



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

Case Reference : **MAN/00CM/LSC/2016/0034**

Property : **17 Dunlin Drive, Washington, NE38 0EB**

Applicants : **Michelle Marie Bennett**

Respondent : **Gentoo Group Ltd.**

Type of Application : **Under s.27A and s.20C of the Landlord and Tenant Act 1985**

Tribunal Members : **Judge P Forster
I Jefferson FRICS**

Date of Decision : **6 September 2016**

DECISION

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Decision

1. The sum payable by the Applicant in respect of the service charge is £375.14.
2. The Tribunal did not determine the application made by the Applicant under s.20C of the 2002 Act because the Respondent agreed that the Applicant would not be charged for the costs incurred in relation to the proceedings.

Background

3. This is an application under s.27A of the Landlord and Tenant Act 1985 (“the Act”) for the Tribunal to determine the amount of a service charge payable for work to an external staircase at 17 Dunlin Drive, Washington, NE38 0EB (“the Property”).
4. The application was made by Michelle Marie Bennett (“the Applicant”) who is the Tenant of the Property under a Lease dated 2 December 2002 (“the Lease”) made between her and Washington Housing Co. Ltd. as Landlord.
5. Gentoo Group Ltd. (“the Respondent”), is the successor in title to Washington Housing Co. Ltd. and is the Landlord under the Lease.
6. The Property is a first floor flat which is part of a linked two storey block of ten similar flats situated on Dunlin Drive, Washington. Access to each of the first floor flats is by a covered wooden staircase.
7. The Tribunal issued directions on 17 June 2016 stating that the application would be determined without a hearing unless any of the parties requested one within 28 days. None of the parties asked for a hearing and therefore the application was determined on the papers without a hearing. The Tribunal inspected the Property on 6 September 2016 before it made its decision.

The Applicant’s Case

8. The Applicant said that the work carried out to the external staircase was not necessary. She relied on an email sent to her on 10 July 2015 by the Respondent. The email stated that that the building surveyor overseeing the external staircase scheme had confirmed that no repair work would be required to the Applicant’s staircase.
9. The Applicant objected to paying for scaffolding that she said had not been used when work was carried out on her staircase.

10. The Applicant alleged that the work to the staircase had been done badly. She relied on a letter dated 28 January 2016 to her from the Respondent that stated "*the workmanship was inspected ...and it was agreed that the final finish, particularly on the treads of the stairs, was not acceptable*".
11. The Applicant made an application under s.20C of the Act for an order that the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of service charges payable by the Applicant in future years.

The Respondent's Case

12. The Respondent accepted that in the email sent on 10 July 2015 it had been stated that no repairs were needed to the Applicant's staircase. A further survey was undertaken which identified sections of the timbers that were rotten and required replacement. It was possible that those repairs only became evident once work had started on the staircase and plant growth had been removed. The Applicant was informed about this and the estimated costs increased.
13. The Respondent explained the method that it had used to calculate the amount claimed from the Applicant. She was only asked to pay for the actual costs incurred in respect to her staircase rather than a proportion of the overall costs of work to all 29 properties. A different approach was taken to the prelims charges, acorws and scaffolding where the Applicant was charged 1/29th of the overall costs incurred.
14. The Respondent acknowledged that complaints had been made about standard of the decoration and accepted that the work had been done badly but that faults had been remedied and that the painting had now been completed and was to a satisfactory standard.
15. When the costs application under s.20C was drawn to the Respondent's attention it agreed to make no charge to the Applicant for any costs incurred in respect of the proceedings.

The Law

16. The relevant law is set out in the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002.

S.18 of the Act defines "service charges" and "relevant costs":

- (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.

S.19 of the 1985 Act deals with limitation of service charges:

- (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 provision 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.

S.27A of the 1985 Act deals with the liability to pay service charges:

- (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.

