9322

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2013/0203**
Property	:	**67A Woodside Green, London SE25 5HQ**
Applicant	:	**Ms C Snowdon** **Mr P Saunderson**
Representative	:	**In person**
Respondent	:	**Westleigh Properties Ltd**
Representative	:	**Gateway Property Management Co**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge.**
Tribunal Members	:	**Mr L Rahman (Barrister)** **Mr S Mason BSc FRICS FCIArb** **Mr Clabburn**
Date and venue of Hearing	:	**5.8.13, 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**20.9.13**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes the determinations as set out under the various headings in this Decision.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable for the years 2006-2019.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants appeared in person at the hearing and the Respondent was represented by Mr James Collingwood (Property Manager from Gateway Property Management) and Mr Ben Day-Marr (Director of Operations).

4. The Applicants were directed at the pre trial review to prepare the bundle of relevant documents for the hearing and submit it by 19.7.13. The Applicants failed to comply with the direction. The Respondent therefore prepared and served its own bundle, including the documents it had received from the Applicants during these proceedings, and served it on the Tribunal and the Applicants on 26.7.13. The Applicants agreed at the start of the hearing that the bundle prepared by the Respondent contained all the relevant evidence they wished to rely upon. Both parties agreed the bundle prepared by the Respondent would be used for the purpose of this hearing.

5. After the conclusion of the hearing and after the Tribunals deliberations, at 4pm on 5.8.13, an email from the Applicants, dated 2.8.13, was brought to the Tribunals attention. The email appears to have been sent on 2.8.13 at 16:11. But the letter was only forwarded to the Case Officer in the afternoon on 5.8.13. The Applicants did not refer the Tribunal to this letter at the hearing. The letter did not appear in the bundle prepared by the Respondent, which both parties confirmed at the hearing contained all the relevant evidence. It was not clear whether a copy was provided to the Respondent. The Tribunal emailed the letter to the Respondent on 7.8.13. The Respondent was invited, if they wished to do so, to respond to the specific points raised by the Applicants. Any response from the Respondent was to be received by the Tribunal by 4pm

on Wednesday 14.8.13. The Tribunal did not receive a response from the Respondent until 4.9.13.

6. The Tribunal have noted the points raised by the Applicants in their letter as it appears the letter was sent to the Tribunal prior to the hearing, albeit not in compliance with the directions given at the pre trial review that any evidence was to be submitted by 19.7.13 at the very latest. However, the letter does not add much to the Applicants case and in any event the Tribunal clarified the relevant issues at the hearing. The response from the Respondent is of a general nature and does not add anything of any significance to the points already put forward by the Respondent at the hearing.

7. The Applicants emailed further letters to the Tribunal on 7.8.13, seeking to clarify and expand on matters. The Tribunal has disregarded these letters and the Applicants were informed the Tribunal will not consider any further evidence as the hearing had been completed. Clear directions were given at the pre trial review that all relevant documents were to be submitted by the Applicants by 19.7.13, which the Applicants failed to comply with. Further, the Applicants confirmed at the hearing the Tribunal had all the relevant documents and had identified the relevant issues for the Tribunal and had the opportunity to give oral evidence on relevant matters. The Applicants confirmed at the end of the hearing that all relevant matters had been covered by the Tribunal.

The background

8. The property which is the subject of this application is a 1 bedroom ground floor flat in a converted Edwardian period house. There are a further two flats in the building. Mr Saunderson has been a leaseholder at the property since 1999. Ms Snowdon has been living with Mr Saunderson since 2001 and named on the lease since 2006.

9. Photographs of the property were provided in the hearing bundle. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

10. The Applicants hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

11. In their application the Applicants had raised issues with past service charge years 2006-2012 and future service charge years 2013-2019. At the pre trial review, attended by both parties, the relevant issues were identified as follows; whether the service charges for the years 2006-2012 are reasonable and payable, whether the major works carried out in 2008 are reasonable and

payable, and the extent to which, if at all, any service charges due should be reduced by any claim for damages the Applicants may have in respect of alleged disrepair, lack of attention by the landlord, and any poor workmanship of such works as have been carried out.

