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

Case Reference : CHI/24UP/LSC/2016/0122

Property : 1-6 Lansdowne Court, Lansdowne Avenue, Winchester Hampshire SO23 9TJ

Applicant : Wildblood Investments Ltd

Representative : (Jeremy Dolphin - paper determination)

Respondent : Lansdowne Court (Winchester)RTM Company Limited

Representative : paper determination

Type of Application : Landlord and Tenant Act 1985 Section 27A(1): Liability to pay service charges

Tribunal Members : Tonia Clark (Lawyer Chair)
Peter Turner-Powell
(Surveyor member)

Date and venue of Hearing : 18th April 2017

Date of Decision : 20th April 2017

DECISION

Decision of the Tribunal:

1. In relation to the initial sum in which a determination was originally requested in respect of the sum of £900 by way of service charge in respect of works of repair to the overflow pipe the applicant has indicated in his statement that no determination is now sought.
2. In relation to the further cost in respect of potential works of rectification to the redundant pipe coming from Flat 5 the Tribunal has concluded that any such works as relate to the plumbing within Flat 5 and specifically in relation to the works disconnecting the redundant pipe are the responsibility of that leaseholder (ie the leaseholder of Flat 5).
3. The Tribunal found on the balance of probability that the extension of a redundant pipe from the bathroom of Flat 5 by a small margin would be unlikely to cause any greater draught than might already have existed taking into account that the pipe had already been disconnected internally at some earlier point in time and that the exit of the pipe was below the fascia and thus exposed to the elements. It would have been for the person/tradesman undertaking this initial work to have made good and blocked up the disconnected pipe. Even if the Tribunal is wrong and such draught is now greater than before, the Tribunal finds that the reasonable solution is for access to be gained to the disconnected pipe through Flat 5 to block up the redundant area. The tribunal finds that the cost of such work should not form part of any service charge nor be borne by the RTM Company but by the leaseholder of Flat 5 pursuant to the terms of the lease.
4. In relation to the cost of obtaining legal and/or other expert advice in respect of any potential action against the roofer and advice relating to causation as to the damp complained of due to the break of the overflow pipe coming from cylinder tank of Flat 5 the Tribunal find that in the circumstances of this case, and subject always to the test of reasonableness as to amount that such costs are chargeable by way of service charge and is not recoverable from Flat 5 alone. Advice obtained in the circumstances of this case on the issue of causation as to the cause of the damp complained of and the advisability of legal proceedings against the roof contractor are properly apportioned by way of service charge.
5. The Tribunal do not find that any such legal or experts costs in the circumstances of this case fall within the definition of "*qualifying works*" in respect of which the RTM Company is obliged to consult.

Such works do not fall within the definition of Section 20 “(*works on a building or any other premises ...*)”. The Tribunal finds that Section 20 when read as a whole is specifically intended to apply to building works and is further clarified in section 20ZA which defines and clarifies “qualifying works” as meaning “*works on a building ...*”

6. Any legal and/or experts costs would still be subject to challenge on the basis that they fail to satisfy the test of reasonableness set out in Section 19 (see below) however in the light of the dispute in this matter legal costs, assuming they fall within the bracket of chargeable rates within the geographical area are unlikely to be successfully challenged.
7. Experts costs – the Tribunal has not been asked to determine any specific experts costs and no details or information has been provided in this regard.

The Application:

8. The Applicant is the leaseholder of Flat 4 Lansdowne Court . A determination is sought pursuant to the Landlord and Tenant Act 1985 Section 27(A) for a determination as to the liability to pay service charges and whether certain charges are payable for the year 2016/2017.
9. The application identified the following issues upon which a determination was required, namely;
 - i) the inclusion within the service charge of the cost of original roof contractor returning to property to investigate cause of water leak from overflow pipe from the tank of the flat situated within Flat 5 and to cost to rectify – cost £900 (“overflow pipe”)
 - ii) the chargeability/potential cost of returning to rectify extension of a second pipe (“redundant pipe”) from Flat 5 and extended by the roofing contractor during the course of the remedial works to the overflow pipe but without request or instruction so to do from the TRM Company.
 - iii) the chargeability/potential cost of legal advice and other experts to advise on potential claim against roofing contractor in respect of damage to the overflow pipe.

Directions:

10. Directions were given by the Tribunal on 20th December 2016 .
11. The Tribunal identified the following issues for determination.
 - i) Whether the £900 costs in relation to investigation and cost of rectification are payable by way of service charge
 - ii) Whether future costs for further works would be so payable by way of service charge (in relation to the redundant pipe)
 - iii) Whether the future cost of legal or other expert costs to advise about potential claims in respect of the above works are payable by way of service charge under the lease.
12. The Tribunal directed that the hearing would be a paper determination. No party objected to this.
13. The RTM company was to send copies of service charges for the relevant year in which costs of £900 were claimed by 6.1.2017.
14. A statement of case was directed to be sent to the landlord by 20.1.2017 along with a witness statement.
15. The landlord was directed to respond with a statement of case and witness statement by 3.2.2017 and directions were given for a response by the applicant.

