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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMC/LSC/2017/0068**
Property	:	**4, George Street, Reading RG1 7NT**
Applicants	:	**Richard James Williams and Mr Peter and Mrs Fiona Bullock**
Representative	:	**In person**
Respondent	:	**Crestcourt Properties Limited**
Representative	:	
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs S F Redmond BSc Econ MRICS** **Mr O N Miller BSc**
Date and venue of Hearing	:	**The Tribunal Hearing Rooms, Friar Street, Reading on 17th October 2017**
Date of Decision	:	**20th October 2017**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(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 Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2015/16, 2016/17 and the estimated charges for 2017/18.

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

The hearing

3. The Applicants appeared in person but the Respondent did not attend. This was notwithstanding that the dates for which Mr Brotherton had indicated unavailability did not clash with the hearing date. An attempt to contact the respondent by telephone before the hearing proved fruitless. A communication was sent after the hearing had been completed indicated that the Respondent had erroneously thought the hearing was on 19th October and apologised for non-attendance.

The background

4. The property which is the subject of this application is a four storey terraced house containing four flats. Mr Williams occupies the basement flat and Mr and Mrs Bullock own the ground floor flat.

5. We inspected the property before the hearing in the presence of the Applicants. The respondent did not attend the inspection. We had the opportunity of inspecting the works of repair to the front pillar, the rear roofing works and the garden area. Internally we noted that there was a hole in the wall in the common hallway and scuff marks. The door entry system did not appear to be working. Externally amongst other matters we noted that the guttering at roof level at the front was not properly finished and there was a gap above the front door to the property. We did not inspect the rear of the property from outside as the rear garden could be clearly viewed from an upper window on the common staircase.

6. The Applicants hold a long leases of their respective flats which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for 2015/16 relating to gardening, roof repair work and repair work to the pillar at the front boundary and management fees

   (ii) For the following year challenges were made to gardening, Fire Risk compliance and management fees

   (iii) The missing budget costs for 2017/18

   (iv) poor management, particularly lack of involvement of the Respondent

8. A Scott Schedule had been completed by both parties. This revealed that it was only the gardening for 2015/16, the roof repairs and the repairs to the front pillar which remained in issue. The Respondent had agreed to reduce the management fee for all years in dispute to £100 plus VAT which was accepted by the Applicants. It was still felt by the Applicants that the Respondent did not, and indeed appeared to refuse to, engage with them as evidenced by the non-attendance at the inspection and the hearing.

9. For the year 2016/17 we were told that no money had been spent on gardening or Fire Risk Compliance and the only items appearing on the accounts, which had not been audited, related to insurance, common parts electricity and management. As we indicated above the management fee was reduced to £100 plus VAT per flat. The other items of expenditure for this year were accepted by the Applicants.

10. No budget had been produced for 2017/18 and accordingly there was nothing we could consider.

11. 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.

Gardening in the sum of £540

12. In the bundle provided to us we had a copy of an invoice from M & R Services dated 5th August 2015 and photographs showing the garden before and after the works. The garden consists of a paved area which can only be accessed by the residents of 4 George Street from a rear accessway. There does not appear to be any direct access to this area from the property itself. The photographs show an overgrown area and the area after brambles and other vegetation had been cleared. The invoice relates to clearing the rear garden and spraying with weed killer. The charge is £450 plus VAT.

13. The Applicants' complaint is that the cost is excessive and it is thought that only two hours was spent. Further the works is carried out only every two years, it would seem. Some uncorroborated comments were made by Mr Bullock that the garden at another property in George Street owned by the Respondent had been treated in only two hours, he thought on the same day. Further he and his wife owned other properties in Reading and the charge being made was high when compared to those. No alternative quotes were supplied.

14. The directions say at paragraph (1) that *the Applicants must provide some evidence that service charges or administration charges are unreasonable.*

The tribunal's decision

15. We determine that the amount payable in respect of the gardening is £540.

Reasons for the tribunal's decision

16. We had the opportunity of seeing the garden area, which had, we were told, just been cleared. It is a paved area with no obvious planting. The garden of the neighbouring property is over grown and a large quantity of bricks were dumped in the vicinity. We have seen photographs showing substantial growth from what would appear to be, amongst other vegetation, brambles. The Respondent has an obligation to maintain the garden area, which is being, only in part it must be said, fulfilled. Having considered the papers before us and all that was said, and the lack of alternative costings we find that the sum claimed is reasonable and payable.

Roof repair £1,854

17. The issue on this case was the lack of consultation by the Respondent before the works were undertaken. The Applicants did not dispute the sum claimed, nor the quality of the work. Mr Williams did express concern that the works were not required as he was not aware of water ingress to his flat, which sits immediately below the roof in question.

Indeed he told us that it was not until July 2016 he discovered roofing works had been undertaken.

18. The Respondent admits that there was no consultation under the provisions of section 20 of the 1985 Act. The response is that there was no consultation because of the urgency, relating it seems to Mr Williams' proposed sale of his flat and that the works were fairly costed, there being another quote from M & R Services. The works were undertaken by R S Aston Builders

The tribunal's decision

19. We determine that the amount payable in respect of the roof replacement is limited to £250 for each applicant under the provisions of s20 of the 1985 Act

Reasons for the tribunal's decision

20. The Respondent, despite hinting at it in correspondence, has not made an application for dispensation under s20ZA of the 1985 Act. There is no evidence before us that the works were required as a matter of urgency and on the face of it therefore, no reasons why consultation could not have taken place. In the absence of an application seeking dispensation we limit the costs as above.

Boundary wall pillar repair £275.52

21. The cost of this work is set out in an invoice from R S Aston dated 4th March 2016. It appears that the pillar had been damaged by an individual and a somewhat 'Heath Robinsonish' repair effected involving the positioning of a metal channel to support the pillar. It does not seem that the pillar was dismantled and rebuilt.

22. The Applicants say that the contractor had to borrow tools and material from a neighbour, although no evidence is adduced to support this allegation. It would seem, from what was said by Mr Bullock that the labour costs of £190 were not excessive.

The tribunal's decision

23. We determine that the sum claimed of £275.52 is payable

Reasons for the tribunal's decision

24. The cost involved is not great and there is no suggestion that the work has not been carried out. The allegation that the builder borrowed tools

and materials from next door is unsubstantiated and we therefore allow the sum claimed.

General

25. We record that the management fees for the years 2015/16 and 2016/17 are agreed at £100 plus VAT for each Applicant. We also note that the expenses for 2016/17 are much less than appear to have been budgeted for. The Respondent will need to be able to show where any overpaid service charge monies has been placed and what it is intended the money will be spent on. We heard that there is an apparent requirement for fire safety works, which may well exceed the consultation level and invoke the requirements of s20 of the 1985 Act. We note that the lease makes clear provision for the method of administering service charges and that there is little said or demonstrated by the Respondent indicating good practice in accordance with professional codes.

S20C application

26. In the application form the Applicants applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the we nonetheless determine 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.

Name: Tribunal Judge Dutton **Date:** 20th October 2017

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 or qualifying long term agreement, 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.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.