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

Case Reference : **CAM/22UJ/LSC/2016/0006**

Property : **118, The Hornbeams Harlow CM20
1PH**

Applicant : **Harlow District Council**

Representatives : **Ms Sarah Bradford Legal
Services, HDC
Ms Lynn Potter Home
Ownership, HDC**

Respondent : **Camelot Property Limited**

Representative : **Mr Robert C W Kurz Director**

Type of Application : **Court referral – section 27A
Landlord and Tenant Act 1985 –
determination of service charges
payable**

Tribunal Members : **Judge John Hewitt
Mr Neil Maloney FRICS
Ms Cheryl St Clair MBE BA**

**Date and venue of
Hearing** : **5 April 2016
Park Inn by Radisson, Harlow**

Date of Decision : **7 April 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that:

- 1.1 The balance of service charges payable by the respondent to the applicant in respect of the demand dated 29 July 2014 is £202.42;
- 1.2 The said sum of £202.42 was due and payable by the respondent to the applicant on 13 July 2015 when the applicant commenced court proceedings against the respondent claiming that sum;
- 1.3 The court file shall now be returned to the County Court at Chelmsford so that the court can determine the outstanding sums claimed in the court proceedings, namely:

The claim to statutory interest made pursuant to section 69 County Courts Act 1984;

Court fee £25.00

Costs in the court proceedings; and

- 1.4 The applicant's application made at the hearing for an extension of time to make an application that the tribunal require the respondent to pay or make a contribution to the fees of £235 paid by the applicant in connection with these proceedings is refused.

2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural and general background

3. The applicant (the council) is a local housing authority. The council's secure tenants have the statutory right to buy set out in the Housing Act 1985. Where a secure tenant exercises that right the council is obliged to grant the tenant of lease of the property for a term of 125 years at a ground rent of £10 pa.
4. The council has granted such a lease in respect of the subject property [38].
5. The respondent is a property investment company and the property has been sub-let to provide a rental income stream

Service charge regime

6. The lease imposes a service charge regime and the tenant covenants to pay the service charge without deduction or set-off at the times and in the manner provided.

As regards major works that covenant is in the following terms:

“4(d)(i) to pay on demand to the Council a reasonable proportion of the cost of any Major Works carried out by the Council pursuant to its obligations under clause 7 of this Lease”

‘Major Works’ is a defined term but it was not in dispute that the set of major works with which we are concerned fell into that definition.

The lease defines ‘the Property’ to be: *“the block of flats or maisonettes known as 115 to 118 The Hornbeams Harlow which is shown for identification by thick black edging on Plan 1 annexed to this Lease together with its associated grounds and outbuildings”*

Evidently the property 115 to 118 The Hornbeams comprises two flats on the upper floor and two maisonettes on the ground and first floors. Each maisonette is accessed by its own individual front door directly off the street – as illustrated in the photograph at [190]. The two flats are accessed via common parts stairways and walkway.

The major works in issue comprised landlord’s lighting and rising mains in the common parts stairway and walkway only.

The council determined that the reasonable proportion of the cost of such works was one half; that is to say to be divided equally between the two flats which enjoy and use the common parts stairway and walkway and this was not in dispute.

The service charges claimed

7. The demand is dated 29 July 2014 for £1,994.85 [71] which is made up as to:

Major Works: Landlord’s Lighting Refurbishment Works	£1,813.50
Contract Administration Fee (10%)	<u>£ 181.35</u>
	£1,994.85

8. The final account at [79] shows a number of omissions and additions to the scope and cost of the works as originally proposed. The cost of the additions is £183.00 made up as to:

Rewire lighting point in Mineral insulated current cable (20)	£140.00
Install adaptable box for wiring (1)	£ 5.00
Tube lighting point in 20mm conduit per meter (2)	£ 28.00
Supply and install intake Sign (1)	£ 10.00

The omissions amount to £422.65, leaving a completed contract sum due of £1813.35. The addition of the contract administration fee at 10% (£181.35) brings the total to £1,994.85.

9. The respondent disputed its liability to pay for the additions and sought from the council supporting documentation in relation to them. A part payment of £1,792.43 was made by the respondent leaving a balance in dispute of £202.42.

