

10593



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

Case Reference : CHI/21UD/LSC/2014/0060

Property : 23 Nelson Road
Hastings
East Sussex
TN34 3RX

Applicant : Mr. P. Simpson

Representative : Unrepresented

Respondents : Mr. D. Burgess (Flat 1)
Mrs. D. Modlock (Flats 2 and 4)

Representative : Unrepresented

Type of Application : Liability to pay service charges
Section 27A Landlord and Tenant Act 1985

Tribunal Members : Judge R. Norman (Chairman)
Mr. A.O. Mackay FRICS
Ms J. Dalal

**Date and venue of
Hearing** : 24th November 2014
Hastings

Date of Decision : 17th December 2014

DECISION

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Decision

1. The Tribunal, made the following determinations:

(a) The replacement of the roof to 23 Nelson Road, Hastings, East Sussex ("the subject property") was justified, the cost of replacement was reasonably incurred and is payable by the lessees as part of the service charges.

(b) Referring to the details of maintenance charges at pp D1 – D4 and D6 – D9 of the hearing bundle:

(i) The roof investigation costs of £1,576.80 (total for section (A)) were not challenged and are payable by the lessees as part of the service charges.

(ii) The roof replacement costs of £2,150 (total section 3), £7,710 (total section 4) and £320 (total section 11) are all payable by the lessees as part of the service charges with the exception of the cost of repeating the works carried out in 2013 amounting to £446.

(iii) The cost of the repairs to Flat 4 of £3,100 (total section 8, total section 9, total section 10 and total for section (D)) is not payable by the lessees as part of the service charges.

(iv) The additional cost of rendering the firewalls in connection with the installation of the Heli bars of £300 (item 4 in section (C)) is not payable by the lessees as part of the service charges.

(v) It was reasonable to employ a surveyor to supervise the works, the cost of doing so of £2,067 (total for section (E)) was reasonably incurred and is payable by the lessees as part of the service charges.

(vi) The Tribunal fees of £630 (total for section (F)) are payable by the lessees as part of the service charges.

(vii) The electricity charges of £35.92 (section (G)) were not challenged and are payable by the lessees as part of the service charges.

(viii) The building control inspection costs of £156 (section (H)) were not challenged and are payable by the lessees as part of the service charges.

(ix) The maintenance fund monies of £1,000 (section (I)) were not challenged and are payable by the lessees as part of the service charges.

(x) The management fees of £500 per year for the whole building (section (J)) are reasonable and are payable by the lessees as part of the service charges.

(xi) The HMO licence fee of £1,093 (section (K)) was reasonably incurred and is payable by the lessees as part of the service charges.

(c) All sums payable by the lessees are to be paid to the Applicant within 28 days of the date of issue of this decision.

Background

2. The subject property comprises four flats. Flat 1 is the garden maisonette and has a separate entrance. Flats 2, 3 and 4 are on the ground floor, the first floor and the second floor respectively and access to them is by a communal entrance door and hallway with stairs and landings to Flat 3 and Flat 4.

3. Mr. P. Simpson ("the Applicant") is the freeholder of the subject property and holds a lease of Flat 3. Mr. D. Burgess holds a lease of Flat 1 and

Mrs. D. Modlock holds leases of Flats 2 and 4. Mr. D. Burgess and Mrs. D. Modlock are collectively referred to as "the Respondents"

4. The Applicant made two applications. By the first application he sought a dispensation from the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") with respect to service charges incurred in 2013 but at the oral case management hearing ("CMH") on 22nd August 2014 he informed the Tribunal that he no longer wished to proceed with that application as the relevant service charges had by that time been paid.

5. By the second application, the Applicant sought a determination as to whether service charges for 2014 are payable. At the time of the application the bulk of the costs related to proposed works but by the date of the CMH the Applicant informed the Tribunal that most of the costs had been incurred, the roof replacement was complete and that the remainder of the works would be completed by the date of the final hearing. It is only this second application which remains to be determined by the Tribunal.

6. The main item included in the proposed service charges for 2014 is the replacement of the roof. It is agreed by the parties that the consultation procedure under Section 20 of the 1985 Act has taken place with respect to the 2014 works. No demands have yet been issued in respect of the 2014 service charges and the works have been funded by the Applicant.

