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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**CHI/45UF/LSC/2015/0068**
Property	**18a & 18d Bedford Road, Horsham, West Sussex RH13 5BJ**
Applicants	**Jessica Lewis and John O'Sullivan**
Respondents	**Melinda Clements & Andrew James Knight**
Respondents Representative	**Richard Alford of Counsel**
Type of Application	**Liability to pay services charges: Sections 19, 27A & 20C Landlord & Tenant Act 1985 ("the Act")**
Tribunal Members	**Judge RTA Wilson (Chairman)** **Nigel Robinson FRICS (Surveyor Member)**
Date and Venue of Hearing	**26th April 2016** **City Gate House, Dyke Road, Brighton East Sussex**
Date of Decision	**18th May 2016**

DECISION

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The Applications

1. This application required the tribunal to make a determination under S.27A (and 19) of the Act of the Applicants' liability to pay service charges for 2012, 2013, 2014 and 2015.

2. The tribunal also had before it an application under S.20C of the Act that the Respondents' costs incurred in these proceedings should not be recoverable as service charges and also an application for reimbursement of tribunal fees.

Summary of Decision.

3. The service charges for 2012 as disclosed by the 2012 accounts are payable in full.

4. The service charges for 2013 as disclosed by the 2013 accounts are payable in full save for the costs of repairing the floor boards (£457.51) and ceiling joists (£408.92) which are not recoverable as service charge.

5. The service charges for 2014 as disclosed by the 2014 accounts are payable in full save that management charges are capped at £466.67 and the Applicants' liability to contribute towards the roof repair costs of £1,515 is capped at £250 each.

6. The service charges for 2015 are payable in full.

7. No order is made under S.20C of the Act.

Background & Preliminary matters.

8. By an application dated the 23rd October 2015 the Applicants applied to the tribunal for a determination of service charges for the years 2012 to 2015. The tribunal gave directions on the 5th November 2015, following which statements of case with supporting documentation and witness statements, were filed by the Applicants and then by the Respondents.

9. A hearing of the application took place on the 26th April 2016. The Applicants appeared in person and Richard Alford of Counsel represented the Respondents.

10. At the start of the hearing it emerged that Melinda Clements had recently transferred the freehold interest to her husband Andrew Knight. A short adjournment was granted so that Mr Arnold could contact Mr Knight for instructions. On returning to the room Mr Arnold confirmed that Mr Knight agreed to be joined in the proceedings as Respondent. Mr Knight was happy to adopt all statements made by his wife and all of the evidence contained in the hearing bundle and Mr Knight had briefed Mr Arnold to represent him at the hearing. The hearing proceeded on this basis.

11. The tribunal then spent some time to explain to the parties the extent of its jurisdiction to hear the issues in dispute, following which the Applicants conceded a number of issues that had originally featured in their application. In particular the Applicants accepted all service charge entries contained in the 2012 accounts.

12. The issues for determination were therefore identified as service charges demanded for

    (a) weed and rubbish clearance and the replacement of the ceiling joists and rotten floor boards in 2013,

    (b) roof works in 2014 and

    (c) roof repairs and insurance excess in 2015.

The Inspection

13. The tribunal inspected the Property prior to the hearing. It comprises a semi-detached four-storey house, including dormers, converted into four self-contained flats with an open side extension containing a metal staircase giving access to the upper flats. The elevations are rendered and painted and under a slate type roof punctured with two dormers each to front and rear. Windows are mostly painted timber double hung sashes or casements with some replacements in upvc. The decorations to render and timber were in fair condition only and would benefit from renewal in the not too distant future. A tower scaffold was present to the front bay and it was understood that the bay lead roof covering had just been replaced. Some minor repairs and touching in of decorations were being undertaken to the bay rendering at the time of the inspection. From ground level, there was no obvious sign of defect to the pitched roof slopes. The dormer roofs all appeared to be covered in a mineral felt type covering and the dormer cheeks clad in a timber or upvc finish. The metal staircase comprised mostly cast iron treads and it was noted that many of these had broken and been patch repaired with mild steel plates. Access was given to the top flat "d" where the bay roof could be seen from the main front room.

14. Externally, there is a gravel driveway leading to a covered parking area for four cars with a corrugated asbestos type roof. The driveway gravel is quite thin and signs of old weed growth could be seen in a number of areas. Attention was drawn to the boundary wall with the pavement which had recently been rebuilt as part of an insurance claim.

15. It was clear that, whilst the Property is not in bad condition, substantial expenditure will be required in due course particularly as there are only four flats to share these costs.

The Lease

16. The tribunal was provided with a copy of the Lease for the second floor flat. The Lease is for a term of 99 years from the 24th June 1981 at a yearly rent of £25 rising every 33 years.

17. So far as material to the issues in this case the relevant provisions in the Lease may be summarised as follows:

(a) On the 24th June and 25th December in each year the tenants are to pay a basic maintenance contribution on account of the tenants share of the annual cost to be incurred by the landlord in complying with its maintenance and other obligations as set out in the Fifth Schedule of the lease. The Fifth Schedule contains a description of the heads of expenditure to which the tenants are to contribute. The landlord can vary the amount of basic maintenance charge to reflect the estimated annual expenses of carrying out its duties under the lease.

