



12348  
**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : **CAM/00KF/LSC/2017/0055**

**Property** : **Ground floor and first floor flats,  
15 Avenue Road,  
Westcliff-on-Sea,  
Essex SS0 7PN**

**Applicants** : **Mark Hill (FFF)  
Mandy Smith (GFF)  
Self representing**

**Respondent** : **Westleigh Properties Ltd. and Gateway  
Property Management Ltd.**

**Represented by** **Alan Mullen (lay representative)**

**Date of Application** : **18<sup>th</sup> May 2017**

**Type of Application** : **to determine reasonableness and  
payability of service charges and  
administration charges**

**The Tribunal** : **Bruce Edgington (Lawyer Chair)  
Stephen Moll FRICS  
John Francis QPM**

**Date and place of  
Hearing** : **17<sup>th</sup> August 2017 at Southend Magistrates'  
Court, 80 Victoria Road,  
Southend-on-Sea SS2 6EU**

---

## **DECISION**

---

Crown Copyright ©

1. The estimate for service charges and administration charges upon which the advance payments for external and common parts decoration and repair work are requested from each Applicant in the sum of £4,492.00 is justifiable but subject to the comments below.
2. The Tribunal has no detail of the service charges for the years 2011 – 2016 and makes no determination in respect thereof.
3. Although the costs incurred by the Respondent in these proceedings are not recoverable under the terms of the lease, a specific determination has been requested and the Tribunal makes an order under section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondent from recovering such costs from the Applicants as part of any

future service charge demand. An order is also made pursuant to paragraph 5A of Schedule 11 to the **Commonhold and Leasehold Reform Act 2002** preventing such costs being claimed as an administration charge.

### Reasons

#### **Introduction**

4. This is a joint application by the long leaseholders of both flats in 15 Avenue Road, Westcliff-on-Sea. The application form says that the Applicants want to challenge service charges in 2011, 2012, 2013, 2014, 2015 and 2016 in the sums of £2-400.00 per annum. In fact they said at the hearing that the figure was £2,400.00 per annum although they confirmed that they were not now pursuing that matter. In fact, no evidence has been produced to suggest what the actual sums are, what they are in respect of or to support the suggestion that they are unreasonable.
5. In another section of the application, there is a specific challenge to a demand which has been received by each Applicant for £4,492.00 being money on account for external and common parts decorations and repairs, on the basis that the sums claimed are unreasonable and for unnecessary work. A total sum of £2,350.00 excluding VAT is suggested as being an appropriate sum.
6. The usual directions order was made providing that all parties were to put their cases in writing. In particular the Applicants were ordered to set out exactly why they were challenging service charges and what they would consider to be a reasonable amount. Their written submissions only deal with the payments on account for the decoration and repair work.
7. The bundle of documents lodged on behalf of the Applicants was sadly lacking and did not comply with the Tribunal's directions. Fortunately, this was noticed by the Tribunal chair some days before the hearing and in order to prevent the case having to be adjourned, the Tribunal members had copies of the Respondent's bundle made so that they had all the documents to enable them to inspect the property in the knowledge of what was in dispute.

#### **The Lease**

8. Copies of the 2 leases have been seen by the Tribunal and the relevant provisions are the same in each i.e. the landlord is to keep the structure, the common parts and the exterior in good condition and good decorative order. The leaseholders each covenant to meet half the cost. Clause 4(4) of the leases say that the covenant by the landlord to keep the property in good decorative order and repair is "*...subject to the Tenants making payment to the Landlord (if so required) of a reasonable sum in advance on account of the cost thereof...*".
9. As Mr. Hill seemed to be under the impression that the decoration of the window frames and the stairs at the rear were his responsibility, the Tribunal chair took him through the relevant provisions in the leases which clearly say that such work is the landlord's responsibility subject to the tenants paying for that work.
10. In respect of costs incurred by the landlord in litigation such as this application, the only provision is in clause 2(d) i.e. "*for the purpose of or incidental to the preparation and service of a notice under Section 146 of the*

*Law of Property Act 1925...*". Such a notice is served when forfeiture is being pursued. As no mention has been made of any anticipated wish to forfeit either lease, this clause would not apply to costs incurred in respect of this application (**Barrett v Robinson** [2014] UKUT 0322 (LC)).

### **The Law**

11. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
12. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether a charge for payment on account of a service charge before it is incurred is reasonable and, if so, whether it is payable.
13. Section 20 of the 1985 Act states that if the cost of works is more than £250 per flat, then a consultation process has to be undertaken. Otherwise, the amount the landlord can claim by way of service charges is limited to £250. In this case, the consultation process appears to have been followed.

