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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UF/LSC/2015/0104**
Property	:	**20 Springfield Green, Chelmsford, Essex CM1 7HS**
Applicants	:	**Trine Harrison & John Harrison**
Respondent	:	**Chelmer Housing Partnership**
Date of Application	:	**13th December 2015**
Type of Application	:	**To determine reasonableness and payability of service charges and administration charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. In respect of the amount claimed by the Respondent from the Applicants in the sum of £494.55 for "FRA Work – Flat doors" and £24.72 for "CHP Administration fee", the Tribunal finds that these sums are not payable by the Applicants.

2. Without more details of the proposed works, the Tribunal cannot determine the liability of the Applicants to contribute towards works to enclose the 2 open stairwells in the building and add security doors with key pad entry.

3. The Respondent must reimburse the fee paid to the Tribunal of £90 on or before the 18th March 2016.

Reasons

Introduction

4. This is a straightforward application by the current holders of a long leasehold interest in the property. They have been charged for upgrading work to the doors of flats within the building in which the property is situated plus an administration fee on top. They also anticipate being charged for some work involving the enclosure of the open stairwells in the building with the addition of

security doors with a keypad entry system. They dispute that they are liable for any of these things and apply to the Tribunal for a determination of the payability of these items under the terms of the lease.

5. The property is in a block known as 16-26 Springfield Green. There are 8 flats. This one is a long leasehold property bought originally under the right to buy provisions and the other 7 are tenanted, presumably on assured tenancies with the Respondent as landlord. The unusual feature of the case is that this flat is self contained with a door direct to the outside which means that it is not necessary for this leaseholder to have access to the common entrance and stairwell with stairs leading to the first floor.

6. As the resolution of this dispute depends on an interpretation of the lease, the Tribunal considered that it did not need to inspect the property or the building and would be content for the determination to be on a consideration of the papers only i.e. without an oral hearing. The parties were given notification of this in a directions order dated 21st December 2015. The Tribunal said that it would consider any application to inspect the building and would have an oral hearing if either party wanted it. Otherwise, the case would be determined on or after 24th February 2016. No-one has asked for an inspection or a hearing

The Law

7. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

8. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction under section 27A of the 1985 Act to make a determination as to whether such a charge is payable.

9. Similar provisions apply under the **Commonhold and Leasehold Reform Act 2002** in respect of administration fees and the Tribunal's jurisdiction to determine their reasonableness and payability.

10. The Tribunal has looked at previous cases to see whether there is any which it should follow. There is an authority which does deal with whether windows form part of the structure of a building i.e. **Re The Estate of Valbourg Cecile Godman Irvine v Moran** [1992] 24 HLR 1. This was a Queens Bench decision of Mr. Recorder Thayne Forbes QC which was referred to with approval and followed in the Lands Tribunal decision of **Sheffield City Council v Hazel St. Clare Oliver** [2008] WL 3909333 determined by the then President, George Bartlett QC.

11. The issue in the **Irvine** case was whether windows, including sashes, cords, frames, glazing and furniture came within landlord's implied covenants to 'keep in repair the structure and exterior of the dwelling house' as implied by section 32 of the Housing Act 1961. In the **Sheffield Council** case, the terms of the lease were basically the same i.e. the landlord had to keep in repair the 'structure

and exterior' of the premises. The Leasehold Valuation Tribunal determined that this did not include replacing the windows and frames and this decision was overturned on appeal. The relevance of these cases is that the clause relating to repairs and maintenance in this case is the same i.e. the lessees have to contribute towards the maintenance of the structure and exterior of the building.

12. The passages of Mr. Recorder Forbes QC's judgment quoted in the later case, which is, of course, binding authority for this Tribunal are, at 262 F-G and 262M – 263B, the first of which says:-

> *"I have come to the view that the structure of the dwelling-house consists of those elements of the overall dwelling-house which give it its essential appearances, stability and shape. The expression does not extend to the many and various ways in which the dwelling-house will be fitted out, equipped, decorated and generally made to be habitable.*
>
> *I am not persuaded...that one should limit the expression 'the structure of the dwelling-house' to those aspects of the dwelling-house which are load bearing in the sense that that sort of expression is used by professional consulting engineers and the like; but what I do feel is, as regards the words 'structure of the dwelling-house', that in order to be part of the structure of the dwelling-house a particular element must be a material or significant element in the overall construction. To some extent, in every case there will be a degree of fact to be gone into to decide whether something is or is not part of the structure of the dwelling-house".*

13. He then went on to say:-

> *"Windows pose a slightly different problem. I have some hesitation about this, but bearing in mind that one is talking about a dwelling-house, and rejecting as I do the suggestion that one should use 'load-bearing' as the only touchstone to determining what is the structure of the dwelling-house in its essential material elements, I have come to the conclusion that windows do form part of the structure of the dwelling-house. My conclusion might be different if one were talking about windows in, let us say, an agricultural building. The essential material elements may change, depending on the nature and use of the building in question. In the case of a dwelling-house, it seems to me that an essential and material element in a dwelling-house, using ordinary common sense and an application of the words 'structure of the dwelling-house' without limiting them to a concept such as 'load-bearing' must include the external windows and doors. Therefore, I hold that windows themselves, the window frames and the sashes do form part of the structure. It follows that, since these are the sash windows, it would be*

invidious to separate the cords from the sashes and the essential furniture from the frames. So, in my judgment, the windows including the sashes, the cords and the furniture are part of the structure of the dwelling-house".