7. In January 2014 the Applicant obtained a surveyor's report on the roof from Mr. Goddard BSc (Hons) MRICS of ACC Surveyors. The report was disclosed to the Respondents and at the CMH they stated that they did not dispute the report's findings or recommendations, but that they wished to put certain questions to Mr. Goddard. They agreed to submit those questions in writing to Mr. Goddard (and jointly to pay his fee, if any, for the reply).

8. At the CMH the Respondents stated that they did not wish to obtain their own expert evidence.

9. At the CMH the Tribunal identified that the issues to be determined included:

- Whether the costs incurred/to be incurred with respect to the replacement of the roof had been reasonably incurred, having regard in particular to:

(a) The Respondents' assertion that replacement was neither necessary nor reasonable and that repairs would have sufficed.

(b) The Respondents' assertion that they should not have to pay some or all of the costs, having already paid for repairs in 2013 which they say were ineffective.

(c) Mr. Burgess' assertion that the new roof is not of an acceptable standard.

(d) The Respondents' assertion that the surveyors' fees for supervision of the works are unreasonable.

- Whether the costs incurred/to be incurred with respect to the repairs to the interior of Flat 4 are recoverable through the service charge.

10. Directions were made, the parties provided written statements of case and supporting documents and the Applicant provided a bundle of documents for the hearing.

Inspection

11. On 24th November 2014 the Tribunal inspected the exterior of the subject property and the internal hallway, stairs and landings.

12. The parties had been informed that the inspection was to commence at 10.00 am but by that time only the Applicant and his partner had attended. Flat 1 is occupied by Mr. Burgess' son and therefore enquiries were made to see if Mr. Burgess was there. He was not, and his son could not assist us. We decided that the inspection should take place and we saw the entrance hallway, stairs and landings. By opening the rear windows we were able to see a little of the rear of the property. Shortly after the start of the inspection, Mr. Burgess' son informed us that his father was on his way and had been delayed by traffic. Once Mr. Burgess had arrived, the inspection continued and we told Mr. Burgess what we had seen before his arrival.

13. The works had been completed and therefore we were unable to see the condition of the roof before its replacement. We were able to inspect it from ground level only but, as the subject property is on the side of a hill we were able to obtain a reasonable view of the roof from higher up the hill, albeit from some distance. The appearance of the roof was better than many in the vicinity. Mr. Burgess pointed out that the lead flashing was finished in a straight line and had not been 'stepped'. He considered that that was not the usual way to finish off the flashing and that as a result it would not be as weatherproof. He indicated a number of properties nearby where the flashing had been 'stepped'.

14. We were unable to obtain access to Flats 2, 3 or 4 and we were told that nothing of relevance to the proceedings would be seen if we entered Flat 1.

Hearing

15. The hearing was attended by the Applicant, his partner, the Respondents and Mr. Modlock.

16. Mr. and Mrs. Modlock had been aware of the arrangements for the inspection but had not attended because of traffic difficulties. We told them what we had seen at the inspection.

17. References to page numbers are to pages in the hearing bundle.

18. The parties agreed:

(a) That the subject property was built about 1890 and so was about 120 years old.

(b) That originally it had had a different roof covering which had been replaced by concrete tiles but nobody could say when that had been done. Redland 49 tiles came in after the Second World War so were relatively new. They would have been guaranteed for so many years but there would have come a point in time that the concrete tiles would need replacing.

(c) That synthetic slates had been used to replace the concrete roof tiles on the roof of the subject property and that synthetic slates and slates are lighter than concrete tiles.

(d) That the cost of scaffolding each time work was required to the roof would be about £2,000.

19. Matters raised by both Respondents:

(a) They had not submitted any questions to Mr. Goddard.

(b) The Respondents had not obtained any surveyors' reports or estimates for the works but Mrs. Modlock had had a surveyor look at the subject property for another reason.

(c) Their statements of case at pp D11 – D14 remained the same after seeing the Applicant's replies to them at pp D15 – D22.

(d) The Respondents considered that the Applicant had decided on a new roof no matter what the Respondents had to say about it.