Decision

17. Under clause 4.2 of the Lease the Applicant is liable to pay the Landlord a sum *"...representing the specified proportion of the Service Charge calculated in accordance with the fourth schedule..."*.
18. Under the fourth schedule the proportion of the Service Charge to be paid by the Applicant is stated to be:
 - 4.2 *"in the case of those items for which the Landlord's expenses extend to the Building...then a fair and reasonable proportion of the costs of such expenses attributable to the Premises such proportion to be determined by the Finance Officer whose decision shall be final and binding or*
 - 4.3 *such other method as the Landlord shall specify acting fairly and reasonably in the circumstances and from time to time and at any time (including but without prejudice to the generality of the above any combination of methods"*
19. The Applicant did not deny that she was under an obligation under the Lease to pay a Service Charge and she did not dispute the method used by the Respondent's to fix the proportion that she was to pay.
20. The Respondent is liable to maintain and repair the external staircase. Under clause 6.2 of the Lease the Landlord covenanted to *"maintain repair redecorate renew ..."* specific parts of the Property including at 6.2.4 *"...the passages landings and staircases..."*. "Service Charge" is defined in the Lease to include the *"costs and expenses incurred or to be incurred by the Landlord in connection with the management and maintenance of the Building and the carrying out of the Landlord's obligations and duties..."* The Respondent is entitled to recover the costs of such work from the Applicant under clause 4.2 of the Lease.
21. The proposed charge for the work to the staircase is a service charge within the definition of s.18 of the Act.
22. The Applicant said that she had already been asked to pay the charge and the Respondent stated that a charge had not yet been made. Whatever the position, the Tribunal has the power under s.18 (2) of the Act to determine *"the relevant costs or estimated costs incurred or to be incurred..."*.
23. In accordance with s.19 (1) of the Act the Tribunal was to determine the amount of the service charge to be paid taking into account the extent to which the costs had been reasonably incurred, and the works were of to be of a reasonable standard. Under s.19(2) the amount of the service charge must be reasonable.

24. The method used by the Respondent to calculate the proportion of the costs to be charged was to apply the actual costs incurred specifically in respect of the Applicant's flat, plus 1/29th of the prelims and provisional sums. That is an unusual way to determine the proportion of the costs to be paid by a tenant. It would be more usual to simply divide the costs between the number of tenants liable to pay the charge as the Respondent has done in respect of the prelims and provisional sums. The method adopted by the Respondent is within the terms of paragraphs 4.2 and 4.3 of the fourth schedule to the Lease. The Tribunal found that it was a fair and reasonable way to determine the proportion to be paid by the Applicant.
25. The Applicant argued that the work was not necessary and that appeared to be supported by what was said in the Respondent's email of 10 July 2015. The Respondent distinguished the need to repair the staircase from the need to strengthen it and to redecorate it. In a later email dated 25 July 2016 from the Respondent it was stated that once some of the steps were removed then evidence of decay was uncovered. The work to the Applicant's staircase was part of a large scheme of work being carried out by the Respondent on the estate involving renovations to in all 29 staircases. A consultation process had been followed under s.20 of the Act and the work had been tendered.
26. The Tribunal found that it was reasonable for the Respondent to carry out work to all 29 staircases at the same time under one contract. It was likely that some of the staircases would have been in greater need of repair than others. Sooner or later it is likely that the staircase to the Applicant's flat would have need to be repaired. With leasehold property the timing of the work is under the control of the Landlord. All the staircases were strengthened. The work that was done necessitated the staircases to be repainted and it was reasonable for all the staircases to be of the same colour to maintain the uniform appearance of the estate.
27. It was reasonable for the Respondent to repair the Applicant's staircase.
28. In a letter dated 20 October 2015 the Respondent set out the estimated contribution that the Applicant was to be asked to pay which totaled £2,640.04 after deducting the amount held in the Applicant's sinking fund. In a letter dated 27 November 2015 the Respondent informed the Applicant that it had reduced the amount claimed for timber strengthening by £279.94. That reduced the amount payable by the Applicant to £2,360.10.

