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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AY/LSC/2017/0281** **LON/00AY/LSC/2017/0476**
Property	:	**Flat 2, 29 Horsford Road, London SW2 5BW**
Applicants	:	**Stephen Courtney Stone and Annette Celia Stone**
Representative	:	**SLC Solicitors and Mr Doyle of counsel**
Respondent	:	**Hugh Carter**
Representative	:	**Vanderpump &Sykes LLP and Mr Samuels of counsel**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Ruth Wayte (Tribunal Judge)** **Sue Coughlin** **Paul Clabburn**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**1 March 2018**

DECISION

Decisions of the tribunal

(1) Application reference LON/00AY/LSC/2017/0476 is struck out as the Tribunal does not have jurisdiction due to a County Court judgment.

(2) The tribunal determines that the sum of £10,214.05 is payable by the Respondent in respect of the service charges for the years 2016 and 2017 (including an on account demand for major works).

(3) The tribunal makes a partial order under section 20C of the Landlord and Tenant Act 1985 so that 50% of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(4) The tribunal also makes a partial order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") to limit the tenant's liability in respect of the costs of these proceedings to 50% of the landlord's costs in respect of any future administration charge.

The applications

1. By application number 0281 the freeholder seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the leaseholder in respect of the service charge years 2016 and 2017, including an amount sought on account of costs for intended major works, largely comprising external decorations.

2. By application number 0476 the leaseholder seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the major works in 2009/10 and 11, identifying the sum in dispute as £2,010.67.

3. On 15 December 2017 a procedural judge directed that the two applications be heard together. For ease of reference this decision will refer to the freeholder as the applicants and the leaseholder as the respondent, although the roles were reversed in the later application. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The applicants were represented by Mr Doyle of counsel, with Messrs Stephen and Benjamin Stone of Grangeview, managing agents attending as witnesses. The respondent was represented by Mr Samuels of counsel and gave evidence on his own behalf.

The background

5. The property which is the subject of this application is the first floor flat in a two storey Victorian house with a London roof where the internal valley runs at right angles to the front parapet wall. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, given the issues in dispute.

6. The respondent purchased his leasehold interest in 2004 and shortly thereafter notified his landlord that the roof was leaking. Some minor works of repair were carried out but by 2009 works were urgently required to at least the parapet wall. A detailed specification was drawn up and the applicants went through a consultation process, identifying the cheapest contractor at a price of £15,480 plus VAT. The respondent identified a Mr Sadler who was prepared to do the work for less. He carried out some works in or about 2011 but in 2012 he was dismissed from the job by the respondent due to concerns with the quality of his work.

7. The applicants were notified of Mr Sadler's dismissal and held back £2,660 of the contract sum, half of which was eventually credited to each leaseholder's account. The respondent had sent some photographs to the applicants to show them the extent of the poor workmanship by Mr Sadler and in particular the problems with the roof. No further works have been carried out and the respondent maintains that he has suffered from a leaking roof from his purchase of the flat in 2004 to date.

8. In 2014 proceedings were issued by Stephen Stone against the respondent for service charge arrears, including a sum of £2,010.67 in respect of the works undertaken by Mr Sadler. Judgment was entered in default of a reply on 12 November 2014 and the respondent's mortgagees cleared the debt. Mr Sadler also issued proceedings against the respondent and obtained judgment in default, although the tribunal was informed that this was due to an error on the part of the court and the respondent was seeking to set that judgment aside. No other details of those proceedings were provided.

9. The latest major works were notified to the leaseholders in January 2016. The applicants demanded an on account payment of £8,352.36 from the respondent, reflecting a half share of the estimated costs of the proposed work. The proposed major works do not include any works to the roof and have not yet been carried out as no payment has been received from the respondent.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) Whether the tribunal had jurisdiction to hear application 0476 in the light of the County Court judgment;

    (ii) The reasonableness of the estimate for the 2016 major works and the payability of the on account demand in the light of the problems with the roof.

11. The respondent confirmed that he had no dispute with the other service charges sought by the applicants in respect of 2016 and 2017 and withdrew his challenge in respect of compliance with consultation requirements for the 2016 major works.

12. Having heard evidence and submissions from the parties and considered the documents provided, the tribunal has made determinations on the various issues as follows.

Application number 0476: the 2009/11 major works

13. This application was issued in December 2017, following the initial directions appointment. It is unclear why it was limited to £2,010.67 but there was no dispute that this amount referred to the balance sought from the respondent in respect of monies paid to Mr Sadler by the applicants for the works carried out in or about 2010.

14. The difficulty with the application is that this sum was the subject of a County Court judgment dated 12 November 2014. Section 27A(4)(c) of the Landlord and Tenant Act 1985 states that no application may be made in respect of a matter which has been the subject of a determination by a court. As stated in the hearing, *Cowling v Worcester Community Housing Ltd* [2015] UKUT 496 (LC) is authority that a county court judgment is a determination for these purposes. The judgment in that case was a money judgment rather than a default judgment but in the view of this tribunal that is insufficient to distinguish it. The judgment was not set aside and it resolved the questions of liability and the amount payable.

15. Mr Samuels did not challenge the argument made by the applicants, his view was that the respondent's application based on the previous defective works and the landlord's failure to repair the roof could proceed in any event by way of a set off to the applicant's application.

