respondent's Invoice 1 dated 27 August refers to different amounts for 2010 and 2011 from the invoices listed in paragraph 22 above leading us to question the accuracy of the demands the Lessor has now exhibited.

27. Doing the best we can therefore and in the absence of more accurate information we allow £250 for each year in question as a reasonable cost of insurance giving a total for the nine years in question of £2,250.00

28. Turning now to the costs incurred by both parties in respect of the repairs undertaken in 2005. Once again we have no builders' invoices presented to us by either party. We have a demand from the Lessor of £1,675 for work to the roof and a counter demand from the Lessee of £1,885 for scaffolding, veluxes and replacement windows. Neither party has challenged the quality of the work or their cost only whether they are liable to pay for them.

29. In the Respondent's letter to the Applicant dated 25 January 2015 in rejecting the claim for a share of the costs expended by him he refers to the windows in the Lessee's flat as being the Lessee's responsibility. This is not correct. The second schedule to the lease defines the "reserved property" which is to be maintained by the Lessor as a service charge cost as *external parts thereof including the external window frames (but not the glass of the windows ....*

30. We are satisfied therefore that the cost of replacing the windows would be a service charge item. We accept that the glass within the frames is the Lessee's responsibility but to separate the cost from the whole is impracticable.

31. However, it is not open for a Lessee in circumstances where common parts are in disrepair to simply have the work carried out and attempt to recover part of the cost from the Lessor. Repair of the common parts is the Lessor's responsibility and if he fails in that responsibility the Lessee's remedy is through the County Court and as such we do not allow the claim for replacement windows at£885.00.

32. The Lessee refers to the Velux windows as replacing the old (page39) whereas the Lessor in his letter of 25 January 2015 seems to imply that they were a new addition installed at the behest of the Lessee without the Lessor's consent.

33. In the absence of any more definitive evidence the Tribunal prefers the contemporaneous letter of the Lessee as likely to be more accurate than a letter written some 10 years after the event and therefore accepts that work to the roof lights was a service charge item. However, for the same reasons as set out in paragraph 31 above we do not allow the claim for £450.00

34. We now turn to the cost incurred by the Lessee in 2004 in respect of scaffolding and whether the Lessee was entitled to incur expenditure that was properly the obligation of the Lessor. It is clear from correspondence at the time that the Lessor was unwilling or unable to bear the cost of repairing the roof and that only the intervention of the Borough Council forced the Lessor to take the necessary action. The Lessee had drawn the problem to the Lessor's notice on at least 2 occasions and the Lessor initially accepted his offer to pay. (para 3 of Respondent's statement of case) However, specific consent was not obtained as once the scaffolding was erected it had to be removed at the Freeholder's request. There is no suggestion that it played any part in the roof replacement subsequently undertaken in 2005 and as such is not a sum properly chargeable to the service charge.

35. The total cost of the roof repairs chargeable to the service charge is therefore £3,350 (page 38) of which each party is liable for 50%. i.e. £1,675.

36. However it is apparent that the consultation procedure set out in S.20 of the Landlord and Tenant Act 1985 has not been conducted and, in the absence of any application for dispensation under S. 20ZA of the Act the total sum recoverable is limited by the Act to £250.

37. In summary therefore the amount payable by the Lessee to the Lessor is;

Insurance costs	£2,250.00
Roof repairs	£250.00
Total	£2,500.00

38. Whilst the Respondent has been largely successful in this application we would urge him to take a more active role in managing the property. He has clearly misunderstood the extent of his repairing obligations and this has to some extent created the situation in which both parties now find themselves.

THE COST OF THE CURRENT PROCEEDINGS

39. No application under S.20C has been made.

D Banfield FRICS
Chairman
12 March 2015

1. 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. 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.

2. 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.

3. 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

Annexe of relevant legislation
Landlord and Tenant Act 1985

S.20 Limitation of service charges: consultation requirements

(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.

S.20ZA Consultation requirements: supplementary

(1)Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2)In section 20 and this section—

- "qualifying works" means works on a building or any other premises, and
- "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a)if it is an agreement of a description prescribed by the regulations, or

(b)in any circumstances so prescribed.

(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5)Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6)Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.