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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property : 270 Fullersmead, Harlow, Essex CM17 9AZ

Applicants : Mr C. Ashbee and Miss H. Prangnell

Respondent : Harlow District Council

Case Number : CAM/22UJ/LSC/2007/0030

Date of Application : 10th May 2007

Type of Application : To determine the reasonableness and payability of service charges Sections 19 and 27A of the Landlord and Tenant Act 1985 ("the Act")

The Tribunal : Mr Duncan T. Robertson (lawyer chairman)
Mr John B. Shrive FRICS FAAV
Mr John M. Power MSc FRICS FCIArb

Date of Hearing : 23rd August 2007

Venue : Norfolk Room, Park Inn, Harlow,
Southern Way, Harlow, Essex CM18 7BA

Appearances : The Applicants Mr C. Ashbee and Miss H. Prangnell
The Respondent Mr Neil Weeks, Head of Litigation Legal Section of Harlow District Council

Witnesses : (a) Ms Claire Hicks – Team Leader Home Ownership Section Harlow District Council
(b) Mr Bob Cunningham – Surveyors Section, Harlow District Council
(c) Mr J. Driscoll – Acting Manager Surveying Team Keir Harlow

In Attendance : Miss V. Branch Harlow District Council

DECISION

1. The Tribunal finds that the Applicants are liable to pay the Respondent immediately the sum of £1,779.45 in relation to the Invoice No. 1606186 dated the 13th February 2007. The invoice was for £1,963.32. From this is deducted agreed credit notes of £38.75 concerning reduction of soil above damp course and £56.33 for not painting concrete lintels. At the Hearing a further deduction of £5.31 was agreed with regard to the issue of painting the washing post. The Tribunal decides that a further deduction of £25.00 should be made with regard painting not done and £58.48 should be deducted from the surveyor's supervision fee. This gives the total of £1,779.45 which is now payable immediately.
2. No application was made by either party in connection with costs. An issue was raised concerning Section 20(c) of the Act. The Respondent's interpretation of the Lease is that they could recover costs incurred in connection with the proceedings before this Tribunal as part of the Service Charge. They undertake on this occasion not to do so and therefore the Tribunal did not consider issues in this respect.
3. The Applicants request compensation for time taken off work. No award is made in this respect. The Tribunal has no power to determine this issue.

REASONS

Introduction

4. It was not clear from the Application and as a result of Directions exactly what is in dispute. Before the Hearing a further preliminary review of issues was undertaken and it was agreed that the following are the points to be dealt with:-

(a) With regard to rainwater goods the Applicants allege that work on the guttering joints and the bitumen painting of the gutters was firstly unnecessary and secondly the work was not done

(b) The Applicants say that the Respondent has failed to paint part of the communal area. This is the cladding above the flat roof of the entrance porch staircase

(c) The charge for cavity wall and loft insulation is excessive.

(d) The Surveyor's fees are excessive because the work has not been undertaken to a reasonable standard.

(e) The Applicants want compensation for time they have taken off work. The Tribunal dealt with this as a preliminary issue and confirmed that compensation in that respect was not within the power of the Tribunal and no award could be made.

The Inspection

5. The Tribunal inspected the Property in the presence of the Applicants and also various representatives of the Harlow District Council. No internal inspection of the flat was necessary. Only the exterior of the block of flats was inspected together with communal areas. The Property is one of four flats built in an L-Shaped block probably in the 1950's. The block is of brick construction and has a tiled roof. The Tribunal considered the exterior of the Property and the block and its common areas to be in reasonable condition except a small part of the communal area had not been painted in accordance with the specification of works in that respect.

The Lease

6. The Lease of the property is dated the 5th October 2004. It is for 125 years from the 24th September 1994. It is a fairly standard lease

appropriate for a flat purchased under the right to buy scheme. It contains normal provisions concerning repairs and service charges. It also contains provisions for an improvement contribution and major works. There are special arrangements in this respect during the first 5 years. There is no dispute that the works undertaken are provided for under the terms of the Lease.

