



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

Case reference : CHI/40UE/LSC/2013/0108

Property : 41B Bramley Road, Taunton, Somerset TA1 2XJ

Applicants : Mr Andrew Stephen Geoffrey Smith

Respondent : Taunton Deane Borough Council

Type of Application : This is an application for a determination under S27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) as to the Applicant’s liability to pay and/or the reasonableness of the 2013 service charge demanded by the Respondent; and further, a determination under S20C of the Landlord and Tenant Act 1985 that the Tribunal makes and order that any costs incurred by the Respondent in connection with these proceedings shall not be treated as relevant costs to be taken into account in determining the amount of any future service charge payable by him

Tribunal Members : Siobhan Casey : Tribunal Judge
Michael Tildesley OBE : Lawyer Member
Simon Hodges FRICS : Chartered Surveyor

Date and venue of Hearing : 9th January 2014 – Taunton Tribunal Centre,
Blackdown House, Blackbrook Park Avenue,
Taunton, Somerset TA1 2PX .

Date of Decision : 25th February 2014

DECISION

1. This is an application for a determination under S27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") as to the Applicant's liability to pay and/or the reasonableness of the 2013 service charge demanded by the Respondent; and further, a determination under S20C of the Act that the Tribunal makes an order that any costs incurred by the Respondent in connection with these proceedings shall not be treated as relevant costs to be taken into account in determining the amount of any future service charge payable by him.
2. The Applicant challenged the reasonableness of the 2013 service charge costs apportioned to his property known as 41B Bramley Road, Taunton, Somerset (the "Flat"). The Flat forms part of a block owned by the Respondent containing 6 purpose built flats. The Applicant is a leasehold owner within the block of which the Respondent is the freeholder. The original Lease was made between Patricia Anne Vaughan and the Respondent on 1st March 1999. On 29th August 2002 the property was transferred by Patricia Anne Vaughan to the Applicant. The Applicant is responsible for 1/6th of the service charge costs of the block and the Respondent 5/6ths. The sum claimed by the Respondent from the Applicant for his 1/6th share of the roof works was £3,075.50 and for administration management charges £480.05
3. The Application was essentially in two parts; firstly an objection to the payment of the cost of renewal of the roof and then secondly, an objection to the payment for the new administration/management charges. It was not disputed between the Parties that the Lease gave the Respondent authority to make a service charge demand.

The Lease

4. Pursuant to the terms of a Lease dated 1st March 1999 made between the Respondent and Patricia Anne Vaughan, the Respondent had authority to make service charge demands to cover the cost of meeting its obligations under Clauses 3(2), 3(3), 3(4) and 3(5) of the Lease. The services were detailed in the Third Schedule and included an amount in respect of the proper management costs of the Respondent in providing the said services. The Respondent's obligations were set out in Clause 3, as follows:
 - (a) Clause 3(2) To keep in repair the structure and exterior of the Flat and the said building
 - (b) Clause 3(3) To keep in repair any other property over or in respect of which the Tenant has any rights by virtue of the Lease

- (c) Clause 3(4) To ensure so far as practicable that the services set out in the Third Schedule are maintained to a reasonable level and to keep in repair any installation connected with the provision of those services
- (d) Clause 3(5) To insure the property
- (e) The Third Schedule details the services to be provided by the Respondent at the Tenant's cost and include at paragraph 10 "the costs of management of the said building". In the application these management costs have been referred to as administration costs but, for the avoidance of doubt, it was clearly the understanding of both the Applicant and the Respondent that what was actually being referred to was the management fee element of the service charge
- (f) On 29th August 2002 Patricia Anne Vaughan transferred her leasehold interest in the Flat to the Applicant and the Applicant took over the obligation for the service charge costs.

The Relevant Law

- 5. Section 27A (1) of the Act provides that an application may be made to a Leasehold Valuation Tribunal for a determination of whether a service charge is payable and, if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 6. Section 18 of the Act defines a service charge as an amount payable by a Tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the Landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 7. Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) where they are incurred on the provision of services or carrying out of works, only if the works are of a reasonable standard and, in either case, the amount payable is limited accordingly.
- 8. These sections are significant. The Tribunal's powers are derived from statute and under the Act the Tribunal is only able to determine whether money should have been spent on service charge items and whether the amount spent was reasonable for the type of service provided.