(b) The landlord is obliged to produce annual accounts showing expenditure in each year on maintenance.

(c) The tenant's liability to pay any balancing charge is triggered by the service by the landlord of a detailed written request to be certified by a duly qualified accountant showing annual expenditure incurred by the landlord in the previous year, credit being given to the tenant for payments already made on account.

(d) The lease contains a provision for the landlord to accumulate reserve funds in its discretion to cover future items of major expenditure

The Relevant Law

18. The tribunal has power under S.27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application can be made in respect of a matter which has been admitted or agreed by a tenant.

19. By S.19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

20. Under S.20C of the Act a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Leasehold Valuation Tribunal 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.

21. Under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal has a general discretion whether to make an order for reimbursement of tribunal fees.

The Applicants' case

2013

22. Ceiling joists and rotten floorboards

The Respondents admitted that the ceiling joist costs of £408.92 and rotten floorboard costs of £457.51 should not have been treated as service charge and they agreed to credit these sums to the service charge account.

23. Weed Clearance

The Applicants withdrew their challenge to these items and accepted that the weed and rubbish clearance charge of £141.60 had been reasonably incurred.

No other items in the 2013 accounts were challenged.

2014

24. Management Charges

The freeholder management charges of £200 were conceded by the Respondents and they confirmed that these charges were withdrawn. The Respondents confirmed to the tribunal that they had secured a reduction in the 2014 management fees from Whitfield's leaving the amount paid as £466.67, which was accepted by the Applicants as being reasonable.

25. Roof Repairs

The Applicants contended that no statutory consultation had been carried out in respect of the roof works, which had costed £1,515. As this figure exceeded the statutory threshold for consultation the amount that they should pay for this work should be capped at £250 each.

No other items in the 2014 service charge accounts were challenged

2015

26. Flat Roof Repairs

The Applicants contended that a roof repair to the flat roof costing £310 had only been necessary because of the Respondents' failure to address the problems in a timely manner. Furthermore the repairs that were carried out were defective

resulting in the need to replace the flat roof some six months later. In these circumstances the decision to carry out patch repairs was wrong, the work defective and the cost should not form part of the service charge.

27. Insurance Excess

The Applicants contended that the Respondents had sent them an email confirming that the insurance excess of £100 would not be charged to the service charge yet the excess had appeared as a service charge item.

No other items in the 2015 service charge were challenged.

Section 20C Application.

28. The Applicants argued for a S.20C order. The application had occupied a great deal of their time and there had been a wholesale failure on the part of the Respondents to operate the service charge in accordance with the lease covenants. It was only when they had involved solicitors had the Respondents sought to address their concerns and even then there had been a refusal by the Respondents to engage with their legitimate complaints in a constructive way. In these circumstances they had had no option other than to initiate and progress the application with the tribunal. They invited the tribunal to make an order under Section 20c of the Act so as to prevent the Respondents from seeking to charge the costs of the proceedings before the tribunal as service charge. They also invited the tribunal to make an order requiring the Respondents to reimburse the tribunal fees that they had paid.

The Respondents' case

2014

29. Roof Works

Mr Alford contended that the roof works had been carried out in two distinctive stages and that as neither stage had involved service charges exceeding £250 then the full amount was payable. The first stage was the erection of scaffolding and an investigation of the issues and the second stage was implementation of the remedial work. He pointed to the admission by the Applicants that they had no issue with the quality or cost of the work carried out and their sole challenge was the lack of consultation, which on the facts of the case had not been required.

2015

30. Roof Repairs

Mr Alford contented that no evidence had been adduced to support the claim that the disrepair had come about because of historic neglect on the part of the Respondents. This claim was denied. He asserted that the decision to initially carry out patch repairs to mend the leak was a reasonable one and no evidence had been adduced to substantiate the claim that the work had been poorly executed. He invited the tribunal to uphold the charge in full.

Section 20C Application.

31. Mr. Alford argued that a S.20C order was not appropriate because after the outstanding service charge accounts had been given to the Applicants in August 2015 it was difficult to see why the dispute had rumbled on. He pointed to the fact that many of the issues brought to the tribunal had either been outside of its jurisdiction or readily conceded during the hearing. Furthermore his clients had offered a round the table meeting in December 2015 which had been rejected by the Applicants. This meeting could have resolved all outstanding issues and avoided the expense of a hearing. He claimed that the Applicants had been unrelenting in trying to uncover failures on the part of the Respondents and unrelenting in their determination to have their day before the tribunal. This amounted to unreasonable conduct and the sanction should be no section 20C order.

