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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/21UD/LSC/2015/0014**
Property	:	**58c Church Road, St Leonards on Sea, East Sussex TN37 6EE**
Applicant	:	**Mr and Mrs C. Burke** **Mr and Mrs Wilcox**
Respondent	:	**Westone Properties Limited**
Representative	:	**Mr G. John and Mr Samuels both of Godfrey John & Partners**
Type of Application	:	**Section 27A the Landlord & Tenant Act 1985**
Tribunal Members	:	**Judge D. R. Whitney** **Mr B H R Simms FRICS**
Date and venue of Hearing	:	**29th June 2015** **Bexhill Town Hall**
Date of Decision	:	**20th July 2015**

DECISION

BACKGROUND

1. Mr and Mrs Burke, the First Applicants, are the owners of 58C Church Road, St Leonards, East Sussex. Mr and Mrs Wilcox, the Second Applicants, are the owners of 58B Church Road, St Leonards. The Respondent, Westone Properties Limited, is the owner of the freehold of 58 Church Road, St Leonards, East Sussex ("the Property").
2. The First Applicant issued an application dated 25th February 2015 seeking to challenge certain service charge items claimed by the Respondents managing agents, Godfrey John & Partners. Directions were issued dated 2nd March 2015. The Second Applicants applied to be joined by way of response dated 21st March 2015.
3. A hearing bundle was filed in accordance with the directions and references in [] are to pages within that bundle.
4. Mr Burke attended both the Inspection and Hearing for the First Applicant. Both of the Second Applicants attended the Hearing and allowed inspection of their flat. Mr John attended the Inspection and the Hearing at which he was also accompanied by Mr Samuel, also from the managing agents, and they collectively represented the Respondent.

THE LAW

5. The relevant section for this application are sections 19 and 27A of the Landlord and Tenant Act 1985 which are annexed hereto marked A.

INSPECTION

6. Immediately prior to the hearing the tribunal inspected the Property. The weather was dry and fair on the morning of the hearing.
7. The building was a converted end of terrace late Victorian property. It was at probably the highest point of Church Road. The roof covering appeared to be slate with chimney stacks on each side.
8. The Property was converted into 4 flats with one on each storey with the flat on the second floor also including the roof. The tribunal inspected flat 58B (the Second Respondents flat) which was on the first floor. In particular the bedroom to the rear of the property over which was a flat roof. It was apparent that this room had suffered significant water ingress and damp. It was clear that this was now drying out. Further the tribunal was advised that there had been damage in the hallway and also damp ingress to the chimney breast in the front room, which overlooked Church Road, on the external north facing wall.
9. The tribunal viewed the flat roof over the bedroom from the stairway leading to the second floor flat although they were advised that this had been repaired since the water ingress occurred.
10. The tribunal also inspected the First Applicants flat which was on the second floor and within the roof eaves. Again some evidence of water penetration was seen which the First Applicant advised was now drying out.

