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

Case Reference : MAN/00CJ/LSC/2015/0061

Property : 121 Church Road Gosforth Newcastle upon Tyne
NE3 1BJ

Applicant : Mark Bourn Limited

Respondent : Newcastle City Council

Type of Application : Landlord & Tenant Act 1985 – Section 27A
Landlord & Tenant Act 1985 – Section 20C

Tribunal Members : Judge W.L. Brown
Mr I D Jefferson FRICS
Mrs A Paterson

Date of Decision : 18 December 2015

DECISION

- (1) Mark Bourn Limited be substituted as Applicant in place of Paul Short
- (2) The sum determined as reasonably incurred and payable by the Applicant for the Works that are the subject of the Application is £1,594.54.

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(3) Order made under Section 20C of the Act.

(4) No further order as to costs.

Background

1. Proceedings were commenced before the Tribunal (the “Application”) to determine the reasonableness of service charges claimed by the Respondent for service charge year 2013/14, specifically for the cost of major works to replace two access doors and an entry system to the block in which the Property is situated for a cost to the Applicant of £2,764.65 invoiced on 22 April 2015. The determination is made under Section 27A of the Landlord & Tenant Act 1985 (the “Act”).
2. The Applicant further applied under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by it for a future year or years.
3. Directions were made by the Tribunal on 24 July 2015.
4. The Tribunal inspected the exterior and interior of the block in which the Property is located on 12 November 2015. The Property is located on the ground floor of a two storey block in which there are four flats known as 119-125 Church Road. The block is one of seven on the same site. The Tribunal observed that the block has front and rear access doors of metal composition and an entry system controlled from inside each of the four flats in the block. The Tribunal was shown how the front door can be opened remotely by the Respondent from their mobile phones.
5. Present at the inspection for the Applicant was Mr Paul Short who also was advocate for the Applicant at the subsequent hearing and for the Respondent were Jeanette Johnson, Right to Buy and Leasehold Manager, Geoffrey Boyle, Property Services Manager of Your Homes Newcastle. A hearing took place on 12 November 2015 at SCS Manors House, Newcastle upon Tyne attended by the same people and in addition the Respondent was represented by Yvonne Donaldson, Senior Solicitor and also present was Lindsay Whitley, Leasehold Service Development Officer of Your Homes Newcastle. The Tribunal made directions at the end of the hearing to allow the Applicant the opportunity to provide like-for-like estimates for the work which is the subject of these proceedings and for the Respondent to reply. The Tribunal reconvened on 18 December 2015 to make its determination.

Preliminary

6. Under Rule 10 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal, with the agreement of the parties present, substituted Mark Bourn Limited as Applicant in place of Paul Short.

7. The Tribunal was informed that the Property is located on an estate of which the Respondent is the freehold owner including of the freehold of each individual flat that comprises the Applicant's block. Your Homes Newcastle Limited (YHN) is a company which is controlled by the Respondent but which operates as the Respondent's arms-length property management organisation. YHN supplies services to the Respondent, including for maintenance of the Property and its officers were involved in the commissioning of the doors and entry system relevant to the Application.
8. The Applicant lets the Property to a third party residential tenant, not involved in these proceedings.

The Lease and Documents

9. The Tribunal was provided with a copy of the lease of the Property (the "Lease"). It is dated 13 September 1982 and is for a term of 125 years from 13 September 1982 at an initial ground rent of £10 per annum. The Applicant became the owner of the Property on 18 March 2002. Each party provided documents to the Tribunal.
10. Clause 3 of the tenth schedule of the Lease shows that the due proportion payable by the Applicant towards service charge expenditure shall be fifty per cent of all costs incurred per annum. The Respondent acknowledged that applying the due proportion in accordance with the Lease terms would mean the Applicant would be paying more than a fair share of costs relating to the block and therefore presently charges the lower rate of twenty five percent per annum. The relevant provisions in the Lease concerning service charges are:

- (1) The Ninth Schedule requires the Respondent, at Clause 1:

"To keep in good and substantial repair and condition (and whenever necessary to rebuild and reinstate and renew and replace all worn or damaged parts)....." of the structure of the Building.

- (2) The Ninth Schedule at Clauses 5 and 6 states:

"5. To manage the Building for the purpose of keeping the same in a condition similar to its present state and condition.

6. To carry out all such other works in respect of the Building or on the Estate as are in the opinion of the Council necessary for its proper maintenance and management."

