

12124



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

Case Reference : LON/00AH/LSC/2016/0416

Property : 1-6 Izzard Court 104 Livingstone
Road Thornton Heath Surrey CR7
8JU

Applicant : Blue Property Investment UK
Limited

Representatives : Blue Property Management UK
Limited

Respondent : Mary Boyle (flat1), Mr I C
Cummings (2), Mr M J McClymont
(3), Reginaldo Xavier Viega (4),
Marline Properties(5) and Miss C E
S D'Acres(6)

Representative : In person

Type of Application : For the determination of the
liability to pay in advance service
charges (s.27A Landlord and
Tenant Act 1985)

Tribunal Members : Prof Robert M. Abbey (Solicitor)
John F Barlow FRICS

**Date and venue of
written Decision** : 27 March 2017 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 27 March 2017

DECISION

Decisions of the tribunal

- (1) The tribunal determines that:-
- (2) The service charges for major roofing works at the property in the sum of £23,945 plus VAT, or £4789 including VAT per leaseholder are reasonable and payable in accordance with the terms of the lease. The tribunal also finds that there are no breaches of s.20 consultation requirements.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the respondent in respect of service charges payable for services provided for **1-6 Izzard Court 104 Livingstone Road Thornton Heath Surrey CR7 8JU**, (the property) and the liability to pay such service charge.
2. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision.

The written decision

3. The applicant and the respondent agreed to a written decision by the tribunal. The tribunal decided that in view of the nature of the application that the decision could be taken on paper and without the cost of an oral hearing. Written submissions were requested of the parties.
4. The tribunal had before it a trial bundle of documents prepared by the one of the parties in accordance with previous directions.

The background and the issues

5. The property which is the subject of this application comprises six flats in a purpose built block owned and maintained by the lessor and its management company with six self contained garages to the rear of the main block.
6. Neither party requested an inspection and the tribunal did not consider that an inspection was necessary in the light of the detailed and extensive paperwork in the trial bundle; nor would it have been proportionate to the issues in dispute.

7. The respondents hold long leases of each of the flats in the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a service charge.
8. The applicant sought the resolution by the tribunal of three issues. First, the liability to pay the cost of roofing works, second the reasonableness of the charges for those works and thirdly that the section 20 process had been adhered to.

Decision

9. The tribunal is required to consider the liability to pay the roofing charges. The leases of the flats were granted in the 1970's. The leases contain the following provisions, (the words in bold are highlighted by the tribunal)

*“(ii) (a) Pay and contribute in manner hereafter provided a proportion of all expenses (including management charges) **incurred by the lessor** in complying with its covenants in relation to the Building as set out in the Fourth Schedule....*

*(b) as soon as practicable **after the complete or partial execution** of any works carried out by or at the direction of the lessor under its covenants in relation to the building above referred to the lessor shall serve on the lessee a notice in writing duly certified by the lessor of the amount of the lessee's aforesaid liability for the said works and the lessee shall forthwith pay the sum so certified....*

THE FOURTH SCHEDULE above referred to

*1. To **maintain repair and renew** (a) the external parts of the building (including the main walls **roof** foundations chimney stacks gutters and rain water pipes of the building including the garages)....”*

10. On careful consideration of these terms the tribunal is of the view that the lessees are responsible under the lease terms for service charges covering the maintenance repair and renewal of the roof of the main block as well as renewal maintenance and repairs to the roof of the garages.
11. The second issue relates to the reasonableness of the the likely charges for the roofing works. The applicant wishes the tribunal to determine that the total costs of £23,945 plus VAT or £4789 inclusive of VAT per leaseholder is reasonable. Additionally the applicant requires the tribunal to confirm that these monies are payable within 30 days of the dates of the works being instructed.

12. The sum of £23,945 is the amount quoted by Premier Roofing in their quote dated 3 January 2017. The applicant also sought a second quote and this was for £36,589.54 plus VAT and was made by Russell Trew Limited and was dated 21 December 2016. The applicant has therefore chosen the first lower quote from Premier Roofing as being the charge they seek to recover. In July 2015 there was commissioned by the applicant a roof condition report and this was issued by John Cobb Consulting Chartered Building Surveyors. The report confined itself to the roofing concerns affecting the main block and appeared to exclude roofing works to the garages. The report provided a budget cost for the works they said were necessary and which totalled £42,000.
13. The tribunal was also shown two additional roofing estimates from Cornerstone Roofing Solutions and Pure Colours Limited. These were provided by the tenants/respondents. In both cases the quotes were considerably lower in cost but were also very thin on detail in regard to the proposed works. Additionally the applicant was able to show to the tribunal that in both cases the companies in question were under threat of being struck off at Companies House there being letters issued to that effect from Companies House in October and December 2016.
14. The tribunal saw copy email correspondence passing between the parties about a third estimate obtained by the respondents from Eden Park Roofing Limited. In that email correspondence the tribunal noted that the Eden quote was originally at £9000 but on Eden being shown a copy of the Cobb report they then increased their estimate to £28,970. This showed two things to the tribunal. First that the low quotes were likely to have been obtained without the companies quoting having seen the Cobb report. Secondly on seeing the report the figures increased to a level that was close to the quote supported by the applicant from Premier Roofing.
15. In the absence of any convincing evidence to the contrary the tribunal is of the view that the charges proposed at £23,945 plus VAT or at £4,789 including VAT per leaseholder are reasonable for the major roofing works.
16. With regard to the timescale for playability, the tribunal was able to confirm the approach for this from the lease terms and the previous decision of the tribunal dated 27 July 2016 (LON/OOAH/LSC/2016/0156). On careful consideration of the relevant wording in the lease, (see paragraph 9 of this decision) the tribunal is of the view that the lease wording disallows any payments in advance, (unless of course the lessor might unusually pay for the works before they are carried out). However, the tribunal is also mindful of clause 4 (ii) (b) which says that the landlord can if it provides a written certificate, demand that the lessees must pay subsequent to the certificated demand. Indeed the lessor may make such a certificated demand after the complete or partial execution of any works carried out

under the lease service charge provisions. Accordingly if the lessor starts the roofing works he can at the start of the works issue a certificate and demand payment. While a demand in advance is not possible, or indeed when the builders are instructed to proceed, provided there is partial execution and a certificated demand the lessor can at that point seek payment. The tribunal noted that clause 4 (ii) (c) of the lease provides that *“if any of the sums which are required to be paid by the lessee in accordance with sub-clauses (a) and (b) hereof shall not be paid within 21 days after the same shall have become due then without prejudice to any other right or remedy of the lessor hereunder the same shall forthwith be recoverable by action....”* It is for the applicant to consider how to proceed in the light of this lease covenant.

17. With regard to section 20 of the Act, the tribunal noted that there were submissions from the respondents regarding the consultation process. However, the objections were based upon the purported failure of the lessor to take into account the comments made by the leaseholders about the need for the works and the estimates submitted by the respondents. The tribunal did not see any convincing evidence of non-compliance with the consultation process. Indeed, the tribunal was shown copies of written notices of intention sent to all the leaseholders and copies of the statement of estimates and the notices accompanying the statement. In support the applicant supplied a witness statement from Egis Gecas, an Administrator employed by Blue Property Management UK Limited. In this statement dated 18 January 2017 the witness stated that the appropriate notices were served as were the statement of estimates and accompanying notices and that the witness personally drafted and posted all such notices and documents.

Name: Judge Professor Robert
M. Abbey

Date: 27 March 2017

Appendix of relevant legislation and rules

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.

20 Limitation of service charges: consultation requirements

- (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 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.

20B Limitation of service charges: time limit on making demands.

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.