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**HM Courts and Tribunals Service
Leasehold Valuation Tribunal**

Sections 19, 27A & 20C Landlord & Tenant Act 1985 (as amended) ("the Act")

Case Number:	CHI/21UD/LSC/2012/0067
Property:	Flat 36, Greeba Court 54-56 Marina St Leonards on Sea TN38 0BQ
Applicant:	Yewside Properties Limited
Respondent:	Mr Stuart Headey
Appearances for the Respondent:	Respondent in person
Appearances for the Applicant:	Ms. Tara Lyons of Counsel Mr John Butler from Countrywide Managing Agents
Date of Hearing:	13th August 2012
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr R Wilkey FRICS (Surveyor Member)
Date of the Tribunal's Decision:	15th August 2012

The Applications

1. This application had been transferred to the Tribunal by the Kingston-upon-Hull County Court for a determination under S.27A (and 19) of the Act of the Respondents liability to pay service charges for the service charge years 2007 to 2011.
2. The Tribunal also had before it an application under S.20C of the Act that the Applicant's costs for these proceedings should not be included in costs recoverable through future service charges.

Summary of Decision.

3. The Respondent is liable to pay to the Applicant forthwith the sum of £5,653.84 by way of service charges covering the service charge years 2007-2011 inclusive.
4. No order is made under S.20C of the Act.

Background & Preliminary matters.

5. In November 2011 the Applicant freeholders commenced proceedings against the Respondent in the Kingston-upon-Hull County Court for the recovery of service charge, administration charges, professional fees and ground rent. The amount claimed in these proceedings was stated to be £8,884.50 inclusive of costs and statutory interest. The Respondent had filed a defence to these proceedings. In March 2012 the County Court transferred the case to the Tribunal to make a determination. The Tribunal gave directions in May 2012, following which the Respondent and then the Applicant filed statements of case. The Applicant also filed supporting documentation which included the County Court pleadings.
6. Immediately prior to the hearing the Tribunal attended the property and carried out an inspection in the presence of the parties and their representatives. Greeba Court is a seven storey purpose built building thought to be constructed in the 1970's and arranged as 56 self-contained flats. The Tribunal inspected the interior of flat 36 which is on the fourth floor at the front of the building. It comprises a small one-bedroom flat and inspection was somewhat restricted because of the quantity and arrangement of the contents. The Tribunal noted severe blackening to most walls and ceiling surfaces. There was no natural light or ventilation in the bathroom and the extractor fan was not working. Condensation appeared to be a significant contributing factor.
7. At the hearing the issues for determination were narrowed and defined, firstly by the Tribunal declining jurisdiction in respect of ground rent, interest and legal costs claimed within the County Court proceedings and secondly by the Applicant conceding its claim in respect of administration charges.
8. Accordingly the amount of service charges claimed by the Applicant and to be determined by the Tribunal was £5,653.84. The Respondent's challenge to this figure could be broken down into three distinct issues each of which is considered below.
9. At the hearing the Applicant was represented by Ms Lyons a barrister and Mr Butler was called to give evidence for the Applicant in relation to the form and manner of

service of the service charge demands. Mr Headey attended the hearing and conducted his own case.

The Lease

10. The Tribunal was provided with a copy of the Lease for the property, which is dated 29th July 1982. The Lease is for a term of 125 years at a yearly rent of £30 rising to £60 after the first 30 years of the term.
11. So far as material to the issues in this case the relevant provisions in the Lease may be summarised as follows:
 - (a) The Respondent is liable to pay the Applicant a service charge equal to a 1/56th part of the costs and expenses incurred by the Applicant in maintaining the building as set out in the Fourth Schedule.
 - (b) An on account payment being an estimate for the whole year is to be paid by the Respondent twice yearly on the 24th June and 25th December in each year.
 - (c) The Applicant is to prepare and serve on the Respondent an end of year service charge final account.
 - (d) Forthwith upon this being done either the Respondent is to pay any balance due or be credited in the Management Company's books with any amount overpaid.

The Relevant Law

12. The Tribunal has power under S.27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application made by made in respect of a matter which has been admitted or agreed by a tenant.
13. By S.19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
14. Under S.20C of the Act a tenant may apply for an order that all or any of the costs incurred in connection with proceedings before a leasehold valuation Tribunal 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.
15. S.21B of the Act requires demands for service charges to be accompanied by a summary of rights and obligations of tenants in relation to service charges.

The Respondents case

Set off / damp issue.

16. Mr Headey's case is that shortly after moving into his flat he noticed traces of damp affecting the wallpaper, carpeting and the kitchen cupboard and ceilings. This

problem increased as autumn turned to winter. He contacted the managing agents who came to inspect and he was told that the problem was solely down to condensation. He did not believe this to be the case especially as many other flats in the building have had similar issues. Over time the damp had ruined the décor of his property and it had also affected his health. It had only been in the last 12 months that extensive external repair work had been carried out to the roof and outside walls. This finally appeared to remedy the problem. He considered that he should receive compensation in the form of a set off against the service charges owed by him as a result of the Applicant allowing the damp to go unchecked for so long. He could not state a figure and accepted that he had not taken professional advice over the matter.

