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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AM/LSC/2013/0693

Property : Flat 3, 1a Croston Street, London
E8 4PQ

Applicant : Places for People

Representative : Andy Rose (Home Ownership
Services Manager)

Respondent : Miss Emily Butler

Representative : Legal Advice Centre

Type of Application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Mr L Rahman (Barrister)
Mr C Gowman BSc MCIEH MCMi
Mrs J Hawkins

**Date and venue of
Hearing** : 6.2.14
10 Alfred Place, London WC1E 7LR

Date of Decision : 25.3.14

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £2,242.23 is payable by the Respondent in respect of works to the roof.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (4) This matter should now be referred back to the Clerkenwell and Shoreditch County Court.

The application

1. Following a transfer of the Applicants case from Clerkenwell and Shoreditch County Court this Tribunal is required to make a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether the sum of £2,242.23 is payable by the Respondent in respect of works to the roof.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. In attendance on behalf of the Applicant were Ms W Botterill (Housing Services Manager), Mr A Rose (Home Ownership Services Manager), Ms S Watkins (Contract Delivery Manager), and Mr M Barrett (Asset Management Surveyor). The Respondent attended and was represented by Ms A Buchanan and Mr Z Shand (Legal Advice Centre). Mr J Addison also gave evidence on behalf of the Respondent.

The background

4. The property which is the subject of this application is a top floor flat comprising two bedrooms, bathroom, kitchen, and a living room. There are nine flats in total, with three flats on the top floor. The Respondent and the owners of the two other top floor flats purchased the leasehold interest in their respective properties in April 2008. In total, five of the nine flats are owned by leaseholders.
5. The Tribunal did not consider an inspection was necessary nor would it have been proportionate to the issues in dispute. The Tribunal were

provided with photographs and a detailed description of the affected area.

6. The Respondent 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 specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. The Respondent stated at the start of the hearing that she was not liable to pay for the roof works as the Applicant had given an undertaking in March 2008 that it would deal with outstanding remedial repairs in relation to the roof, within 28 days of completion of the sale, and would not include the cost in the service charge (letter dated 31.3.2008 at page 219 of the bundle). The Respondent stated the works carried out in 2011 were part of an on-going process of remedying the damp issue concerning the roof. In the alternative and without prejudice to the Respondents first argument, the Respondent stated the charge was not reasonably incurred and the sum demanded was not reasonable as the Applicant had failed to properly investigate the cause of the damp issue before commissioning the work and the works carried out by the Applicant failed to remedy the damp issue.
8. The Applicant stated that it had prepared its case on the basis that the issue was whether the costs were reasonable and whether the works were done to a reasonable standard. The Applicant stated it had carried out patch repairs as required under the undertaking, the undertaking did not specify exactly what works were to be carried out, and the undertaking was superseded by a further signed agreement between the parties in August 2011 (agreement dated 2.8.2011, page 157 of the bundle). The Applicant stated if the outcome of the hearing before the Tribunal was dependent upon the undertaking, then it would need to instruct Solicitors, thereby necessitating the hearing to be adjourned to another date.
9. The Tribunal briefly adjourned the hearing to consider whether to allow the Respondent to rely upon the undertaking.
10. The Tribunal noted that a lot had occurred between the undertaking and the agreement.
11. The Tribunal noted the agreement was in relation to the relevant roof works and set out the basis upon which the contribution to be made by each flat was calculated. Under the agreement, the Applicant agreed to pay 50% of the total costs of the roof works. The Respondent stated at the hearing that she did not challenge the calculation. The agreement stated *"If accepted the offer will constitute full and final settlement of*

any and all actions, claims, rights, demands and set-offs whether or not presently known to the parties or to the law, and whether in law or equity, the leaseholders or any of them ever had, may have or hereafter can, shall or may have against the Places for People Group (whether past, present or future and whether actual or contingent) arising out of or connected with the repair of the roof and the related matters the subject of our recent correspondence ("the Works"). The settlement will relate to all claims relating to the Works whether arising under the Sale Agreements relating to the properties, any statements made by Pfp relating to the sale of the properties, the leases of the properties or otherwise".

12. The Tribunal noted the Respondent did not raise the issue of the undertaking in her defence at the County Court or at the pre-trial review which took place on 24.10.13. The Tribunal noted the Respondent stated in her statement in relation to the County Court proceedings, dated 28.8.13, that she was willing to pay her contribution as previously "agreed" once the works were completed. The Tribunal found this consistent with the issues identified by the parties at the pre-trial review on 24.10.13, namely, whether the date for the payment of the roof works had occurred and if it had, the reasonableness of the amount claimed in relation to the quality of the work. The Tribunal noted the Respondent had specifically agreed at the pre trial review that there was no dispute as to whether the costs of the works were payable under the lease. Had the issue of the undertaking been relevant, the Tribunal would have expected the Respondent to have stated this at the pre-trial review when asked whether the charge was payable under the lease or not. The Tribunal noted the Respondent was represented by Legal Advice Centre at the pre-trial review.
13. In the circumstances, the Tribunal concluded, having considered the overriding objective to deal with cases fairly and justly, to not allow the Respondent to raise the issue of the undertaking, which would have resulted in the hearing having to be adjourned to another date. The issues had been identified clearly during the County Court proceedings and at the pre-trial review, when the Respondent was legally represented. The undertaking was not considered to be of significance and appears to have been superseded by the subsequent agreement, as confirmed by the Respondents statement dated 28.8.13, that she was willing to pay her contribution as previously "agreed" once the works were completed.
14. The parties identified the relevant issues to be determined by the Tribunal as follows:
 - (i) Whether the costs were reasonably incurred.
 - (ii) Whether the works were done to a reasonable standard.

