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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an application under Section 20C of the Landlord and Tenant Act 1985 ("The Act") : Service Charges.

Case No: CHI/23UB/LSC/2012/0080

Property: 90 and 90A Suffolk Road, Cheltenham, GL50 2SZ

Parties: Mr. Mark Gould Leaseholder Applicant

Mr. Paul Sutor Lessee Tenant.

Committee: -
Miss Tessa Hingston (Barrister at Law.) Chairman
Michael Ayres (FRICS)
Michael Jenkinson Esq. (Lay member)

Inspection and Hearing 27th September 2012

DETERMINATION AND REASONS FOR THE DECISION.

This case concerns an application made by the resident landlord/leaseholder of the subject property, Mr. Mark Gould, for determination of Service charges for costs incurred and to be incurred in respect of the above property during the years 2012 and 2013, as noted in the Pre-trial Review summary.

The Committee visited the property on 27th September 2012 and thereafter held a Hearing, having directed both parties to submit further documents to the Tribunal in advance. The lessor, Mr. Gould, had submitted the following by way of additional material: -

A separate 'schedule' of Service charge expenses for each of the relevant periods, together with both estimates and receipts for works done, and copies of correspondence with the tenant/lessee; and
A copy of the 'Visual Inspection Report' for 90 Suffolk Road, prepared by JDL Consultants and dated 13th June 2012.

Mr. Gould was present at both the inspection and the hearing.

The lessee, Mr. Sutor, had not sent in any further submissions or representations, and had contacted the Tribunal office to confirm that he would not be able to attend the hearing. The Tribunal exercised their discretion under Section 15 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 to proceed in his absence, given that every opportunity had been afforded to all concerned to make

submissions and representations, and the pre-trial Review had already been adjourned on 3 occasions thus causing further delay in resolution of the matter.

The subject property.

We were able to view the exterior of the building, the external piping and groundworks, and the interior of Mr. Gould's flat on the ground floor (Flat 90 or the 'Reserved Property' as referred to in the Lease), together with the hallway or 'common parts'.

The property is an end-terrace two storey two-hundred-year old house with many original features, and there is a single-storey extension at the rear which is not covered by the Lease but is the sole responsibility of Mr. Gould.

With the assistance of the surveyors' Report (as referred to above), we looked in particular at evidence of damp problems and treatment of the main structure, at rainwater goods and soil-pipes, and at rendering and exterior paintwork.

The Lease.(Particular clauses relevant to this Application.)

The Lease, dated 14th January 1983, makes provision for the tenants/lessees to pay half the costs of maintenance and repair in advance and on demand. (Clause 17 of the Sixth Schedule). By a Deed pf Gift dated 12th December 1991 the Lease was altered in order to remove 'the roof' from the 'Reserved Property' (ground floor flat etc.) and add it to the definition of 'the Premises' or the upstairs maisonette.

This variation leaves the lessor with responsibility for (inter alia) Insuring the building (Clause 2 of the Seventh Schedule); for repainting the exterior every 7 years (Clause 4 of the seventh Schedule). for 'maintaining, repairing, renewing, amending, cleaning and repointing' the 'Reserved Property' (which includes the 'main structural parts', the 'timbers, foundations and external parts of the property, but *not* the roof any longer) (Clause 5 of the Seventh Schedule); and for keeping the ground floor hall 'carpeted, cleaned, in good order and adequately lighted' (Clause 8 of the Seventh Schedule).

The applicable Law

Under the Landlord and Tenant Act 1985 (hereafter referred to as 'The Act') all service charges are subject to the overriding test of 'Reasonableness', in that Section 19 states that 'relevant costs' shall only be taken into account to the extent that they are costs which are '*reasonably incurred*' and where the works or services are of a '*reasonable standard*'.

Section 20 and 20ZA of the Act (as amended by the Commonhold and Leasehold Reform Act of 2002) set out the Consultation requirements for any works costing in excess of £250 per flat.