The Tribunal's Determination

2014

32. Roof Works - £1,515

The tribunal is not persuaded that these works were carried out in two stages thus avoiding the requirement for consultation. The facts were not easy to establish and the Respondents were not able to assist the tribunal as the work had been organised by the managing agents appointed at the time, and Ms Clements had left all the details to them. Such documentary evidence as there is, is to be found in the hearing bundle at pages 352 -355 and comprises of a series of invoices relating to the project. The first invoice is from MRN roofing services for £135 and the narrative is *to undertake an inspection to the rear roof and to arrange for the erection of scaffolding.* It is dated the 18th December 2013 and of significance this charge is not included in the £1,515 challenged amount. The second invoice is from Mid Sussex Scaffolding for £510 and relates to the cost of scaffolding hire. It is dated the 28th February 2014. The third invoice is from Coast to Coast roofing for £730. It is dated the 6th March 2014 and the Respondents confirmed that this invoice represented the cost of works carried out. The Fourth invoice is from MRN Roofing services

for £275 and relates to the arranging and monitoring of the repairs. It is dated the 14th May 2015.

33. From the sequence of these invoices it can more probably be interpreted that Stage one of the works actually began in December 2013 and is evidenced by the invoice from MRN for £135 with the narrative equating to investigation of the issue without the need for scaffolding. The Applicants did not dispute this charge. The remaining invoices which total the £1,515 all have the hall marks of Stage two, comprising the implementation of the work as one project; namely the erection of scaffolding and the carrying out of the work on a monitored basis. On this analysis the cost of this stage does indeed exceed the threshold for consultation, which the Respondents admit was not carried out.

34. What should have happened is that statutory consultation should have been initiated in December 2014 after the investigation had taken place and the erection of the scaffolding and the remedial work should only have been authorised after the completion of consultation. In the alternative, if the work was of an emergency nature then an application could have been made to the tribunal for dispensation from consultation. If granted this would have enabled the work to be completed without full consultation. In the absence of consultation or a dispensation order the tribunal finds that the maximum amount recoverable from the Applicants in respect of the work charged at £1,515 is capped at £250 per Applicant.

35. <u>Roof Repairs - £310</u>

It is established law that where a landlord covenants to keep the structure and exterior of a building in repair and the tenants covenant is to contribute towards the cost of so doing, it is for the landlord to decide how to repair, although decisions must be reasonable. So where the landlord could patch a roof or replace it, it has been held that the tenants could not require him to carry out a permanent job rather than a patch repair. It is a matter of landlord's judgment as to when the time has come to repair or replace an item. On the facts of this case there is no evidence to support the Applicants contention that the need to repair came about because of historic neglect and this argument is rejected.

36. The tribunal finds that it was not an unreasonable decision for the landlord to initially elect to try a patch repair to rectify the leak. There was no probative evidence before the tribunal to support a finding that the repair had failed ab initio and no evidence to establish that the landlord had acted negligently in electing a patch repair in the first instance. The Applicants claim is rejected.

37. <u>Buildings insurance.</u>

At the hearing the Applicants confirmed that they did not challenge the principle that the insurance excess was a legitimate service charge item. Their sole ground of challenge was that they had received an email from the Respondents which led them to believe that they would not have to contribute towards the insurance excess. A copy of this email is to be found at page 158 of

the bundle. It reads *I forgot to mention that the front wall will be built up to the same as next doors as Eddie had identified that it was too low and a risk of people falling off it. There is no extra from the maintenance to pay as we have some materials from our house that the builders are going to use.*

38. In the tribunal's judgment, no reader of this email could reasonably conclude from it that the landlord intended to waive the right to recover the insurance excess from the service charge fund. The subject matter of the letter is not insurance but the size of the front wall. The Applicants' claim is rejected.

Application under S.20C

39. In deciding whether to make an order under S.20C of the Act a tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings.

40. As far as the conduct of the parties is concerned there is little doubt that there has been a break down in communication between the parties in part caused by the failure of the Respondents to produce annual service charge accounts. Whatever the reason for this might have been, and the one pleaded is that the freeholder was endeavouring to save costs, this failure meant that it was not possible for the lessees to ascertain the state of the service charge accounts and the amount of reserve funds. It is understandable that they had concerns.

41. This failure was finally rectified in August 2015 when service charge accounts for 2012, 2013 and 2014 were commissioned by the Respondents and served on the lessees. At this stage the parties ought to have re-evaluated their positions and sought to resolve the outstanding issues in a constructive way. In the event neither party can be said to have done this. The Applicants brought to the tribunal many issues that the tribunal was not able to deal with and the Applicants conceded a number of items on the day of the hearing but not before. On the day of the hearing the Respondents quickly conceded the cost of the joist and ceiling repairs, which amounted to nearly £900 and have been found to have fallen short in carrying out statutory consultation.

42. Neither parties' conduct has been exemplary and there have been no clear winners. In the tribunal's judgment it is just and equitable on the facts that both parties should be responsible for their own costs, which necessitates the tribunal making an order under S.20C of the Act.

43. For these reasons, the tribunal makes an order under S. 20C of the Act and declines to make an order for the reimbursement of the tribunal fees incurred by the Applicants.

Appeals

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.

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. 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 the time limit, or not to allow the application for permission to appeal to proceed.

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.

If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.