- (3) Clause 3 (A) is a covenant as follows on behalf of the Applicant which requires it to pay a due proportion of the cost incurred by the Respondent in carrying out the obligations specified in Clauses 5 and 7 and within the Ninth Schedule of the Lease:

"To pay to the Council such annual sum as may be notified to the Lessee by the Council from time to time as representing the due proportion of the reasonably estimated amount required to cover the costs and

expenses incurred or to be incurred by the Council in carrying out the obligations or functions contained in or referred to in this clause and clauses 5 and 7 hereof and the covenants set out in the Ninth Schedule hereto...

(4) Clause 3 (A) states:

“the Management Charges may (without prejudice to the generality of the foregoing) include such amounts as the Council shall from time to time consider necessary to put to reserve to meet the future liability of carrying out major works to the Building the Reserved Property or to the demised premises”.

(5) Clause 3 (D) states:

“Major structural repairs and replacement are to be charged separately as they arise but the Council will reserve the right to require the payment of such reasonable sums as the Council consider necessary to put to reserve to meet the future liability of carrying out such major works”.

The Law

11. Section 19 of the Act states:

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 for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.*

(2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than as reasonable as so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.*

12. Section 27A of the Act states:

Liability to pay service charges: jurisdiction

(1) *An application may be made to the appropriate tribunal for a determination whether 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 service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -*

- 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.*

The Issue

13. The only matter for determination regarding the service charge concerned the cost of removing the existing front and rear access doors and side screens and installing new Secured by Design metal access doors with integral side screens to the front and rear of the block with associated works, replacing the door entry system and key fob readers (the "Works"). The scheme for the Works included seven blocks of four properties giving a total number of twenty eight properties in the scheme. The same works were proposed for each of the seven blocks.
14. Section 20C costs, as referred to in paragraph 2.

Consultation, Representations and preliminary determination

15. Following a Notice of Intention dated 20 December 2004 to enter into a long term qualifying agreement under Section 20 of the Act the Respondent proposed to enter into a qualifying long term agreement with a contractor partner (Your Homes Newcastle ("YHN")) to manage its leasehold properties. Relevant to these proceedings YHN on behalf of the Respondent gave Notice of Intention dated 20 January 2014 to carry out works under the said long term agreement, being to carry out the Works, costing in excess of £250 per property. The total estimated cost of the Works for 119-125 Church Road was £11,058.60 which was split by the four properties in the block to give an estimated cost to the Applicant of £2,764.65. The consultation period was shown to end 30 days later on 19 February 2014.
16. The parties agreed that consultation regarding the Works was required to be in accordance with Schedule 3 of The Service Charges (Consultation Requirements) (England) Regulations 2003 ("Schedule 3 Consultation"). In effect this means that the Respondent must have regard to observations of the Applicant regarding the Works proposed.

17. YHN received from the Applicant an e-mail dated 21 January 2014 objecting to the Works on the basis of the costs being too high. The Respondent replied to these observations in an e-mail dated 22 January 2014. The specification for the Works was attached to the response and a breakdown of the cost was provided.
18. YHN received from the Applicant an e-mail dated 23 January 2014 further disputing the Works because the Applicant felt that the specification was disproportionate to the risk, the fireman's switches were easily available from any locksmiths and that the battery back up was unreliable and would only last for two hours. The Respondent replied to these observations in an e-mail dated 24 January 2014 advising that YHN fits a standard level of security to all blocks throughout the city and the finish of the new doors removes the need for future decoration. The fireman's switch keys are not readily available and the keys are only issued to people with YHN's permission. The door entry system provides the local housing office with the ability to monitor and control access to the block and allows for the remote addition and deletion of fobs without staff having to travel to the block to do this as the system controller. The battery in the specification typically gives over twenty four hour standby power in the event of a mains failure.
19. In the e-mail from the Applicant of 23 January 2014 a request was made to see details of alternative quotes that were sought.
20. The Works were to be undertaken by City Build. The Respondent felt that the first price that they had submitted was too high in comparison to previous quotes that YHN had received from other contractors who had carried out similar schemes, therefore YHN asked City Build to obtain other quotes to benchmark their price. The details of the prices obtained were included in the Respondent's email to the Applicant dated 24 January 2014.
21. City Build reduced their initial price from £74,624.59 to £71,028.37 for the whole scheme. This resulted in a total block cost of £10,146.91 before the addition of a contingency sum and a technical services fee.
22. YHN received from the Applicant a further e-mail dated 24 January 2014 in relation to the specification of Works which referred to specific brands and suppliers available, which the Applicant suggested meant that YHN had not looked to obtain comparable items from other suppliers. The Respondent replied to the Applicant by e-mail dated 3 February 2014 advising him that although the specification did reference specific manufacturers the contractor was permitted to nominate alternatives on the provision that the minimum standards in the specification were adhered to. The only item that YHN insisted must be used was the fob system because this was already in use in other parts of the city and in the local housing office managing the block therefore the Respondent did not want to introduce multiple fob systems for housing management staff to use.
23. YHN received from the Applicant a further e-mail dated 3 February 2014 in which it was stated that the cost seemed disproportionate to the risk and that the existing doors only required basic decorating. The Respondent replied to this e-mail on 4 February advising that the cost was proportionate to the type of system

