



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

**Case Reference** : CAM/34UF/LSC/2017/0038

**Property** : 12 Elmhurst Court, Northampton  
NN3 2LG

**Applicant** : Mrs Brenda Ashley

**Representative** : In person

**Respondent** : EMH Housing and Regeneration  
Limited (EMH)  
Miss L Cocker of Forbes Solicitors  
Mr M Abell of EMH

**Representative** : Mr I Bennett of Independent  
Testing Company Inc Limited (ITC)

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**Type of Application** : For the determination of the  
reasonableness of and the liability  
to pay a service charge

**Tribunal Members** : Tribunal Judge Dutton  
Miss M Krisko BSc (Est Man)  
FRICS  
Mr C P Gowman MCIEH MCMI BSc

**Date and venue of  
Hearing** : 6th June 2017 at the Magistrates  
Court Northampton

**Date of Decision** : 7th June 2017

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal makes the determination as set out below.
- (2) The tribunal makes an order, with the agreement of the Respondent, under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (3) The tribunal records that the Respondent has agreed pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant. Further the Respondent has agreed to reimburse the Applicant her photocopying charges, not to exceed £110, subject to the Applicant providing the Respondent with a receipt for the photocopying charges.

### **The application**

1. The Application made by Mrs Ashley sought a determination that the proposed costs for the installation of a new door entry system of some £24,000 was not payable. The basis of the application was that the costs were too high and that a replacement system could be provided at a substantially lower cost. Further that there had been no consultation under s20 of the Act.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant appeared in person at the hearing and the Respondent was represented by Miss Cocker a solicitor from Forbes who attended with Mr Abell of EMH and Mr Bennett of ITC.
4. Immediately prior to the hearing Mrs Ashley provided a revised quotation from Finch Electrical Limited. We had also received the evening before a skeleton argument on behalf of the Respondent.

### **The background**

5. The property, which is the subject of this application, is a ground floor flat in a two storey block of 4. There are five other blocks, containing in total 24 flats. The flats are occupied by persons aged 55 or over.
6. The tribunal inspected the block housing Mrs Ashley's flat before the hearing in the presence of Mrs Ashley, Miss Cocker, Mr Abell and Mr

Bennett. The object of the inspection was to see the present door entry system.

7. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

### **The issues**

8. The skeleton argument for the Respondent indicated that many of the earlier issues raised by Mrs Ashley had been resolved. The Respondents would not be installing a computerised system and instead would replace the current system with a similar one at a price below £6,000 which obviated the need for consultation under s20 of the Act. The lack of consultation therefore fell away.
9. Accordingly we were asked to determine whether the door entry system should be a Fermax Citymax system, suggested by ITC at a total cost of £5,859.36, or whether Finch Electrical Limited (Finch), a well known and respected local contractor should carry out the work at the latest figure of £5,640.96, using a Bell System.
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Who should carry out the work and the cost**

#### **The tribunal's decision**

11. Although it seems to us this is not strictly a matter falling within s27A(1) but rather s27A(3) we have concluded that the works should be undertaken by ITC at an agreed price matching the quote of Finch at £5,640.96.

#### **Reasons for the tribunal's decision**

12. We have noted the circumstances leading to this application and the genuine concerns of the residents voiced by Mrs Ashley, who did a sterling job. However we heard from Mr Bennett of ITC who appeared a straight forward and honest witness. He told us that he knew Finch and its director and had no doubt that they would be able to undertake the work, to such a standard that ITC would take on the on-going maintenance. However, ITC is the preferred contractor for EMH in respect of electrical matters, having gained that role following consultation under schedule 2 of the Service Charges (Consultation Requirements)(England) Regulations 2003 (the Regulations), relating

to long term agreements requiring public consultation. It should be noted that there was no consultation with the residents of Elmhurst Court, a matter picked up by Mrs Ashley.

13. Mr Bennett told us that ITC would be prepared to mirror the quote of Finch, uplifted recently to a figure of £5,640.96, and to undertake the works as per that quotation. This would mean that the Fermax Citymax system would not be utilised but a Bell System installed, which was favoured by both the residents and Finch. Mr Bennett indicated that it was a better system although usually more expensive. Further there would be no change to the exiting arrangements and a push pad would not be included.
14. This arrangement met with the approval of Mrs Ashley and it seems the residents who attended, namely Mr Denney, Ms Robinson, Ms Chambers and Mr Richardson.
15. There are just a few matters we should record. There is no doubt that the Respondent did not consult on the long term agreement. However, as the costs of this piece of work fall below the consultation level (£6000 in this case) assuming such consultation would have taken place under schedule 4 part 2 of the Regulations, there really is no issue, the more so as of course the costs are the same as those suggested by Finch, with which Mrs Ashley agreed. If works are to be undertaken in the future under the long term agreement the Respondent may well need to consider an application under s20ZA seeking dispensation as of course the limit thereunder is £100. We were told by Mr Abell that EMH would need to obtain three quotes for works over £4,000 in any event if they were not under the long term agreement.
16. We do not consider that the residents can dictate to the landlord the identity of the contractor. If consultation is required then clearly an alternative can be put forward but there is no requirement on that alternative being used. In this case EMH has sought to create a working relationship with ITC. They are free to do so. Further, thanks to Mr Bennett, ITC has agreed to match, in all respects the quote of Finch. We understand that Finch has a good reputation with the residents but EMH cannot be compelled to use them.
17. We should also record that the Respondent has agreed to fund the costs of these works from monies held in the reserve fund, which we were told as at the end of 2016 stood at £34,975.
18. In the skeleton argument the Respondent posed 4 questions. We believe that those questions have been answered, either by agreement between the parties or on our findings in this case

#### **Application under s.20C and refund of fees**

19. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application/hearing<sup>1</sup> and her photocopying costs. In addition Mrs Ashley applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. We should record that Miss Cocker agreed with such an order.
20. The Respondent, without demur, agreed that it would reimburse the application and hearing fee of £300 and would pay the photocopying costs up to £110, upon production of a receipt from Mrs Ashley.
21. At the hearing some of the residents complained about the lack of communication they had with EMH. Indeed Mrs Ashley was of the view that these proceedings would not have been necessary if EMH had properly engaged with her. The residents are a potentially vulnerable group, although we do not for one minute suggest that they cannot fight their corner. As we are sure EMH appreciate, communication is essential. Mrs Ashley, in our finding was justified in being concerned about the original plans of EMH to install a very expensive door entry system. To their credit, after Mrs Ashley raised the issue albeit not as quickly as she would have liked, they have reviewed the position and this has resulted in a settlement which we hope satisfies Mrs Ashley and her fellow residents. We were impressed with Mr Bennett and hope that the residents can foster a relationship with ITC akin to the dealings they had with Finch.

*Andrew Dutton*

**Name:** Tribunal Judge Dutton      **Date:** 7th June 2017

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

#### Section 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~~ for which the service charge is payable or in an earlier or later period.

#### Section 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 provisions 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.

#### Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations; and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20C**

- (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 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.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;



- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.

### **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.