9237

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CAM/00KF/LSC/2013/0058
Property	:	195 Rochford Road Southend on Sea SS2 6EU
Applicant	:	Mr Craig Pepper
Representative	:	in person
Respondent	:	Southend on Sea Borough Council
Representative	:	Mr B Maltz
Type of Application	:	to determine reasonableness and payability of service charges.
Tribunal Members	:	Mrs E Flint DMS FRICS IRRV Mr D T Robertson Mr D W Cox JP
Date and Venue of Hearing:		22 August 2013 The Court House 80 Victoria Avenue Southend on Sea SS2 6EU
Date of Decision	:	6 September 2013

Decision of the Tribunal

1) The Tribunal determines that the sum of £325.72 in respect of works to the gutters is not payable by the Applicant.
2) The Tribunal determines that the management charges of £102 (2011) and £116 (2012) are payable.
3) In respect of the S20(c) application the Tribunal determined that the costs incurred by the landlord are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the service charges demanded by the Respondent for 2011 and 2012 and the budget for 2013 were reasonable and payable and in particular whether £325.72 in respect of roofing works in 2011, caretaking/cleaning costs in 2012 and management fees in each year were reasonably incurred. The service charge year commences on 1 April each year.

2. The application is dated 10 April 2013.

3. The Applicant withdrew his application in respect of the budget for 2013 on the basis that once the actual costs are known if there are any unresolved issues he may make a fresh application to the Tribunal.

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

The hearing

5. The Applicant appeared in person and the Respondent was represented by Mr B Maltz of counsel who called Mr C Showell, the Maintenance Contract Team Leader and Mr S Gallagher Revenue Services Senior Technical Officer both of South Essex Homes Limited as witnesses.

6. At the commencement of the hearing Mr Maltz advised the tribunal that the applicant had withdrawn an earlier application to the tribunal as part of the settlement of a complaint relating to 2010, the year when the work to the roof had taken place. The tribunal was provided with copies of correspondence regarding the complaint. The tribunal was satisfied that the "complaint" works were not those referred to in the application.

The background

7. The flat is situated on the ground floor of a 2 storey block of four flats, each with their own garden within a development of 2 storey purpose built blocks of flats and houses constructed in the 1950's. The Tribunal

inspected the exterior of the block on the morning of the hearing. It was raining lightly at the time of the inspection and the tribunal noted that the front gutter was leaking.

8. The lease which is dated 27 February 1989 is for a term of 125 years from 27 February 1989. By clause 3 (A) the Lessee covenanted with the Lessor to *"Pay such annual sum.....as representing the due proportion of the reasonably estimated amount required to cover the costs and expenses incurred by the Lessor in carrying out the obligations or functions contained in or referred to in this clause and clauses 4 and 6 ..... and the Eighth Schedule ..... to be payable annually in advance on the days for payment of rent hereunder"*. The due proportion payable in respect of the subject premises is 24.12% of the total sum expended.

9. Clause 6(A) provides that the Lessor will manage the Property in a proper and reasonable manner and enables the Lessor to employ managing agents to undertake its management work.

10. The Eighth Schedule requires the Lessor to "*maintain the main structure of the Property... including all roofs and chimneys and every part of the Property above the level of the top floor ceilings....*"
11. Day to day management is undertaken by South Essex Homes on behalf of the Lessor.

The issues

12. By the beginning of the hearing it had been accepted by the Applicant that he had received a refund in relation to the cost of caretaking/cleaning which had been incorrectly charged to the service charge account for 2012.

13. Mr Maltz confirmed that the roofing works were in fact carried out in 2010. The parties agreed that the tribunal should open the 2010 service charge account to deal with the dispute.

14. While looking at the service charge accounts and related invoices for the 2010 works it transpired that a further item of double counting in the sum of £59.50 had been entered in the account instead of the invoiced sum of £29.75. Although this sum did not form part of the Application before the tribunal Mr Maltz took instructions and confirmed that £29.75 would be credited back to the service charge account.

15. The Applicant accepted that S20 consultation was not required because the costs of the works fell below the S20 threshold.

16. 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.

Roof works

17. The works had been described on the works order and invoice under the heading "relining roof". Subsequently the works were described as "realigning gutters".