HEARING

11. It was agreed that the issues in dispute were those contained in the Scott Schedule at [1] and annexed hereto with the tribunals comments marked B.
12. The tribunal also relied upon the lease documentation for flat 58c found at [108-125]. This consisted of the original lease dated 30th July 1974 and an extension dated 28th September 2005 simply granting a statutory lease extension.
13. All the parties agreed that Item 1 of the Schedule was agreed.
14. In respect of Item 2 Mr John explained that his firm charged 10% for administration and managing the works. The actual amounts claimed were at [31 and 32] being a statement listing the costs of the major works. There were also accounts at [128].
15. Mr John explained that it was accepted by him that there had been some problems with these major works and he may adjust the amount he charged in light of any adjustment which may be made to the cost of the works. He was supposedly awaiting a surveyors report on the works undertaken but at the time of the hearing this was not available.
16. Mr John explained there was no written agreement with the Respondent but his firm had managed the building for about 23 years and on behalf of the current landlord for about the past 9 years. Historically he had always charged 10% of the cost of major works. He had administered the work, liaised with the leaseholders and associated matters. No surveyors were appointed and he dealt with the contractors. Mr John confirmed he had five years' experience and managed about 100 blocks of flats.
17. Mr Burke accepted that all demands contained all necessary statutory information including landlords name and address and summary of rights and obligations.
18. Mr Burke accepted that external works had been undertaken and the building had been painted. Mr Burke's contention was that Mr John did not manage the works. He simply left it to the contractor and had no idea what work was being undertaken or when. Mr Burke suggests that it was he who had to chase the contractor and relied on emails contained within the bundle.
19. Mr Wilcox did not think that the works had been done to a good standard but works had been done. The scaffolding had been up for a very long time and in his opinion the price was far too high and should have been about half the amount charged.
20. Mr John explained that the additional works referred to in paragraph 3 of the Scott Schedule were set out at [128-130] of the bundle. These works related to water ingress. Supposedly despite what the accounts showed TORK (the contractor) had not been paid. Mr Samuels explained that when TORK were first instructed it was not believed these works would cost more than £1000, hence no consultation.
21. It was accepted by Mr John that given no consultation he is limited to a maximum sum of £250 and there is no evidence of what the final reasonable cost might be as he has not got his surveyors report.
22. Mr Burke suggests there is no evidence that the leaseholders benefitted from these works as they did not rectify the water ingress. Mr Burke referred to pages [40,44 and 58] all of which alerted Mr John to the water ingress and he suggests it was clear that S.20 consultation could have been undertaken and that no specification for the work was prepared.

23. Mr Wilcox referred to his rear bedroom and the obvious water penetration that was seen at the inspection. Mr Wilcox referred to water coming in as a "flood". He had asked Mr John to pursue an insurance claim but he had heard nothing about this.
24. Mr John indicated he could not remember whether or not an insurance claim had been made.
25. Mr Wilcox stated that in his opinion it was clear from the detailing to the flat roof that TORK had not undertaken this work to a good standard.
26. Mr John indicated that the surveyor he had appointed had agreed that the detailing was not properly undertaken.
27. In respect of item 4 of the Scott Schedule Mr John relied upon his earlier comments.
28. Mr Wilcox said he was disappointed that Mr John does not keep the leaseholders up to date. There was a surveyor for the second set of works but not the first and a surveyor was only appointed after pressure from the leaseholders.
29. In respect of Item 5 of the Scott Schedule Mr John stated that his costs were calculated on the basis of the invoices. He had not got a copy of the actual demand. The surveyor's fees were calculated on the basis of the hourly rate of £75 per hour. Unfortunately the surveyor was on holiday this week and once he had his report he will look again at the charges and other items and adjust them if required.
30. Mr Burke submitted that Mr Johns added no value given there was a surveyor overseeing these works. Mr Burke indicated the surveyor did all the specification and oversaw the works and he had corresponded directly with the surveyor.
31. Mr Wilcox agreed that no value had been added by Mr Johns.
32. In respect of Item 6 of the Scott Schedule Mr John explained that he had not agreed the increase in the agent's fees with the freeholder. He took the view having looked at various tribunal decisions that his fees were very low hence an increase was justified. He felt his fee was still far below what many other agents were charging.
33. The tribunal questioned Mr John as to what terms of the lease he relied upon in respect of his charges. Mr John confirmed he had read the lease but the tribunal asked Mr John if he wanted an adjournment to review. Mr John indicated he did and the tribunal adjourned.
34. Mr John returned after a short adjournment and confirmed he was happy to proceed. He relied upon clause 4(b) of the lease. This referred to the leaseholder being responsible for paying all "outgoings which may at any time during the term be assessed ...". Mr John accepted that there was no mechanism for payments of service charges in advance but Mr Samuel referred to the service charge code to support recovering payments in advance.
35. Mr John submitted that he had not been elusive as suggested by the Applicants. He feels much is still up in the air and he awaits the surveyors report. He accepts he has not done his homework properly and should have had the surveyor's comments and placed them before the tribunal. He states he verbally advised the leaseholders that he was looking to amend the charges and this hearing could have been avoided.
36. Mr Burke suggested that it was Mr John's management which was the cause of much stress. In support of his S. 20C application he stated that the

application was only necessary because Mr John had not properly undertaken his role as a managing agent. He said he heard what Mr John had said about the surveyors report but frankly he had heard this suggestion of "2 or 3 weeks time" for receipt of it on many occasions and Mr John had failed to deliver.

