



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

Case Reference : MAN/00CB/LSC/2018/0064

Property : 6, Victoria Drive, West Kirby,
Wirral, Merseyside CH48 0QT

Applicant : Nicholas Williams

Respondent : Celia Pritchard

Type of Application : Reasonableness and payability of service charges
Landlord and Tenant Act 1985 section 27A

Tribunal Members : Mr J R Rimmer
Mr J Faulkner

Date of Determination : 18th March 2019

Date of Decision : 19th March 2019

DECISION

Order :

- (1) The proposed element of the service charges for 2018 and 2019 relating to the costs of new roof works to the roof are reasonably incurred at reasonable cost.**
- (2) The amount payable by the Respondent shall be due 28 days after the Applicant has expressed satisfaction with the completed works.**

Application and background

- 1 The Applicant is the freehold owner of the building that contains 2 flats. The flat occupying the ground floor is owned, under the terms of a long lease, by the Respondent. The upper flat, occupying the first and second floors, is similarly owned and occupied by the Applicant and his wife.
- 2 The Applicant has proposed re-roofing of the building and has sought to justify this by reference to the building survey carried out at the time of his purchase and subsequent estimates of the work required.
- 3 The cost of the works was always going to be such that an appropriate consultation exercise, required by Section 20 Landlord and Tenant Act 1985 was required and this was carried out correctly by the Applicant. It is evidenced by the documentation in the Applicant's bundle, page 60 onwards.
- 4 Of the quotations obtained by the Applicant, one for a total amount of £16,098.00, including VAT, was accepted. The cost of further works to update roof insulation are also added to this amount, but the Applicant does not seek any contribution to this additional cost. The Applicant's view is that the Respondent is liable for one-third of the amount in question.
- 5 The Applicant and the Respondent have not been able to agree as to the appropriateness of the re-roofing exercise, the Respondent taking the view that a much cheaper option to repair the existing roof was available. In the absence of any agreement between the parties the application to the Tribunal has been made before works are contracted and commenced.
- 6 The Respondent has clearly been distressed by these proceedings, to the extent that she contacted the Tribunal on the day before the intended inspection and hearing to express the view that she was now willing to meet the Applicant's claim and did not wish to attend the hearing. The Tribunal was, however concerned that this view was equivocal and was therefore minded to continue with its deliberations to effect an independent determination of the merits of the case: a view with which the Applicant agreed.

The law

- 7 The law relating to jurisdiction for service charges, falling within section 18 Landlord and Tenant Act 1985 is found in section 19 of the Act which provides:
- (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 in the provision of services or the carrying out of works, only if the services are of a reasonable standard.
- 8 Further, Section 27A of the Act provides;
- (1) An application may be made to a (First-tier Property 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

And the application may cover the costs incurred in providing the services etc. and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (Subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

Inspection

- 9 On the morning of 11th March 2019, the Tribunal inspected the property and found it to be a three-storey, terraced house constructed of brick under a tiled roof. It is understood to date from the end of the Nineteenth Century and is therefore 120 years old, or thereabouts. A communal front door leads to the two separate flats. The external grounds are predominantly, but not completely, within the demise to the Respondent.

- 10 The roof is composed of rosemary clay tiles and there are clearly a number broken and/or missing and a number show damage from the elements. The property is situated only a short distance from the Dee Estuary and exposed to a coastal and marine environment. Internally there is evidence that water ingress has compromised the ceilings and electrical circuits in a number of rooms on the second floor.

The lease

- 11 the leases to the flats provide, at clause 3(a), that the roof is in the ownership of the lessor, and shall be maintained and repaired by the lessor, but without prejudice to the right to recover the contribution required of the respondent by her lease.
- 12 This is set out in paragraph 14 of the Third Schedule to the lease: to pay one-third of the cost of maintaining, repairing and renewing a list of items, importantly including the roof, set out in that paragraph.

Submissions and hearing

- 13 Although set out at some length, the submissions made by both parties addressed the simple issue as to whether the roof works, as proposed, were reasonably required, and the likely cost thereof.
- 14 The basis of the Applicant's case for the need for a new roof is the building survey dated 17th March 2016, obtained by the Applicant from Rainfords, Chartered Surveyors, at the time he and his wife purchased both the freehold of the building and the lease to the upper flat. Thereafter a further report, dated September 2018, was obtained in relation to the roof from McLachlan Associates, Chartered Building Surveyors. The Applicant relies upon the extensive contents of them, considered by the Tribunal, to justify the need for a replacement roof. The identified likely cost is that in the lower of the two estimates eventually provided to the Applicant; that being from Les Perry Roofing Limited.
- 15 The Respondent suggests that there is no need to re-roof, merely to repair the existing roof where necessary. This view is based upon a report she obtained from a local roofing contractor, Roofcare, indicating that suitable repairs could be carried out at a cost of £1,595.00.
- 16 The Tribunal therefore considered the evidence at a hearing, following its inspection, held at the Civil Justice centre, Liverpool. This was attended by the Applicant, accompanied by his brother, David Williams.

- 17 The Applicant addressed the Tribunal at some length in support of his application and answered a number of queries that the Tribunal had in order to clarify some issues that might have been raised by the Respondent, had she felt able to attend:
- The need for the lease to provide clearly that the respondent was required to pay one-third of the cost of roof repairs.
 - The compliance with the Section 20 Landlord and Tenant Act 1985 consultation procedure.
 - The issue as to whether or not roof repairs, as suggested by Roofcare would be adequate.
 - Whether the costs, as set out in the estimate from Les Perry Limited were reasonable, including the requirement for scaffolding.
 - Whether all the works specified were reasonably necessary.

Decision

- 18 Thereafter the Tribunal considered all that it had received by way of documentary and oral evidence, before, or at, the hearing.
- 19 The current roof is 120 years old. The experience of the Tribunal, supported by the professional evidence submitted, suggests that it has done well to last as long as it has. The rosemary clay tiles currently in place are known to deteriorate after long exposure to the elements. It is not unreasonable to suppose the coastal position of the property will assist such deterioration. The observations by the Tribunal at its inspection suggest that there are many areas of deterioration. Indeed, the drone photographs taken by Roofcare show problems in all areas of the roof.
- 20 Further, the internal deterioration of the uppermost storey to the building by water penetration suggests a widespread problem. This is supported by the evidence of extensive mortar decay and accumulations in the loft roof.
- 21 The reports of both the experts instructed by the Applicant are clear and thorough. They are more convincing, to the Tribunal's mind, than that of Roofcare.
- 22 It is also the experience of the Tribunal that limited repairs will not at this stage address the problem. This is confirmed by the conclusions in the second of the reports.
- 23 The suggested costs would appear to be reasonable. Quotations were obtained and considered appropriately. The costs are well within the limits of what the Tribunal would in its expert opinion be reasonable.

- 24 The Tribunal therefore considers that the quoted costs for the re-roofing, as evidenced by the Quotation from Les Perry Limited will be reasonably incurred and the cost reasonable.
- 25 It would appear that the Applicant does not prepare any budget for anticipated service charges, nor seek any payments on account for the current year. It is therefore appropriate that in the absence of any clearer indication as to when payment should be made, the Respondent should make an appropriate payment of one-third of the costs, as set out in paragraph 4, above, within 28 days of the Applicant being satisfied that the works are concluded. The Tribunal is of the view that the Applicant's own interests in satisfactory works makes that appropriate.

J R Rimmer
Tribunal Judge
19th March 2019