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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UJ/LSC/2013/0060**
Property	:	**5 Rose Gardens Mews, Loudwater, Hertfordshire WD3 4LA**
Applicant	:	**Mr S M Langley**
Representative	:	**Mr Langley in person accompanied by his wife**
Respondent	:	**Loudwater (Troutstream) Estate Limited**
Representative	:	**Dr J Toy, Chairman of the Respondent Company**
Type of Application	:	**Section 20C and Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Mr A A Dutton (Judge)** **Miss M Krisko BSc (Est Man) FRICS** **Mr P J Tunley**
Date and venue of Hearing	:	**Park Inn Hotel 30 4- St Albans Road Watford on 30th August 2013**
Date of Decision	:	**19th September 2013**

DECISION

DECISON

On the 1st July 2013, the Leasehold Valuation Tribunal ("LVT") was subsumed into the First-tier Tribunal, Property Chamber which now has all the powers and jurisdictions of the LVT. The Tribunal makes the decisions set out in the findings section of this document.

The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 (the Act) considering it just and equitable to do so in the circumstances of the case.

The Tribunal orders a refund to Mr Langley of the application and hearing fee totalling £350 but makes no further order in respect of costs.

BACKGROUND

1. By an application dated 23rd April 2013 Mr Selwyn Michael Langley, the Applicant and leaseholder of 5 Rose Gardens Mews, Loudwater, Hertfordshire WD3 4LA, sought a determination in respect of annual service charges for the year 2011/2012 and in respect of major works in the year 2012/13.

2. In respect of the year 2011/12 by his application he sought to challenge the following items:-

   - A refund of service charges from a previous case.
   - Additional lighting charge.
   - Insurance.
   - Managing agents' fees.
   - Accountancy.
   - Repairs and maintenance.
   - Gardening.

   In respect of the following year, he concentrated his concerns on major works that were carried out to the development by Formation Management Limited at a cost of £18,480 plus VAT.

3. In a bundle of papers submitted prior to the hearing we were able to take note of Mr Langley's statement of case, the documents relating to Section 20 procedures, the final account from Formation Management Limited and from Rumble Sedgwick for overseeing the external decoration works, the schedule of works and a copy of Mr Langley's lease. In addition in the bundle there was the Respondent's reply to Mr Langley's statement of case in which they asserted on 9th July 2013 that they had no comments to make.

4. The previous decision by the Tribunal under case number CAM/26UJ/LSC/2011/0141 was included as were a bundle of documents provided by the Respondents which included amongst others Rumble Sedgewick's contract and details of the insurance arrangements for the

property. Under a section containing papers produced by Mr Langley were a number of items of correspondence and photographs, as well as a copy of his suggested comparable insurance quote from Clear Property Owners.

Inspection

5. Prior to the hearing we inspected the development in the company of Mr Langley and Dr Toy. The description of the development is contained in the Tribunal's decision dated 28th February 2012. There is no need to expand upon that. At the time of inspection we were asked to note the condition of the boundary wall to the front of Mr Langley's property which had been the subject of some re-building works. We also inspected the paviors and gratings in front of Mr Langley's property which he said had been poorly fitted and in the case of the gratings fitted in such a state that they could not be lifted. He showed us that the lower hinges to his garage doors had not been painted properly and that there was some evidence of paint having been affected by rain although not to his windows. He also showed us the bin store where it was alleged a ladder had been left for some time and an area to the rear where again rubbish it was said had been left for some time. We also saw the lighting which was the subject of dispute and a window in the flank wall of the property which appeared to have missed from the decoration works.

HEARING

6. Notwithstanding that the Respondents had indicated they had not comments to make in relation to Mr Langley's statement of case, Dr Toy did attend the hearing. We are pleased to say that some items were agreed. These related to the service charges for the year 2011/12. The first part of his application. There are at present no accounts available for the year 2012/13. Under the headings shown on the tenant's income and expenditure account, we can confirm that it was agreed the following amendments should be made:

- The repairs and maintenance figure of £1,593 should be reduced to £1,261.80.
- The insurance, health and safety and gardening figures were no longer in dispute.
- The accountancy charge of £600 should be reduced to £420 and the bank charges and sundry incidentals £115 and £22 remain unchallenged.

The only issue, therefore, which was not agreed or conceded by the Respondents, was the managing agents' fees of £1,902.