- (iii) Whether the date for payment of the cost of the roof works had occurred.

The Applicants case

15. The Applicant states PH Warr (Consultants) were contracted to replace the roof. The work was completed on 2.12.11 by a roofing contractor (GWS) under the management of PH Warr (page 136). On 29.4.12 the Respondent reported there was water ingress to the ceiling around the patio doors. An appointment was made to inspect the water ingress on 1.5.12. In a letter dated 17.5.12 (appendix 5) GWS stated they did not feel the leak was in any way associated with a roof leak. They stated that due to the heavy and prolonged recent rain, there was water ingress through the brickwork either through a lack of efficient DPC to the high level copings or through the mid-level copings partially set into the brickwork. GWS proposed removal of the high level copings and installation of a DPC and at low level, installation of lead capping to the projecting cornice.
16. The roof was surveyed by PH Warr on 29.5.12 and the Respondent was told on 8.6.12 that further works would be needed to the coping stones and parapet walls at the rear of the premises (appendix 6).
17. In an email dated 30.8.12 (appendix 7), GWS confirmed that on closer inspection there was already DPC in place underneath the copings, therefore there was no need to lift and re-bed the copings. However, they installed lead capping to the cornice and carried out re-pointing to the brickwork in the area that was deemed to be missing or defective. The work was completed on 31.8.12.
18. On 22.11.12 the Respondent informed the Applicant there was still a leak.
19. On 13.2.13 a water test was undertaken by GWS on the roof and the rear parapet wall above the Respondents flat. Also in attendance were PH Warr and Mr Barrett. The roof and parapet wall were flooded. The result showed that only the flooding of the parapet wall resulted in droplets of water appearing to the underside of the soffit to the patio doors. Although there was no damp to the ceiling of the living room, minor mastic defects to the roof cover were identified, which did not contribute to the water ingress to the patio door area, and subsequently rectified on 18.2.13.
20. The water test identified additional works that were required to deal with the defects to the parapet wall which included the removal of the coping stones to the parapet wall, renewal of the existing DPC, re-bedding of the coping stones, re-pointing to either side of the patio

doors, and removal of mastic to the weep holes above the patio doors (appendix 9). The additional works were undertaken on 17.5.13.

21. After the completion of the additional works Mr Barrett continued to monitor the soffit to the patio doors. He visited the property on many occasions. There continued to be moisture in the area of the soffit.
22. A dye test was undertaken on 30.10.13 to the flat roof of the Respondents property to confirm the roof was "fit for purpose" and to provide evidence to the Respondent that the condition of the roof was not responsible for the continuing water ingress (appendix 13). Since the completion of the dye test there have not been any reports of dye appearing to the underside of the ceiling to the Respondents flat.
23. On 1.11.13 a clear water test was undertaken to the rear wall to the Respondents flat. During the test Mr Barrett observed there were no water droplets in the soffit area.
24. Mr Barrett visited the Respondents flat on 8.11.13 after recent rainfall. The soffit to the patio door showed evidence of moisture and further water ingress.
25. Mr Barrett stated at the hearing that in December 2013 a cavity tray had been installed above the lintel to take the moisture out. He subsequently visited the property on 16.1.14 to inspect the progress of the repairs. He noted a damp patch in the soffit area measuring about a metre across and three quarters of the soffit area. He states he took a moisture reading above the patio door and the initial meter reading was 27. After scraping the underside, the meter reading was 24.
26. Mr Barrett stated that in his view the moisture was due to frosting on the inside of the patio doors, caused by inadequate ventilation and resulting condensation. He noticed a de-humidifier in the room with the rear of the unit directed at the patio doors. He did not notice evidence of moulding or condensation on the ceiling. He noted the heating was not on. He did not take the room temperature. He stated the situation was being monitored. He stated he had very limited knowledge of dealing with condensation, had limited experience of dealing with damp works, and was simply relying on the meter readings and taking logical steps. His academic qualifications were Bricklaying NVQ 1 and Bachelor of Science Degree in Surveying (2:1), completed in 2008.
27. The Applicant stated no other tenants have raised any problems with the roof works or any ongoing issues with dampness.

28. The Applicant will review the costs now being incurred with the additional works and then decide whether to recover the additional costs by way of a service charge.

