

9624



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

Case Reference : LON/00AJ/LSC/2013/779

Property : 10 Gunnersbury Court, Bolo Lane,
Acton, London. W3 8JL

Applicant : Mr David Tipping

Representative : In person

Respondent : Gunnersbury Court Ltd

Representative : Mr Ammar Hassan, Director

Type of Application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Ruth Wayte
Mrs Davies, Chartered Surveyor
Mrs O'Sullivan

**Date and venue of
Hearing** : 14 March 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 24 March 2014

DECISION

Decisions of the tribunal

- (1) The tribunal has determined that the Applicant's lease allows for the recovery of the cost of the items in issue as detailed below.
- (2) The estimated cost of the proposed works in relation to the new lighting, plaster skim coat to the walls and ceilings and new carpeting is reasonable.
- (3) In the circumstances the tribunal does not order the Respondent to refund any fees paid by the Applicant.

The application

1. The Applicant sought a determination pursuant to s.27A (3) of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges would be payable if works are carried out. Section 27A (3) of the 1985 Act is set out in full in the Appendix to this decision.

The hearing

2. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Hassan, a Director of the company.

The background

3. The property which is the subject of this application is 10 Gunnersbury Court, Bolo Lane, Acton ("the Property"). The Property is part of a small estate, consisting of three small blocks of flats, with 72 flats in total ("Gunnersbury Court"). The landlord is a leaseholders' management company. Most (including the Applicant) but not all the lessees are shareholders in the company.
4. The proposed works to the internal common parts of Gunnersbury Court are the last in a series of works which have taken place over the recent past including the installation of new lifts and external building repairs and decoration. In his written statement to the tribunal the Applicant stated that those previous works cost over £10,000 per flat, with the decorations to the internal common parts being "the last link in the chain". The major works contract to the lifts and exterior was completed by the end of 2012.
5. The specification for the proposed works to the interior was raised in the Annual General Meeting held on 23 January 2013 and the consultation process started on 30 January 2013. Following objections by some of the leaseholders and an Extraordinary General Meeting

("EGM") held on 3 July 2013, there have been some modifications to the original specification which have reduced the overall cost, however the Applicant still wishes to challenge parts of the amended specification as detailed in the issues section below.

6. The tribunal inspected Gunnersbury Court before the hearing in the presence of the Applicant. No-one attended for the Respondent at the time of the inspection. It was noted that the blocks, each six storeys high, were built circa 1935 and are situated in a mixed residential and commercial area fronting onto a busy road. The blocks appear to have flat roofs and walls are of brick faced construction with many replacement UPVC windows and some original Crittel windows. The communal grounds are well maintained and there is some shared car parking in the entrance driveway.
7. Externally the blocks are in good condition. Internally the common parts are dated and tired. The walls and ceilings of the entrance halls, stairs and landings have all been Artexed at some time, probably in the 1960's. We noted that the Artexing is defective in many areas where it is cracked and peeling. Old patch repairs are clearly visible, with a poor match to the original finish. Paintwork is badly chipped and marked. There are carpet tiles to the entrance halls and carpeting to the stairs and landings which we noted were stained and worn, mainly in the entrance hall and on the stairs. An entry phone system and CCTV are installed in each block and each is served by a modern electric passenger lift. Communal lighting is the old emergency lighting up the stairwell, which was seen to be on at the time of inspection, at 10am on a sunny morning.
8. The Applicant holds a long lease of the Property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the works are within the landlord's obligations under the lease;
 - (ii) The reasonableness of the cost of the proposed works in relation to the new lighting, plaster skim coat to the walls and ceilings and new carpeting;
 - (iii) Whether an order for reimbursement of application/hearing fees should be made.

10. The Applicant confirmed he did not wish to challenge the validity of the consultation carried out under section 20 of the 1985 Act and had no issue with other costs in the revised estimate for the works sent in September 2013.
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The Lease

12. The Applicant's lease is dated 21 December 1995 and made between Gunnersbury Court Limited (the Landlords) and David Tipping (the Tenant) ("the Lease"). The Landlord's repairing covenants are in clause 5 (5) and include the following relevant provisions:

"Clause 5 (5)(a) To maintain and keep in good and substantial repair and condition:-

5(5)(a)(iii) the Common Parts

5(5)(b) As and when the Landlords shall deem necessary:-

5(5)(b)(ii) to paint varnish or otherwise treat such of the interior parts of the Building as have been or ought to be so treated (other than those parts which are included in this demise or in the demise of any other flat in the Building)

5(5)(d) To keep clean and where appropriate lighted the Common Parts and to keep clean the windows in the Common Parts and where appropriate to furnish the Common Parts in such style and manner as the Landlords shall from time to time in their absolute discretion think fit.

5(5)(n) Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Landlords may be considered necessary or advisable for the proper maintenance safety amenity and administration of the Building."

