



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

Case Reference : **MAN/30UK/LSC/2015/0088**

Property : **23, 25 and 31 Marsh Way,
Penwortham, Preston, PR1 9PL**

Applicants : **Elizabeth Anne Basquill (Flat
25)
Mr P Walton (Flat 25)
Mrs S. Hubbersty(Flat 31)**

Representative : **Elizabeth Anne Basquill**

Respondent : **Proxima GR Properties Limited by its
Agent Firstport Property Services
Limited**

Representative : **None**

Type of Application : **Application under section 27A (and
19) of the Landlord and Tenant Act
1985 and section 20C (“the Act”)**

Tribunal Members : **Mr G. C. Freeman
Mrs J Jacobs MRICS Expert Valuer
Member**

Date of decision : **20 January 2016**

DECISION

DECISION

The sum of £356.40 incurred by the Landlord for an insurance valuation of the Property was reasonably incurred.

No order is made under Section 20C of the Act

Background

1. By their application dated 10th September 2015, the Applicants applied to the Tribunal for a determination of the liability to pay and the reasonableness of service charges for the Property incurred on 28 April 2015. The Applicants object to a single item of expenditure, namely the cost of an insurance valuation of the Property, carried out on behalf of the Respondent. The amount involved is £356.40, which divided between the eight flats in the development equates to £44.55 per flat.
2. By directions issued by a Procedural Chairman on 27th October 2015 the Tribunal directed that the application be dealt with on the basis of written representations without an oral hearing unless either or both parties requested an oral hearing. No such request was received, and the Tribunal accordingly met to determine the application on 20th January 2016. Statements of Case and written representations were received from both parties and were copied to each other.
3. Subsequent to the issue of directions the Applicants raised further issues by email dated 8th January 2016. The Tribunal declined to deal with these as they formed no part of the original application.

The Lease

4. A copy of the lease for flat 25 was produced with the application. The Tribunal has proceeded on the basis that all the leases are in similar form. That lease was dated 30th September 1983 and was made between Barratt Preston Limited of the one part and Karen O'Sullivan of the other part. It created the term of 125 years from 24th June 1983 and reserved an annual rent of £20 for the first twenty years of the term and thereafter subject to review. Proxima GR Properties Limited is the successor in title to Barratt Preston Limited. Each Applicant is the successor in title, or original tenant of each of the flats in the Property.

5. It was not disputed that the Leases of each property provides for a service charge to be payable. The relevant provisions of the lease relating to insurance is as follows:

“(f) AND ALSO paying on demand by way of further or additional rent from time to time a sums or sums of money equal to one eighth equal part of the amount which the Lessor may from time to time expend in effecting or maintaining the insurance of the block against loss or damage by the Insured Risks in accordance with the provision of the Sixth Schedule hereto”

6. The Sixth Schedule provides for the Landlord to insure the Property for its full replacement value from time to time including an adequate amount for professional fees.

The Applicants’ Case

7. The Applicants claim that the charge is unreasonable may be summarised as follows:

- 7.1 No notice of the charge was given.
- 7.2 The charge had never been imposed before.
- 7.3 Why was an inspection necessary?
- 7.4 Will the charge recur?

The Respondent’s Case

8. The Respondent has confirmed that Firstport Property Services Limited (“Firstport”) is the appointed managing agent on behalf of the Landlord, Proxima GR Properties Limited. Firstport wrote to the Applicants on 2 October 2015 explaining the need for a valuation and pointing out that no valuation had been carried out for 18 years. They consider the cost was reasonably incurred.

The Law

9. The Law is set out in the Schedule annexed.

Discussion

10. It is not disputed that the Landlord is responsible for insuring the Property for its full replacement cost. The Landlord needs to know what that cost is. If it fails to insure for this cost it is liable to each tenant for breach of this covenant. In order to ascertain that cost a valuation of the rebuilding cost is necessary. To carry out such a valuation an inspection is essential. Any Valuer would need to know what materials were used in the construction of the property in order to calculate the replacement cost of such materials.

11. The Tribunal accept the Respondent's contention that the Landlord should comply with the RICS code of practice for the management of flats.
12. The Tribunal concluded that Firstport has been incorrectly named as the Respondent. It is not a party to the lease and is not a successor in title to the original landlord. The Tribunal has therefore substituted Proxima GR Properties Limited as the Respondent of its own volition.
13. Dealing with the specific points raised at paragraph 7 above the Tribunal comments as follows:
 - 7.1 There is no requirement in the lease to give notice of this expenditure. To protect tenants against unreasonable expenditure Parliament has enacted s27A of the Act to enable tenants to challenge such costs, which the Applicants have exercised.
 - 7.2 This is no valid reason for not carrying out a valuation. Indeed, the Tribunal considered that the lack of a valuation for a number of years is all the more reason that one should now be carried out.
 - 7.3 The reason for a valuation has been explained above.
 - 7.4 It is not within the Tribunal's jurisdiction to decide this issue. It is a question of reasonableness. Clearly an annual inspection is unnecessary, but a prudent manager will keep the insured sum under careful review.
14. No evidence that the cost of the valuation was unreasonable (for example, a comparative quotation) was produced by the Applicants.
14. The Tribunal concluded that the expenditure of £356.40 for an insurance valuation of the Property was reasonably incurred.

Section 20C application

15. Some leases allow a landlord to recover costs incurred in connection with proceedings before the LVT as part of the service charge. The Applicant has made an application under s20C of the Act to disallow the costs incurred by the Respondent of the application, subject, of course, to such costs being properly recoverable under the provisions of the tenancy agreement. The Tribunal could find no provision in the lease for the payment of such costs.
16. Subject to the above the Tribunal determines that, as they have found that the cost in question was reasonable, it would not be reasonable to make such an order, and therefore no order is made.

THE SCHEDULE

Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

- (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.

Section 19 provides that

- (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.

Section 27A provides that

- (1) an application may be made to a First-tier Tribunal (Property Chamber) 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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)
- (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....

- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

No guidance is given in the 1985 Act as to the meaning of the words “reasonably incurred”. Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Where a tenant disputes items, he need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant’s case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

Section 20C of the Landlord and Tenant Act 1985

Section 20C provides that

- (1) A tenant may make an application for an order that all or any of the costs incurred or to be incurred, by the landlord in connection with proceedings before a court or the First-tier Tribunal (Property Chamber) or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application
- (2) The application shall be made-
 - (a) in the case of court proceedings to the court before which the proceedings are taking place, or, if the application is made after the proceedings are concluded, to the county court
 - (b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)
 - (c)