



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

**Case Reference** : CAM/00MD/LSC/2105/0058

**Property** : Windsor House, 33 Upton Park,  
Slough SL1 2DA

**Applicant** : Mintoncrest Limited

**Representative** : Mr K Traynor of Remus  
Management Limited

**Respondent** : The Lessees of the 8 flats at  
Windsor House whose details  
appear on the Application

**Representative** : Mr A Aiad of flat 4 who attended on  
his own behalf

**Type of Application** : For the determination of the  
reasonableness of and the liability  
to pay a service charge yet to be  
incurred

**Tribunal Members** : Tribunal Judge Dutton  
Mr D Barnden MRICS  
Mr A Kapur

**Date and venue of  
Hearing** : The County Court at Slough on 6th  
October 2015

**Date of Decision** : 9th October 2015

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal determines that the sums to be payable under s27A (3) as set out in the findings section of this decision are reasonable and payable under the terms of the Respondents' leases. No finding can be made as to the standard of works nor whether the Respondent should be required to make a contribution
- (2) No application was made under s20C

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") of the costs to be incurred in respect of damp and dry rot treatment and associated works.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

3. The Applicant was represented by Mr K Traynor of Remus Management Limited, its managing agents. There was no written representation by any of the Respondents to the Application. Mr Aiad, the owner of flat 4 did attend the hearing but did not represent the other Respondents.
4. Prior to the hearing we were provided with a bundle of documents that included the Application, a specimen lease, the directions issued, a very short statement from Remus and surveyors report by Ellis Sloane & Co (ES) dated 6th March 2014 (the Report). In addition we had copies of the section 20 notices, correspondence between ES and the leaseholders and quotes from three of the suggested contractors.

## **The background**

5. We inspected the property which is the subject of this application before the hearing.
6. 33 Upton Park Slough is a semi-detached house with a lower ground, housing flats 7 and 8 and three upper floors, believed to have been built in the late 19<sup>th</sup> or early 20<sup>th</sup> century. It is one of a group of villa-style houses built in a pleasant location around a public park. Residents' parking is available to the front and rear of the property.

7. The house has been converted into 8 flats. It is constructed of brick with a slate roof. The majority of doors and windows have been replaced with UPVC units, though a few older timber windows remain. The brickwork has been recently re-pointed and generally the house is in good condition. However the front dormer has some slipped flashings requiring attention, and the remaining timber windows are in need of painting.
8. At the inspection we were given access to a rear entrance lobby where some signs of rising damp were visible. Lifting the carpets it was possible to see an area where the floorboards had been replaced as part of dry rot investigations. Under the stair carpet some signs of dry rot were visible. No access was available to either of the lower ground floor flats affected by the dampness and dry rot.
9. The Respondents occupy under long leases which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. It is not in dispute that the Landlord is responsible for the repairs, the subject of this application, and can seek to recover the costs through the service charge regime.

### **The issues**

10. At the start of the hearing Mr Traynor told us that he was seeking a decision from the Tribunal that the extent of the proposed works and the anticipated cost were reasonable. He also was also seeking a finding that the costs were payable by the Respondents. .
11. The statement of case filed on behalf of the Applicant is itself rather lacking in evidence. It does however include the report by ES which sets out in detail the problems that afflict the property and the steps to be taken to rectify them. The letters accompanying the Report sought to indicate that the provisions of section 20 of the Act have been complied with. Certainly there is no indication from the Respondents of any failings in that regard. We were also provided with a proposal from Peter Cox a company specialising in damp and dry rot treatment and two specifications completed by Speedmain Contractors and HM Monfarad dealing with associated works, specifically enabling works and decorative and repair following the damp/dry rot works. We were not provided with a copy of any specification from Preservation Treatments who we were told was the preferred contractor for the preventative works. Although no documents were produced from this company we were told that the costs were based on the same specification given to Peter Cox.
12. Mr Traynor told us that ES had sought the various quotes for the works, having undertaken the s20 process. We were told that in respect of the treatment works Preservation Treatment, being the lowest quote at £12,600, including an increased contingency of £3,000, were to be

instructed. In respect of the enabling/decorative/repair works Speedmain Contractors Limited, who are now VAT registered, had been chosen at an inclusive price of £21,256, some £6,000 + below the quote of HM Monfarad. This gave a total cost in the region of £36,000 when taking into account professional fees. He told us that there was some £16,000 in the reserve fund which was to be used and that £20,000 had been sought and in the main recovered from the leaseholders to enable the works to start in the near future.