In summary, the landlord must obtain first at least 2 estimates from independent contractors, then he must send those estimates in a notice to the tenant explaining what is proposed and giving 30 days for comments and observations, which he is obliged to consider before any works are actually commenced – unless such works are 'urgently required' (for example a leaking roof.)

If the landlord fails to comply with these requirements any costs he recovers shall be limited to a maximum of £250 per flat. (Section 20(1), unless the LVT excercises its discretion to dispense with the requirements if satisfied that it is reasonable to do so.

Landlord's representations

Mr. Gould submitted to the Tribunal that each of the elements of work should be treated as a separate entity, and that none of the bills for individual pieces of work exceeded the £250 watershed. He said that he had commissioned the work at different times and from different contractors for various practical reasons. He also argued that some of the repairs were urgent, and that the property was desperately in need of renovation after many years of neglect. No monies at all had been paid by the tenant to date.

Tenant's/lessees representations

Mr. Sutor had (as per the Pre-Trial Review) requested clarification as to which items he was required to pay for and when.

FINDINGS AND DETERMINATION.

The Tribunal carefully considered the surveyor's report in conjunction with our own observations, and it was accepted that the property was badly in need of repair and renovation. However, it was not accepted that each of the pieces of work should be regarded separately. It was determined that all those works identified by the surveyor's report as being necessary to remedy the immediate damp problems could properly be regarded as one 'block' of work for the purposes of the statutory consultation requirements.
Thus, in the 2012 costs, the Damp Survey, the Damp chemical injection, the installation of Air-bricks and the essential re-rendering of the interior and exterior walls after DPC injection were all treated as a single cost, which exceeded the £250-per-flat limit and therefore triggered the consultation requirements.
In the 2013 projected costs the DPC injection and repairs to low-level render at the rear of the house were similarly treated, and also triggered the consultation requirements, as do the £10,000's worth of works listed in the Tradesman 4 quotation of 17th May 2012.

Since we found that the consultation requirements applied in this case, the Tribunal then went on to consider whether, in all the circumstances, it was reasonable to dispense with them. We bore in mind the fact that the landlord had at least obtained 2 independent quotations in each case, and had correctly forwarded them to the tenant and notified him of what works were proposed. Copies of the Tenant's legal rights were also attached in correspondence, which was helpful. The main fault lay in the fact that the landlord had not then always allowed the statutory period of time for

comments and suggestions before proceeding with the works, and had demanded the money from the outset – at the same time as he sent the quotations. Nevertheless, the tenant had confirmed at the PTR hearing that he agreed that the works were necessary and that he was satisfied with the standard of works so far. In the particular circumstances the Tribunal determined that it was reasonable to dispense with the consultation requirements, but the recovery of any future costs will be restricted unless the process is correctly followed.

1. Service charges for 2012.

In respect of the 2012 schedule (taking each item in the order of the Schedule), the following determinations were made: -

Insurance... No issue. Half-share of premium payable forthwith: should have been paid in advance on demand. Payable by lessee: **£274.40**

Gardening... We were told that the lawn had been cut twice, and the hedge once; total cost £75. The cost for these services is reasonable and the tenant/lessor is liable to pay half, i.e **£37.50** forthwith. (In future, given that it is appropriate to have the garden maintained regularly and the charges are reasonable, the tenant will be liable to pay for half the cost of regular hedge and lawn-cutting as proposed.)

Cleaning... £10.00 per week is reasonable, but no cleaning has been done for some time. The Tribunal determined that half of £150 was payable now for the 15 weeks or so to the end of the year, i.e. **£75.**

Maintenance of Common parts... £750 is reasonable for redecoration. £50.00 is payable for lighting. £150 is reasonable for electric repairs. Total **£475** (half of £950) is payable forthwith.