37. Mr and Mrs Wilcox agreed and supported the application highlighting that further unexpected costs had been billed.
38. Mr John stated he refuted the allegations but respected the leaseholders opinions.

DETERMINATION

39. The tribunal has anotated the Scott Schedule annexed hereto in the final column with its determinations.
40. The tribunal has had regard to all the evidence presented to it and heard. The tribunal notes that it did question the terms of the lease relied upon by the Respondent to claim various costs but notes that a short adjournment was afforded to Mr John and thereafter he was happy to proceed. In any event a managing agent ought, in this tribunals determination, to be able to refer to the relevant clauses in the lease upon which they rely to recover monies.
41. Many of the items listed refer to the managing agents fees being items 2,4,5 and 6 of the Schedule.
42. This tribunal was not satisfied that the lease contains any clauses allowing recovery of managing agents costs. The tribunal is mindful that its starting point must always be what the lease allows by way of recovery of service charges.
43. Mr John relied on clause 4(b) of the lease. This is not relevant. This clause related to taxes such as council tax and the leaseholders obligation to pay the same. The Fifth Schedule sets out what the leaseholder is required to contribute to. This includes no mention of agents fees for managing. This tribunal therefore determines that no managing agents costs are recoverable.
44. If the tribunal is wrong on this point we would determine the issues as follows. In respect of Item 2 and 4 if charges are recoverable for overseeing the works then in this tribunals determination the Respondent is not entitled to recover the fees of Godfrey John and Partners. In this tribunal's determination the managing agent added no value and did not oversee the works which it seems apparent were left to the contractor to oversee and manage. For this reason we would refuse the amounts claimed.
45. In respect of Item 5 again we would allow nothing. A surveyor was appointed whose fees have not been challenged. On the evidence we have heard it is unclear what if anything Mr John and his firm added to this process and it would be unreasonable for his fee to be allowed.
46. Item 6 is general managing agent's fees. The tribunal accepts that the amounts claimed are relatively modest compared with other agents. However there seems to be no contract or agreement with the freeholder as to the original fee or any increase. It is unclear the basis on which any charge is levied. Further the standard of the service provided fell substantially below that which a tribunal would expect a professional managing agent being able to demonstrate. The tribunal was not satisfied that the agent properly understood the lease terms which was surprising given the length of time they had managed. However taking all of this into account if a management fee

was payable the tribunal would have allowed £150 per unit per annum to include all management work including any work the agent undertook in respect of major works.

47. This left item 3 of the schedule. It was conceded that no consultation S.20 had been undertaken or application for dispensation sought. As a result the recoverable amount was capped. The tribunal had regard to the limited information about the works. It was not clear what works were undertaken although it appeared to be accepted such works were not undertaken to a proper standard. Whilst the tribunal notes that Mr John says he may re-visit matters and suggested that costs had not been paid. However service charge accounts had already been prepared! This tribunal determines that £250 is payable in respect of Mr and Mrs Burkes flat and £125 in respect of Mr and Mrs Wilcox's flat given they are responsible for 1/5th of the costs and Mr and Mrs Burke responsible for 2/5ths of the costs subject to evidence being produced that monies have been paid to the contractor for the works undertaken.