18. Mr Pepper said that he was not convinced that the works had been carried out. He queried how the works had been completed, no scaffolding had been erected. He thought some work had been carried out to the gutter at the rear but it would not be possible to use a cherry picker at the rear. Due to health reasons he did not leave his flat for periods of a whole day and he had seen no evidence of the work being carried out nor had he been advised at any time that the work was to be carried out. He thought that the gutter had been cleaned twice in 2010. Under cross-examination he said that he did not accept the contents of a letter from Mr C Showell dated 24 February 2012 in which it was stated that the works were "*to repair and realign the gutters to the correct falls.... Our contractor confirms that all work at height is undertaken in accordance with their safe working practices using tower scaffolds or easy deck platforms.*"...

19. Mr Showell confirmed that no inspection of the gutters had been carried out after completion of the works because it was South Essex Homes' policy to inspect a random 10 % of works undertaken. He had inspected the gutters in July 2013 and as stated in his report found the gutters to be clean and evidence of brackets having been renewed in the last 4 years. In his report he stated "In accordance with the work order description it is my opinion that the work has been undertaken to clear and realign these gutters ..." Mr Showell explained that the contractor preferred to use a platform on a collapsible support for gutter repairs although he agreed that it would not have been possible to use this method on all sides of this building. He advised that no appointment would have been made prior to the works being carried out because the works were to the whole block and internal access was not required.

The Tribunal's decision

20. The Tribunal determines that the charge of £325.72 for gutter repairs was not reasonably incurred and therefore not payable.

Reasons for the Tribunal's decision

21. The Tribunal is not satisfied that sufficient evidence was produced to confirm that the works had actually been carried out. The original documents refer to relining the roof which both parties agree was not done. This description was not corrected on the works order or invoice. The Respondent was unable to confirm the actual method of working. The parties agree that no appointment was made in relation to the

works although it would have been necessary to gain access to the Applicant's garden, the Applicant and his neighbours did not see the works being undertaken. On the balance of probabilities the tribunal is not satisfied that the work was undertaken and noted that the gutter was leaking at the time of its inspection.

Management fees

22. Mr Pepper said that there was a lack of communication, repairs were not dealt with promptly and referred to complaints he had raised in the past. He confirmed that there were no outstanding repairs at present. He was concerned that there had been a problem with vermin living between his ceiling and the floor of the flat above. He said bait had been put down; it was a health and safety matter. He had not heard the vermin for several weeks but the problem has been going on since 2011.

23. Mr Gallagher explained that a pest control contractor had visited the site on a number of occasions prior to 11 October 2011. However the tenant at No.197, above the subject flat, had been unwilling to allow access to deal with the rodent problem until April 2013 when the specialist firm had put down bait. They had made further calls in June and July 2013 and left bait with the Applicant. He was of the opinion that the block had been properly managed.

24. He advised the tribunal of the refunds made in respect of errors which had been pointed out e.g. caretaking and cleaning costs.

The Tribunal's decision

25. The tribunal determines that the management fees of for 2011 and 2012 are reasonable, properly incurred and payable.

Reasons for the Tribunal's Decision

26. The tribunal accepts that the standard of management is not high particularly in relation to communication, as evidenced by the correspondence in the bundle and the evidence at the hearing. It noted that the paperwork was not easy to follow, not all documents were dated, amended invoices were not described as such, and even at the hearing another example of double counting had come to light. However the management fees are at the lower level of those found in the Southend area even where services are minimal consequently the tribunal determined that no reduction should be made to the fees charged.

Section 20(c) application

27. Mr Maltz said that although the costs relating to the hearing would be added to the service charge account his client would bear approximately 50% because only 2 of the 4 flats were subject to long

leases. He said that the tribunal had the power to use its discretion to award only a proportion of the costs. He handed in a copy of Wales and West Housing Association Limited v Sharon Paine in support of his submissions that his client had done the best they could and were only able deal with matters set out in the applicant's statement of case. He agreed in response to a question that this tribunal had not deviated from those matters raised by the Applicant.

28. Mr Pepper said he was happy for the tribunal to make a decision based on what it had heard.

The Tribunal's decision

29. Accordingly, the Tribunal determines that it is just and equitable that the costs incurred by the Respondent in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

Reasons for the Tribunal's decision

30. The Tribunal has considered the conduct of the parties in dealing with this application both prior to and at the hearing and is of the opinion that the applicant had no choice but to make the application in view of the dispute regarding the works of maintenance and repair and the ongoing, at the time of the application, problem with vermin.

Chairman: _____

Evelyn Flint

Date: 4 September 2013

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 20B
(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.