12. In the Scott Schedule, pursuant to the direction given at the pre trial review, the Applicants identified issues with the service charge years 2010, 2011, and 2012. In particular, the Applicants took issue with the standard of works to the exterior of the building, lack of any gardening or cleaning of the communal areas, and various other matters.

13. The Applicants were asked at the start of the hearing to clarify the disputed service charge years and the reasons for it, given the discrepancy between the application form, the information provided at the pre trial review, and the Scott Schedule. The Applicants stated they took issue with each service charge year since 2006, for the reasons given at pages 209-215 of the bundle. However, this did not make the issues any clearer. For example, on pages 209-210, for the year 2006, the Applicants took issue with the rear gate falling apart and being replaced by the Applicants, the front sill crumbling and the poorly finished work, and the broken fencing at the rear of the garden which had never been repaired. However, according to the service charge accounts for that year, as set out on page 111, the items of expenditure were; drainage cleaning, insurance, and management fees only.

14. The Tribunal asked the Applicants to identify, with respect to each service charge year since 2006, the particular items they disputed and why. The Applicants went through each service charge year and confirmed they did not dispute any of the particular items for which they had been charged for each year, except the drainage charge in 2006. The Applicants stated they had issues with the external works to the property in 2007, the damp problem, problems with the rear gate, the fencing in the back garden, and the communal hallway (poorly maintained, disrepair, light bulb not being changed, and the main door lock not working properly).

15. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Drainage charge (2006)

16. The Applicants stated the cost should be halved because of the short time that was spent on the job. The Applicants stated "maybe 30 minutes " was spent on the job. The Applicants stated they had not previously challenged this. The Applicants did not have anything more to add to the matter.

17. The relevant invoice is on page 128 of the bundle. The job involved clearance of a blocked gully and subsequent testing to ensure it was clear and free flowing. The total cost, excluding VAT, was £225.00.

18. The Tribunal finds the drainage charge reasonable and payable. The invoice speaks for itself. The amount charged does not appear to be unreasonable for the works done. The Applicants have not provided any alternative estimates or quotes and had only raised this matter for the first time at the hearing.

Major external works

19. The Respondent stated at the hearing the monies, a total of £20,850.36 divided equally amongst each of the 3 flats, was collected in 2006. A copy of the "Building Works Costs Analysis" is on page 118. The works were completed in 2007. The works were administered by a surveyor. The Respondent did not have a copy of the specifications for the works and could not clarify the exact works that were carried out, as they were overseen by the previous managing agents. There was an under spend on the overall project (at page 110, certificate for payment dated 26/03/07 gives net amount certified as £15,145 plus VAT). The surplus was put into the reserve and taken forward (part of which was subsequently used for the damp-proofing works).

20. The Applicants stated "not much works were done". The works kept on being delayed. The pebble-dash wall, fascias, windows, and the columns were painted. A few tiles on the roof were changed. Some external plastering was done around the windows and repairs to the window sill. The contractors used ladders. No scaffolding was used. The works were done in a week or less. The Applicants confirmed they were given estimates of the works at the relevant time.

21. The Tribunal referred Mr Saunderson to a letter he had written to the previous managing agent in June 2006 (page 196), stating that the property was in a bad state of disrepair, that no works had been carried out for many years, and it was unfair for the 3 flats to pay for "such a large amount of works" in one go. Mr Saunderson confirmed that all the expected works referred to in the letter had been done, including the additional roof works, but the overall works were not done to a good standard.

22. When asked to clarify what exactly had been done to a low standard, the Applicants stated one window sill was not done properly. The Applicants provided a very recent photo of the window sill (page 53, centre of top row). They did not have any photo of the window sill just after the works were done. The Applicants stated the painting works were alright at the time, except for the window sill.

