



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

Case Reference : CHI/00ML/LSC/2020/0065 &
CHI/ 00ML/LDC/2020/0070

Property : 12A Cross Street, Hove BN3 1AJ

Applicant : Roger Martin Yates & Lawrence Howard
Livingstone

Representative :

Respondent : Michael Wynne

Representative : Marcus Staples, Deacon Crickmay

Type of Application : Determination of liability to pay service
charges and the reasonableness of the
same

Tribunal Member(s) : Judge D. R. Whitney
Mr M J F Donaldson FRICS

Date of hearing : 12th November 2020 remotely by video

Date of determination : 16th December 2020

DETERMINATION

Background

1. The Applicant's are the owners of leasehold interest in 12A Cross Street, Hove. The Respondent is the freeholder. By application CHI/00ML/LSC/2020/0065 the Applicant's seek to challenge certain elements of service charges for the years 2017 to 2020.
2. Directions were issued for this application following a telephone Case Management hearing on 28th August 2020.
3. Following the CMH the Respondent made an application for dispensation in respect of the need to conduct a statutory consultation under CHI/ 00ML/LDC/2020/070. Directions were issued on 12th October 2020 which provided that both cases would be heard at the same hearing.
4. Throughout this decision references to Applicant is to the leaseholders of the Property and the freeholder is the Respondent. References A[] are to the bundle supplied by the Applicants for the service charge determination and R[] are to the bundle prepared by the Respondent for the dispensation application.
5. All directions were substantially complied with.
6. The hearing took place remotely using the FVH video platform. The Applicant's both took part with Mr Yates taking the lead. Mr Staples, the Respondent's managing agent, appeared for the Respondent. All parties agreed to proceeding in this way and were able to actively take part in the hearing. At the conclusion all parties confirmed that they had opportunity to say everything they wished to the Tribunal.

Hearing

7. The below is a summary only of matters raised and evidence given at the hearing.
8. Mr Yates confirmed that the Applicant was not disputing that the Respondent was entitled to seek any of the sums claimed under the lease and that they did not dispute or challenge that the Respondent was complying with the service charge mechanism of the lease A[17-44].
9. Mr Yates referred to paragraph 4 of his statement of case A[57]. It was the Applicants case that they had paid all service charges when demanded and it was when they received the request for further funds for major works which referred to arrears that they became aware that other sums were supposedly owed by them. The Applicants deny that they ever received any of the earlier demands.

In particular Mr Yates referred to the demand at A[76]. This appears to show that as at 25th June 2018 the Applicants owed £405.18 which is a sum they paid. Mr Yates stated the Applicants thought nothing of not receiving demands given the expenditure on the building was normally very modest involving building insurance, managing agent and accountants' fees only. In May 2019 the Applicants had made a large payment towards the anticipated cost of redecoration works and so were surprised to receive in February 2020 letters demanding further sums for the redecoration costs and suggesting that there were historic arrears.

10. Copies of the demands themselves were subsequently produced by Mr Staples. The documents produced failed to account for the payment made in May 2019. At this point the Applicants say they were told for the first time that halfway through the external redecoration a new contractor had been appointed and further costs had been incurred. The Applicants say they had not been made aware that a new contractor was being appointed or that this would lead to higher costs being incurred.
11. The Applicants believed that the contractor originally instructed, Mr Ramjedas, had provided a fixed price quotation for undertaking the external redecoration works. The Applicants suggested that the works were not adequately managed despite a management fee being charged by the managing agents. It appeared that the Respondent whilst appointing a managing agent still tells them exactly how and what he wants done and by whom. In that way the Applicants are in the worst of all positions in that they pay for a managing agent but the agents' hands are tied behind his back by the Respondent.
12. The Applicants suggested that scaffolding for the rear works was erected for an unnecessarily long period during which time no works were undertaken.
13. The Applicants had also spoken to Mr Ramjedas who had told them he felt bad that he had been unable to complete the works and that he had repaid £500, yet no credit seemed to be given for this sum.
14. The Applicants did confirm they were happy with the work to the front elevation actually undertaken by Mr Ramjedas.
15. On questioning by Mr Staples Mr Yates confirmed he knew that the lease required him to make 6 monthly payments. However the regular expenditure was very limited and has no idea where the supposed 6 monthly figure of £405.18 came from. In his opinion this figure was not justified. The sum claimed should not simply be an arbitrary figure but must have some justification.

