



FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/29UN/LIS/2020/0038

Property : Flat 4, 81 Northdown Road, Margate CT9 2RJ

Applicant : Cipora Stern
(the Landlord)

Representative: Fountayne Managing Ltd

Respondent: Tayrin & Rorun Mehmet
(the Lessees)

Representative: ---

Types of Application: Determination of service charges - Section 27A
Landlord and Tenant Act 1985 (the 1985 Act)

Tribunal Members: Judge P J Barber
Mr R Athow FRICS, MIRPM

Date of Decision: 30 November 2020

DECISION

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Decision

- (1) The Tribunal determines in accordance with the provisions of Section 27(A) of the 1985 Act, that the sums of £4,553.86 in respect of major roof works, and £885.86 by way of interim service charges, in each case in the service charge year 2019/2020, are reasonable and payable by the Respondents to the Applicant.

Reasons

INTRODUCTION

1. The application received by the Tribunal was dated 14 July 2020 and was for determination of service charges payable by the Respondent lessees to the Applicant landlord, in the service charge year 2019/2020. The Applicant states that Flat 4, 81 Northdown Road, Margate CT9 2RJ (the Property), is a self-contained flat within a converted house of 6 flats and 1 commercial unit.
2. Directions were issued on 3 September 2020, providing for the matter to be determined by way of a paper determination, rather than by an oral hearing, unless a party objected; no such objections have been made and accordingly, the matter is being determined on the papers.
3. The Applicant has provided an electronic bundle of documents to the Tribunal which variously included copies of the application, service charge accounts, specimen lease, the Respondent`s statement of truth, documents and photographs.
4. The lease provided in relation to Flat 4, is a Lease dated 11 April 1988 made between Burnswark Limited (1) Paul Luis George Mendonca Michael Hone (2) (“the Lease”) for a term of 99 years from 29 September 1987.
5. Due to Covid 19 restrictions, no inspection was carried out in respect of the Property.

THE LAW

6. Section 27A Landlord and Tenant Act 1985 provides that:-
 - (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, the date at or by which it is payable, and*
 - (d) *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)-(7)....

WRITTEN REPRESENTATIONS

7. The electronic bundle includes a witness statement made by Simon Stern of the managing agent, Fountayne Managing Limited. In broad terms, the Applicant requests a determination of reasonableness of service charges for the year 29 September 2019 to 28 September 2020, variously being interim charges of £885.86 and major roof work costs of £4,553.86. The Applicant submits that the interim service charge demanded includes:-
- Communal cleaning - $£780.00 \times 16.67\% = £130.00$
- Communal lighting – $£250.00 \times 16.67\% = £41.60$
- Fire prevention system - $£570.00 \times 16.67\% = £95.00$
- General maintenance - $£750.00 \times 14.29\% = £107.14$
- Roof report & maintenance - $£250.00 \times 14.29\% = £35.71$
- Insurance premium - $£850.00 \times 14.29\% = £121.42$
- Accounts - $£540.00 \times 14.29\% = £77.14$
- Management fee – $£1,700.00 \times 14.29 = £242.85$
- PPS (out of hours call centre) - $£245.00 \times 14.29\% = £35.00$
8. The Applicant explains that the proportions attributable to the Property are variable either at 14.29% or 16.67%, given that the commercial premises do not contribute to service costs only for internal communal residential areas of the building. The Applicant says that despite being demanded, no sums have been paid by the Respondents for the above service charge amounts. The Applicant further states that Clause 2(xiii)(b) of the Lease entitles her to request monies on account and that in regard to major works, these arose following part of the roof having been stripped off by extremely strong winds. The Applicant says that temporary covering was put in place whilst builders were consulted regarding the extent of necessary works; water ingress then started to occur to the top flat, following which Margate Council served an Improvement Notice in respect of the required roof repair.
9. The Applicant further submits that it arranged for several roofers to inspect and also enquiries were made regarding insurance cover for the costs, but unsuccessfully on the basis that the damage was due to wear and tear. The Applicant stated that

Section 20 consultation notices were served on the lessees. The Applicant further stated that three quotations were obtained and that the cheapest tenderer was selected to do the work.

