



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

Case Reference	:	LON/00BE/LSC/2012/0632
Property	:	25 Market Yard Mews, Rear, 194-204 Bermondsey Street, London SE1 3TJ
Applicant	:	Mr Indrajeet Lalbeharry
Representative	:	In person
Respondent	:	Galliard Homes Ltd.
Representative	:	Mr M Barnett-Salter, FW Gapp Ltd., managing agent
Type of Application	:	S.20C Landlord and Tenant Act 1985
Tribunal Members	:	Judge Dickie Mr M Taylor, FRICS
Date and venue of Hearing	:	12 May 2015, 10 Alfred Place, London WC1E 7LR
Date of Decision	:	11 June 2015

DECISION

Decisions of the tribunal

- (1) The tribunal declines to make an order under s.20C of the Landlord and Tenant Act 1985 ("The Act").

The application

1. The Applicant seeks an order pursuant to s.20C of the Act to limit the Respondent landlord's ability to recover the costs of its managing agent's representation in proceedings under s.27A of the Act.

2. The tribunal issued a determination dated 24 June 2013 on Mr Lalbeharry's application under s.27A. Within that application he had also applied for an order under s.20C of the Act, which provides:

(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 leasehold valuation 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.

...

(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.

3. The parties did not make submissions on Mr Lalbeharry's application under s.20C, and the tribunal did not reach a decision on it. No party brought this to its attention until Mr Lalbeharry wrote to the tribunal on 11 March 2015.
4. As a result, the tribunal issued directions on 17 April 2015 for the parties to make written submissions on the application under s.20C, and for it to be determined at an oral hearing on 12 May 2015. On that day, the application was heard by two of the three tribunal members who determined the application under s.27A of the Act (the third tribunal member having since retired).

Submissions

5. In support of his application under s.20C, Mr Lalbeharry relied on his perceived success in three aspects of his application under s.27A:
 - (i) The tribunal disallowed £3000 of the disputed major works costs as the landlord ought to have sought to recover these from the insurer.
 - (ii) The front block is expected to reimburse the rear block with a further £312 for shared yard expenses.
 - (iii) The landlord will reimburse the insurance premiums incorrectly charged through the service charge for the Vodafone mast.
6. In his application under s.27A, Mr Lalbeharry had disputed:
 - (i) Professional fees charged to him of approximately £245 in relation to the major works.

- (ii) An administration charge of £60.
- (iii) £934 in buildings insurance charges made to him during the period 2007-2013.
- (iv) His proportionate share of major works expenditure of £16,416.37, being approximately £2063.

7. Accordingly, Mr Lalbeharry disputed total service charges demanded from him of approximately £3300. The tribunal decision resulted in a credit to him of approximately £377. Whilst he refers to two other expected credits to his account (5(ii) and (iii) above), neither was a matter disputed in his application or a matter on which the tribunal reached a determination. It can therefore be observed that Mr Lalbeharry was successful in resisting approximately 11% of the service charges he challenged, and this is a matter of significance for consideration by the tribunal in the exercise of its discretion to make an order under s.20.

8. Furthermore, Mr Lalbeharry confirmed that he had rejected an offer from Mr Barnett-Salter to settle his application to the tribunal for a credit of £700 to his service charges. In spite of the passage of time, the tribunal clearly recollects the challenge it met in understanding Mr Lalberharry's disputes. It found the majority of his arguments were misconceived. Indeed, in paragraph 29 of its decision, the tribunal commented:

“In spite of the fact that Mr Lalbeharry won on one element (the insurance under-claim), his analysis and presentation made it all but impossible for the application to be dealt with expediently, or indeed to be settled.”

9. The parties were engaged in four days of attendance at the tribunal – at a pre trial review, a mediation session, and two days of hearings (on 31 January and 15 May 2013). The tribunal declined to order the landlord to refund to Mr Lalbeharry his tribunal fees or to make an order for costs under Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. Accordingly, whilst Mr Lalbeharry commented at the costs hearing that he thought it reasonable that he should set off some of his costs against the landlord's, he cannot.

10. Mr Lalbeharry disputed that the lease made provision for the recovery of the cost of the managing agent's representation in these proceedings. Mr Barnett-Salter relied on the following covenants of the lease:

“5(a) in the management of the Building and the Estate and the performance of the obligations of the Lessor hereinafter set out the Lessor shall be entitled to employ or retain the services of any

employee agent consultant service company contractor engineer managing agent or other advisers of whatever nature as the Lessor may require and the expenses incurred by the Lessor in connection therewith shall be deemed to be an expense incurred by the Lessor in respect of which the Lessee shall be liable to make an appropriate contribution under the provisions set out in the Fifth Schedule hereto”

11. In Paragraph 14 of the Fourth Schedule the Lessor covenants:

“To carry out any other services or incur any other expenditure which the Lessor reasonably deems necessary to enable the Lessor to manage the Estate and the Building and carry out its obligations contained hereunder.”

12. The tribunal considers that the landlord's costs in instructing its managing agent in relation to proceedings challenging the recoverability and apportionment of the costs of major works are costs of managing the Building and Estate which are recoverable under either of the provisions relied upon by Mr Barnett-Salter.
13. Whilst Mr Lalbeharry suggested that Mr Barnett-Salter's charges (being £125 plus VAT per hour, for 32 hours) were unreasonable, they can be compared to what Mr Lalbeharry estimated would have been his professional charges for the time he spent on his application (were such charges recoverable) in the sum of £160 per hour for 35 hours, total £5,600.
14. In all of the circumstances the tribunal does not consider that it is just and equitable to make the order sought by Mr Lalbeharry under s.20 of the Act.

Name: F. Dickie

Date: 11 June 2015