13. As further background to the present situation Mr Traynor told us that there had been a leak from the bathroom of flat 7 which had spread to flat 8. This had been dealt with by insurance, save for the excess. In the process of investigating the extent of the damp problem following the leak the builder had discovered dry rot. Further investigation had then been undertaken and the report from ES commissioned. Although this report appears to have been commissioned to investigate damp issues in fact it highlighted the dry rot problems in the common parts and flat 8. Recommendations were provided and it is those recommendations which give rise to the proposed works and this application.
14. Mr Traynor was asked if the dry rot could have been caused by the damp problems and if so whether an insurance claim could be considered. He thought not as there was no evidence that the leak in flat 7 had been the cause of the dry rot. Further he said that the residents wished to get the works carried out as soon as possible and that a delay in pursuing a doubtful insurance claim would not be appropriate. We were also told that enquiries had been made with a contractor who carried out work in 1997/8. Although the contractor had changed title they nonetheless attended and satisfied ES that the works which they had undertaken in 1990's was without fault and therefore no claim under that guarantee could be made. We were also told that the preventative/curing works would be the subject of a guarantee, which should be insurance backed.
15. Mr Aiad, the owner of flat 4 attended the hearing. He had not responded to the application or raised any objections to the works. However, he did ask whether the Freeholder should contribute as he thought the problems may be historic although he had no evidence to support such a proposition. He also complained that decorative works had been undertaken to the common parts in 2011 when he thought any damp problems should have been highlighted and dealt with. He also told us that he had installed new windows in his flat which had avoided any condensation issues that were referred to in the ES report.

### **Findings**

16. We are asked to make a determination as to the need for and the costs of works to the property as set out in the ES report. We have had the benefit of inspecting the property and seeing the photographs included

in the report. Further no leaseholder has objected to the works or the costs. Mr Aiad did not dispute the quantum of the works but posed the question as to whether the Respondent should contribute towards the expense. A figure plucked from the air of 50% was suggested. However, he did not file any evidence in respect of this matter and we are not able to support such a submission in the absence of any such evidence or indeed objection from the Respondents.

17. This case rests with the report by ES and the subsequent s20 notices, which we are satisfied complies with the law and the regulations. The work needs to be done as soon as possible to prevent the spread of dry rot. It may be that the owner of flat 8 will need to be temporarily housed and Mr Traynor indicated that he would be able to deal with that matter as necessary. It is not a matter for us. The quotes supplied were commissioned by ES, a firm of Chartered Surveyors. Although we have not seen any quote from Preservation Treatment, it appears that the lowest-priced contractor is to be used. We have seen the specification for the enabling works and the specification in the Peter Cox budget is, we are told, the same as that given to Preservation Treatment.
18. We find that the need, extent and the costs of the works to open up, eradicate dry rot, any damp there may be and to make good is reasonable and payable under the terms of the lease that was provided to us and which we were told contains the same terms, in this regard, for all Respondents. The total costs that have been claimed from the Respondents are £36,000, of which £16,000 will be funded from the reserve fund. This departs slightly from the figure of £34,830.80 in the estimates letter dated 7th January 2015. The difference appears to be due to the VAT registration of Speedmain and may well reduce if the contingency element is unused. We were also told that most Respondents had made the contributions requested of them. The Respondents have the right to challenge the standard of works once they have been concluded.
19. No application under s20C was made by any Respondent. They have the right to challenge any claim for costs on the grounds that the costs are not recoverable under the lease or if they are they are unreasonable. However we make no order under s20C in the absence of any application to do so.

**Name:** *Andrew Dutton*

**Date:** 9th October 2015

Tribunal Judge Dutton

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (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**

- (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 provisions 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**

- (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.

### **Section 20C**

- (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, residential property tribunal or the Upper Tribunal, 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 a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.