16. Following the presentation of the Applicants case there was a short adjournment of about 20 minutes to provide all parties with a break.
17. Upon resumption Mr Staples presented the case for the Respondent. He relied upon his statement within the bundle A[139]. He stated that the 6 monthly amount had been the same throughout his management of the Property. He accepts with hindsight it may seem excessive, but he knew the external decoration works were going to have to be undertaken and was trying to make sure there was money available to pay for the same.
18. He relied on a report of sums demanded and receipts A[144]. He believed the demands would have been produced and sent out. One of his colleagues in the office would have done this but she had not provided a witness statement. He accepted that the demand for June 2018 A[145] could be said to be confusing. He explained demands were not sent with a covering letter and he had not been able to locate the 2017 demands. He was as sure as he could be that these would have been generated by his system although his system did not retain copies.
19. Mr Staples referred to his bundle for the dispensation application and took the Tribunal through the first and second stage notices contained therein. He explained after the estimates had been received his client, the Respondent, was unhappy with the quotes he had obtained and looked to obtain his own quotes. These then included the quote from Mr Ramjeddas R[28] which led to the further second stage notice from June 2018 R[31&32].
20. Mr Staples explained he voiced concerns he had to his client over this quote but was advised Mr Ramjeddas had successfully decorated the Property on two prior occasions. Mr Staples explained Mr Ramjeddas undertook the works to the front elevation without any problems but then he struggled to get him to come back to undertake the rear works or complete the snagging items. He explained as a result he recommended to his client that alternative contractors should be sourced to complete the works. This was done, Mr Staples believed these were critical as the Applicants flat had suffered from some damp.
21. Mr Staples believed that in his opinion the total cost was reasonable. He suggested it was in line with the original estimates which had been rejected by his client. In appointing Mr Ramjeddas he relied upon his client who sourced Mr Ramjeddas although he believed he did obtain a copy of his public liability insurance. It appeared Mr Ramjeddas had been unable to complete the works due to various personal issues which arose.
22. Mr Staples explained that whilst Mr Ramjeddas had contacted him about making a payment he had not felt comfortable with the

arrangement and had not accepted the same. He did not believe his client had done so. He stated he had told Mr Ramjeddas to await the outcome of the Tribunal.

23. On cross examination Mr Staples stated he believed all demands were sent out. He was not personally aware that previous correspondence to the Applicants had been sent to the wrong address.
24. Mr Staples explained that his company does frequently chase outstanding amounts. In this case he believed the Applicants would always question the service charge demands and he believed sending reminders would only provoke them.
25. He believed Mr Ramjeddas had completed about 95% of the front elevation and none of the rear works.
26. Mr Staples confirmed he had paid the invoice provided by Mr Ramjeddas R[48] dated 7th October 2019 and he paid the scaffolders directly. He explained that contractors would often ask the managing agent to pay the scaffolders directly. He was happy with the works undertaken so paid.
27. Mr Staples accepted that perhaps he had not provided a full project management service but in his opinion he carried out a lot of work including at least 3 meetings on site.
28. The Tribunal adjourned for a one hour lunch break. Upon the hearing recommencing the Tribunal questioned Mr Staples.
29. Mr Staples accepted that the lease did not allow him to set up a reserve but he had been trying to build up funds to undertake works.
30. He explained his firms fee was £150 per unit per annum plus vat. He had taken over management in 2015 and thinks he just adopted the figures previously charged for interim charges.
31. Mr Staples stated that he and the Respondent had tried to reach agreement with the Applicants and so no orders pursuant to section 20C or Paragraph 5A should be made. He believed that he acted appropriately and reasonably and if required dispensation should be granted.
32. In summing up the Applicants deny they had received the earlier demands. They say the Respondent acted unreasonably and Mr Staples should not have refused the monies offered by Mr Ramjeddas. They say that the Respondent could have consulted with them as to what action to take.

