



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

Case Reference : **CHI/00HN/LSC/2015/0039**

Property : **196 Holdenhurst Rd, Bournemouth,
BH8 8AS**

Applicant : **Tyrell Investments Inc**

Representative : **Napier Management Services Ltd**

Respondent : **Mr M Ross, Mr G Machray, Mr B Stocks**

Representatives : **None**

Type of Application : **Liability to pay service charges**

Tribunal Members : **A J Mellery-Pratt, FRICS
N P Jutton BSc**

Date : **21st August 2015**

Hearing : **Determination on basis of papers
presented**

Date of Decision : **27th August 2015**

DECISION

Preliminary

- 1.0. On 20 May 2015 the Applicant submitted an application under section 27A of the Landlord & Tenant Act 1985.
- 1.1. On 1 June 2015 directions were issued, identifying the matters to be resolved and setting down a timetable for dealing with them.
- 1.2. On 7 July 2015 further directions were issued amending the timetable

Documents

- 2.0. The documents before the Tribunal were the papers submitted on behalf of the Applicant, which included the application form, a copy of the lease to the 2nd floor flat, a painting specification, and a specification for external decorations and minor repairs. Additionally, there was correspondence covering Notices 1 and 2 under section 20 of the Landlord & Tenant Act 1985.
- 2.1. There were additionally, responses to the Tribunal from Mr Machray and Mr Stocks confirming that they supported the landlord's application.

Inspection

- 3.0. The Tribunal inspected the property at 10.00 am on 21 August 2015, accompanied by Ms Eden Mellows from Napier Management Services Ltd. She had keys to access the common parts, but having looked inside briefly the Tribunal determined that there was nothing relevant to the case in hand within the property. She did not have keys to allow the Tribunal to access the rear yard, although the relevant areas were visible over the fence. She was thanked for her attendance.
- 3.1. The property is a terraced house in a row of similar properties, originally constructed at the beginning of the 20th century and more recently converted to provide 3 flats, one on each floor.
- 3.2. The building is constructed of brick walls, rendered on the front elevation and with unpainted brickwork to the rear. The roof has been recovered in concrete tiles in recent times. Alterations have taken place within the rear roof extension to provide additional space for the 2nd floor flat.
- 3.3. The windows, fascias and soffits have generally been replaced in UPVC, but some timber window surrounds still remain.
- 3.4. There is a low brick wall fronting the pavement and enclosing a very small front area, and this has been painted in the past but is now in poor

decorative condition.

- 3.5. The rear of the property faces Corporation Road and the small rear area is enclosed with timber fencing, and this fencing appears to be excluded from the contract

The Law

- 4.0. The relevant provisions of the Landlord and Tenant Act 1985 are:-

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 to which the service charge is payable or in an earlier or later period.

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 provision 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.

27A (3) An application may also be made to the appropriate

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.*

The Lease

5.0. Under clause (iii) of the 4th schedule (lessee's covenants), the lessee is:-

'to pay to the lessor on demand a one third share of the actual cost incurred by the lessor in performing the covenants on the part of the lessor contained in clause 3 and the 5th schedule hereof, including all professional fees wages administrative and other expenses of the lessor or the lessors managing agents in connection therewith and any reserves or sinking fund properly required'

5.1. By clause 3:-

'The lessor hereby covenants with the lessee to observe and perform the covenants contained in the fifth schedule hereto'

5.2. By clause (iii) of the fifth schedule, the lessor covenants:-

'As often as shall be reasonably necessary and at least once every 5 years paint all outside parts of the building usually painted'

The Applicant/landlord's case.

6.0. On 27 November 2014, Napier management services Ltd, on behalf of the Applicant, sent to each of the lessees Notice 1 under section 20 of the Landlord & Tenant Act 1985, together with an accompanying letter to each.

6.1. On 19 March, 2015, Napier Management Services Ltd, again on behalf of the Applicant, sent to each of the lessees Notice 2 under section 20 of the Landlord & Tenant Act 1985, together with an accompanying letter, a summarised tender sheet and, on the advice of a surveyor, a recommendation that the quotation from J R Murphy & Co should be accepted. The summary also set out the costs of that quotation and

associated fees and vat, all totalling £4170.00, including a contingency amount of £500 plus vat

The Respondent/tenants' case.

7.0. None of the lessees had responded to the formal notices issued by the Applicant, although Mr Machray and Mr Stocks had responded to the Tribunal to confirm that they were in agreement with the Applicant's proposals.

Consideration

8.0 The Tribunal considered all the points raised by the Applicant, and considered that:-

- a) The terms of the lease are clear that the Applicant has a responsibility to maintain the external decorations at least every 5 years and correspondingly the lessees have an obligation to reimburse the Applicant with their due proportion when those costs, including professional and administrative costs, have been incurred.
- b) Three tenders had been received by Napier Management Services Ltd, based upon the specification provided and the tender submitted by J R Murphy & Co was the lowest in cost
- c) The consultation requirements of section 20 of the Landlord & Tenant Act 1985 had been complied with by Napier Management Services Ltd on behalf of the Applicant.
- d) The price quoted by J R Murphy & Co of £2200 plus a contingency of £500.00, all plus vat, is reasonable, bearing in mind the extent of the work and the requirement for scaffolding/tower scaffold at the front and rear respectively.
- e) Any expenditure under the contingency provisions must be fully documented and approved by the surveyor and due credit given for any unused amount.
- f) The supervision and management fees of £225.00 and £300.00 respectively appear reasonable in the light of the size of the contract and noting that a similar contract was proposed for the adjoining very similar property and on the basis that the two contracts were to run together.
- g) Although the directions required a decision to be made in respect of section 20C of the Landlord and Tenant Act 1985, no such application had been made by a lessee and it was therefore unnecessary to make a decision on this point.

The determination

9.0. The Tribunal determines that:-

- a) The Applicant has a responsibility to carry out external redecoration under the terms of the lease.
- b) The lessees have a responsibility to reimburse the Applicant when the costs have been incurred.
- c) The consultation requirements of section 20 of the Landlord & Tenant Act 1985 have been complied with and no responses were received from the lessees.
- d) The recommendation for the contractor represents the lowest of the tenders received.
- e) The price quoted by J R Murphy & Co of £2,200 plus a contingency of £500, plus vat, is reasonable, subject to documentation of the use of the contingency sum and reimbursement to the lessees for any unused amount
- f) The supervision fee of £225.00 + vat and the management fee of £300.00 plus vat are both reasonable.

Appeals

- 10.0. 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.
- 10.1. 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.
- 10.2. 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.
- 10.3. 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.

AJ Mellery-Pratt FRICS
Chairman

A member of the Tribunal
appointed by the Lord Chancellor