to be installed and by installing this system the building could be protected to the same level as other buildings that YHN manages. It stated that the arrangement also would cater for any changes in tenancy that could have a negative effect on the current level of problems experienced in the area. The existing system was inspected on a six monthly maintenance programme; however the system was in excess of twenty years old and was obsolete. YHN's maintenance contractor was having to rely upon utilising parts from old systems that it had replaced in other parts of the city in order to carry out repairs where needed which is not a sustainable approach and therefore replacement was the only option. The existing wooden doors were also in a poor condition and for these reasons the block was included in the programme.

24. The Respondent sent an email dated 5 February 2014 advising that replacement parts were not easily available as reported by its contractor and that the alternative system proposed by the Applicant in his email of the 5 February 2014 is a very simple system which the Respondent would not fit to its properties because it did not have Secured by Design accreditation. YHN only install doors that have Secured by Design accreditation which includes the fitting of equipment such as door entry systems and fireman's switches that are fitted on the instruction of YHN's fire safety officer. Photographs showing the poor condition of the existing doors were included in the response that was sent. YHN received from the Applicant an e-mail dated 5 February 2014 again disputing the need for replacement, the specification of the Works, the cost and indicating that replacement parts were easy to source for the existing system and also commenting again that the fireman's switch key was readily available therefore compromising the security offered by the new doors and access system.
25. The Respondent informed the Tribunal that prior to responding to each of the Applicant's e-mails the officer involved, Lindsay Brown, sought technical advice on the scheme of the Works from Geoff Boyle, YHN's Senior Technical Surveyor who was managing the programme.
26. The Applicant accepted that the Respondent through YHN had been aware of his observations. He was not satisfied with the degree of attention paid to his representations, but the Tribunal found that on the evidence before it the correct level of consultation had taken place and there had been no failure in compliance with Schedule 3 Consultation.
27. The Tribunal was informed that on completion of the final cost of the scheme works totalled £74,474.93 giving a cost per block of £10,639.28. With the addition of the Technical services fee the final cost per block was £11,277.63 giving a final cost per property of £2,819.41. The Applicant was informed that the Respondent was restricting the sum to be demanded to £2,764.65 as in its consultation notice.

The Applicant's Case

28. Simply, as set out in the e-mails of the Applicant referred to in paragraphs 19, 20, 24, 25, and 26, his complaint was firstly that the doors in question did not need to be replaced but merely required repair. Secondly he said that the Works comprised more than "repair". He represented that the Works were not

proportionate and specifically regarding the replacement entry system which permitted remote opening of the external front door were an improvement. His point was that the Lease obligation for maintenance on the part of the Respondent did not extend to improvement.

29. The Applicant stated that the specification of the doors was for a model that was too sophisticated for the block; that there was no reason to install doors of the same specification as those used for large social housing premises with more people using the entry ways and which had greater security needs.
30. The installation of a canopy to the rear and cladding of concrete columns were improvements.
31. He could have sourced like-for-like doors at a block cost of £1,216.08, whereas the Respondent's had cost £6,210.00 and a suitable replacement for the door entry system could have been obtained for approximately £500. He produced information from Masterdor and other suppliers which he stated demonstrated cheaper materials costings.

The Respondent's Case

32. The Respondent advised that the doors replaced had been of hard wood, in a wooden casement. They had been in situ since mid-1960s and been repaired periodically as necessary. However, surveys had found evidence of rot affecting patches of wood on the sills and casements and the door frame on one of the entries had become detached from the structure of the building. It was becoming uneconomic to repair, requiring repeat attendances at the site.
33. It was accepted that in the Works there may be some element of betterment, but with replacement work that sometimes could not be avoided. The canopy addition to the rear was recommended in current guidance.
34. Cladding of the concrete columns provided a uniform appearance for the installation.
35. The doors were of a standardised specification, of Secured by Design type and had a guarantee for twenty years. They were installed as standard in all of the Respondent's leasehold housing with communal entrance, regardless of location of the block. There would be a long-term saving arising from less future maintenance being likely.
36. The remote opening function for the door entry system also created a long-term saving as attendance at the block to permit access for particular purposes would be unnecessary.
37. The Respondent represented that the Applicant's comparative costing evidence was deficient as to detail of functionality and omitted installation costs, warranty information, maintenance requirements and labour / electric costs.