In letters dated 19 August [100] and 9 September 2014 [107] the council intimated to Mr Kurz that Kier Harlow had been requested to provide copies of the variation orders and that these would be forwarded to him.

By letter dated 26 August 2014 [106] Mr Kurz on behalf of the respondent sent to the council a cheque for £1,748.71 in settlement of the demand and said:

"I have not received copies of the variation orders as promised and have therefore deducted the additions to the contract.

10. By letter dated 3 November 2014 [108] the council explained to the respondent (evidently for the first time) that there were no formal variation orders completed for the additional works in question but the council was satisfied that the additional works were properly required and had been carried out and the respondent was liable to contribute to the costs of them.

That explanation was not to the satisfaction of Mr Kurz and so no further payment was made.

11. On 13 July 2015 the council commenced court proceedings against the respondent [4] claiming the sum of £202.42 plus interest. A defence was filed [11] the gist of which was that the council was unable to provide to the respondent documents to support the cost of works claimed. The defence also raised a query as to whether six or seven light units were installed.

By order made 1 December and drawn 18 December 2015 District Judge Mitchell ordered (amongst other things) that the service charge claim be sent to this tribunal for determination.

The hearing

12. The hearing was listed for 5 April 2016. The tribunal did not consider they would derive any assistance from an inspection of the subject development.
13. The council was represented by Ms Bradford and Ms Potter both of whom are employed by the council. Mr Bob Purton of Kier Harlow Limited was called to give evidence. Kier Harlow is a joint venture company owned by Kier and the council and it manages a large number of building and related projects on behalf of the council. Mr Purton has been with Kier Harlow for the past nine years. Before that Mr Purton had been employed by the council for some 17 years.

14. The respondent was represented by Mr Robert Kurz, one of its directors. Mr Kurz did not call any witnesses as such but he cross-examined Mr Purton and put forward his views where he disagreed with or disapproved of what Mr Purton had to say and he also had a number of things to say about the council's administration systems and record keeping.

The gist of the respondent's case

15. The gist of the respondent's case was that he had not been provided with copies of documents which he considers should have been raised a part of the due administration of the contract to satisfy himself that the works described as the additions had been reasonably incurred and carried out to a reasonable standard and at a reasonable cost.
16. In opening Mr Kurz complained that some of the documents now included in the hearing bundle by the council were late and he had only seen them for the first time a week or so prior to the hearing. Those documents did not appear to relate directly to the 'Additions' works which is the focus of these proceedings but to alleged discrepancies in contract documentation and/or administration in unrelated respects.
17. Mr Kurz did not wish to apply for a postponement to give him more time to prepare his case for the hearing but was anxious that his grievance should be aired.

The gist of the case for the council

18. The gist of the case for the council was that the 'Additions' works had been carried out, it was reasonable to have carried out those works and that the costs of those works was reasonable in amount.
19. The council relied on the evidence of Mr Purton of Harlow Kier.
20. Mr Purton gave oral evidence. He said that his witness statement at [227] was true.

Addition 1 Rewiring £140

21. By way of further clarification Mr Purton confirmed that the contract allowed for the fact that the contractor would not always be able to utilise the existing conduits to run the cabling for the new emergency lights to be installed. In this block it did not prove possible to do so. Thus instead cabling was run externally. This required two adjustments in the final account. The sum of £160 was omitted and the sum of £140 was added to reflect that the external cabling solution was slightly less expensive than the alternative originally contemplated. Thus this resulted in a net saving of £20 for the respondent on this item.
22. Mr Purton was cross-examined by Mr Kurz on this issue. Mr Kurz had some concerns as to the number of new light-fittings installed. Mr Kurz drew attention to some contract documents relating to other blocks which he considered to be identical to the subject block where the number of light-fittings varied. The evidence of Mr Purton was that six

light-fittings were installed in the common parts and one fitting in a cupboard which made seven in all. Eventually, but reluctantly, Mr Kurz was prepared to accept that. The apparent confusion was not assisted by the fact that the location of the new fittings set out at [188] shows a total of 6 fittings but that list was totalled incorrectly; it should have shown a total of 7 fittings.