23. The Tribunal finds as follows. Neither party could clearly state exactly what works were carried out. The cost of about £15,000.00 (net of VAT and minus the surveyors fee and other administration fees) appears to be on the high side. However, the Tribunal note the Respondent had provided estimates at the time and the Applicants did not challenge this at the time or at the hearing, and have not provided the Tribunal with any alternative estimates. In his June 2006 letter, Mr Saunderson does not argue that the cost was excessive, he simply states he cannot pay it in one go.

24. The Applicants accept that all the expected works were done, including some additional works on the roof.

25. The only real issue taken by the Applicants concerns one window sill. This is consistent with the October 2010 report from Hann Graham, Chartered Surveyors, stating that inspection of the exterior of the property showed that redecoration works appeared to have been carried out to a reasonable standard and that some deterioration was bound to have occurred in the intervening period. The surveyor identified that the outer corner of the stone window sill was poorly made good, but noted that it was relatively minor and no progressive deterioration of any consequence would occur.

26. The photograph on page 53 shows the relevant window sill. Neither party provided any estimates as to the cost of remedying this. Using the Tribunals expert knowledge and experience of such matters, the Tribunal estimate it would cost about £250.00 to repair this (labour and material, and possibly needing 2 visits). Accordingly, £250.00 should be deducted from the contribution made by the Applicants towards the cost of the major works.

27. The Tribunal note a fee of £411.25 (£350.00 plus £61.25 vat) was charged for the JCT. It is not clear why such a high fee was charged for this as it is a standard contract that could have been purchased at the time for about £30.00. Therefore, the Applicants should have paid £11.75 (one third of £35.35 (£30.00 plus £5.25 vat)) instead of £137.09 (one third of £411.25). Accordingly, the difference between the two figures, £125.34, should be deducted from the contribution made by the Applicants towards the cost of the major works.

28. There was a £411.25 (£350.00 plus £61.25 vat) CDM charge. This is a statutory requirement for works exceeding 30 working days. Bearing in mind the nature and duration of the works, the Tribunal finds this was not reasonably required for these works. Accordingly, the £137.09 (one third of the CDM charge) paid by the Applicants, should be deducted from the contribution made by the Applicants towards the cost of the major works.

The damp problem

29. The Applicants stated at the hearing the problem started since they moved into the property. There was rising damp along the right side of the length of the whole property. The matter was reported to the managing agents about 10 years ago. The previous managing agents tried to deal with it 6 years ago, but the problem did not go away. The problem was finally satisfactorily dealt with in January 2012.

30. The Applicants stated at the hearing they paid £600.00 in January 2012 to re-plaster the internal lath & plaster lounge wall, between their flat and the communal hallway, which had been damaged by rising damp. The Applicants

said the contractor, sent by the Respondent to inject the external wall, stated the internal wall was not part of the contract.

31. The Respondent states it sent a surveyor to the property in October 2010 to provide a report concerning the damp issue. A copy of the report is on page 51 of the bundle. The Respondent started to collect the funds for the necessary works at the end of 2010. There were inadequate funds prior to that due to arrears of service charge payments. The Respondent needed time to complete the Section 20 Notices. The total cost of the works was £7,094.40 (including vat). The Respondent used £6,000.00 from the reserve. Each flat therefore paid £364.80. The Respondent was not aware the Applicants had paid £600.00 to the contractors, but would reimburse the Applicants if an invoice were provided.