38. It stated that the Works were in accordance with its maintenance obligations in clause 1 of the Ninth Schedule of the Lease and that in any event it had a wide discretion under Clause 6 of the Ninth Schedule as to what was necessary for proper maintenance and management of the block.

THE TRIBUNAL'S FINDINGS AND DECISION ON THE SECTION 27A APPLICATION

39. The Tribunal was satisfied that the Application concerned the sum referred to in paragraph 1 as explained in paragraph 29 and that the due proportion of the overall cost for the Works payable by the Applicant in this matter is 25%.
40. Having carefully considered the Lease and with reference to the limitation of "reasonableness" set out in Section 19 of the Act, the Tribunal found that the Respondent was entitled to carry out replacement of structural fittings where reasonably necessary, in accordance with its obligations in the Ninth Schedule of the Lease. However, it determined that the Respondent was not entitled to effect improvements in terms of maintenance repairs. In particular, the discretion granted to the Respondent in Clause 6 of the Ninth Schedule of the Lease regarding the proper maintenance and management provision has to be read with regard to the similar provisions in the Lease and the Tribunal's determination is that it does not give the Respondent the right to improve.
41. Regard was had to the breakdown of the cost of the Works provided by the Respondent at page 182 of its bundle of documents. The Tribunal found that of the costs for "extra works" therein noted, comprising cladding to columns, bricking up of existing door panels, asbestos removal, fixing of outside lights, repair of wiring and some minor cost relating to an access issue, were reasonably incurred and reasonable as to amount. In particular, while it may not have been essential to replace the side screen to the front door, the decision to do so was a reasonable one because of the desire to achieve long-term maintenance cost saving overall.
42. The Tribunal found that with suitable maintenance the previous timber framed hardwood entry doors had lasted for in excess of 50 years. It was not definitively made out that the front door could not be repaired. There was less evidence before the Tribunal as to the condition of the rear door, but there was no strong argument against its replacement. However, the Tribunal was satisfied that replacement of both front and rear doors in 2014 was reasonable. Replacing the entry door system at the same time was prudent and made economic sense.
43. Regarding the replacement of the front and rear doors the Tribunal was not satisfied that the Respondent could reasonably select replacements by adopting a "one size fits all" Secure by Design specification across the city of Newcastle upon Tyne. This disregards the location of the block (here in a reasonably low crime area) and the number of users of the entryways (here only 4 flats). The doors chosen were of a high specification in excess of what is reasonable for the block.
44. The Applicant's evidence of the cost of doors and an entry system alternative to those installed by the Respondent was deficient as to quality. It was not possible to

determine if they were like-for-like, or to review their adequacy as alternatives so as to consider if they were suitable costings for a direct comparison. However, regard was had to the information and the Respondent's representations on that evidence. Using its own expertise and experience the Tribunal determined that front and rear entry doors of a reasonable specification, suitable for the particular block and with side screens could be sourced for a cost limited to £4,000.

45. Similarly the Tribunal determined that replacement of the door entry system did not require the remote access function and that a reasonable cost of replacement would be limited to £1,000 for the block.
46. The Tribunal determined that the installation of a canopy to the rear entry was an improvement and therefore the cost for the block of this element of the Works of £372.75 is not reasonably incurred.
47. Allowing the addition of the technical services fee of 6% on the revised total block cost of £6,017.12, the Tribunal determined that the reasonable sum that would have been incurred for the block for the Works is £6,378.15, of which the 25% share payable by the Applicant is £1,594.54.
48. The Respondent in its Statement of Case asked the Tribunal to make a determination regarding the front door to the Property, as distinct from those for the block. At the hearing the Respondent accepted that its request was not within the Tribunal's jurisdiction.

As to Section 20C

49. There was an application before the Tribunal under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by them for a future year or years. At the hearing the Respondent advised that it did not intend to seek recovery of any of its costs. The Tribunal has found that the charges within the Application are not reasonable in accordance with Section 19 of the Act. Therefore it considers that it is appropriate to make an order under Section 20C.
50. The Applicant made no application regarding its fees. Therefore the Tribunal makes no further order regarding costs.