9532

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOKC/LSC/2013/0101**
Property	:	**Flats 1-3 and 5-7, 7 Icknield Street, Dunstable, LU6 3AD**
Applicant	:	**H & D Property Services Limited**
Representative	:	**Mr Stone of Grangeview Management Limited**
Respondent	:	**Lessees of Flats 1-3 and 5-7 as per the attached schedule**
Representative	:	**None**
Type of Application	:	**Liability to pay service charges under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Mr A A Dutton (Judge)** **Mr D D Banfield FRICS** **Mr A K Kapur**
Date and venue of Hearing	:	**Court 5 Luton Magistrates Court, Stewart Street, Luton** **19th November 2013**
Date of Decision	:	**10th December 2013**

DECISION

DECISION

The Tribunal makes the determinations as set out in the findings section of these reasons.

The Tribunal declines to make an order under Section 20C of the Landlord and Tenant Act 1985 for the reasons set out below.

The Tribunal orders the refund of the application and hearing fee to the Applicant in the sum of £630 to be payable in equal shares by each of the Respondent leaseholders within 28 days.

BACKGROUND

1. This application was made by H & D Property Services Limited by its managing agents Grangeview Management Limited (GML) on 24th July 2013. The application sought a determination from us in respect of the service charges ending December 2009, 2010, 2011, 2012 and the budgeted figure to 24th December 2013. In addition also, the Applicants sought approval of the anticipated costs relating to the refurbishment of the property for which notices under Section 20 of the Landlord and Tenant Act 1985 (the Act) had purportedly been served. Directions were issued on 12th August 2013 requiring the Respondents to, either as a group or individually, set out the basis upon which they were declining the pay the monies that the Applicant says were due.

2. In the bundle provided for the hearing we had a statement of facts which set out the brief history of the property. GML had been appointed at the end of 2008 and at that time it was clear that the property required redecoration and repairs. A surveyor was appointed in 2009 to prepare a specification for tenders to be obtained. It seems that in 2004 the landlord had previously tried to instigate refurbishment works but had not been successful. Matters had also been put on hold because in 2009 one of the lessees, a Mr Kane, lessee of Flat 6, indicated that he would like to see if it would be possible to set up a Right to Manage company and accordingly little was done in respect of the property until 2012 when it became apparent that Mr Kane had not been successful. On 18th October 2012 section 20 notices had been issued but despite requests for contributions from the lessees only the lessee of Flat 4 had offered to make any payment, she having taken legal advice and been told that it was reasonable to do so. It appears, however, that the monies she had paid have been reimbursed to her pending the outcome of these proceedings.

3. Insofar as the service charges for the years outlined above are concerned, it appears that GML were unaware of the reasons for the Respondents' declining to pay.

4. Also in the bundles were a number of responses made by individual leaseholders to whom the Applicant had responded and we have noted all that was said. In addition we were provided with a copy of the letter of 2nd July 2012 in which Central Bedfordshire Council warned the freeholder that the property is in a poor state and that they are considering serving notices requiring works to be undertaken. Those works appeared to be window joinery to the front elevation

and the roof covering to the rear elevation as well as the chimney. Action under the letter from the council has been put on hold whilst the Applicant investigated the possibility of works being undertaken voluntarily, hence the specification, tendering and issue of s20 notices in 2012.

5. A specification was prepared by True Associates on 2nd October 2012 which went out to tender, the lowest tender being from TPW Building Services at a price of £50,225 plus VAT. A copy of the tender and specification was in the bundle. We also had sight of a specification of works prepared by Michael Scott Associates in 2004.

6. In addition to above, the accounts for each of the years in dispute was included, as was a copy of a sample lease, the terms of which we were told were the same for each property.

INSPECTION

7. Prior to the hearing we inspected the subject property in the presence of a number of the leaseholders and Mr Stone. The property comprises a three/four storey, double-fronted, end of terrace house built around the early to mid 19th century. The front has a basement and three storeys above with bay windows to the ground and first floor. At the top floor to the front and to most floors to the rear were UPVC windows which had been installed contrary to the property's Grade II Listed Building status. The rear has three storeys with small single storey mono pitched roofed extensions to both sides.