2009 work

17. Mr Headey disputed, in his words "the enforced charges for the 2009 internal makeover because he considered them excessive". He confirmed that he had not challenged the proposed cost of the work during the consultation process, which he accepted had taken place, and was unable to propose an alternative figure he considered reasonable for the works. He made no suggestion that the standard of the work was unsatisfactory.

The lift

18. Mr Headey stated that the lift still did not work properly and when it breaks down it is often unrepaired for days on end. He had no documentary evidence to substantiate the problems and he had not taken professional advice or entered into correspondence with the Applicant in relation to the problems.

Section 20C application.

19. The Respondent argued that a S.20C order should be made if the Tribunal accepted his challenges but accepted that if the outcome of the proceedings was not favourable to him then an order was not appropriate.

The Applicant's case

Set off/damp issue

20. Ms Lyons stated that it was not accepted that the problem experienced by the Respondent was as a result of penetrating damp. Furthermore the weather proofing of the block mentioned by the Respondent had nothing to do with water ingress. The works were arranged by the local council to add warmth to the block and to assist with the condensation issues affecting the residents. She reminded the Tribunal that the Applicant had led no evidence to substantiate his claim that there was damp at the flat and that the damp had been caused by a failure by the Applicant to comply with its external repairing obligations. Neither had he provided any figures to support his claim. The claim was without merit.

2009 works

21. Ms. Lyons reminded the Tribunal that the Respondent's claim was unsupported by any documentary evidence. She told the Tribunal that the appropriate consultation

had been carried out in relation to the charges and the Respondent had had the opportunity to make his objections known at that time but had not done so. The consultation in respect of these works had previously been considered by the Tribunal and found to have been correctly carried out and that the proposed costs were reasonable. As the Respondent had adduced no evidence, his case amounted to no more than a bare submission and she invited the Tribunal to reject it.

The lift

22. The Applicant's statement on this issue was that there was a maintenance contract in place covering the lift. The Respondent was not specific about the dates on which he had experienced problems so it was impossible to comment upon whether the problem had been properly reported or whether the contractor had responded in a timely fashion. Ms. Lyons observed that the claim made by Mr Headey in this respect was totally unsupported by any evidence which put her client at a disadvantage when it came to defending the claim.

Application under S.20C

23. Ms. Lyons argued against a S.20C order on the basis that the Respondent had made no payment of service charge for some four years. The Applicant had every right to bring the application. As the Respondent had led no evidence to support any of his challenges it would be manifestly unjust for an order to be made.

The Tribunal's Determination

Set off/damp issue

24. On this issue the Tribunal rejects the complaint of the Respondent, which amounts to no more than an unsupported assertion. He led no evidence professional or otherwise to demonstrate the existence of damp at the building or in his flat or evidence that the Applicant had failed to repair the fabric of the building in a timely manner. Neither did he lead any evidence to quantify his claim in monetary terms. At its inspection the Tribunal noted severe blackening to the walls and ceiling of the flat but it was not persuaded that this deterioration had been caused by a failure on the part of the Applicant to attend to its repairing obligations. In the opinion of the Tribunal, condensation appears to be a significant contributing factor. In the absence of any evidence, the Tribunal was bound to conclude that the Respondents set off claim is without merit and fails.

2009 works

25. The works concerned the refurbishment of the internal common parts of the building. From the documentary evidence adduced by the Applicant, the Tribunal was satisfied that the Applicant had properly specified the works and had carried out a tendering process from which the lowest tender had been accepted. The Respondent led no evidence to substantiate that the price was too high or that the work was below standard. Having regard to this the Tribunal determined that the costs incurred for these works were reasonably incurred and the works had been carried out to a reasonable standard.

The Lift

26. The Respondent complains that the lift does not function correctly and when it breaks down it is often unrepaired for days on end. However he produced no evidence to show that the work carried out to the lift in 2009 had not been reasonably incurred or that the cost was excessive. From the evidence produced by the Applicant, the Tribunal was satisfied that there is in force a full maintenance contract covering the lift and that there is in place a system for the repair of notified faults. In the absence of any evidence to support the Respondent's claim the Tribunal was bound to find that the service charge expenditure incurred in relation to the lift had been reasonably incurred and reasonable in amount.
27. The Tribunal heard evidence from the Applicant in relation to the form that the service charge demands had been made and it was satisfied that where appropriate the Tenants summary of rights had accompanied each service charge demand. The Respondent confirmed as much. The Tribunal was also satisfied that the demands contain the statutory information with regard to the identity of the landlord and address for service of notices and in these circumstances it directs that the sums found to payable by the Respondent are due immediately.

Application under S.20C

28. In deciding whether to make an order under S.20C of the Act a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. Given the outcome of the proceedings the Tribunal considers that it would be manifestly unjust for it to make an order.
29. At the hearing the Respondent produced no evidence to support his challenge and showed a complete lack of understanding of the legal issues underpinning his challenge. None of his challenges have been accepted. It is not for the Tribunal to conduct a case on behalf of an unrepresented party and the Tribunal expects parties to have taken appropriate advice before making an application and thereby setting in train all the time and expense that may then be required. The Tribunal is of little doubt that had the Respondent taken appropriate advice then it is unlikely that the application would have been pursued.
30. For these reasons, the Tribunal makes no order under S.20C of the Act.

Signed _____
R.T.A.Wilson (Chairman)

Date: 15th August 2012