The Law

7. In the Chairman's opening remarks the provisions of Section 19 of the Act were highlighted. The Tribunal made reference to the service charges being reasonably incurred. Were the jobs necessary and was the cost reasonable? The Tribunal would also consider whether the work and services were to a reasonable standard?

The Hearing

8. Before the Hearing substantial written representations were made by the Respondent. These confirmed that the provisions for consultation under Section 20 of the Act had been complied with by the Respondent. There was no dispute by the Applicants in this respect. The Applicants had failed in their application to clarify exactly what was in dispute. They did not respond to directions satisfactorily. The true nature of the dispute was not ascertainable until the Applicants wrote to the Tribunal Office on the 5th August and then clarified by the Tribunal at another preliminary review before the Hearing.
9. With regard to rainwater goods the Applicants stated that the work to the guttering joints and the bitumen painting of the gutters was firstly unnecessary and then was not done. Before works were carried out there were no problems and the gutters were not leaking. The Respondent contends that this expense was reasonably incurred and was both necessary and had been undertaken. Both sides produced photographs and there was considerable argument and conflicting evidence as to whether the work had been done or not and if so when.

10. With regard to painting the Respondent at the Hearing conceded that the washing post had been wrongly charged and a credit of £5.31 was agreed in that respect. They also conceded that the area above the flat roof of the communal staircase had not been fully painted and offered an undertaking to have that work attended to immediately.
11. On the issue of cavity wall and loft insulation the Applicants argument is that the price is excessive. A normal three bedroomed semi-detached property could have all work done for £300.00. This block of flats is in reality the same as two semi-detached properties. The total cost should be £600.00 for the block. £150.00 for each flat. The Applicants were unable to provide any estimates to support their argument. The Respondent could not respond directly to this contention. All they could say was that they had gone through a proper tender procedure for the overall contract and the contractor was the cheapest.
12. The Applicants say that the Respondent's Surveyors fees of £178.48 are excessive because they have not done the job properly. They make reference to various parts of the service that were inadequate both before the date of the Invoice and subsequently. The Respondent accepts that the Surveyor's fee does cover work both up to the date of the Invoice and also subsequently. They consider a charge of 10% is reasonable taking into account all of the work that is undertaken so far as supervision is concerned. They say the job of the Surveyor was done satisfactorily.

Conclusion

13. The Tribunal again considered the provisions of Section 19 of the Act which were highlighted by Mr Weeks in his summing up. Was the cost reasonably incurred? Was the amount charged for each item reasonable and was the work or service necessary? Was the work or service also to a reasonable standard?

14. The Tribunal find that the charges made by the Respondent with regard to rainwater goods are reasonable. The work to the joints and the bitumen painting of the guttering was necessary. The work has been done.
15. The Respondent conceded that a small area of painting had not been attended to. The Tribunal decided that a deduction of £25.00 for the Applicants would be appropriate in that respect. An undertaking for this work to be done is not acceptable because this would mean a final decision could not be given by the Tribunal at this stage.
16. With regard to cavity wall and loft insulation the Tribunal had some sympathy with the Applicants argument that this work could be done cheaper. Having said that the contract for work must be considered as a whole. The cheapest tender had been accepted and the Tribunal therefore considers no deduction is appropriate as this charge has been reasonably incurred.
17. On the issue of Surveyor's fees the Tribunal considered that there had been deficiencies in the work undertaken by the Respondent and communication with the Applicants had not been effective. A deduction of £58.48 was decided in that respect.
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18. With regard to Section 20(c) the Tribunal noted the undertaking given by the Respondent that they would not be pursuing any claim with regard to the costs of this Hearing. The undertaking is accepted and because of this a full review of the wording of the Lease has not been pursued.



D.T. ROBERTSON

Chairman

03 September 2007