14. The judge then went on to say that even if he was wrong, windows do form part of the exterior of the building. Thus it appears clear that if the lease doesn't say anything to the contrary, not only has the High Court but also the Lands Tribunal has determined that in respect of a dwelling house – as this property is – the structure and/or the exterior will include the windows, the window frames and furniture. Therefore, the cost of replacing the windows will be a service charge provided the cost is reasonable.

15. So, does this case assist with regard to the issue as to whether doors from part of the structure? Mr. Recorder Forbes did say that structure encompassed external doors although it could be argued that this was merely an *obiter* comment. The doors in question are not 'external' in the sense that they open onto the outside of the building but they are the 'external' doors to flats 18, 18A, 24 and 24A.

The Lease

16. The Tribunal was shown a copy of the lease of this flat. It is dated 20th September 1993 and is for a term of 125 years from the 20th September 1993 with a ground rent of £10 per annum. One of the main issues in this case is whether the front door forms part of the demise. The reason for this is that none of the other flats in the building are let on long leases. If the external door were to be included in the demise, this would assist the Tribunal as to whether the intention of the parties at the time the lease was created was that doors should be the responsibility of the landlord or the tenant. The demise does not include the external door.

17. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the building in which the property is situated and to insure it. The lessees covenant to pay to the Respondent the expenditure set out in the Fifth Schedule by means of the payment regime in the Fourth Schedule.

18. The Second Schedule sets out the rights granted to the lessees which includes a right to "*go pass and repass on foot only over and along so much of the Common Access Ways passages landings and staircases within the Council's land as is necessary to obtain access to and egress from the flat*".

19. The Fifth Schedule provides that the lessees must contribute towards the cost of keeping the structure and exterior of the flat and building in repair including external drains gutters and pipes. In addition, the lessees must contribute towards "*the cost of providing repairing maintaining or replacing any facilities or services which the Council may from time to time provide for the use of the occupiers of the building including as applicable storage facilities waste disposal chutes dustbin areas amenity areas lifts and any other facilities or services*".

20. As far as decoration works are concerned, there is a separate provision that the lessees are to contribute to "*the cost of decorating the exterior of the building and all staircases accessways entrances and other parts of the building over or in respect of which the Lessee has any rights by virtue of this Lease*".

Discussion

21. This application has been made under somewhat of a misapprehension. Reliance is placed on a decision by the landlord in previous years to attempt the collection of the cost of decorating the common entrance and staircase and then to reverse that decision upon representations being made by the Applicants. The reversal of the decision was correct because the clause relating to decoration works is worded clearly so that the Lessees do not have to pay towards decoration of parts of the building they have no access to.

22. However, in this case, different provisions apply. There is no automatic immunity because there is no right to use the common entrance and staircase. The Respondent's case is that the present claim for a contribution towards the doors on the first floor flats is payable because doors are part of the structure. They do not seek to justify that assertion with any legal argument at all, which is unfortunate, to say the least.

23. As has been said above, the case law indicates that all external doors are part of the exterior and structure. It is therefore the Tribunal's view that the outcome of this case rests on whether the entrance, hall, stairs, landing and doors to the upstairs flats would be included within the definition of such exterior and structure. Just because the Applicants have no access to these parts of the building is not the way to look at this issue. There are many blocks of flats where the ground floor tenants have to contribute towards the cost of maintaining the lifts even though they do not use them.

24. It seems to the Tribunal that the key words used by the judge in the case referred to above are "*I have come to the view that the structure of the dwelling-house consists of those elements of the overall dwelling-house which give it its essential appearances, stability and shape.*"

25. In this case, we have 8 dwelling houses in one building and the conclusion of the Tribunal is that the essential appearance, stability and shape of the building do not include the doors to the upstairs flats. They cannot be seen from the outside and they do not form part of the stability of the building or give it its shape.

26. The subsequent work involving the stairwell and the creation of security doors and a keypad entry system may be included in that definition but the Tribunal would want to know a great deal more about the actual works. One interpretation is that each of the 1st floor flats would be changed so that it had its own staircase down to the ground floor with its own key pad entrance. In those circumstances, this would not be an improvement to the building but a change to the building for the sole benefit of the Respondent and its tenants. Such works would be unlikely to come within the service charge regime and the lessees would

not have to contribute to the cost.

27. Whatever the works entail, they would clearly be an improvement. If the service charge provisions in the lease do allow for such improvements – depending on what work is involved – the Respondent will need to consult properly with the Applicants because, unlike ordinary repairs and maintenance, there is a requirement on landlords to consider whether such improvements are actually required, whether the cost of any improvements is reasonably incurred and their payability so far as lessees are concerned.

Reimbursement of fee

28. Rule 13(2) of the **Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013** provides that a Tribunal can order a Respondent to reimburse any fee paid to the Tribunal by n Applicant. Such an order can be made on the Tribunal's own initiative. In the particular circumstances of this case, the Tribunal does consider that such an order is just and equitable.

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Bruce Edgington
Regional Judge
1st March 2016

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.