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

Case Reference : LON/00AZ/LSC/2013/0412

Property : 30 Tyrwhitt Road, London SE4 1QG

Applicant : Sian Williams
J.C. Ross Cameron

Representative : None

Respondent : General Properties Finance
Limited

Representative : Trust Property Management

Type of Application : Ss.20C and 27A Landlord and
Tenant Act 1985

Tribunal Members : D Banfield FRICS
W R Shaw FRICS

**Date and venue of
hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 3 September 2013

DECISION

DECISION

To allow the sum of £650 plus VAT

Preliminary

- 1) The applicants are the leaseholders of three flats at 30 Tyrwhitt Road, London SE4 1QG. By an application received 12 June 2013 they sought to challenge items charged to the service charge account for 2008.
- 2) The application was considered by a procedural chairman on 21 June 2013 who identified the issues to be determined as:
 - (i) The payability and reasonableness of an invoice for surveyors fees in the sum of £293.75
 - (ii) The payability and reasonableness of an invoice for surveyors fees in the sum of £2,570.31
 - (iii) Whether an order under section 20C of the 1985 Act should be made.
 - (iv) Whether an order for reimbursement of application/hearing fees should be made.
- 3) Directions were made the same day listing the documents required and providing a timetable for their production. Briefly these were as follows:
 - (i) The application to stand as the applicants' case
 - (ii) The respondent to send the applicant a full statement in response which must attach a copy of the survey, invoices and proof of payment and any other documents relied upon.
 - (iii) The applicant to send a brief supplementary reply.
 - (iv) Witness statement to be exchanged.
 - (v) A hearing bundle to be prepared with all the relevant documents.
 - (vi) Submissions on costs to be included.
 - (vii) In the absence of a request for a hearing the matter to be determined on the papers in the week commencing 2 September 2013.
- 4) The first of the sums in dispute relate to an inspection carried out by Benjamin Mire and Co on behalf of the freeholder on 30 October

2007 charged at £250 plus VAT. In the letter arranging the appointment the intention was said to be the preparation a specification for internal and external repairs and redecoration works with a view to having the works carried out at the earliest opportunity.

- 5) On 25 November 2008 a notice of intention was served describing the works and inviting observations and the nomination of a contractor.
- 6) On 19 December 2008 demands were sent to each lessee indicating that a specification of works had been carried out and enclosing an invoice being a proportionate part of the £2,570.31 referred to above.
- 7) On 15 April 2009 Benjamin Mire and Co reported to the freeholder the results of tenders received and advised that the total surveyor's fees would be £2,575.65 plus VAT. The two tenders received were for £63,840 from DDD Builders (UK) Ltd and £15,671 from R&B Decorators and Refurbishment.
- 8) Due to objections from the lessees the works did not proceed further.

Submissions

- 9) The applicants contend that the inspection carried out by Benjamin Mire Surveyors on 30 October 2007 had not been signed off or reported to the freeholder's agents and was out of date by the time the S.20 works were considered some 13 months later. As such they were of little value in the preparation of the specification some time later.
- 10) The applicants consider that in basing their fees for the preparation of the specification on long outdated RICS scale fees the respondents had acted unreasonably. They further state that the fee scales used relate to "Construction" but are in fact "Maintenance" the use of which would have resulted in a much reduced fee.
- 11) In July 2009 the appellants engaged Henry-May & Sons a firm of Chartered Building Surveyors to conduct a full building survey with a specification of works for a fee of £525 plus VAT.
- 12) In an undated statement prepared by Antoinette Griffiths of Trust Property Management at page 6A.1 of the bundle it is suggested that new issues have been raised at points (f) to (h) of the applicants' response of 24 July. It is also said that further documents are to be included in the bundle which she has not seen and a request for additional time is made.

- 13) In their statement of case the respondent's agents refer to the freeholder's obligation to undertake repairs and that clause 4(1) permits costs incurred to be charged to the service charge. As the surveyors' fees were less than the s20 consultation limit as it was then understood there was no need to consult the lessees. In serving the notice of intention it was open to the lessees to nominate their choice of surveyor.
- 14) The initial fee was in respect of the cost of a qualified building surveyor spending 2 to 3 hours on carrying out a brief inspection together with travel and the preparation of a report. Such advice was necessary in providing information on the general defects referred to in the notice of intention.
- 15) They say that the use of the former RICS scale is widely adopted in the industry at 15% of the cost of the tendered works. They attached a copy of an agreement between the freeholder and Benjamin Mire confirming that fees would be charged at the above rate and that 60% was due upon receipt of tenders.

Decision

- 16) Despite a clear direction to do so the respondents failed to provide a copy of the survey, the invoice or proof of payment. This is regretted, however the main events of this case do not appear to be in dispute and we will make a decision based on the information supplied.
- 17) It is unfortunate that the applicants' brief response of 24 July appears to be in two versions with different paragraph numbering. That in the bundle being different to that sent to the respondents. In considering Ms Griffiths request at paragraph 12 above we are assuming that the paragraphs referred to are shown on pages 3B4 and 3B5 paragraphs c) to e).
- 18) We agree that paragraph f) seems to relate to matters outside the application and as such we will not consider them. Paragraphs g) and h) however seem to relate to the issues under consideration and will be considered. We do not consider that the respondent has suffered prejudice by the inclusion of these paragraphs and to delay making a decision at this stage would be neither proportionate nor in the interests of a timely resolution of the dispute.
- 19) It does not seem to be in dispute that a visit was paid to the property by a surveyor on 30 October 2007 although the value of such a visit is in question.
- 20) The lease clearly gives the obligation to repair to the freeholder and as such it is reasonable to instruct a surveyor to inspect both to determine the general condition but also with a view to preparing for

future works. It is considered likely that if a major problem had been detected the report to the client may have been somewhat more speedy. We also consider that whilst there may have been some changes in condition between the date of inspection and the commencement of work on the specification it is not possible to show on the evidence before us that it had no value.

- 21) Whilst being prepared to allow a fee for the work involved in the absence of either invoice or report we can only speculate as to the appropriate amount to allow. In these circumstances we allow £150 plus VAT.
- 22) We now turn to the fees charged for the abortive S.20 works. We accept that the agreement at page 3A 33 of the bundle sets out the basis upon which Benjamin Mire and Co may charge fees to the freeholder. In considering the lessees' obligation to pay however we must consider whether they have been reasonably incurred and are of a reasonable standard.
- 23) We do not have a copy of the specification or tender documents only the tender analysis. We are concerned by the large discrepancy between the tenders which might suggest a lack of precision in the specification. The applicants take no particular point on this and neither do we other than to emphasise the need to provide the tribunal with all the documents upon which the parties may wish to rely.
- 24) We are conscious that the RICS scale fees are no longer sanctioned. We hear that they are regularly applied in the industry yet we also have the quotation from Henry-May & Sons at £525 plus VAT. We consider the sum charged to be excessive and, doing the best we can on the limited evidence before us allow £500 plus VAT.
- 25) Despite being asked to address the matter of whether orders under section 20C of the 1985 Act and reimbursement of application/hearing fees should be made neither party appears to have done so. No such orders are therefore made.