33. The Applicants are not seeking any refund, simply that they owe no further monies and orders pursuant to section 20C and paragraph 5A preventing the Respondent recovering any costs from them.

Decision

34. The tribunal in reaching its decision has had regard to the two hearing bundles and the evidence given at the hearing. The Tribunal has read carefully both bundles.
35. 12 Cross Street is a house converted into only two flats. One belongs to the Applicants and the other to the Respondent. The Respondent has, as he is entitled to do so, appointed a managing agent. It appears however that the Respondent remains very “hands on” in terms of choosing contractors and undertaking works.
36. The main item relates to the redecorating works. Mr Staples candidly explained he had reservations as to the contractors ability to undertake the required works. His client wished to proceed and when it became apparent Mr Ramjeddas could not complete the same due to health and family issues he arranged for alternative contractors and paid the invoices received from Mr Ramjeddas.
37. Whilst the Tribunal accepts Mr Staples may have felt empathy for the contractors situation we agree with the Applicants that it was not his money he was spending. The agent knew further monies were going to have to be spent. In this Tribunals opinion he should have awaited the outcome of the works to know what monies were being spent. Further it is not for the agent to decline a return of service charge monies from a contractor.
38. We have considered carefully all the evidence and whether or not dispensation should be granted. We decline to grant dispensation. This Tribunal believes that the Respondent could have consulted with the Applicants, even some form of informal consultation would have been expected. No proper explanation has been provided as to why this did not take place and we are satisfied the Applicants were prejudiced by this failure. In any event even if we are wrong, we determine that the reasonable costs of such works should not exceed the quotation of Mr Ramjeddas.
39. He provided a fixed price quote which the Respondent chose to accept. It is clear from the presentation of the quote that it is less professional than others included within the bundle and at a significantly lower price. This was a decision the Respondent took and in our determination, taking account of all the facts of the case it is reasonable to limit the costs to that figure.

40. Turning to the demands we are not satisfied that demands were sent by the agents until referred to in correspondence after February 2020. The question of the sending of the demands was raised as an issue at the Case Management hearing. The Tribunal was surprised that the agent did not adduce further evidence. Mr Staples candidly admitted he did not personally send out the demands and his system did not provide any method of checking or confirming. He had not produced witness evidence from his colleague who had sent the demands. The Tribunal found the demands confusing.
41. By way of example A[145] clearly says £405.18 is due and owing. Whilst another amount is included, this is then credited back. The Applicant paid £405.18. The Tribunal would have assumed, as did the Applicants, they had paid all that was required of them. It is for the agent on the face of the demand to be clear as to what is due and owing.
42. The Applicants accept they are liable for all monies which they have paid to date. We find that the sums paid to date totalling £2806.54 (see A[144]) are the monies due and owing by the Applicants in respect of service charges for the service charges up to and including 29th September 2019 and in respect of the Applicants contribution to the costs of the major works being the external redecorations to the front and rear elevations of the Property.
43. For the year 2019 to 2020 the Respondent may produce accounts and may be entitled to seek additional monies.
44. In respect of interim amounts we do not accept the amount claimed is reasonable. Plainly these are allowed under the lease but they should relate to the actual intended expenditure. Whilst we accept the prudent manager would include something for repairs, to cover all eventualities, doing the best we can we say that the interim payments for the year 2019 to 2020 should total £650 per leaseholder.
45. Finally this leaves the question as to whether any orders should be made under Section 20C of the Landlord and Tenant Act 1985, paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and reimbursement of Tribunal fees. All such remedies are discretionary.
46. Looking at the case in the round and the findings we have made we determine that an Order pursuant to Section 20C and Paragraph 5A should be made in favour of the Applicants. Further we order that the Respondent shall within 28 days of this decision repay the Tribunal fees of £300 to the Applicant.

RIGHTS OF APPEAL

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 rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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