7. In the application mention was made that the refund due from the previous year did not appear to have made its way to Mr Langley's account. We were told that this would be dealt with within the accounts for the year ending March 2013 and that was accepted. We were also told by Dr Toy that it had been agreed with the other residents that managing agents were not to be employed and that was now being dealt with by the freehold company through Dr Toy's efforts. It was, however, confirmed that Rumble Sedgwick, the previous agents would be undertaking the preparation of the accounts for the year ending 2013. We were also told that the charge in respect of additional lighting which was referred to on Mr Langley's application but

which did not appear as an expense in the tenants' income and expenditure account, had been paid back to the tenants and Mr Langley accepted that the lighting was now in situ and working properly.

8. As to the agents' fee, Mr Langley had obtained an alternative from Rylands Associates Property Management Company having offices in Covent Garden, Southend and Chelmsford. They had indicated that they would be prepared to manage the development at an annual fee of £180 plus VAT per flat, per annum. We were told that they had inspected and had seen the lease. Mr Langley's case was that he thought Rumble Sedgwick's fees were too high for the work that they had undertaken and should be reduced to no more than £120 plus VAT each year instead of the amount contained in the management agreement included in the bundle before us which showed a figure of £250 plus VAT per property. In fact the claim for costs made in the year ending March 2012 was not for a complete 12 month figure.

9. Dr Toy said that he had been troubled by Rumble Sedgwick's performance and as compared to the Rylands figure it did seem to be too high, although he had no idea what the figure should be. The complaints made by leaseholders related to difficulties in communications in that Rumble Sedgwick and one of the employees had been "ungracious" in the manner in which she had dealt with residents. These issues, he said, had been taken up Rumble Sedgwick's director.

10. That concluded the evidence we received in respect of the service charge year ending March 2012 and Mr Langley then sought to challenge the costs of the major works. There appeared to be no challenge that the Section 20 procedures had been fully complied with, although the sums sought seemed to Mr Langley to be on the high side. He was also concerned that it appears no formal JCT minor works contract had been entered into with the contractors. We were told that the contractors commenced work in mid-August and he thought from the outset they undertook the works poorly. The total cost to the builder inclusive of VAT was £22,176. The final invoice also included an amount for replacing sills to the ground floor window frames to the rear of the block of £1,020 but these had been removed from the final account by the freeholder who indicated that those would be met from other funds.

11. Mr Langley queried the fees being charged by Rumble Sedgwick for managing the works. On their invoice dated 16th January 2013 they sought to recover a fee of £3,510 inclusive of VAT. This, he said, was contrary to the statement contained in a letter from Rumble Sedgwick of 12th June 2012 in which they indicated the total work costs including VAT and Rumble Sedgwick's fees would be £24,948. This would therefore have left a figure of £2,772 inclusive of VAT which was in fact 12½% of the contract price. He could not, therefore, understand why the Rumble Sedgwick invoice in January of this year was for £3,510. He asked that it be reduced. He said that they did nothing manage the contract. In particular they did not oversee the works of the contractors who Mr Langley said failed to carry out much of the works that were contained within the schedule. They did not, for example, wash down the paviors nor did they lift some, the grid that has been laid cannot be lifted and

there is still mud pooling on the paviors after the rain. The finished job he said looks ugly and is deficient. He also said that there was no evidence that a CCTV survey of the drains had been carried out and Dr Toy accepted that he had not seen a report.

12. In respect of the boundary wall, which was another area of contention, he thought that this may well belong to Rose Gardens Mews but there was no certainty. Contact had been made with the owners, according to Dr Toy, and a walling expert had been called in who appeared to indicate that the damage was done by the tree roots from the adjoining property. Whilst Mr Langley accepted that in the first instance the residents should meet the costs of these, subject to pursuing the matter against the adjoining land owners if possible, he thought nonetheless that the costs were too high. Under the heading "other repairs" there were some seven items of work to the boundary wall, two of which Mr Langley thought should be reduced from a figure of £300 to £100. Otherwise he was prepared to accept the figures set out on the Schedule

13. In further support of the reduction from the Rumble Sedgwick account he complained that the contract administrator's role had not been fulfilled, no meetings were recorded, he was not aware of any inspections indeed he could not say whether they were ever on site. There appeared to have been no adjustments to reflect errors or omissions in the final account and no contract has been produced. In addition, he was not aware that any snagging had been conducted and certainly there were items of decoration which had been left unattended. He thought that taking this into account, the figure of £2,772 which would be on the basis of a 12½% assessment, was too high and that the costs to Rumble Sedgwick should be limited to 5% of the contract price which would cover their costs for dealing with a specification and the section 20 issues.

14. At the conclusion of the hearing Dr Toy told us the Respondent would be making no claim for costs in respect of these proceedings, Mr Langley sought a refund of the application and hearing fees and a cost order against the Respondents as a result of their no non-participation such failing having prevented him from possibly settling the matter and avoiding these proceedings. He told us that he had prepared bundles of 2,200 pages and he sought a charge of 10p per page.

