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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UF/LSC/2015/0040**
Property	:	**100 Byron Road, Chelmsford, Essex CM2 6HJ**
Applicant	:	**Robert Hill (self representing)**
Respondent Represented by	:	**Chelmer Housing Partnership Ltd. Angela Vale (Leasehold Services Co-ordinator)**
Date of Application	:	**23rd April 2015**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (lawyer chair) Stephen Moll FRICS John Francis QPM**
Date and venue of hearing	:	**15th July 2015, The County Hotel, 29 Rainsford Road, Chelmsford CM1 2PZ**

DECISION

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1. **UPON** the parties and the Tribunal members having discussed the issues prior to the commencement of the hearing of this application

2. **AND UPON** the parties having reached agreement as set out in the Schedule below

3. **IT IS ORDERED** that:-

    (a) This applicant be and is hereby dismissed.
    (b) The Respondent shall pay to the Applicant within 28 days of the date of this Order the sum of £190 as re-imbursement for the hearing fee paid to the Tribunal and
    (c) The Applicant's application to be reimbursed his application fee of £65 and his solicitors' costs in the sum of £100 is dismissed

Reasons

Introduction

4. This is an application by the long leaseholder of the property that the amount due to be claimed from him as his share of the replacement or refurbishment of the front doors to the 7 other flats in the building in which the property is situated is unreasonable and/or not payable. He also asks for an order that the fees he has paid to the Tribunal and costs of £100 paid to his solicitor should be refunded to him by his landlord, the Respondent.

5. The facts are that in 2008, the Applicant undertook certain alterations to the property which had the benefit of both building regulation approval and the written permission of the Respondent. As is clear from the plans prepared at the time and seen by the Tribunal, these works included "*Front door replaced with 30 minute self closing fire door hung from other side*". Thus there can have been no doubt in the minds of both the Respondent and Chelmsford Borough Council that the front door was being replaced by the Applicant. As there is a certificate of completion from Chelmsford Borough Council in the bundle provided for the Tribunal, such work was clearly completed and there seems to be no dispute about this.

6. On the 19th April 2013, the Respondent served a notice under section 20 of the **Landlord and Tenant Act 1985** ("the 1985 Act") proposing to undertake "*Replacement or Fire Stopping Works to Flat Entrance Doors (according to existing door type)*" following, so it said, a fire risk assessment. The usual provisions were set out inviting comment and identification of any contractor proposed by the recipient of the notice.

7. The balance of the consultation requirements were progressed and the Applicant was eventually told that he would have to contribute to the cost of upgrading the front doors to the other 7 flats in the block. Based on the original quotations, this was to be £239.55 but the Tribunal was told that the end cost had not yet been calculated.

8. The Applicant wrote several times objecting to his door being replaced or upgraded as it was already a fire door compliant with current building regulations and fire protection requirements. He also did not see why he should contribute to the cost of upgrading the doors to the other 7 flats in his block.

9. As at the date of this hearing and the inspection of the flats by the Tribunal, it seems that the upgrading work had been completed but the final cost had not yet been worked out.

The Law

10. In view of the agreement reached, the Tribunal does not set out the law relating to this dispute save for that relating to the application for fees and costs which remained a live issue after agreement had been reached.

11. In respect of any application for the payment of fees and costs, this is now dealt with by rule 13 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** ("the rules") which says that a Tribunal can make an order for one party to repay the fees paid or costs incurred by the other party. As far as costs are concerned, such an order can only be made if that party "*has*

acted unreasonably in bringing, defending or conducting proceedings". However, this has to be taken in the context that these proceedings are within a 'no costs' regime which means that the general rule is that no costs orders are made.

The Hearing

12. The hearing was attended by Mr. Hill, Ms. Vale and her colleague, Melody Hampson. After the discussion referred to above and the agreement reached, Ms. Vale said that she did not see why the Respondent should pay the costs of the Applicant. Mr. Hill said that he thought that the behavior of the Respondent had been unreasonable and that he should be reimbursed.

Discussion

13. In proposing these works, the Respondent clearly took the view that the front doors to each flat are not demised to the tenants. As a management issue, this made sense, but this lease is not clear on the point.

14. The front door is not part of the structure of the flat. Also doors and windows are often treated the same way and in this case the fact that the glass in the windows appears to be demised would tend to imply that the window frames are not. It is the Tribunal's view that on a true construction of the lease, the original front door to the flat was not actually demised to the tenant, but is a landlord's fixture.

15. However, the problem for the landlord Respondent is that in 2008 it gave permission for or, at the very least, did not object to the Applicant replacing this landlord's fixture with his own fire door. In theory it will remain as his door until he ceases to be a tenant, in which case, arguably, ownership could pass to the Respondent. Therefore, unless there has been a beach of the terms of the lease – which is not suggested by the landlord – it is not the Respondent's door to replace or upgrade.

Conclusions

16. The agreement reached is a very sensible compromise because it not only resolves the issue of the cost of upgrading but it removes any problem for the future. It was probably an error on the part of the Respondent to agree to the Applicant replacing the front door in 2008 without insisting on retaining ownership of the replacement door so that it could continue to maintain it.

17. Having done that, it should have realised that any attempt to interfere with the new door would be a trespass to goods because it was not their door to maintain. Also, the Tribunal would undoubtedly have found that it was unreasonable for this Applicant to have contributed to upgrading the other 7 front doors in the building to a standard which already existed with 'his' door.

18. By agreeing to pass title to his front door to the Respondent, the Applicant now has the comfort of knowing that it is up to the Respondent to maintain that door in the future which will hopefully resolve the potential for any similar dispute as arose in this case.

19. As far as costs are concerned, it has already been said that this is a 'no costs'

regime. In other words the 'winning' party would not normally expect to recover costs or fees. Dealing firstly with the question of fees, the Applicant would have known when he issued the application that in the normal course of events, he was unlikely to recover the issue fee and it is determined that he should not do so in this case. The Tribunal very carefully weighed up the issue of whether he should also have to pay the hearing fee of £190.

20. It was decided, on balance, that this Respondent should have realised before such fee was incurred, that they did not own Mr. Hill's front door, that such door already had adequate fire protection, paid for by Mr. Hill, and that it would be unreasonable to expect Mr. Hill to pay towards upgrading the other 7 doors. In other words this matter was crying out for an agreement and as a responsible landlord, the Respondent should have taken the lead. Thus they should reimburse Mr. Hill for the hearing fee.

21. As to the payment of solicitors' costs, the Tribunal determines that the Respondent has not been guilty of unreasonable conduct in its defence of this application and the high hurdle set out in the rules had not been crossed. Such costs are not to be reimbursed.

THE SCHEDULE

(i) Robert Hill passes ownership of the front door to his flat to Chelmer Housing Partnership Ltd. with immediate effect so that it is now responsible for maintaining the door.

(ii) In consideration thereof, Chelmer Housing Partnership Ltd. agrees not to attempt to recover any monies from the Robert Hill in respect of the fire resistance upgrading undertaken to the front doors of the other 7 flats in the building in which 100 Byron Road, Chelmsford CM2 6HJ is situated.

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Bruce Edgington
Regional Judge
17th July 2015