8. The roof which was of slate construction and the front slope was uneven but there was no obvious missing or slipped tiles. The same could not be said for the rear where there was evidence of a number of broken and missing slates. The windows to the front of the property were in very poor order and needed attention. There was cracked rendering to the right hand flank wall when looking at the property from the road and also there appeared to be damp above the single mono-pitched roof extension to the rear of the property to the left hand side when looking at the property from the rear car park. Externally the property was in a neglected state. The front door had no entry phone and loose glass. The common parts were in poor decorative order, the carpeting was grubby and worn. There was a general feel of neglect affecting the property.

HEARING

9. At the hearing on 19th November 2013 Mr Stone represented the landlord and a number of leaseholders attended. They were Miss Jocelyn Cussack who owns Flats 1 and 3, Russ Henderson who owns Flat 2, Claire Smith who owns Flat 5 and her partner Mr Bandy, Dean Kane who owns Flat 6 and his partner Miss Rowles. From a review of their statements it appears that insofar as the annual service charges were concerned, there appeared to be a misunderstanding in respect of the monies that were paid as against sums of monies that were required in respect of the major works. There was a dispute with regard to the management fees as it was essentially said there was no management. The more so it was said that during the years that Mr Kane had attempted to take over the management by setting up a right to buy company, the managing agents themselves had done very

little other to insure the property, collect ground rent and prepare statements for the recovery of such service charge payments as there, were which is essentially the insurance. The residents appeared to be unable to understand that the annual service charges paid for matters incurred on an annual basis and the costs that were now being sought in the connection with the major works had no particular relationship. Mr Henderson told us that he had paid for some repair works himself, to the windows, but accepted that there had been a credit note although he was not quite sure how that had been applied. Claire Smith complained that three keys had been cut but no invoice had been supplied although this was corrected by Mr Stone at the hearing who told us that three keys had been cut for the freeholders to enable proper management of the property. There was also a complaint that a roof repair in 2009 where the sum of £322 had been claimed, that this should have been dealt with by insurance. This appeared to relate to the repair following the falling chimney pot and we were told that the policy excess was in itself £250.

10. There appears also to have been some confusion caused to the leaseholders by the fact that when monies were paid, the managing agents did not necessarily allocate those to the appropriate subject matter. For example, ground rent appears to have been allocated against service charge liabilities, which has resulted in lessees having demands for non-payment of ground rent. The same may well have occurred in relation to payments made for insurance, which most leaseholders appear to have settled together with their ground rent.

11. Mr Stone told us that he had offered to speak to the lessees to explain the accounts and that the lease made no provision for reserve fund payments. The service charge accounts were simple he said and nobody was being asked to pay for something that had not been supplied. The management charge in the earlier years was £165 plus VAT which he thought was low because to manage a building of this nature would normally be in the region of £200 plus VAT. He was not aware, that until he came to these proceedings, of any particular challenge to the management costs.

12. Insofar as the management was concerned, he conceded that during the years that Mr Kane had tried to acquire the management, the requirements of the freeholder had been put on the back burner. He told us, however, that he had during that period dealt with insurance, collected the ground rent, collected arrears and produced accounts. In addition also, there had been an electrical survey carried out and some repairs. There was a considerable amount of correspondence dealing with the refurbishment and neglect of the building and he for his part fully accepted that the property needed work.

13. On the question of the major works, there was no dispute between the parties that works were required. The Respondent leaseholders' concerns, however, were that the work had been exacerbated by the lack of attention to the building by the freeholder. It was suggested that the freeholder should therefore bear a proportion of the costs of the refurbishment works. Mr Stone said that there was possibility of splitting the works perhaps dealing with the interior at a later date but that the exterior works needed to be dealt with in one because of the scaffolding requirements. He told us that the Lessees had known about the works since 2009 when preliminary figures were made known and he was surprised that

the leaseholders had not put money aside. He said that if they wished to obtain advances from their mortgagees he would be more than happy to assist.

14. There appeared to be no challenge to the specification of the works although Mr Kane said at the hearing that he wanted more time to go through the specification, notwithstanding that he had had the bundle for ample time to have done so. It was confirmed also that there was no connection between those contractors who had tendered and the freeholder and GML.