15. Dr Toy said that there had been attempts so deal with Mr Langley through Rumble Sedgwick's. The other residents of Rose Gardens Mews had not joined with Mr Langley in the application and in the end the Respondents thought it better to get a decision from the Tribunal for certainty's sake.

THE LAW

16. The law applicable to this matter is contained in the schedule annexed.

FINDINGS

17. We have already recorded above the agreements reached in respect of the service charge year ending March 2012. The only issue, therefore, that we need to consider in respect of that year, is the managing agents' fees. We did not find the comparable evidence put forward by Mr Langley helpful. These were managing agents in London, Chelmsford and Southend. We do not see how in reality they would be able to properly manage this development. The Respondents say that the managing agents were not good at communicating but there appears to be no other particular complaint about their involvement in the year ending March 2012. In those circumstances, bearing in mind that this was not a full year, we conclude that the sum claimed at £1,902 is reasonable and is allowed.

18. For the purposes of clarification, we record in the findings section that the expenditure items shown on the tenants' income and expenditure account for the year ending 31st March 2012 are as follows:-

- Managing agents fees £1,902.
- Insurance £2,236.
- Repairs and maintenance £1,261.80.
- Health and safety £342.
- Gardening £958.
- Accountancy £420.
- Bank charges £115.
- Sundry £22.

19. We turn then to the question of the major works. Our inspection supported much of the complaints made by Mr Langley. The grids did not fit well and have been concreted in place. There appeared to be little if no evidence of any works having been done to the paviors to the front of Mr Langley's property which still appears to be subject to flooding. Further, there was no evidence of any CCTV survey having been carried out. The landlord has not seen a copy and in those circumstances there is no evidence to support this expense.

20. Accordingly considering the schedule of works included in the bundle at document page A45 under the heading 'Seven other Repairs' we make the following findings.

(a) The costs in relation to the removal of the checker plates and the grids at a figure of £2,000 are reduced by £400 to £1,600. We have done this because it seems to us the grids can be reused if they are fitted correctly and the chequer plate is still in situ but needs some decorating.
(b) The block paviors, which were supposed to have been cleaned, lifted and rebedded at a price of £1,500 showed no evidence of work having been undertaken. The problem still exists with pooling of water and in those circumstances we disallow the full sum of £1,500.
(c) There was, as we have indicated above, no evidence that a CCTV survey had been carried out. No evidence that any works of flushing had been undertaken and in those circumstances we disallow the sum of £700.

21. The other item of dispute related to the boundary walls, the details of which are found at page A46 in the bundle. We had sight of the work that was done which was not extensive and in the main was of adequate standard but certainly nothing of any great moment. Mr Langley's suggested reduction of £400 to the total cost of £1,670 seemed to us to be perfectly reasonable. Accordingly in respect of the works to the boundary wall we allow the sum of £1,270.

22. The final account showed a figure of £18,480. From that should be deducted the £400 in respect of the grid work, the £1,500 in respect of the pavior work, the £700 in respect of the CCTV and the £400 in respect of the boundary works making a total deduction of £3,000. This reduces the sum due in respect of the final account for the major works of £15,480 plus VAT of £3,096 for which Mr Langley will have to pay his share.

23. We agree with Mr Langley that there appears to have been little or no supervision by Rumble Sedgwick. The original invoice of £3,150 cannot be right given the correspondence. The most it seems to us it should be is £2,772. However, we are attracted to Mr Langley's suggestion that a figure of 5% is sufficient to allow for the preparation of the specification and the Section 20 documentation. That, based on the full price of the contract, which seems appropriate, is £924 to which VAT of £184.80 should be added. This means that the total claim in respect of the major works inclusive of Rumble Sedgwick's fees should be £19,684.80 and not the £25,686 which is suggested by the final accounts from Formation Management Limited of the 31st July 2012 andRumble Sedgwick's fees of £3,510 sent under cover of their invoice of 16th January 2013.

24. Fresh demands dealing with these amendments to the two years should be prepared by the Respondents and sent to Mr Langley with the necessary statutory wording so that payment can be made of any outstanding sums.

25. We are minded to award Mr Langley a refund of the application and hearing fee totalling £350 which should be paid by the Respondents within 28 days. We do not, however, think that the Respondents have acted in such a manner that they should have visited upon them the provisions of Schedule 12 of the Commonhold Leasehold Reform Act 2002. The application began before the introduction of the new Tribunal rules and accordingly the old cost regime applies. In those circumstances we conclude that it would be inappropriate to make an order for costs against Loudwater Troutstream Limited in respect of these proceedings.

Judge: *Andrew Dutton*

A A Dutton

Date: 19th September 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.