32. The Tribunal finds the Applicants overall evidence on the damp issue unpersuasive.

33. With respect to the alleged £600.00 paid by the Applicants, the Tribunal note the Applicants claim to have paid in cash. At first they stated they did not have an invoice. They then stated they did. However, no invoice has been provided to the Tribunal. The Applicants claim the relevant wall had a lath & plaster finish, which would suggest the wall has a timber stud structure. The Tribunal knows from its own knowledge and experience that such a construction is unlikely to be affected by rising damp. If it were affected by rising damp, the timbers would be rotted and would need replacing and both sides of the wall would have been affected. The Tribunal heard no evidence that the timber needed replacing or that the other side of the wall had to be re-plastered. Furthermore, the surveyor did not mention, in quite a detailed report, any rising damp or evidence of any mould on that particular wall. The Applicants also stated in oral evidence that the rising damp was along the right side of the length of the whole property, they did not identify this particular wall. The Applicants have failed to satisfy the Tribunal that this particular wall had been affected by damp or that any such payments had been made by them as claimed.

34. The Applicants claimed in their application that there was damp and black mould throughout their flat, a damp stench on the wall and on their clothes, cockroaches and insects, and extensive damage to their bed and mattress. The Applicants also claimed compensation for chesty conditions caused by the lack of any action to deal with the damp problem over a number of years.

35. Based upon the evidence before the Tribunal, the Tribunal is not satisfied the problem was as severe as claimed by the Applicants.

36. The Applicants accept the Respondent tried to deal with the damp problem 5-6 years ago. The Respondent finally satisfactorily dealt with the problem in January 2012, after having to raise the relevant funds and comply with the relevant notices.

37. The report by the Chartered Surveyor states there was a high damp meter reading for the front bay window and within built in cupboards either side of the chimney breast in the front reception room and lower readings in the rear bedroom. The surveyor states he did not see any signs of significant mould growth. The surveyor did not refer to any damp smell in the property. The Tribunal finds the severity of the problem, as claimed by the Applicants, is not consistent with the surveyors report.

38. The Applicants have failed to provide any other reports to support their account of the severity of the problem. The Applicants provided a coloured photograph of an internal window at the hearing, which they claimed was evidence of damp. However, upon close examination of the photograph, it appeared to the Tribunal to be evidence of condensation and not damp. The Applicants have not provided any medical evidence to support their claim that chesty conditions for both of them were caused by the damp.

39. The Applicants appear to be quite capable and resourceful. They managed to arrange the works for the rear gate and fence (discussed below), which they believed was the Respondents responsibility. The Applicants claim to have been responsible for arranging the damp-proofing quotes and the contractor used by the Respondent (Scott Schedule, page 5). Had the damp problem and the effects upon the Applicants and their quality of life been as severe as claimed by the Applicants, the Tribunal find the Applicants would have taken matters into their own hands much earlier.

40. Based upon the evidence before the Tribunal, the Tribunal finds no persuasive evidence the Respondent had failed to deal with the damp problem in a reasonable and timely manner.

Rear gate and 2 fencing panels

41. The Applicants state they replaced the rear gate and 2 fencing panels at the side of the house, providing access to the back garden, in 2010, at a cost of £300.00. They did not have the receipt.

42. The Respondent conceded it was responsible for the gate and the 2 relevant fencing panels. The Respondent did not argue the cost was unreasonable.

43. The Tribunal accordingly finds the Applicants should be reimbursed the sum of £300.00.

Rear garden and fencing

44. The Applicants state the Respondent had failed to maintain the rear garden. The Applicants claimed a total of £4,320.00 for tending the rear garden of flats B and C over the years (page 216). The Applicants also stated at the hearing that the problem with the fencing along one side of the length of the back garden was that it was uneven and therefore an eyesore.

45. The Respondent states it is not responsible for the back garden or the fence as the garden is demised to each flat (one third each).

46. Clause 1 of the Lease states "...AND TOGETHER with the garden ground edged green on the said plan ALL of which said flat is hereinafter referred to as "the demised premises"...".

47. Clause 4(1) of the Lease states "...THE LANDLORD HEREBY COVENANTS with the Tenant:- (1) To maintain and keep in good order repair condition...the boundary walls and fences...".