10. The Respondents submitted a single page response in which they referred to having purchased the Property at auction in 2017, finding it to be occupied by squatters on their first visit. The Respondents indicated that they became aware of a leak into the top flat, from the roof and how they had spoken to Greenknights, the then agents, about this. The Respondents said there had been no response from the freeholder or the agents and that in consequence, in parallel with their refurbishment of Flat 4, they took it upon themselves to fix the communal area including re-papering, plaster ceiling, repainting and new carpets, attaching invoices in support. The Respondents submitted that when the new managing agents took over, they did not visit the building until the council served an enforcement order, having previously sent to the Respondents invoices for cleaning which the Respondents said they were surprised to receive as they were already doing that themselves. The Respondents referred to a witness statement by John Turner in this regard; a brief undated and unsigned statement was included with the bundle at Page 227 in which John Turner of 48 Canonbury Road, Ramsgate, purported to say that he had been cleaning the hallways since 2018 and that the roof had been damaged by theft of lead, rather than by a storm as alleged. Certain invoices and photographs purportedly showing the communal stairs and landings in poor repair were also appended.
11. In a brief reply dated 26 October 2020, the Applicant referred to deficiencies in the Respondents` statement, and submitted that whilst there had been some break-ins at the building, the Applicant had taken appropriate action to secure the front door and carried out some redecorations to the communal areas. The Applicant submitted that cleaning is part of the landlord`s responsibility in the Lease and that they had instructed Pioneer Quality Service Ltd to clean such areas fortnightly, attaching a contract and quote, and disputing whether the invoices provided by the Respondents necessarily relate to this building. The Applicant repeated that the roof had been damaged by a storm and denied any alteration of any of the quotes provided.

CONSIDERATION

12. The Tribunal, have taken into account all the case papers in the bundle.
13. The issue for determination under Section 27A of the 1985 Act is as to whether or not the interim & major works service charges in 2019/2020, are reasonable and payable.
14. In regard to the interim service charge sums, the Tribunal notes the complaint by the Respondents that they had found the communal areas, being the hall, stairs and landing, in poor condition when they had purchased in 2017, at an auction apparently without having previously inspected the Property, and their comments to the effect that they had proceeded to paint, decorate and carpet those areas, having unsuccessfully asked the previous managing agent to arrange for such repairs. However, the disputed service charges are for a later period, being those proposed on an estimated or budget basis for the service charge year 2019/2020, and in any event, they include provision for many categories of work in addition to cleaning, namely lighting, fire prevention, roof report, insurance, accounts, management fee and for an out of hours call service. None of those other items appears to have been challenged by the Respondents. In regard to the amounts proposed, the Tribunal notes that these were raised by the new managing agents during the early period of

their appointment and, as budget or estimated figures, the Tribunal considers them to be not wholly unreasonable, particularly in the absence of any specific challenge, provision of comparables or other evidence to the contrary. The Tribunal further notes that the budget items are within the landlord`s obligations in the Lease which provides at Clause 2(xiii)(b) for payments to cover estimated costs.

15. In regard to the major roof works, the Respondents have not challenged the Section 20 consultation process itself. Respondents did dispute as to whether or not the roof work had been necessitated by storm damage as alleged by the Applicant, or whether it was due to theft of lead sheeting as alleged by the Respondents. The Respondents did not challenge whether repairs were needed; their statement suggests that they had expressed concern to the previous managing agents, Greenknights, about who would be responsible for the repairs. It appears that an attempt was made by the Applicant to pursue a claim against insurers, but that this was rejected on the ground that the work was due to wear and tear. The Tribunal further notes that the roof damage also appears to have occurred prior to the date when Hunters took over as managing agents.
16. The Respondents did refer in the final paragraph of their statement, to a company having been created, *“just to inflate the price of the roof which the original price is only 16000 compared to the 25000 charged by the management company which was confirmed by the contractor on site.”* However, no evidence was provided to support any claim of a lowest price of £16,000.00; to the contrary, the Applicant responded in its reply at Page 234 of the bundle, *“This claim is strongly denied by Freeholder and myself, at no times were any of the quotes altered ...”* The Tribunal notes that the Respondents chose not to nominate any contractor or to request further quotes through the Section 20 consultation process. Conversely, the Applicant confirmed at paragraph number 20 of its statement at Page 82 of the bundle that three quotations had been obtained, that VAT had been added as well as 10% & VAT for their inspections and supervision, and that in consequence, the total cost was £31,876.44, of which the 14.29% share attributable to the Property was £4,553.86. The lowest tender appears to have been selected and in the absence of further or other evidence to the contrary, the Tribunal considers the above costs to be reasonable and payable.

Appeals

1. 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, by email to rpsouthern@justice.gov.uk
2. 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.
3. 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 time or not to allow the application for permission to appeal to proceed.

4. 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.