48. The tribunal is not satisfied that the Respondents costs are recoverable under the lease but for the avoidance of doubt the tribunal makes an Order pursuant to Section 20C that any and all costs incurred by the Respondent in pursuing this matter are not recoverable as a service charge. Further the tribunal determines that the fees paid by the First Applicant totalling £440 do be reimbursed to the First Applicant by the Respondent within 14 days of this determination. The tribunal makes such a determination as having heard all the evidence it is satisfied that the Applicants had not choice to make this application. The application has been almost wholly successful. The evidence and case advanced by the Respondent, as acknowledged by their agent, left much to be desired.

Judge D. R . Whitney

Appeals

1. 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.

2. 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.

3. 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.

4. 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.

ANNEX A

Section 19 Landlord and Tenant Act 1985

Limitation of service charges: reasonableness.

(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.

Section 27A Landlord and Tenant Act 1985

Liability to pay service charges: jurisdiction

(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.

(3)

An application may also be made to a leasehold valuation 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.

(6)

An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a)

in a particular manner, or

(b)

on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7)

The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Number	Item	Costs in total	Costs apportioned to the leaseholder of flat 58c	Costs apportioned to each of the other 3 leaseholders	Tenant's comments
1	2012 Brought forward balances	£302.61	£302.61	£0.00	Draft service charge accounts for the year ended 31/12/12 provided to leaseholders on 14th November 2014 show an amount in arrears at that date for flat 58c. As this liability was not made known to the leaseholder within 18 months we are disputing the agents right to recover it.
2	Managing Agents mark up of 10% on 2013 major works covered under Sect 20 notice originally issued 31 May 2011	£1,402.00	£561.00	£280.50	The agent did not either manage the contractor nor supervise the works. A fixed fee of c£500 in total (£200 for our flat) would be a reasonable charge for the effort involved in sending out the Section 20 notices and obtaining 2 quotations for the works.
3	2013 works carried out by Tork Kent & Sussex above those specified in the Section 20 notification issued 31 May 2011 and the statement of estimates issued 2 August 2012	£8,628.00	£3,451.20	£1,725.60	The works above those specified in the Section 20 notice were intended to stop water ingress to the building No consultation was done for the works nor were any alternative quotations obtained The works required were not specified in advance nor agreed with the contractor There was no supervision of the works undertaken and no management of the project by the managing agent The works delivered no improvement for the leaseholders of the building, water and dampness continued to come into the building after the works were completed and further works which included undoing the work done by this contractor being undertaken November 2014 to April 2015. Despite being informed of the fact that water was still coming into the building when the works were completed neither the managing agent nor the contractor made any efforts to undertake remedial actions to minimise the damage, the building was finally surveyed in November 2013 but the contractor did not make any attempt to reduce the continuing water ingress. The invoices received from the contractor for the works include apparent examples of duplication where the same activities have been invoiced more
4	Managing Agents 10% markup on 2013 works carried out by Tork Kent & Sussex above those specified in the Section 20 notification issued 31 May 2011 and the statement of estimates issued 2 August 2012	£862.80	£345.12	£172.56	The agent did not either manage the contractor nor supervise the works. They did not get the contractor to undertake any remediation work when it became evident that there was still water ingress.
5	Managing Agents mark up of 10% on roof repair works undertaken between November 2014 and April 2015	£2,123.00	£849.00	£424.50	The managing agent appointed a surveyor who prepared the specification of work for the Section 20 notification and quotation process, met with the contractors and has supervised the works as they have been undertaken.
6	Increase in managing agents minimum charge per leaseholder from £100 (plus VAT) in 2012 to £150 (plus VAT) in 2014	£200.00	£50.00	£50.00	This increase has appeared in the summary accounts provided on 17 March 2015. There was no communication or dialogue with the leaseholders in advance about cost increases or their potential scale. The official inflation increase over this period is 2.4% (0.7% 2012 1.7% 2013).