The Inspection

- 9. The inspection of the property took place prior to the Hearing on Thursday 9th January 2014 at 10.00am. In attendance were the Tribunal members, the Applicant, Mr Jeremy Gainsford, the Respondent's legal representative Mrs Alison Taylor and the Respondent's workmen, (the workmen were there to assist with access). 41B Bramley Road is a first floor flat within a purpose built two storey block of six flats built around 1968 with part rendered blockwork and part brickwork elevations under a pitched roof clad with concrete interlocking tiles.

There is a central stairwell. The block is set in a grassed area off a cul-de-sac from Bramley Road. At the rear there are trees and a 1m step created by a retaining wall down to the main road. There are trees between the flats and the main road.

10. Access was gained to the roof space from the first floor landing and was inspected by the Surveyor and Lawyer members of the Tribunal. It was noted that the renewal of the roof had now been carried out so that inspection was of limited value in terms of determining its previous condition.
11. To the exterior of the property it was noted that the common parts, gardens, drying areas, bin storage and parking areas were all neat and clean and well maintained. It was noted that the roof covering had been stripped and renewed; the chimney flashing and guttering had been renewed; the original tiles had been used again on the building. The ridge valley had been cleared and a cherry tree had been cut down.

The Hearing

12. In attendance at the hearing were the Applicant, Mr Jeremy Gainsford, Mrs A Taylor the legal representative for the Respondent, Mr Timothy Haynes the Respondent's property manager and two representatives of the Respondent council who took no part in the hearing. The background to the case was set out by the Applicant. The Respondent had given notice to the Applicant by letter dated 8th August 2012 that they intended to carry out roof repair works to the block where the Applicant's flat was located. They advised that the works they intended to carry out included but were not limited to roof repairs. They advised that they considered it necessary to carry out these works because the roof had deteriorated due to its age and that to prevent the block from falling into disrepair (and then needing substantial repair work in the future) they considered these works to be necessary. Later on in the notice the Respondent referred to the works as being emergency repair works but the papers read as though that description was not thought through and they certainly were in fact works that were consulted upon and carried out on a planned basis. A further notice was then sent to the Applicant on 4th December 2012 again advising of the Respondent's intention to carry out roof repair works to the block where his flat is located. In this notice the Respondent advises that recent inspections of the roof indicate that the tiles had become porous and as such the battens, fascia, soffit, guttering and the felt needed replacing. The works the Respondent intended to carry out included, but were not to be limited to, roof renewal, renewal of rainwater goods, upgrade loft access, timber works and the erection of scaffolding. The Respondent explained in the notice that it was concerned about the amount of damage, disruption and inconvenience that may be caused if the roof failed during future adverse weather conditions. A further notice relating to the roof was sent by the Respondent on 6th February 2013 with a statement of estimates for the works, again stating that recent inspections of the roof indicated the tiles had become porous and, as such, the battens, fascia, soffit, guttering and the felt needed to be replaced. DR Jones, Studley Roofing and MI Space quoted for the works. DR Jones submitted the lowest quote in the sum of £17,446 plus VAT and was awarded the contract.

Applicant's Case: Roof Renewal Costs

13. The Respondent had in 2013 carried out a pre-planned maintenance programme of works to remedy defects they considered necessary to the roof of the block where the Flat was situated. This involved stripping off the original roof, removal of existing tiles and felt, stripping away battens and the renewal of battens, felt and re-tiling the roof on the whole block. Initially, the Respondent had also envisaged replacing the original tiles but in the event they were reused.
14. The Applicant considered that if the council wished to carry out roof repairs as some form of pre planned maintenance then this was its prerogative but he felt that it was inappropriate that Leaseholders should be asked to contribute to works that are not considered to be absolutely necessary.
15. The Applicant told the Tribunal there had been a long and frustrating history of communication between himself and various representatives of the Respondent council.
16. He claimed the Respondent had neglected to manage the block containing his property for a number of years and this neglect had had an impact upon the condition of the block as a whole and the repairs that were then part of the 2013 maintenance programme of works. In the Applicant's addendum to his application he advised that things started to go wrong with the block in 2009.
17. Those historical issues concerned blocked drains, damp and mould growth internally at the Applicant's property. There were concerns of damp and cracks to the structure of the property, cracks to walls and ceilings, concerns of planting trees too close to the block in which his flat is situated and the failure to control the tree roots thereby causing damage and there were concerns regarding the impact of all of this on water table movement. The Applicant contended that cost of repairs could have been met by the Respondent by the policy of insurance covering the property.
18. The Applicant had many discussions with the Respondent and a number of its representatives over the following years. A number of different explanations for the problems were put forward.
19. The Applicant said he had actively engaged with the Respondent to try and resolve these problems and had always been keen to meet with the Respondent's officers to discuss the works. The Applicant was frustrated by the lack of progress in reaching resolution. When he became aware of the planned programme of works including renewal of the roof he was concerned at the potential costs of these works. He was of the view that the roof could quite properly have been repaired. With this in mind he and another owner leaseholder commissioned a surveyor's report.
20. The Applicant gave evidence himself at the hearing and also relied upon the report he and the other previous leasehold owner Mrs K. Threlfall had commissioned from Mr Jeremy Gainsford FRICS. Mr Gainsford had inspected the subject block and prepared a report dated 11 April 2013 (which had been read by both Parties and the Tribunal).
21. Mr Gainsford attended the inspection and gave evidence at the hearing. His opinion was that the roof was in, "good order", with three areas that needed attention by way of repair. He was of the opinion that renewal, at this point in