(e) Mr. Goddard's conclusion at p E10 was to carry out remedial work and at paragraph 4.1 on p E9 he states that "Although there is deflection to the roof, it is not thought that this is the primary cause of the problems. Notwithstanding this, it should be noted that complete replacement of the roof may be the only long-term solution to ensure that the problems are eliminated completely". He does not say that replacement is the only method to solve the problem. At paragraph 4.6 on p E9 he states that the parapet walls are party walls and that responsibility for repair and maintenance of those should be shared with the adjoining owner.

(f) At paragraph 4 on p D21 the explanation for additional works without specifying them was not accepted.

20. Mr. Burgess stated that:

(a) The problem had been on going for many years and could be as a result of underpinning carried out at some time, perhaps 20 years ago.

(b) Some of the works went into September 2014 but it was only minor work and 95% or more of the roof works had been completed by 22nd August 2014.

(c) He agreed that there was deflection to the roof, that there was inadequate overlap of the tiles and that the roofing felt was in poor condition and was not providing the secondary barrier that it should (as at p D19).

(d) He had not made challenges to specific items in the tender. There was not a separate tender or part of tender for remedial work only. He would have had to go through the tender and take out the items.

(e) He had made assertions in his representations at p D13 that the Applicant had made mathematical errors in his costings but Mr. Burgess had not specified them. At the hearing he said that his view was that if there were such errors then all he should do was make that statement and leave it to the Applicant to find them.

(f) Similarly, in relation to double charging, he had not specified them but gave two examples at the hearing.

(g) He considered that the roof should have been repaired and then after say 5 years they could get the money together to replace the roof.

(h) He gave examples of his assertion that there had been double charging. Item 8.1 on pp D1 and E38 includes re-plastering ceilings. Item 10.2 on pp D2 and E39 includes preparing surfaces of ceilings but that was already covered by item 8.1. At p D2, the Respondents had no argument with the item for the supply and fitting of Heli Bars but considered that the charge of £300 for rendering the firewalls where the crack was discovered was covered by item 9.1 on p E38 and that the sum of £280 should be removed.

(i) He considered that a roof covering other than synthetic slate could have been used. All alternative coverings would have been more expensive but would last longer. Concrete tiles would have a life of 40 or 50 years.

(j) He knew of one hole in the roof before it was replaced but did not dispute the Applicant's statement that there were more holes.

(k) In the analysis of the tenders at pp E29 – E40 there were some items in respect of which Ajays had quoted a lower sum than OTR Construction Limited and that on his calculation if the remedial work had been carried out rather than the replacement of the roof, Ajays tender would have been cheaper than OTR Construction Limited.

(l) The employment of a surveyor to oversee the work was unnecessary and expensive and that the contractor should be trusted to carry out the work without such supervision. Mr. Burgess considered that nothing should be paid for supervision. He referred to the requirement at item 2.1 on p E15 that the contractor should ensure that no elements of the existing structure should be left unprotected and he was concerned that there had been a lack of supervision when on one night the building was left uncovered and if it had

rained then damage would have been caused and it would have been expensive for the builder. In fact, fortunately, it did not rain that night. There had been no protection for the occupants of Flat 1 or for the conservatory at the rear of the subject property except for a board and there had been a 6 inch gap through which items could have fallen. Mr. Burgess would have liked to have received a report from the surveyor once the roof was opened up. He accepted that there were items to sort out and that it was necessary for the surveyor to charge for initial work but not for supervision.

21. Mr. Modlock on behalf of Mrs. Modlock stated that:

(a) In his opinion there was no problem with the roof. The problem was with the party wall. It was damp all along the top corner of the wall where it joins the ceiling.

(b) He agreed with what was shown in the photograph at p D20 but stated that there were no cracks in the plaster and that suggested that the wall was not moving. The wall had been repaired and was good. Mr. and Mrs. Modlock were disputing only the replacement of the roof.

(c) He appreciated the need for a lay landlord to employ a surveyor but considered it was not necessary in this case.

(d) He suggested that the Applicant should have got the first builders back to do the rest of the work.

(e) He pointed out that the roofline steps down, that the next door roof is in a terrible state, that the whole of the top of the chimney stack and the full width of the top of the party wall had been rendered.

22. Mrs. Modlock stated that:

(a) As at paragraph 2 on p D11, item 4.5 the cost of skelting insulation seemed excessive. Referring to paragraph 7 on p D11, she agreed that the waste had now been removed.