15. Mr Stone told us that the freeholder had owned the property for a number of years and indeed was the owner of more than 50 other freeholds. It was put to him that the initial notice served under the Section 20 procedures did not provide the necessary 30 days, but he said that in fact an earlier initial notice had been given in July 2012 and that he would seek to rely on that notwithstanding that the specification in respect of that notice was different.

16. It is right to record that Mr Kane indicated that he would be willing to consider tendering for the job and would be able to do the work at considerably less than that which had been presently quoted. He was told by Mr Stone that it would be perfectly property to provide a quote and that as long as the surveyor agreed that Mr Kane was able and willing to do the works then he could do so.

17. It was also discussed as to whether or not the demands that were in the bundle complied with Section 47 of the Landlord and Tenant Act 1987.

18. In final submissions Mr Stone told us that there was no evidence produced by the leaseholders to show that they were being erroneously charged for any items of annual service. The management fee was charged in accordance with the RICS code and whilst he accepted that little was done when Mr Kane had made his offer to take over the management, nonetheless they had still carried out management tasks. He also felt that insofar as the major works were concerned, the management charge of 5% was in line with other tribunal decisions. He told us that the landlord had been trying to get works done for some time but the leaseholders were unwilling to make contributions. Miss Smith indicated that she had been complaining about the allocation of funds since 2007 but produced no evidence to show that the funds had not been correctly allocated. Mr Stone in his final submission asked for reimbursement of the hearing fee as well as the application fee, because the lessees had not responded to requests for payments. Insofar as the costs of the proceedings were concerned, he confirmed that if a way forward could be found which resulted in the major works being undertaken, he would consider foregoing any costs associated with the hearing today.

THE LAW

19. The law is set out on the attached schedule.

FINDINGS

20. We will deal firstly with the service charge matters on an annual basis. In truth the Respondent's complaints are geared to an allocation issue and the historic neglect of the building. They do not go towards the annual service charge costs. For

example, in the year 2009, the total expenditure for the building was £5,000. This was made up of the insurance which was not challenged, common parts' electricity which was not challenged, some roof repairs, maintenance surveys, the accountant's certificate and management fees. In the following year the annual charge dropped to £3,800 which was largely made up of the insurance premium of over £2,000. The same applied to year ending December 2011 and in 2012, when management was taken on again by GML, there were works of repairs and a reimbursement shown to Mr Henderson in respect of the monies he had spent decorating windows. The budget for the year ending December 2013 showed an allocation for general repairs of £1,200 and health and safety surveys of £300. Mr Stone said that he would be happy for those to be removed from the budgeted figure thus reducing the budgeted sum from £3,375 down to £1,875 payable by the leaseholders. We should also record that although according to the specimen lease that we were shown each flat should contribute one sixth of the costs, it seems that the basement flat, which forms the seventh property, also contributes and the parties have agreed over the years to deal with the service charges on a straight one seventh split. Whether the lease is amended to reflect this position we leave to the parties' discretion.

21. The only item that was challenged each year in the service charges was the management fee. In truth the sum claimed is quite low and the management company GML has had to deal with the insurance, the common parts' electricity and the accounts. We do not think that the management fees for each year are excessive and are therefore recoverable in full. Accordingly our finding is that in respect of the periods in dispute, each year correctly records the sums payable as set out on the annual accountant's report, the sums claimed are reasonable and owing by the leaseholders. Their contributions should, therefore, be settled as quickly as possible and we would give 56 days for that to take place.

22. Insofar as the major works are concerned, we find that the costs being sought are reasonable. There is an issue on the initial notice under Section 20 which we shall return to but a number of companies have been asked to provide a tender, the lowest tender has been taken, the leaseholders were given the opportunity to provide their own contractor and accordingly we are satisfied that the cost of the works at just over £50,000 is commensurate with the costs of the works of repair to the property as we saw at the time of our inspection.