time, was not necessary. Mr Gainsford explained that the historic concerns regarding damp internally were largely explained by addressing ventilation and condensation issues and that those problems varied from flat to flat in accordance with the different uses by each occupant and different presentations in the roof in different areas. Insulation at each property had been variable. He did not consider the condition of the roof to be the cause of those problems or the solution to them.

22. In his opinion the roof battens were holding the existing tiles in place as evidenced by the fact there was no movement of the tiles when he inspected. It was his opinion the roof was only damaged in parts and when he was referred to the Respondent's photographs of the original felt on the roof, taken when the renewal works were being carried out, he observed that the original felt in that photograph looked relatively sound. He found the original tiles to be in good condition and he noted at the Tribunal's inspection that the original tiles had been reused by the Respondent. Although the roof was now in the region of 45 years old he considered that with repairs the roof could have remained viable for a further 30 years. Mr Gainsford qualified in his evidence that it is difficult to be entirely precise about the number of years the roof would last for but that it would be reasonable to look towards that potential further period of years of effective use before renewing the structure.
23. Mr Gainsford identified works of repair that could be carried out to address the current condition of the roof, these were:
 - (a) Repairs to chimney flashing in three areas where there was evidence of water ingress;
 - (b) Ridge tile re-pointing;
 - (c) Felt replacement in isolated areas of damage; in particular where there were some tears in the felt or where felt was sagging and deteriorating.
23. Mr Gainsford had not provided costings for these works in his original report but he provided the following figures at the hearing for the cost of repairs to address and remedy existing defects to the roof based upon his knowledge and experience as a qualified building surveyor. Mr Gainsford estimated that the cost of repair would be in the region of £2,000 plus VAT which he broke down:
 - (a) Scaffolding £800.00;
 - (b) Chimney flashings £675
 - (c) Felt replacement £300.00;
 - (d) Re-pointing at ridge £200.00.
24. It should be noted that at this point in the hearing there was a short adjournment. The evidence with regard to the cost of repairs had not been in Mr Gainsford's report and the Respondent had not heard it before. The hearing was adjourned to allow Mrs Taylor to discuss the newly introduced evidence with her witness Mr Haynes.

25. Following the adjournment the Respondent's legal representative asked Mr Gainsford to refer to the bundle of photographs it had filed in evidence. The Respondent's case was put to the witness, in particular the Respondent's case that the felt was shown to be in poor state, there were rusty nails in the battens and that the battens themselves were greatly deteriorated. Mr Gainsford's opinion was that the tiles were not moving and were reasonably secure. He referred to the Respondent's photographs numbered 24 and 25 and observed the roof to look generally sound, no leaks showing in the ridges. When challenged, Mr Gainsford did not accept that it would have been unreasonable to proceed by way of repair works. Mr Gainsford observed that originally one of the Respondent's main arguments for renewal was their intention to replace the existing roof tiles because the Respondent claimed they had become porous and, as such, the battens, soffit guttering and the felt needed replacing, but then, as it transpired, the original tiles were found to be satisfactory and reused. In his opinion, the roof had a worthwhile remaining life and it was not necessary, at the time these works were done, to renew the whole roof covering.