29. After the work had been done but before it was completed the Respondent wrote to the Applicant on 22 March 2016. The amount that the Applicant was asked to pay had been reduced further to £999.05:

(1) Timber replacement (cross bracings and verticals)	£228.70
(2) Timber strengthening (treads/stringers etc.)	£426.76
(3) Timber Decoration	£1,441.15
(4) Timber strengthening	£325.52
(5) Contractor prelims	£610.83
(6) Gentoo prelims	£378.24
(7) Provisional sum	£220.92
	<u>£3,632.12</u>
Less timber decoration	£1,441.15
Less improvement element of timber strengthening	£279.94
<u>Final cost</u>	<u>£1,991.03</u>
Less sinking fund	£911.98
<u>Final charge</u>	<u>£999.05</u>

30. On the available evidence the Tribunal found that the general repair costs were reasonable in the context of the scheme of works undertaken by the Respondent which had been subject to consultation and tender.

31. The total charged for contractor prelims was £610.83 and included scaffolding; acrows and supervision.

32. The Applicant's evidence was that scaffolding was not used on her staircase and that was not contradicted by the Respondent. In respect of the work done to the Applicant's staircase she was only charged for the actual work done and not a proportion of the overall cost of the work on 29 staircases. The overall cost of the scaffolding was £10,788.00 and the Respondent asked the Applicant to pay 1/29th of the cost. The Tribunal found that scaffolding was not used on the Applicant's staircase and adopting the Respondent's method of charging for the cost of the work actually incurred the Applicant should not have to pay for scaffolding that was not used on her property. That reduces the amount she must pay by £372.00.

33. On the same basis the Tribunal found that it was unlikely that acrows were used on the Applicant's property. The overall cost of the acrows was £1,658.00 and the Applicant was asked to pay 1/29th of the cost. The Tribunal found that the Applicant should not have to pay for the acrows. That reduces the amount that she must pay by £57.17.

34. The Applicant complained about the standard of the work. She said that the wood used was not new. By that she appeared to mean that pieces of wood from work on other flats and offcuts had been used. That in itself could be a reasonable use of the materials available on the site. The quality of the wood appeared to be adequate and suitable for purpose.
35. It took three attempts to get the painting to a barely reasonable standard and that was a legitimate cause for complaint. The contractor returned to carry out remedial work. Half the stairs were painted on 7 March 2016 and the other half on 10 March 2016. The Applicant complained again that the stairs had not been rubbed down properly and that the decorator had just painted over "*the muck and dust*". The staircase was painted again just before the Tribunal inspected on 6 September 2016.
36. In respect of contractors prelims the Tribunal found that the supervision was poor and reduced the amount claimed £5,268.00 by 50% resulting in a deduction of £90.83.
37. The Respondent waived the charge for the cost of painting the staircase taking into account all the circumstances including the fact that the staircase had been redecorated in 2013. In the light of that the Tribunal found that no deduction should be made in respect of the standard of the work. The way in which the work was supervised stood to be reflected in the amount allowed for the Prelims.
38. The amount claimed for the Respondent's prelims was £378.23. That included supervision, site accommodation and site office costs. The Tribunal considered the amount to be allowed for supervision by the Respondent together with supervision by the contractor. The standard of supervision was low as reflected by the number of attempts required to bring the decorating to a barely reasonable level. The Tribunal decided not to make a reduction in respect of the Respondent's claim for supervision but to reduce the amount allowed for the contractor. The sums claimed by the Respondent in respect of site accommodation and site office costs appeared to be high but in the absence of reliable evidence about the duration of the works on site and any specific objection from the Applicant the Tribunal left the £378.23 as claimed.
39. The Respondent claimed £220.90 as a provisional sum based on the overall costs. The Tribunal found that it was appropriate to allow 10% of the overall costs.

40. The Tribunal calculated the amount to be paid by the Applicant as follows:

Timber replacement (cross bracings and verticals)	£228.70
Timber replacement (treads/stringers etc.)	£426.76
Timber decoration waived by Gentoo	£0.00
Timber strengthening as reduced by Gentoo	£45.58
Contractor prelims	£90.83
Gentoo prelims	£378.24
	£1,170.11
Provisional sums – 10% of above	£117.01
	£1,287.12
Less sinking fund contribution	£911.98
Sum payable by the Applicant	<u>£375.14</u>

Costs

41. During the course of the inspection the Respondent's representative stated that the Applicant would not be asked to pay any of the costs incurred in relation to the proceedings. On that basis, the Tribunal did not have to determine the application made under s.20C of the 2002 Act.