23. Insofar as any historic neglect is concerned, we can understand those leaseholders who may have come to the property in the relatively recent future feeling that they are being asked to pay for costs that should perhaps have been incurred some ten or more years ago. However, most leaseholders have in fact been owners of flats for some time. It seems to us that there is no evidence that the works of repair have increased other than by way of inflation as a result of the neglect that is suggested. We note that the landlord issued a specification in 2004 for the works to be done and by a letter from the landlord's surveyor, True Associates, dated 2nd October 2013, it does not appear that there has been a great increase in costs since 2004. One area where there is perhaps some alteration is the replacement of slash windows where it is suggested it would be appropriate to replace those rather than to carry out a form of repairing operation which could be just as expensive. We also bear in mind the local authority's letter in July of 2012 threatening proceedings as a result of the state of disrepair of this Listed Building. It seems to

us, therefore, that the Respondents have produced no evidence to show that costs of these works have increased as a result of neglect. Indeed the evidence before us tends to show that that is not the case. Furthermore, the terms of the lease require the landlord to carry out the works subject to the leaseholders making the appropriate contributions. Despite requests for payment they have not made the contributions requested. We also suspect that those leaseholders who have bought in the more recent past acquired the property at a price which reflected the state of disrepair.

24. Taking these matters into account we conclude, therefore, that the need for these works is established, the proposed works are reasonable as are the proposed costs. We do flag up the fact that there appears to be an error in the initial notice in that this is dated 18th October 2012 and only gives the recipient until 13th November 2012 to respond, which is clearly not 30 days. This can be put right by serving a revised notice, making an application under Section 20ZA, which would seem to us to be slightly heavy handed or perhaps obtaining the agreement of the leaseholders that this is not an issue. Bearing in mind the recent Supreme Court case of Daejan and Benson it may be difficult for the leaseholders show that they have suffered prejudice as a result of this error.

25. It is to be hoped that Mr Kane feels that he can proceed to carry out these works at what he indicated would be a cost only basis. Hopefully he and the surveyor will be able to make an accord which satisfies the landlords position insofar as repairs are concerned and the matter can progress at a lower price. However, it is for the leaseholders to make funds available so that the landlord can carry out the repairs to this property. If that is not done and the local authority decide to press on with the threatened proceedings, then that will be a different matter and the landlord will have to consider its position at that time. Either way it seems to us that the leaseholders must inevitably bear the cost of these works and accordingly should reach some form of compromise with the landlord as to the method of payment. In the absence of so doing it would be for the landlord to take proceedings to recover the sums on account.

26. We were told by Mr Stone that the terms of the management agreement enabled the recovery of the costs in respect of the attendance before this Tribunal. It is not wholly clear that the lease goes that far. However, it does seem to us that the landlord has by and large been successful in this claim and we are not, therefore, minded to make an order under Section 20C of the Act. This does not prevent the leaseholders from bringing a challenge under Section 27A of the Act if the landlord seeks to recover its costs as a service charge in due course. It is to be hoped, however, that a compromise can be reached. Both sides accept that works are needed to the property. The leaseholders must surely want to preserve their investment and accordingly we would urge all involved to try to work together to enable these works to be undertaken without unnecessary delay.

27. The only other issue we would raise at this stage is whether or not the demands comply with the provisions of Section 47 of the Landlord and Tenant Act 1987. On the documents we have seen they do not appear to disclose the landlord's address for service in accordance with Section 47 of the act. Accordingly further demands should reflect the correct position. This was not an issue raised by the parties prior to the hearing and we do not, therefore, propose to make any findings in

respect of the previous demands. We do however, ask that GML ensure that future demands do comply both with Section 21B of the 1985 Act and Section 47 and 48 of the 1987 Act.

28. The other only matter we need to consider is the reimbursement of the fees that were paid. The application fee was £440 and the hearing fee £190. Given the success of the applicant company we order that those monies should be repaid by the leaseholders and find the proper way forward is that those leaseholders who are Respondents, should each pay one sixth of this cost for each flat owned.

RESPONDENTS
Miss J A Cussack, Flats 1 and 3
Mr R Henderson, Flat 2
Miss C Smith, Flat 5
Mr D Cane, Flat 6
Miss S Hoult, Flat 7

Judge:

A A Dutton

Date: 10th December 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 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.