Landlord's comments	Tenant's reply	Agreed Yes/no	Blank for tribunal
The "draft Service Charge Accounts" to which the Applicant refers were in fact "working papers", and should not have been sent to him. The sum of £302.61 was paid by the previous lessee, Mr Lazarow,	The statement of account provided by the managing agent on 17th March indicate that this amount has either been paid by the previous leaseholder or has been written off, it is therefore no longer in dispute.	Yes	Agreed by parties nothing owing.
As Managing Agents of the property, we undertake the following tasks: (a) Prepares and serves statutory notices to lessees. (b) Calculates, prepares and submits interim bills to lessees. (c) Communicates and meets with surveyor, when appointed, and contractor, in person, by telephone and e-mail. (d) When no surveyor has been appointed, we obtain estimates for submission to lessees, visit the property and liaises with contractor. (e) Advises lessees of progress, as applicable (f) Prepares final balance of account and calculates bills for lessees. (g) Pays contractor on receipt of interim certificates/invoices. (h) On completion inspects the property for snagging, instructs contractor as appropriate, and when snagging works have been completed, pays over the retention sum. It is generally accepted that between 10 and 15 of the cost of major works is reasonable for Managing Agents fees in connection with the works. As this Application concerns the liability to pay service charges, and the main dispute appears to be in connection with our administration and management fees, matters concerning the quality of the work should not be The LVT has determined that VAT is a legitimate expense, and when fees are	I have an expectation that when works are agreed with a contractor the work should to be properly managed, not just "outsourced". There was no management or supervision of this contractor which resulted in the works taking significantly longer than originally anticipated. There was no communication of progress through the works to leaseholders.	No	Nothing allowed.
3. The original works were to repair and decorate the exterior of the building and the internal common parts, and repair the Chimney Stack. On completion, it appeared that there was water ingress, which the contractor was asked to remedy. When he could not find the source of the water problem, a surveyor was asked to produce a report and ascertain from where the water was coming. On the basis of the report, a second Section 20 Notice was served. Mr Burke asked us to contact his builder, and ask him to quote for the work, but it became apparent that he was not interested, after it took six months before he contacted us. Mr Burke recommended other builders who either were not competent to do the work, or did not put in a tender in accordance with the Specification. In trying to locate leaks after works have been completed, it is sometimes necessary to undo previous work, and then make good the defective area. As this Application concerns the liability to pay service charges, and the main dispute appears to be in connection with our administration and management fees, matters concerning the quality of the work should not be	The managing agent and contractor were both aware of water ingress to the building before any works were commenced. They were informed on a number of occasions through the works that this water ingress had not been stopped. Contrary to the statement by the managing agent no section 20 Notice was served on leaseholders of this property between May 2011 and Summer 2014. The root cause of leaseholder dissatisfaction is that works were undertaken without any specification, were not supervised/managed which had a direct impact on the quality of the work and did not deliver the stated desired outcome ie to stop water getting into the building. This is a disagreement about delivery as well as costs.	No	£250payable by Mr & Mrs Burke and £125 payable by Mr & Mrs Wilcox
Please see item 2 above	Please see comments for item 3 above	No	Nothing allowed.
It is generally accepted that between 10 and 15 of the cost of major works is reasonable for Managing Agents fees in connection with the works. When these works have been completed, we will review our fees. The Applicants have been iriforrrred that this will happen.	On item 2 above the managing agent details the activities they should undertake to justify their markup on the cost of major works, for this project most of these responsibilities have been contracted to a surveyor.	No	Nothing allowed.
In 2005, the LVT determined that General Management Fees for a small property comprising 2-6 units, £175.00 per flat, plus VAT, was reasonable. At the present time, indications are that charges should be between D 75 and £250 per flat, plus VAT. The increase of £1.00 per week, plus V AT, was not excessive, when it is considered that £150.00 per year represents a charge of only £3.00 per week, or 40p per day. Our fees were not excessive to start with, at approximately £2.00 per week, and were well below the norm for this type of property. The increase of £1.00 per week was to tart to bring the fees up to current levels.	At a minimum I would have expected a 50% increase in costs to be communicated to the payers in advance so that they are in a position to determine if it in their best interests to retain the managing agent rather than seeing the charge for the first time in the annual accounts after the end of the period.	No	Nothing allowed.