12884

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/LSC/2017/0357**
Property	:	**18A Lady Somerset Road, London NW5 1UP**
Applicant	:	**Mr D Kaufman (1), Mr R Kaufman (2) and Ms H Kaufman (3)**
Representative	:	**No appearance**
Respondent	:	**Mr A Collier (1) and Ms J Comerford (2)**
Representative	:	**Mr A Collier**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Mr S Brilliant** **Ms A Flynn MRICS** **Mrs J Dalal**
Date and venue of hearing	:	**14 March 2018** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**27 April 2018**
Date of refusal of permission to appeal	:	**9 July 2018**

DECISION

Decision of the Tribunal

1. The Tribunal has considered the tenant's request for permission to appeal dated 25 May 2018 and determines that:

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(a) it will not review its decision; and

(b) permission be refused.

2. In accordance with s.11 Tribunals, Courts and Enforcement Act 2007 and Rule 21 Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Respondents may make 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 to appeal.

Reasons for the decision

3. The first ground of appeal concerns the format in which the Applicants provided documents to the Respondents.

4. By paragraph 1 of the directions given on 2 November 2017 [4], it was provided that:

By 17 November 2017 the landlord shall send to the tenant by post and may be sent in electronic format by email:

certain documents including a Scott schedule, a statement of facts and copies of all relevant invoices relating to the service charge demands.

5. The direction is, with respect, ambiguous. It is not clear whether email can be used instead of the post, or in addition to it. The First Applicant says that he understood it to permit sending the documents by email alone and that the usual means of communication between the parties was by email: see paragraph 1 of his reply [18].

6. As it happened the Respondents did not receive anything in the post but did receive the documents by email on 22 November 2017. Those documents included a Scott schedule, a statement of facts and various invoices and receipts. The Applicants were unable to print out the email but were able in turn to provide their comments on the Scott schedule, a statement of facts and two additional documents.

7. The Applicants provided a bundle prior to the hearing and the Respondents were in possession of it.

8. Whilst the Applicants were some days late in providing the required documents, the Respondents were able to provide the documents required of them, and we found that no prejudice was caused to them by the lateness. It would have been disproportionate to have struck out

the proceedings as requested by the Respondents.

9. The second ground of appeal is that the Applicants did not include any evidence of actual invoices for the years 2011-2015. Invoices were provided although the First Applicant says that he typed them out himself for the builders to sign: see paragraph 7 of the reply [18]. There appears to be only one receipt (as opposed to an invoice) [28]. The directions referred to invoices and not specifically to receipts. For the reasons given below we consider that the previous proceedings have already decided that certain expenditure had actually been incurred in the five service charge years from 1 January 2011 to 31 December 2015.

10. The third ground of appeal is that the Tribunal misunderstood the basis of the previous decision. We do not agree. Paragraph 13 of the previous decision explains that the service charges were not recoverable at the time of that hearing because of a failure to comply with s.47 Landlord and Tenant Act 1987 and s.21B Landlord and Tenant Act 1985. Those omissions had been remedied by the time of the proceedings before us.

11. It is clear from the previous decision that the Tribunal was deciding what would be a reasonable figure to pay had the service charge demands been valid. There is no suggestion that the Tribunal was deciding what would be a reasonable figure to pay had proper evidence of invoice and receipts been provided. Nowhere does the Tribunal say this. Indeed, had the Tribunal said this it would have been an abuse of process for the Applicants to have commenced a second set of proceedings.

12. The fourth ground of appeal relates to insurance payments. We have taken the view that the previous decision has already decided would be a reasonable amount to pay for insurance in the five service charge years from 1 January 2011 to 31 December 2015 (see paragraphs 24, 28, 32, 37 and 41 of the previous decision). There is a debit note for the year ending 31 December 2017 [13] showing the Respondents' share at £240.00. There is no debit note for the year ending 31 December 2016, but in the context of the other payments for insurance we did not find it to be an unreasonable amount paid for that year.

13. The fifth ground of appeal relates to the service charge years ending 31 December 2016 and 31 December 2017.

14. The first point taken relates to the insurance payments of each of these years. We have already dealt with this point in paragraph 12 above.

15. The second point taken is that the Tribunal did not allow any part of the claim for repairs in the year ending 31 December 2016, but did allow part of the claim for repairs in the year ending 31 December 2017.

16. The latter year was principally concerned with the erection of scaffolding in respect of which a claim for £975.00 was made. It was not suggested that the scaffolding had not been erected. We were satisfied, on the balance of probabilities, that the scaffolding had been erected and the amount claimed was, based on our knowledge and experience, a reasonable amount. We were also satisfied that certain other minor repairs, in respect of which a total of £220.00 was claimed, were carried out.

17. The largest component of the charge for the former year was £300.00 spent on *various minor repairs previously detailed* [30]. A claim put in these terms is not acceptable. Further, we were not satisfied, on the balance of probabilities, that the two other items of work, in respect of which £280.00 was claimed, were in fact carried out.

18. The sixth ground of appeal is that the entire claim of the Applicants should have been struck out. This ground repeats some of the grounds already made. Our understanding of the previous decision is that the Applicants would have been entitled to recover certain sums provided the service charge demands been valid. The Applicants also complain that they have had to pay an increased premium for an extension of their lease. That is not a matter the Tribunal can consider in deciding whether service charges are payable not.

19. In conclusion, there was no procedural irregularity in the determination of the application, and there are no grounds for setting the order aside, for reviewing it or for granting permission for appeal.

Signed

Simon Brilliant