Applicant's Case: Administration Management Fees

26. Further, the Applicant challenged the administration/management charge demanded by the Respondent calculated as 15% of the total service charge expenditure of that year. In previous years the Respondent had claimed a flat fee of £10.00 for administration/management charges and the Applicant argued that it was unreasonable to change the basis for calculation of the administration/management fee in the 2013 account and further the Respondent had failed to explain why the charge demanded had changed.
27. During the course of the Applicant's evidence the Respondent's case was put to him and the Respondent broke down the new calculation for administration/management fees. It was explained that the Respondent relied upon the matters which had been detailed in their Statement of Case dated 29th October 2013 to provide greater clarification for the new calculation of the administration/management fees. In addition, it was explained that with the use of technology a much closer analysis and calculation of the administration/management costs for provision of the leasehold services could be calculated and this had enabled a more realistic formulation of the management fee.
28. The Applicant made it clear to the Tribunal that he opposed the 15% charge in particular on the service charge item demanded for the cost of the roof renewal. Although he did not welcome the new management fee calculation of 15% on each service charge cost incurred by the Respondent he advised that he did not challenge the formula. The Applicant conceded that in earlier years there had been a flat fee of £10.00 per year which had in fact been a formula favourable to him. Having had the basis of recalculation for the administration/management fee explained fully in the Statement of Case and the hearing the Applicant did not seek to argue further that the new calculation was unreasonable in itself; simply that he would dispute that levy upon the disputed roof renewal costs.

Respondent's Case: Roof Renewal Costs

The Respondent's evidence comprised the Respondent's Statement of Case dated 29th October 2013, Witness Statement of Mr Timothy Haynes (the Respondent's Property Manager) dated 5th December 2013, Report of Mi Space dated 10th June 2011 and Report of Gary Gabriel Associates dated 7th September 2012. Oral evidence was given at the hearing by Mr Timothy Haynes.

29. The Respondent's case was presented by its legal representative Mrs Alison Taylor. Mr Haynes' evidence was that the Respondent's primary concern was in relation to the condition of the felt and battens and that the only way to address these was to renew the roof covering. Mr Haynes accepted that the felt and battens on the subject property were only examined once the Respondent's renewal works had commenced. The Respondent did not support a programme of limited repairs as it believed the life expectancy of the roof was limited. The Respondent believed that if it had just repaired the flashing and roofing felt it would only have been a matter of time before its workmen had to re-attend and deal with further repair works. Mr Haynes believed that in view of the recent December 2013 and January 2014 weather there was a greater chance of repairs being necessary once again. Mr Haynes believes the roof life expectancy following repair would be nominal and not significant. He advised that the relevant time period was difficult to quantify. The Respondent considered renewal was needed at this time and the practicalities of carrying out a significant number of repairs had to be considered. He observed that prior to the renewal works a number of job tickets had been raised in connection with this particular block. Mr Haynes advised that the Respondent had a very limited budget and would not do work unnecessarily. The Respondent did carry out a tender process and gave the contract to the company delivering the lowest quote. Mr Haynes' concern was that the roof was now 45 years old and the problem that concerned him most was the condition of the felt and battens. Mr Haynes referred the Tribunal to the Respondent's contractor's photographs which he said were taken as the Respondent's contractors carried out the renewal works as evidence of the condition of the roof and the need to renew the roof covering.
30. The Respondent had relied upon a report they had commissioned from a company called Mi-Space on a neighbouring property when deciding to carry out renewal of the roof covering rather than works of repair. Mi-Space are major council contractors and Mr Haynes confirmed that Mi-Space had quoted for this contract. Mr Haynes confirmed that the Respondent was responsible for 5/6ths of the whole contract price. The Respondent had also commissioned a report from Gary Gabriel Associates consulting structural and civil engineers and this was read by the Tribunal. They had been appointed by the Respondent to carry out a structural inspection of the subject block of flats and to provide a report. The main purpose of the inspection was recorded as being "to determine whether movements that have caused cracks in walls and ceilings at the property have damaged the roof and to give an opinion on the causes of these movements". Gary Gabriel Associates inspected the property on 6th September 2012. The roof space was inspected; access being gained from the loft hatch above the hallway. They reported that the roof structure is mainly of, "traditional", construction, being formed of loose timber rafters, purlins and struts, with the rafters tied at ceiling level to stop roof spread. The rafters are fixed to a timber plate on top of the internal leaf of the external wall at ceiling level. The purlins are supported by the inner leaf of the gable walls

and internal masonry walls or timber struts. Timber joists support the plasterboard ceilings.