(b) She had had to get a solicitor to write to the Applicant before he would do anything. The works had been done and as far as Mr. and Mrs. Modlock know Flat 4 is all right but they wait to see if the problem recurs.

(c) Her view was that the repairs to Flat 4 should be covered by insurance but if not covered then the cost of the repairs should be borne by the Applicant. Mr. Modlock suggested that the claim had not been put in in time.

23. As to the cost of dealing with the HMO licence, the Respondents contended that that should not be payable by the lessees but by the Applicant as freeholder.

24. The Respondents considered that management fees of £500 per year for the whole building were excessive.

25. Mr. Burgess agreed that the value of the work done in 2013 which had been repeated in 2014 was £446.

26. As to the Tribunal fees, Mr. Modlock considered that they could not come within the service charges.

27. The Applicant stated that:

(a) The works had been done in July and August and the final invoice was 18th September 2014.

(b) In June 2013 a report had been obtained from Mr. Nyss MRICS MFPWS and as a result works had been carried out in 2013.

(c) In 2014 Mr. Goddard inspected the roof. Part of the roof was removed and the tops of battens were found to be damp with water dripping down from them onto the edge of the ceiling of Flat 4 and progressing into the wall from there. This was on the wall towards the front of the subject property and the chimney breast and the wall to the rear. The wall to the kitchen, which is in the middle, was not affected.

(d) The Section 20 consultation documents were detailed.

(e) The most significant cost was the scaffolding at about £2,000.

(f) He was glad he had not gone for the new tile option because of the weight.

(g) As to the suggestion of double charging for plastering ceilings, Mrs. Modlock had requested re-plastering which cost an extra £300 for plasterboard and skim which was a low quote.

(h) As to the suggestion of double charging for rendering the firewall where the crack was discovered, the original quote was at item 9.1 on p E38 and was also charged as £300 additional work ((C) 4. on p D2). He thought that the extra rendering was as a result of installing the Heli Bars whereas the original quote for the same wall was for making good and re-pointing.

(i) He understood that these costs were extra to the specification. The surveyor signed off all costs and the Applicant paid them all.

(j) He could not give details of the additional works at paragraph 4 on p D21 (items 4.9, 8.2 and 9.2 in the tender). They were in the nature of contingency and he relied on the surveyor.

(k) He always put money in and the work got done.

(l) As to the HMO licence, the local authority required this and it was a cost in respect of the building and so should be charged to the service charges. He relied on clause 4. (2) of the leases and the Fourth Schedule to the leases.

(m) He was charging £500 per year management charges for the whole of the subject property which he considered reasonable.

(n) As to supervision of the works on the night when the roof had been left uncovered, he had visited the site and found that the roof was in the process of being covered with roofing felt. He was not happy about the situation and contacted the surveyor and the builder.

(o) There were difficulties with scaffolding because Mr. Burgess refused to allow entry to his garden to put up scaffolding.

(p) When considering the whole matter the Applicant had spent a lot of time deliberating. He wanted to ensure a long term fix and did not want to have scaffolding again in 4 or 5 years time. There was the considerable cost of scaffolding and also the inconvenience to people in the building and the problem of the conservatory.

(q) As to the works in 2013, in June 2013 a report had been obtained from Mr. Nyss dealing with a number of matters including that he considered that the most likely cause of water ingress was badly installed lead flashing on the neighbour's property. As a result of that report access was obtained to the neighbour's property and an inspection of their side of the party wall was carried out. However, there were no signs of damp anywhere on their side of the party wall. The Applicant contacted the neighbours every time he got a report from a surveyor. All the evidence showed that there was a problem with the roof of the subject property. There was no sign of damp in the neighbour's flats. He was disappointed to see how dry they were. Works were carried out in 2013 and the contractors did what they contracted to do. The Applicant got them back to do certain other work including to the roof of the extension which is Mr. Burgess' responsibility. The Applicant kept getting them back and the relationship soured because he had called them back several times. He was not happy with some of the work but happy with other work. At p A26 items 3, 4 and 5 (totalling £446) had to be redone as part of the 2014 works.

(r) The Tribunal fees of £630 should be charged to the service charges or should be reimbursed by the Respondents. The leases provide that they can be charged to the service charge.

(s) As to the work to Flat 4, the Applicant had contacted the insurers and had been informed that as it was a maintenance issue then the insurance would not cover it.