48. Clause 2(4) of the Lease states "THE TENANT HEREBY COVENANTS with the Landlord as follows:- (4) To keep the demised premises...(other than the parts thereof referred to in Clause 4 hereof)...in good and substantial and tenantable repair and condition...".

49. The Applicants provided a plan at the hearing showing the back garden being divided into 3 separate parts.

50. The Tribunal finds the upkeep and maintenance of the back garden is not the Respondents responsibility. The back garden is divided into 3 sections and each section is demised to each individual flat. Therefore, each flat is responsible for maintaining its part of the garden. This interpretation is consistent with the Applicants understanding of the Lease as they state at page 216 that they want to be paid for work carried out in tending the rear garden of Flats B &C. The Tribunal finds the Respondent is not liable for any claims the Applicants may have for tending the gardens belonging to Flats B and C.

51. So far as the back garden fences are concerned, the Tribunal finds the Respondent is responsible for its maintenance under Clause 4(1). Clause 1 of the Lease does not state the fence is part of the demised premises. However, the Respondent is only required to "...maintain and keep in good order repair condition...". The Tribunal found no evidence of disrepair. The Applicants simply state the fences are uneven and an eyesore. No costs have been incurred by the Applicants. As and when the Respondent does any works, if the Landlord thinks they need changing, the Applicants and the other 2 flats will pay towards it through the service charge.

Communal hallway

52. The Applicants state the Respondent has failed to clean the hallway, keep it in good decor, and failed to change the bulbs in the hallway. The Applicants state they clean the hallway themselves. The hallway is essentially the entrance hall and a stairway going upstairs. There are 2 light bulbs. The Applicants did not know whether they told the Respondents, the current managing agents who took over in 2009, that they wanted regular cleaning of the hallway. When they spoke to the previous managing agents, they were told there was no money available for the cleaning.

53. The Applicants also state the lock on the communal front door is in disrepair and they want it changed. The lock actually works but it sometimes gets stuck, and the area around the lock looks like it has been damaged at some stage.

54. The Respondent states it has not carried out nor charged the Applicants for cleaning, decorating, or changing bulbs. No money has been allocated for cleaning as it is a very small property and the communal hallway is very small. The tenants can clean it themselves as it would be too expensive to use contractors for the job, which the tenants would have to pay towards in any event.

55. The Respondent states the door latch had been repaired and replaced with a new latch. The invoice dated 5.12.12, for £65.00, is on page 16. The lock had been replaced previously in 2010, at a cost of £57.50 (invoice on page 41). The Applicants challenge these charges.

56. With respect to the lock, the Tribunal finds the invoices speak for themselves. They state the work carried out and the amounts charged. There is no evidence the work was not done. The Applicants accept the lock actually works but that sometimes it gets stuck. The amounts charged are reasonable and payable.

57. The Respondent accepts it has not arranged for cleaning contractors and has not changed bulbs in the hallway. However, the Applicants have not been charged for this. The Applicants have not paid anyone else for the cleaning. The cost of replacing 2 bulbs periodically is likely to be very low. Given the very small size of the hallway, the cost and time to clean it is likely to be minimal. The Tribunal agrees the cost of cleaning and sending someone to change the light bulbs is likely to be disproportionate. It was reasonable for the Respondent to not incur such expenses, which ultimately the Applicants would have to pay for by way of a higher service charge. There is no evidence the Applicants had asked the Respondent to arrange for regular cleaning of the hallway.

58. The Respondent accepts it has not redecorated the hallway. However, the Applicants have not been charged for any redecorating costs. The Respondent stated it had limited funds and had prioritised dealing with the damp issue. If and when the Respondent carries out any redecorating the Applicants will no doubt make a contribution through the service charge.

Application under s.20C and refund of fees

59. No application was made by the Applicants in their application form. Despite the direction by the Tribunal at the pre trial review, no written representations have been made and no oral application was made at the hearing. Accordingly, no orders are made.

Chairman: L Rahman Date: 20.9.13

Appendix of relevant legislation

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.

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.

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.