Addition 2 Adaptable box £5

23. During the course of the hearing Mr Kurz withdrew his challenge to this item.

Addition 3 Tube lighting conduits £28

24. Mr Purton gave oral evidence to clarify this item of work and drew attention to the photograph at [193] which illustrates the subject conduit.

Mr Kurz did not wish to cross-examine Mr Purton on this issue.

Addition 4 Intake sign £10

25. Mr Purton gave oral evidence to clarify this item of work and drew attention to the photograph at [194] which illustrates the subject signage.

Mr Kurz did not wish to cross-examine Mr Purton on this issue.

Discussion and findings

26. The tribunal concluded that its prime function was to determine whether it was reasonable for the 'Additions' to be carried out and the expense on them incurred, and if so whether the cost of those works was reasonable in amount.
27. Mr Kurz accepted that he did not have any evidence to challenge the additions claimed by the contractor and approved by the council. In the final result Mr Kurz did not appear to assert that the works had not been carried out. Further he did not assert that the sums claimed for the 'Additions' works were unreasonable in amount.
28. Mr Kurz principal complaint was that he had not been provided with a full set of paper trail documents which he envisaged should have been generated if the terms of the contract had been complied with and administered and supervised to the letter.
29. Mr Purton gave his evidence in an open and honest manner and we find that he is a witness upon whom we can rely with confidence. We accept his evidence. We thus find, as a fact, that the 'Additions' works were reasonably incurred, were carried out to a reasonable standard and at a reasonable cost so that the respondent is obliged to make the contribution to the costs of those works demanded of it by the council.
30. Mr Kurz was anxious to go through the contract documents and subsequent letters issued by the council with a view to demonstrating

that the contract had not been administered and supervised properly and in all respects as required by the terms of the contract. Even if that exercise had been undertaken and even if some paper trail deficiencies or discrepancies had been identified, we find that it would not have resulted in any material impact on the real issue before us which was whether it was reasonable to undertake the 'Additions' works and, if so, what is the reasonable cost of them.

31. It is not for this tribunal to audit the manner in which the contract was administered or supervised in detail and make detailed findings on discrepancies or shortcomings which might have arisen – especially where any such discrepancies do not impact on the reasonableness of the works and the cost and quality of them. Even if discrepancies or shortcomings in other areas of the operation of the contract had been demonstrated it is not open to this tribunal to impose sanctions on the council simply because it did not always get everything right. But, we noted Ms Bradford's assertion that lessons had been learned about how 'Additions and Omissions' might be better identified and presented in future.
32. Going forward if the parties have similar issues in relation to other properties or sets of works we do urge them to keep a sense of proportion and to try and resolve their differences by negotiation.

In this case the final sum due from the respondent was less than the estimated cost [80], because the omissions were a greater sum than the additions.

This demonstrates that litigation whether by way of court or tribunal proceedings (and certainly not both) is not usually a cost-effective or sensible method of dispute resolution.

We would also urge the parties to keep the bigger picture in mind and to focus on what works have been carried, what is the cost of them and was that a reasonable cost, taken in the round. Pedantic attachment to a paper trail of documents, some of which will be less than helpful, will rarely be material to that bigger picture.

Fees and costs

33. At the conclusion of the hearing Ms Bradford made a late application for an order that the tribunal require the respondent to pay or contribute to the fees of £235 paid by the council to the tribunal in connection with these proceedings.
34. The council had not complied with direction 10 in regard to giving prior notice to the tribunal and the respondent of such an application. Ms Bradford said this omission was due to an oversight on her part. Ms Bradford thus sought an extension of time for making such an application.

35. The application was opposed by Mr Kurz who complained that the tribunal proceedings had been unnecessary, the issues should have been settled with some input by both sides and that the council had declined to mediate.
36. We decided to refuse the application. The reason for the failure to comply with directions was not compelling or meritorious. Broadly we preferred the submissions made by Mr Kurz, although we would add that it in our view is was not unreasonable of the council to decline the 1-hour free telephone mediation service on offer by the court. In our view, given the issues and the positions taken by the parties in these proceedings that form of mediation was never going to have a realistic prospect of success.
37. No application was made with respect to section 20C of the Act.

John Hewitt

Judge John Hewitt

7 April 2016

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.