31. They further reported the roof insulation varied, with the insulation to 43B having been increased by an additional layer, the roofing felt has been damaged in a few locations and there are gaps between the roofing felt and the roof vents.
32. The report concluded with regard to the roof that the only significant defects noted in the roof space were the holes in the roofing felt where it has been damaged and where gaps have been left between the felt and roof vents. It is possible that under certain weather conditions small amounts of rain might be blown up through the tiles and these holes into the roof space. They reported that there is no evidence that the shrinkage cracking in the walls and ceilings has resulted in any damage to the roof structure. In their recommendations they report, "In general, the roof structure appears to be in good condition".

RESPONDENT'S POSITION Administration/Management Fees

33. The Respondent relied upon the matters which it raised in its written evidence particularly that contained in the Statement of Case where it provided a detailed deconstruction of the administration/management fees.
34. During the course of the hearing the Applicant narrowed his opposition to the administration/management fee to the discrete issue of the 15% calculation being levied upon the cost of the roof renewal charges. The Applicant conceded that he had paid the new charge on the undisputed service charge costs demanded that year.

Tribunal Determination

35. The Tribunal is required to determine whether the costs for replacing the roof and in respect of the management fees were reasonably incurred.
36. The Tribunal starts with the costs for the roof. As a rule replacement of the roof will be required only where it is not reasonable to carry out repairs. The Applicant' argued that it was reasonable to repair the roof which would extend its life by about 25 years. The Respondent, on the other hand, contended that it would be uneconomic to repair the roof, and that renewal was the only viable option.
37. The Tribunal found Mr Gainsford's evidence persuasive. The Tribunal accepted his conclusion that complete re-roofing was unnecessary and that repairs to the value of £2,000 plus VAT would extend the life of the roof for about 25 years. Mr Gainsford's expert opinion was supported by the report dated 7 September 2012 of Gary Gabriel Associates, consulting structural and civil engineers, commissioned by the Respondent. Gary Gabriel reported that the roof structure appears to be in good condition.
38. The Tribunal's preference for Mr Gainsford's evidence was reinforced by the following weaknesses in the Respondent's evidence:

- 1) The Respondent's reliance on a report from Mi-Space which related to a different property. Mi-Space were building contractors and had tendered for the re-roofing works. The Tribunal considered that reports of chartered surveyors or civil engineers carried greater weight than that of a building contractor which had an interest in the outcome of its report.
 - 2) The Respondent's change of mind about the cause of the problem with the roof. Originally the Respondent said that water ingress was due to the porosity of the tiles but gave a different explanation after the roof was stripped.
 - 3) The Tribunal found the photographic evidence relied upon by the Respondent of the condition of the discarded felt and timber battens following the removal of the roof to be of no value in that damage was inevitably sustained in the process.
39. The Tribunal, after taking into account its findings above concluded that it was unreasonable for the Respondent to replace the roof rather than repair it. The Respondent is, therefore, limited to recovery of the costs of repairs only. The Tribunal accepts Mr Gainsford's figure of £2,000 (VAT is not charged on service charges) for the repairs of which the Applicant would be responsible for 1/6th which would be £333.33.
 40. The Tribunal now turns to the reasonableness of the management fee. The Tribunal understood that the Applicant did not welcome the new calculation formula for administration/management fees but there was an acknowledgement by the Applicant that the previous administration/management fee in earlier years of £10.00 per annum had been a flat fee which was favourable to the Applicant. The new formula was not unreasonable of itself and was accepted by the Applicant and his challenge was in fact limited to the one disputed service charge item; the cost of the roof renewal.
 41. The Tribunal determined that the administration/management fee of 15% of the charges for the 2013 period was reasonable. The amount of the charges after the adjustment for roof repairs was £128.80 (see service charge statement 1 April 2012 to 31 March 2013) plus £333.33 for roof repairs which equalled £462.13. The Applicant would, therefore, be liable to a management fee of £462.13 x 15% = £69.31.

Section 20c and Fees

42. The Tribunal then considered the application made by the Applicant under Section 20c of the Act. On the basis that the Applicant had largely succeeded in his application the Tribunal makes an order that the Respondent shall not be entitled to recover any of the costs it may have incurred in this matter on the basis that it is just and fair to make that order.

SIOBHAN CASEY TRIBUNAL JUDGE

RELEASE DATE 26th February 2014

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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