10425

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY

Case Reference	:	**CHI/29UH/LSC/2014/0057**
Property	:	**Flat 3 Manor Lodge, 25 Manor Road, Folkestone CT20 2SA**
Applicant	:	**Jane Burrell**
Representative	:	**N/A**
Respondents	:	**CG & GI Furneaux**
Representative	:	**Smith Woolley & Perry**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge Lal** **Mr N. Maloney FRICS FIRPM MEWI**
Date of Inspection	:	**1st September 2014**
Date of Decision	:	**14th September 2014**

DECISION

Application

1. On 22nd June 2014 the Applicant applied to the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 (as amended) (the "Act") as to the Applicant's liability to pay service charge and the reasonableness of such service charge. The service charge to be considered by the Tribunal relates to the years 2011-2012 and the item in issue is the Applicant's liability to contribute £1,200 per annum to a reserve fund for the future maintenance and repair (the Applicant uses the phrase "future work works") of the Property.

2. Directions were issued on 27th June 2014. The Directions made it clear that the Application is to be dealt with on the paper track on the basis of written representations without a formal hearing. Neither party has objected to this procedure.

3. In accordance with the Directions, the Respondents have sent to the Applicant and the Tribunal the Respondents' Statement of Case together with the service charge budgets and certificates for the years in question. The Tribunal has considered this documentation together with the Applicant's Statement of Case and the relevant provisions of the lease of the Property.

The Inspection

4. The property is a period house, now converted into self-contained flats, spread over three storeys (including the roof space). The main building is two storey with a pitched roof, covered in slate and with inset dormer windows. The main elevations are constructed of load bearing masonry, with painted render. The windows originally timber have been previously replaced with PVC double glazed units (in the main). There is a single storey addition to the right flank of the property; hard-standing for parking in front of the property and communal gardens at the rear.

5. Access was gained to the interior communal areas with the Applicant and Respondent's agent. There is a large internal lobby and hallway with access to two ground floor flats on either flank. A staircase leads to a large first floor landing where there is access to the Applicant's flat and two others. The floors are carpeted, the walls and ceilings finished with painted plaster and the areas catered for with the "usual" lighting, power and fire alarm systems often found in such converted premises.

The Applicant's Case

6. The Property is held by the Applicant under a long lease dated 9th December 1993 (the "Lease"). The Applicant inherited the leasehold interest in the Property from her mother. The Property is one of five flats. The other four flats are owned and let by the Respondents.

b. the person by 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.

The Tribunal's Decision

14 The Tribunal, on the basis of the evidence before it, the written submissions of the Applicant and the Respondents and exercising its own independent expertise has determined the following in so far as the lease is concerned, namely, Clause 5(5)(j) of the Lease entitles the Respondents to "set aside .....such sums of money as the Lessor shall reasonably require to meet such future costs as the Lessor shall reasonably expect to incur of replacing maintaining and renewing those items which the Lessor has hereby covenanted to replace maintain or renew".

15.This means that the Lease entitles the Respondents to maintain a Reserve Fund for meeting the future costs of maintaining and decorating the building provided that the amount of the contribution from the Applicant is reasonable.

16. Turning to the next matter and that is whether the reserve fund charge is unreasonable. The Applicant has not provided any evidence to show that the contribution of £1,200 is unreasonable other than to say that it is hindering the sale of the Property.

17. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in Plough Investments Ltds v Manchester City Council [1989] 1 EGLR 244 that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease – in this case the Lessor.

18.Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself –in this case, owning four other flats in the building, we are told he does. Ultimately it is for the court or tribunal to do decide on the basis of the evidence before it and exercising its own expertise. In that regard the Tribunal is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it. The Tribunal accepts that the service charge maybe at the higher end of the scale but it can only be considered with reference to the type of premises and the type of upkeep that it would require. The argument that the flat is not selling could equally be that the price is too high for this particular unit.

19. The Tribunal considers that the contribution of £1,200 per annum by the Applicant to the Reserve Fund is not unreasonable given the amount currently

sitting in the Reserve Fund (£16,440) and the projected costs of future work (£20,000 - £25,000) which on the face of it would be reasonable for a building of this type. The Tribunal therefore finds in favour of the Respondents and dismisses this Application

20. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make no order under s.20C of the Landlord and Tenant Act 1985. The Respondents have succeeded in respect of their submissions.

21. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

22. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

23. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S.Lal