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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AJ/LSC/2012/0323
Premises:	38 Cumberland Road Hanwell London W7 2EB.
Applicant:	Mr James Edmund Lockley
Applicant's Mackenzie Friend.	Mr Richard Lockley
Respondent(s):	Ms Karina Chlond (1) Mr Thomas Lipinski (2)
Representative:	None
Date of hearing:	28th August 2012
Appearance for Applicant(s):	Mr James Edmund Lockley
Appearance for Respondent(s):	None
Leasehold Valuation Tribunal:	Mrs N Dhanani LLB (Hons) Mr M Taylor FRICS Mrs G Barrett
Date of decision:	11 October 2012

(NB: Unless otherwise stated: the numbers in the square brackets correspond to the page numbers in the papers produced by the Applicants and Respondent)

Decision of the Tribunal

(1) The Tribunal determines that the amount in respect of service charge recoverable from the Applicant in respect of the works carried out in 2010/2011 is limited to £250.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the liability to pay a contribution towards the works undertaken in 2010/11 to the front garden and porch ("the works").

2. The Applicant seeks a determination of the reasonableness of the cost of the works, in particular in relation to the nature of the works and the contract price.

3. The Applicant seeks a determination as to whether the works are within the landlord's obligations under the lease and whether the cost of the works are payable by the leaseholder under the Lease.

4. The Applicant also seeks a determination as to whether the Respondent has complied with the consultation requirements under s.20 of the 1985 Act.

5. The Applicant seeks an order under s.20(c) of the 1985 Act. .

6. The relevant legal provisions are set out in the Appendix to this decision.

Matters agreed

7. There is no annual service charge in dispute.

The hearing

8. The Applicant attended the hearing together with his father Mr Richard Lockley. The Respondents did not attend and were not represented.

The background

9. The property which is the subject of this application is a one bedroom, ground floor maisonette.

10. The Applicant acquired the leasehold interest in the property on the 17 September 2010 by an assignment of a lease dated 23 June 2006 made between Karina Sabina Chlond(1) and Roisin Elizabeth Holden(2) ("the Lease")[48-52]. The Lease was granted upon the surrender of a lease dated 15 April 1977 made between Vigilant Properties Ltd (1) and Jacqueline Betty Ledbury (2) ("the Existing Lease")[38-47]. The Lease was granted subject to and with the benefit of the covenants contained in the Existing Lease modified as specified in the Lease.

11. The First Respondent holds the freehold title to the property.

12. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

13. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Lease granted a term of 156 years from 29 September 1974. The specific provisions of the lease and will be referred to below, where appropriate.

The Applicant's case

14. The Applicant asserts that on the 17 September 2010 when he moved into the property clearance works in the front garden had already commenced. He claims that he was not aware of these works prior to the purchase of his interest in the property.

15. The Applicant claims that in July 2011 a door and outside post box were added to the front porch and the work had commenced without any consultation or notification.

16. The Applicant states that on the 14 December 2011 he received a letter seeking payment in the sum of £3340 in respect of the front garden and porch works. He states that he had a discussion with Mr Lipinski and some email correspondence in relation to the costs, he states he could not reach an agreement with Mr Lipinski so he decided to make the application to the Tribunal.

17. The Applicant claims that he did not receive appropriate information about the cost of the works prior to the purchase of the property. He produced a copy of the replies to the pre contract enquires[12-18]. The Applicant claimed that

other than a reply to enquiries summarising the works there was no information as to any estimate, invoices or other information provided. He drew the Tribunal's attention to the following question and response:

Question: *"Is there any contemplated or expected large scale expenditure which will materially affect service charge levels? If so, please give details."*

Answer: *"Front garden maintenance (overdue) involving: removal of overgrown hedge and trees, supply and installation of new fence and recycling storage, new planting repair to porch".*

18. The Applicant claims that the Respondents admitted not serving any s 20 Notices. He drew the Tribunal's attention to the following question and response:

Question: *"Have any notices been served by the landlord on the tenant at the building? If so please supply details."*

Answer: *"No".*

19. The Applicant claims that in December 2011 Mr Lipinski provided him with copies of some email correspondence with the previous leaseholder. The Applicant relies on this copy correspondence [19 – 20] in support of the view that Mr Lipinski had failed to secure an agreement as to the works with the previous leaseholder. In addition the Applicant produced a copy of the response received from the previous leaseholder to his enquiry as to whether there had been any consultation [28-29].

20. The Applicant accepts that there had been some dialogue between the Respondent and the previous leaseholder but he asserts that there was no formal notification or agreement as to the works. In addition he claims that the only company approached to carry out the work appears to be Green Structures Ltd.

21. In relation to the additional porch door, the Applicant claims that this was not part of the works mentioned in the replies to enquires [12-18] and was not shown on the plan [30] he received in January 2012. He relies on the email dated 25 June 2012 [28-28] from the previous leaseholder to support the fact that she was unaware of that a new porch door was to be installed as part of the works. He states that the door was constructed in July 2011 without any consultation. He contends that the new porch door is not a repair as there previously was no porch door.

22. The Applicant contends that the fence and porch door have been designed to fit in with the Respondents property which he states is a showcase "zero carbon loft", he claims this has inflated the cost. He states that the fence is not in keeping with the rest of the road.

The Respondent's case:

23. The Respondents made written submissions by way of a letter dated 6 July 2012 [34-37] but they did not attend the hearing and were not represented at the hearing.

24. The Respondents state that the works were carried out in 2010/2011 and that the works fall within the landlord's obligation under the Lease and the Applicant as the leaseholder is liable for 50% of the cost of the works.