Reasons

28. The Tribunal considered everything that had been seen at the inspection, all the documents which had been received and all the evidence which had been given and the submissions made at the hearing and made decisions on a balance of probabilities.

29. It must be stated that there can be no guarantee that in the future there will not be problems of water ingress. The Tribunal was able to carry out only a limited inspection from the internal common parts and from ground level.

30. The main matter to be determined is whether or not the cost of replacing the roof was reasonably incurred. There was some agreement between the parties that the roof needed attention and the choice was to carry out a repair or to replace the roof. In either case, the main item of expenditure would be the cost of scaffolding and that cost would be about the same no matter which option was chosen. The cost of repair would be cheaper than the cost of replacement but the difference between the two was not great and by choosing to replace rather than to repair, the chances of obtaining a long term solution were increased. Mr. Burgess suggested that the best plan would have been to repair the roof now and then after say 5 years they could get the money together to replace the roof. That ignores the fact that on both occasions about £2,000 would have to be paid for scaffolding. The Tribunal is satisfied that it was reasonable to make use of the scaffolding on the one occasion and to replace the roof. The expense of the replacement was reasonably incurred and the Respondents are liable to pay their share of the expenditure according to the terms of their leases. Complaint was made that there was insufficient detail of the additional works and the Respondents did not accept the Applicant's explanation at p D21. However the Tribunal was satisfied that the small sum for additional works was a reasonable way of providing a contingency sum for minor additional works which became apparent and no deduction was required.

31. Mr. Burgess had pointed out that in the analysis of the tenders at pp E29 – E40 there were some items in respect of which Ajays had quoted a lower sum than OTR Construction Limited and that on his calculation if the remedial work had been carried out rather than the replacement of the roof Ajays tender would have been cheaper than OTR Construction Limited. However, in comparing tenders it is usual to find that contractor A will quote for a particular item a lower figure than contractors B and C and in respect of other items contractor B will have the lowest quote. To try to choose the contractor with the lowest quote for each item to carry out just that work is impractical and it is extremely unlikely that the contractors would be prepared to work in that way. The quote has been presented as a whole and that is how it has to be viewed.

32. It is appreciated that there are difficulties in getting contractors back on site to correct all perceived problems but there was some agreement that works to the value of £446 were a repeat of works which should have been completed by the 2013 works and therefore that sum cannot be recovered through the service charges.

33. As to the repairs to Flat 4, an insurance claim could not be made because, as the Applicant quite properly told the insurers, it was a maintenance issue rather than an insurable cost and as the Applicant accepted that there had been a lack of maintenance the cost cannot be recovered through the service charges.

34. Mr. Burgess at p D13 in making broad assertions that there were mathematical errors and double charging without particularising them in his representations did not assist the conduct of the proceedings. However, we did find that there were two examples of double charging. In the first, both items formed part of the repairs to Flat 4 therefore the sum was disallowed in any event. The other concerned the additional cost of rendering the firewalls in connection with the installation of the Heli bars. The supply and fitting of the Heli Bars was agreed by the parties but the charge of £300 for rendering the firewalls the Tribunal found was included in the charges for repair to Flat 4 and therefore there was an element of double charging and the sum of £300 cannot be recovered through the service charges.

35. Mr. Burgess suggested that the contractor should be trusted to do the work without supervision but the Tribunal found that that was unrealistic. The Tribunal was satisfied that it was reasonable for the Applicant as a lay landlord to employ the services of a surveyor to oversee the works. The Tribunal found that the charge made for supervision was reasonably incurred and that no deduction was required to take account of the night when the subject property was left not fully protected. It must be pointed out that the charge made for supervision by a surveyor would not include being on site every minute of every working day. There was no challenge by the Respondents to the calculation of the fee.

36. It was necessary for the Applicant to bring these proceedings to clarify the position and the Tribunal fees of £630 were reasonably incurred.

37. The Applicant is entitled to charge a fee for managing the subject property and the Tribunal finds that a charge of £500 per year for the whole building is reasonably incurred.

38. As to the HMO licence fee, the Tribunal is satisfied that the Applicant was obliged to respond to the requirement by the local authority that the subject property be licensed and that the cost is recoverable through the service charges.

Appeals

39. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

40. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

41. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

42. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman (Chairman)