The tribunal's decision

16. In the circumstances and for the reasons set out above the tribunal determines that it has no jurisdiction to hear the application. In the circumstances the tribunal must strike it out under rule 9(2) of the Tribunal Procedure (First–tier Tribunal)(Property Chamber) Rules 2013.

Application number 0281 – the 2016 major works

17. As stated above, the respondent withdrew his previous objection to the other service charges demanded in 2016 and 2017 and his challenge to the consultation process in respect of the 2016 works. This was an on account payment permitted by clause 6(b)(viii) of the lease which provides for a reserve fund as a reasonable provision to meet the future liability for costs expenses and outgoings. As stated in section 19, the issue to be determined in relation to on account payments is whether they are reasonable, a requirement of the lease in any event. Given that the request is based on an estimate, the issue in this case is whether the estimated cost of the work is reasonable.

18. The 2016 works are for external redecoration and repair and internal redecoration to the common parts. There was no dispute that the works are necessary. The applicants had obtained three quotes and chosen the cheapest. The demand including supervision and management fees was £13,920.60 plus VAT, making the respondent's 50% share £8,352.36. The respondent did not argue that any of the costs were unreasonable. There was also no dispute that the applicants were entitled to obtain monies on account of the works.

19. In his statement of case, the respondent stated that he should not be charged twice for the same work when the applicants should either have ensured Mr Sadler finished his work properly or paid for someone else to do it. He provided an estimate from a roofing company for £4,800. In his oral evidence, the respondent mentioned the works he had been forced to carry out to the interior of his property due to water penetration and stated that he wanted a rebate of everything he had spent back in 2011 on Mr Sadler's works.

20. As mentioned above, the 2016 works do not include any works to the roof. The summary of work carried out by Mr Sadler in 2011 was for painting the front elevation of the building, rebuilding the defective parapet wall and works to the chimney. His original estimate had also included works to the flashing on the roof at a price of £340. The respondent has paid a total of £4,360.68 towards these works, including the judgment debt identified above. £1,330 per leaseholder was retained in 2012 due to the issues reported with Mr Sadler's work. It is unclear what he finally sought to charge in relation to the roof works but the evidence of the respondent was that he had a quote of around £1,900 to remedy the defects back in 2012. As stated above, this has now increased to £4,800.

21. The applicants have always sought to deny responsibility for Mr Sadler, both before he carried out any work and after his dismissal by the respondent. Nevertheless they paid him £8,385 from the service charge account and appear to have charged management fees on his work. It is unclear why no further works to the roof have been carried out since 2012. In their statement of case and evidence to the tribunal the applicants agreed that they would now carry out whatever works were necessary to the roof once the scaffolding was in place and a proper inspection could be carried out.

The tribunal's decision

22. Clause 5(5)(a) of the lease requires the applicants to "*maintain repair renew rebuild as necessary...the...roof...of the Building.*" The tribunal has no doubt that the roof is in want of repair and the applicants were on notice of that fact both prior to the works carried out by Mr Sadler and after he was removed from the job by the respondent. The argument as to whether they or the leaseholders are responsible for the works carried out by Mr Sadler does not displace their responsibility under the lease. In his oral evidence Mr Carter mentioned internal repair works carried out to his flat in response to the damage caused by water penetration. However, he had made no counterclaim and provided no details of the works or their cost in his witness statement or written evidence. As stated above, although his statement of case was originally based on the claim that the 2016 works are a repeat of Mr Sadler's defective work, in fact no works to the roof are in the specification. In these circumstances there is nothing for the tribunal to offset.

23. Clearly the works to the roof have been outstanding for many years and the tribunal trusts that the applicants will make good on their commitment to carry out any necessary work as soon as they are placed in funds. One of the frustrations of this case is that Mr Carter initially had a quote of about £2,000 to carry out the work, which could have been covered by the retention from Mr Sadler of £2,660. A more recent quote appears to have increased to £4,800. It is hoped that the parties are able to reach agreement in respect of any additional service charges sought. Failing that, the respondent is entitled to request a determination of the service charge following the completion of the works and he may wish to take advice on the possibility of counter-claiming for his loss of amenity and any other costs incurred due to the delay in carrying out the roof works.

24. In the circumstances the tribunal determines that the amount payable in respect of application number 0281 is £10,214.05, including the on account payment in respect of the planned major works.

Application under s.20C and refund of fees

25. At the end of the hearing, the respondent made an application for an order under section 20C of the 1985 Act. Although the applicants have been successful the dispute arose from their failure over many years to repair the roof. Furthermore, had the respondent's counter-claim been properly pleaded and correctly quantified it might well have been successful. Consequently, the tribunal determines that it is just and equitable in the circumstances for a partial order to be made under section 20C of the 1985 Act, so that the applicants may not pass more than 50% of its costs incurred in connection with the proceedings before the tribunal through the service charge.

26. The respondent also applied for an order under paragraph 5A of Schedule 11 to the 2002 Act reducing his liability to pay an administration charge in respect of the costs of the proceedings before this tribunal. Again and for the reasons given in the previous paragraph, the tribunal determines that it is just and equitable to reduce any future administration charge to 50% of the applicants' costs.

Name: Ruth Wayte **Date:** 1 March 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 5A

Limitation of administration charges: costs of proceedings

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.