13. The Applicant submitted that the clauses only permitted repairs, rather than the "upgrade" sought by the Respondent. In particular, he submitted in his application that the reference to "ought to be treated"

in clause 5(5)(b)(ii) would only cover repainting and making good of the walls and ceilings as opposed to re-plastering and washing of the carpets as opposed to replacement. He recognised that clause 5(5)(n) was broader but submitted that “proper maintenance” did not extend to the items in dispute which in his view were part of the Directors’ ambition to take Gunnersbury Court upmarket rather than focus on what was necessary. He also queried the Directors’ ability to press ahead with the works in the face of leaseholder objections, given that many of the leaseholders were effectively also the Landlord, by way of their shareholding in Gunnersbury Court Limited.

14. Mr Hassan for the Respondent submitted that the Lease was open to interpretation. He stated that the Directors only wanted to do their best for Gunnersbury Court and its residents. The Directors felt that the proposed works, as amended following the last EGM were appropriate to bring Gunnersbury Court back in to the 21st Century and would be more cost effective in the long run.

The tribunal’s decision

15. The tribunal determines that the provisions of the Lease stated above are not limited to works that are necessary, as submitted by the Applicant. The Directors have ostensible authority to make decisions on behalf of the Landlord management company and the tribunal is satisfied that the proposed works fall within the express wording of paragraphs 5(5)(d) and (n), being what, in the Directors’ absolute discretion, they consider fit for the common parts and advisable for the proper maintenance of Gunnersbury Court. It follows that the Lease allows for recovery of the cost from the Applicant.

New lighting

16. The tribunal noted on inspection that the lighting on the stairs is the original emergency lighting which in our view is in need of updating, not least as the tribunal heard evidence that it is currently on permanently. The original specification had been modified following the EGM on 3rd July 2013 to simply provide for “new lighting with integral PIR control” with a provisional cost of £9,500 plus VAT.
17. The Applicant objected to the proposed cost on the basis that what had been agreed at the meeting was to investigate the most cost efficient option for the lighting, although when asked he agreed that the sum claimed was not necessarily unreasonable.
18. Mr Hassan for the Respondent confirmed that the new proposal was for low energy sensor lighting and the costing had been obtained from the preferred contractor following the EGM. He confirmed that the

Directors would be happy to carry out further investigation to establish the most cost-efficient solution for the lighting.

The tribunal's decision

19. In the light of the previous competitive tendering exercise, which resulted in a preferred contractor who has quoted for the works, the tribunal determines that the provisional cost of £9,500 plus VAT is reasonable and is therefore allowed. The Applicant may challenge any excess sum found to be payable in due course when the final account is provided. It is noted that the parties have agreed to investigate the energy savings to be gained from the new specification.

Re-plastering

20. It was clarified at the hearing that this item in fact referred to the application of a plaster skim coat on top of the existing Artex surface, rather than the removal of the Artex and subsequent re-plastering. Mr Hassan for the Respondent stated that the Directors had been advised that this would be the most cost-effective way of creating a smooth and durable finish for the redecoration both now and for the future.
21. The Applicant objected to the item on the basis that it was not necessary. He accepted that there were areas of damage but submitted that they could be dealt with by patch repairs at a much lower cost, as with the last redecoration work.

The tribunal's decision

22. At the inspection the tribunal noted that the previous repairs were clearly visible and therefore considers that further patch repairs would be even more unsightly. Given the age of the Artex finish and the amount of repairs required, the tribunal accepted the Respondent's evidence that the better option in the long term would be to skim the walls to provide a more long-lasting finish which would be easier to maintain in the future. We would comment that the Landlord is not under a duty to choose the cheapest method of repair but a reasonable method. In our view, the skimming of the walls is a reasonable method in this case. Given that the specification had been the subject of a competitive tender, the tribunal considers the provisional cost to be reasonable and therefore the costs are allowed.

Carpeting

23. The Applicant stated he had no objection to replacing the carpet tiles and doormats in the entrance hallways but that the rest of the carpet was not worn or dangerous, had years of life left and only really required a good clean.

24. Mr Hassan replied that the existing carpeting dates back to over 14 years ago, when the common parts were last redecorated. Although it was true that the carpeting in the halls and stairway was less worn than the carpet in the entrance hall, there were stains caused by the previous practice of leaving household rubbish outside the flats for collection by the caretaker. Use of the same carpeting throughout would look much better and last until the common parts required redecoration in future, or at least 10 years.

The tribunal's decision

25. As noted on inspection, the carpeting is stained and worn and there is no dispute that the carpet tiles and doormats in the entrance halls require replacement now. Although it is arguable that the fitted carpet on the stairs and hallways could last for another 12 to 18 months, replacement at the same time as the blocks are decorated will avoid damage and additional cost caused by subsequent removal. Given the competitive tender exercise carried out by the Directors, the proposed cost appears reasonable and is allowed.

Application for the refund of fees

26. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/hearing¹. Having heard the submissions from the parties and taking into account the determinations above in favour of the Respondent, the tribunal does not order the Respondent to refund any fees paid by the Applicant.
27. The tribunal has sympathy with the leaseholders who are clearly worried about further expenditure, following a series of works to the property. That said, the tribunal are satisfied, having heard from Mr Hassan, that the directors have taken those concerns on board and the revised works will provide for a more modern and cost-effective renovation to the interior common parts in the longer term.

Name: RuthWayte

Date: March 2014

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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.