Building works... £150 is payable for the Damp survey; £499.92 is payable for the Damp chemical injection, and £474 for the air-bricks (it would appear that this work has been paid for, although it is not yet completed). The low-level rendering and stop bead at the side of the house, at £846, is also allowable, as is the £100 for general maintenance, but the Tribunal found that both the lintels to the back door and the replacement timbers to the flooring in the landlord's flat were for the benefit of the flat in particular and not part of the maintenance of the structure within the terms of the lease.
Mr. Gould had asked whether he could recover the costs of re-plastering the internal walls of his flat, and the Tribunal found that a proportion was claimable because it was a necessary part of the damp-proofing. £400 was deemed recoverable from the tenant/lessee.
The Tribunal were not satisfied that a major reduction of the ground level (either at the rear of the house or at the side) was necessary and reasonable, and therefore it was determined that these particular costs could not be added to the service charge.
Total costs allowed under this heading (half of £2,069.92, plus £400): - **£1,434.96.**

The landlord had also asked whether he could claim for the cost of soundproofing the ceiling(s) of his flat, but the Tribunal considered that such works were not within the

definition of obligations under the lease, and therefore were not recoverable by way of service charges.

The total service charge payable by the lessee/tenant for the 2012 period is £2,296.86.

2. Service charges for 2013.

Again taking the items in the order of the schedule, the Tribunal determined as follows: -

Insurance ... Half of the premium is payable by the tenant/lessee in advance (say the month before renewal): **£350**

Gardening... Half the costs are payable: **£202.50**

Cleaning and maintenance of Common Parts... The Tribunal found that repairs to the front path and gate (whilst required at some point) were not urgent or essential. It was not considered reasonable to incur these costs at the same time as major damp-proofing and redecorating works, so they were disallowed for this year. £150 for general maintenance, £50 for electricity, and £480 for Cleaning were all reasonable: half-share **£340** payable.

Building works... the Damp-proof injection (at the rear of the house-£442.80) and repairs to low-level render* and stop-bead (ditto - £850) are recoverable. Half payable: **£646.25.**
Referring to the Tradesman 4 quotation item by item (total £10,000 as set out on the 2013 schedule), we found that the 'Redecoration and Repair' costs were recoverable: half would be £2995, but it was determined that £6,000 would be a reasonable amount for the external redecoration, including minor repairs to windows and frames and removal of SVPs and RWPs, and therefore **£3,000 plus VAT** is recoverable from the tenant/lessee. It was considered that the render repairs at item 2 should be covered either under the low-level render repairs at * above, or under 'minor repairs' to the render prior to painting in item 1.
There were no necessary repairs to lintels definitely identified at the time of the determination (other than the lintels to the kitchen back door, as referred to above), so there was no allowance made for such works.
£150 was reasonable for cleaning out and resealing leaking joints on guttering: **£75** payable.

In addition, the sum of **£25** for cleaning out drains blocked by the sub-tenants was recoverable from Mr. Sutor.

The sum of £500 for crack stitching the rear wall below the bedroom window was allowable; sealing of holes in external walls is covered by other items; £200 is a reasonable amount for general maintenance. Half payable: **£350.**

(Roof survey: as referred to above, the roof is now the responsibility of the tenant/lessor, and not the landlord. It is not within the terms of the lease for Mr.

Gould to commission a roof survey and then charge the tenant for it. If the tenant fails to comply with his maintenance obligations, Mr. Gould may want to investigate other forms of enforcement.)

The total service charge payable for the 2013 period is £4,988.75.

Conclusion.

In the circumstances of this case, the Tribunal found that there were valid issues to be determined between the parties, and that because the correct procedures had not been followed on each occasion it was appropriate for the tenant/lessee to challenge some of the invoices which he had been sent. Accordingly, under Section 20C, the Tribunal determined that the landlord could not recover the costs of the LVT proceedings from the tenant/lessor.

Tessa Hingston
Lawyer/Chairman
8th October 2012