The Respondents case

29. The Respondent stated at the hearing it was obvious the roof needed replacing as it was in a state of disrepair. Photos 7, 8, and 9 on page 93 and both the photos on page 119 show the underside of the flat roof inside the Respondents flat.
30. The Respondent stated at the hearing that prior to the works to the roof in 2011, there were patches of dampness in all the rooms at various points of the ceiling and above the patio door. Since completion of the roof works, all the dampness had been resolved except for the dampness on the inside of the flat above the patio door. The plasterboard has been removed and there are ongoing investigations by the Applicant. The bottom photograph on page 60 of the bundle shows the affected area inside the flat. Photo 5 on page 93 of the bundle shows the patio door from the outside of the flat.
31. The Respondent disagreed with Mr Barrett's evidence in relation to the recent meter readings. The Respondent stated the meter reading 2-3 weeks ago was very high, "in the red and in the 30's". The Respondent did not think it was due to condensation and stated the de-humidifier was being used due to the humidity in the room. The Respondent stated that she had recently noticed less dripping by the patio doors. The Respondent then clarified that the affected area does not actually have dripping water and it would not even be possible to tell there was damp just by looking at the affected area. However, it felt damp when touched and the meter readings also indicated increased moisture levels.
32. The Respondent stated that once all the works had been concluded and there was no further water ingress into her flat, she would be happy to pay her contribution. She had been pushing for a specialist firm to be brought in as she was not happy with the level of professionalism.
33. The Respondent has found the ongoing damp issue very upsetting and stressful and has seen a Counsellor for a number of issues, one of which was the damp issue.

Were the costs reasonably incurred

34. The Respondent states the Applicant failed to properly investigate the cause of the damp and should have consulted roofing / damp specialists before commissioning the works.

35. The Tribunal finds it was reasonable for the Applicant to assume the roof needed to be replaced given there was dampness throughout the ceiling below the flat roof, as evidenced by the various photographs the Tribunal has been referred to.
36. The Respondent also accepted the roof was in a poor state and needed to be replaced as the previous patch work had not resolved the damp issue.
37. The Applicant had the roof surveyed by PH Warr who also recommended the roof needed replacement.
38. The Applicant consulted the lessees on the issue, went through the relevant statutory consultation process, and had the agreement of all the lessees as evidenced by the agreement dated 2.8.2011.
39. The Respondent accepts that prior to the works to the roof in 2011, there were patches of dampness in all the rooms at various points of the ceiling and above the patio door. Since completion of the roof works, all the dampness had been resolved except for the dampness on the inside of the flat above the patio door.
40. The Tribunal finds the works to the roof was necessary. The roof work clearly resolved most of the damp issue. Therefore, the costs were reasonably incurred.
41. The Respondent did not argue that the costs were excessive and did not provide any alternative prices. The Tribunal note the Applicant had obtained two quotes (approximately £60,000.00 and £38,000.00) and had opted for the cheaper of the two quotes and had properly consulted the lessees on the issue. The Tribunal finds the overall cost reasonable.

Were the works done to a reasonable standard

42. The Respondent states the work was not done to a reasonable standard as there is continuing dampness.
43. The Tribunal finds the work to the roof and the subsequent work to the parapets, all part of the specified works, were eventually completed. The works were supervised by PH Warr and a statement of final account has been provided (page 131). The water test and the subsequent dye test confirm there are no leaks from the new roof. All the damp except the dampness on the inside of the flat above the patio door has been resolved. None of the other lessees have raised problems with the roof works or any ongoing issues with dampness.

44. The Tribunal are satisfied, on balance, the work to the roof is of a reasonable standard. Given the various works and tests that have been done, the Tribunal are satisfied the continuing water ingress is not linked to the work done to the roof and the parapet wall.
45. The Tribunal finds the Applicant has taken reasonable steps to investigate and monitor the continuing damp issue and has undertaken additional works to deal with the localised problem.
46. The Tribunal notes the subsequent work done to the parapet wall, as set out in the letter dated 17.5.12 (page 50 of the bundle), should have been part of the original major works, as set out at paragraph 3.2.12 of the schedule of works (page 40 of the bundle). The Respondent has not been charged for that additional work and it is not relevant to the issues before this Tribunal. However, the Respondent may wish to query this particular charge if and when the Applicant seeks to recover the cost by way of a service charge.

Are the costs for the roof work now payable

47. The Respondent states that once all the works have been concluded and there is no further water ingress into her flat, she would be happy to pay her contribution.
48. The Tribunal finds the specified roof works have been completed satisfactorily and the final accounts have been settled. The Respondent has benefitted from the works done to the roof as all the dampness has been resolved except for the dampness on the inside of the flat above the patio door. The continuing problem with the damp above the patio door is not linked to the roof work and is being investigated. Therefore, the costs for the roof works are now payable.

Application under s.20C and refund of fees

49. The Respondent 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 the Applicant acted reasonably in connection with the proceedings and was successful on all the disputed issues, therefore the Tribunal decline to make an order under section 20C.

The next steps

50. This matter should now be returned to the Clerkenwell and Shoreditch County Court.

Name: Mr L Rahman

Date: 25.3.14

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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 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 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 that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.