The background:

16. The property which is the subject of this application is a brick built purpose built block of flats.
17. Significant roofing works were undertaken at the property finishing in December 2013. This included replacement of the roof, and fascias.
18. At the same time the leaseholder of Flat 5, Mrs Herbron also undertook works including replacement of her cylinder/ water tank.
19. At some indeterminate time someone decommissioned a pipe from Flat 5 that ran from under the bath in Flat 5 (the flat occupied by Mrs Herbron).
20. On 9th November 2015 Mrs Herbron notified the RTM company of a leak affecting her property and the 2 flats below her. By this time snagging works had been completed and the period for notification of defects had expired.

21. The original roofing contractor returned and extended the overflow pipe. The cost of investigation and rectification was £900. At the same time and without instruction to do so the contractor extended the redundant pipe coming from Flat 5 and exiting below the fascia boards.

The lease:

22. The relevant parts of the lease relating to the Tenants obligations provide as follows;
- 2. The Tenant covenants with the landlord as follows;**
- (2) to pay or otherwise effectually indemnify the Landlord against all existing and future rates taxes duties charges and outgoings of whatsoever nature which are now or at any time during the term hereby created is payable in respect of the premises hereby demised or any part thereof ...**
- (3) to pay to the Landlord ... a sum of money equal to one sixth of;**
- (c) the actual cost (as certified by the Managing Agents) incurred by the Landlord in performing the covenants hereinafter contained**
- and further
- (5) at all times during the term to keep the inside parts of the Flat and all fixtures and fittings therein in good and substantial repair and condition.**

The law:

23. Section 27A of the Landlord and Tenant Act 1985 provides for applications to the Tribunal to be heard for a determination by that Tribunal as to whether a service charge is payable and if so by virtue of section 27(a) (1)
- 1) the person by whom it is payable.**
- 2) To whom it is payable.**
- 3) The amount payable.**
- 4) The date by which it is payable.**
- 5) The manner in which it is payable.**
24. An application may also be made for a determination, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description as to whether a service charge would be payable and if so by virtue of Section 27(A)(2)
- 1) by whom payable**
- 2) to whom payable**
- 3) the date payable on which**
- 4) the manner in which payable.**

25. Section 18 of the Act defines service charges and “*relevant costs*” and section 19 provides as follows;

“Relevant costs shall be taken into account in determining the amount of service charge payable for a period –

(a) Only to the extent that they are reasonably incurred, and

(b) (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.

26. Section 20 ZA (2) of the Act defines “*qualifying works*” for the purposes of consultation as “*works on a building or any other premises*”

Inspection:

27. The Tribunal carried out an external inspection on the morning of 18th April 2017 immediately prior to their consideration.

28. The Tribunal were able to see from the car parking space both the overflow pipe extending through the fascia and the redundant pipe extending out at a point below the bottom of the fascia boards.

The hearing:

29. The matter was listed for a paper determination.

30. The Tribunal read and took into account the statements of the applicant, considered the photographs annexed to it and read and took into account the statement of the respondent.

31. The Tribunal took into account their external inspection of the premises.

32. The Tribunal considered the terms of the lease.

33. The applicant specifically withdrew his request for a determination as to the inclusion of the £900 in respect of investigation and works of repair to the overflow and now redundant pipe running from Flat 5 tank. The applicant requested consideration of the other issues raised in his application.

34. The respondents statement referred to a report commissioned by the RTM company in December 2015 in relation to the overflow pipe. The Tribunal were not provided with the experts report in full and referred to in the respondents statement of case but its content was not challenged in any answer from the applicant.

35. The part of the report was highlighted in the respondents statement stated that;

“We cannot confirm the exact cause of the damage , whether it has been caused by the roofing contractor (WER)... or the plumber who fitted the new cylinder employed by Mrs Herbron.”

Landlord and Tenant Act 1985 Section 20C application:

36. There was an application made by the applicant that if successful the respondents costs should not be regarded as relevant costs to form part of the service charges to be payable by the tenants. The Tribunal decline to make such an order considering this to be just and equitable in the circumstances of this case. Both the application and response has benefited of all the leaseholders in clarifying aspects of the service charges moving forwards .

Appeals

37. 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.
38. 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.
39. 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.
40. 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.

Name: Miss T A Clark (Lawyer Chair) Mr P Turner Powell (Valuer)

Dated: 20th April 2017