25. The Respondents claim that the consultation started in 2008 and included details of the project costs. They claim that as a result of the consultation the previous leaseholder queried the use of some of the materials and so the specification of the works was altered.

26. The Respondents claim that the fir trees grew to a height of 6m and threatened the stability of the building as well as the neighbouring property. They further state that the insurance excess on a subsidence claim was in the region of £2000 so the removal of the trees was thought to be the most cost effective solution. The Respondents confirm that the project for the site clearance and tree removal began in August 2010. They state that the replies to enquires relied upon by the Applicant show that they did inform the Applicant that the work were about to commence. They state that they did not serve any notices as the works followed a two year long consultation period and were not disputed by the then leaseholder of the property.

27. The Respondents state that they sent the Applicant an invoice for his share of the cost of the works in December 2011[6-8].

The Lease:

28. The Lease Under Clause 1(4) as amended grants the leaseholder the following right:

> "The right to use the garden and pathway and porch shown edged green in the plan for the purpose of access to the Flat and enjoyment of the said garden and also for the purpose of cleansing or executing any necessary repairs or other work to the Flat making good any damage caused and contributing from time to time half of the expense of repairing and maintaining the said garden and pathway and porch provided that the pathway is kept clear of any obstruction."

29. The leaseholder's covenants are set out under Clause 2 of the Lease. The leaseholder covenants under Clause 2(6) as follows:

"At all times during the said term to pay and contribute a rateable or due proportion of the expenses of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes .....gutters party walls party structures ..fences easements appurtenances used or capable of being used by the lessees in common with the lessor or the tenants or occupiers of the premises...."

30. The Lease is granted subject to the provisos set out under Clause 3 as amended which provides as follows:

"(1) All walls dividing the Flat hereby demised from the adjoining property and the roof and footings of the building of which the premises hereby demised form part and the joists or other supports for the floor of the said Upper flat shall be deemed for this purpose to be party walls roof footings and joists to be maintained and repaired

(a) as to the walls at the joint expense of the Lessees and the tenants occupiers or owners for the time being of the adjoining property thereby separated, and

(b) as to the roof...

(c) as to the fences and boundaries at the joint expense of the Lessee and the tenants occupiers or owners fort the time being of the Upper Flat and adjoining property hereby separated."

Reasons for the Tribunal's decision:

31. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

32. Under the provisions of the Lease the Applicant covenants to contribute a due proportion of the costs of making repairing maintaining supporting rebuilding and cleansing the matters specified under Clause 2(6) of the Lease. The Tribunal find that the provisions of the Lease do not extend to requiring the lessee to contribute to the cost of improvements in the property.

33. The works undertaken and the costs charged for the works are itemised in the schedule attached to the letter dated 14 December 2011 sent by the First Respondent to the Applicant [6-8]. The plan [30] and photographs [31-32] produced by the Applicant show the works.

34. The Tribunal finds that the door forming an enclosed front porch, the bin store and the post boxes to be new additions to the property and thus amount to improvements as a result the Tribunal finds that the Applicant is not required to pay for the costs of these works.

35. As to the fence, the Tribunal noted that this replaced an existing boundary structure and so the Tribunal finds that under the provisions of the Lease the Applicant is jointly liable with the owners and occupiers of the Upper flat to pay towards the costs of maintaining and repairing the boundary structures and fences. The Tribunal accepts that it was reasonable of the Respondent to seek to replace the original boundary structure although there was no evidence before the Tribunal as to what type of boundary structure or fence had existed at the property and had been replaced. The Tribunal noted that the fence now erected at the property seemed to be of a higher specification and was not in keeping with the general character and specification of boundary fences and structures of the adjoining properties. Although the Tribunal is of the view that the renewal of the fence amounts to a repair under the provisions of the Lease, the Tribunal does not consider it reasonable to erect a Thermawood fence at a cost of £950. The Tribunal is of the view that the cost of erecting a normal close boarded fence would be more reasonable.

36. The Tribunal finds the labour costs of the site clearance works to be excessive and determines that a sum of £60 to be more reasonable.

37. The Tribunal was not persuaded on the evidence that it was necessary to remove the fir tree, there was no evidence produced as to the tree causing any damage to the property.

38. The Respondents are seeking a contribution in the sum of £3340 from the Applicant towards the cost of the works. The Tribunal having considered the nature of the works finds that the sum of £3340 to be excessive and considers the sum £1000 to be reasonable for the works.

39. In relation to the consultation, the Tribunal noted that there was evidence of some discussion between the Respondents and the previous leaseholder as to the works and that the previous leaseholder had agreed to contribute up to £500 towards the cost of the works. The Tribunal also noted that the Respondents had confirmed that they had not served any notices under Section 20.

40. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) a leasehold valuation tribunal.

41. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

42. The Tribunal finds that the works undertaken by the Respondents amount to qualifying works as defined by s.20ZA. The consultation requirements prescribed by the 2003 Regulations in relation to such works basically consists of three stages, a Notice of Intention to undertake the works, notification of estimates in relation to the works and finally notification of the award of a contract for the works. The 2003 Regulations are quite specific as to the information that should be included in each notice served as part of the consultation process. The discussions between the Respondents and the previous leaseholders do not satisfy the requirements of the 2003 Regulations. Accordingly the Tribunal finds that the Respondents failed to comply with requirements of the 2003 Regulations and so the Applicant's contribution towards the cost of the works is limited to £250.

43. In the application form, the Applicant applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: _____
Mrs N Dhanani

Date: 11 October 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a Leasehold valuation 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 a Leasehold valuation 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 20

(1) Where this section applies to any qualifying works....., the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

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 leasehold valuation 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 a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.