### **The Inspection**

14. The members of the Tribunal inspected the outside and common parts of the property. The Applicants and Alan Mullen from Gateway on behalf of the landlord Respondent were in the vicinity and were asked specifically whether they wanted the Tribunal to look at anything in particular. The flats are in a fairly typical Southend mid terraced house built in the early 20<sup>th</sup> century of brick under a slate pitched roof. The windows at the front were still wood framed but at the back, the ground floor windows were uPVC.
15. The Tribunal was concerned to see what appeared to be a bay tree at the rear. It was large and part of the crown of the tree was pressing against the building and will have to be cut back before any decoration work can be undertaken. There is no mention of this in the specification. Whilst it is appreciated that the consultation process started at the end of 2016, this tree must have been almost as large at that time and yet it is not mentioned. This does question the extent of the inspection of the property that was undertaken at the time.
16. The overall impression is that the building is in reasonable repair save for the windows on the 1<sup>st</sup> floor, but could do with decoration. The Tribunal was told that these windows were impossible to open due to constant decoration over the years meaning that such windows were closed before the paint was dry and had seized up. They had recently been freed up and much of the wood where they opened was exposed and in need of sealing before the winter sets in.
17. Ms. Smith had obviously decorated some of the lower part of the building, including her window frames and the common parts. They were not perfect but with a property of this age, that would not be easy. Some parts of the lower walls at the rear had signs of salt coming out creating a bubbling effect. Not serious, but in need of attention.

18. The main roof could have been the original although the Tribunal did not have any view of the pitched roof going back from the main house. It was made of slate and it was obvious that there had been several repairs over the years. The roof over the bay window at the rear on the first floor had been replaced with a composite roof looking like slate.

### **The Hearing**

19. The hearing was attended by the Applicants and Mr. Mullen. During the hearing Mr. Hill explained that he owned a number of properties and he thought that over the years, the general management charges and insurance premiums were far too high. However, he acknowledged that this part of the application had effectively been abandoned.
20. It was said that the reason for the application was two-fold. Firstly he was going through difficult personal circumstances which made large payments very difficult. Secondly, so far as Ms. Smith, in particular, was concerned, a previous employee of the managing agent had been very aggressive in demanding money and, at the same time, threatening court proceedings. She had been unwilling to discuss matters.
21. The main part of the hearing was devoted to going through the very helpful Scott Schedule which Gateway had produced.

### **Discussion**

22. The contractor's figure includes various contingencies and the figure quoted is just an estimate. As has been said many times, 'an estimate is just that – an estimate'. It is not a quotation and the ultimate cost could be less than that. Therefore the only question for this Tribunal is whether the estimate and the work anticipated is so out of step with reality, that it is unreasonable and, if so, should the landlord be entitled to claim that sum on account of repairs and decoration costs.
23. This decision must take into account the fact that during the consultation process, the Applicants were given the opportunity to suggest contractors and make comments, neither of which they seem to have done. The Respondents have said from the beginning that the contractor must satisfy certain minimum requirements i.e. have minimum public liability insurance cover and satisfy health and safety conditions. The Tribunal finds that these requirements are reasonable. The 2 estimates provided by the Applicants appear to be from one man businesses with no indication of those minimum requirements. Indeed, Mr. Hill has suggested that the cost could exclude VAT which would indicate a very small business.
24. Another indicator of Mr. Hill's attitude towards this whole problem is a comment in a letter written to the Tribunal received on the 14<sup>th</sup> June 2017 which says, in respect of a contingency sum of £500 for roof repairs, "*I recently paid £240 for roof repairs, and Gateway also sent a contractor in to carry out roof repairs. So, this cost needs to be deleted. The roof does not require any further work at this stage*".
25. In the Respondents' evidence, an email is sent to a contractor by the managing agents on the 25<sup>th</sup> November 2016 asking for a visit to the property as water is penetrating into the ground floor flat and is believed to be coming

from the roof as the first floor flat is empty. A report came back from the contractor on the 5<sup>th</sup> December 2016 saying that there is severe damage to the roof at the rear with holes, pigeons nesting and cement work in the valleys crumbling. There are photographs which seem to confirm this. A quotation of £498 was provided for temporary repairs without any guarantee because of the poor condition of the roof. Work was done and further photographs provided.

26. On the 5<sup>th</sup> April 2017 a further request for an attendance is made because of a further report of holes in the roof. Repair works were undertaken again. The contractor has prepared a statement dated 21<sup>st</sup> June 2017 which says "*we have attended the above address on a number of occasions to undertake temporary repairs. In our opinion the roof is beyond economic repair due to the roof tiles being brittle and severely deteriorate (sic) and there is movement in the roof timbers*".
27. The problem faced by the Respondent landlord is that it has received the estimates in the tendering exercise and has chosen the cheaper one. If the work should proceed and the estimate be justified, then if the Tribunal should cut down the amount payable, the landlord will be short of money.
28. On the other hand, there do seem to be question marks over how much of an inspection there was by the surveyor. The answer to several of the questions raised by the Applicants has been, in effect, 'if the work does not need to be done, then there will be no charge'. This suggests, once again, that the inspection was not, perhaps, as thorough as it could have been. The problem so far as the Applicants is concerned is that they would have had to pay out large sums of money in a situation where if the inspection for the specification had been more thorough, the amount demanded may not have been so much.

### **Conclusions**

29. The Tribunal, having taken all the evidence and submissions into account, concludes that the estimate provided for the work set out in the specification is justifiable but may be based on an inadequate specification.

### **The Future**

30. The Tribunal was delighted to see that the Applicants, having met Mr. Mullen for the first time, appeared to strike up a good relationship with him. He was certainly willing to talk to them and meet them further.
31. There were certainly parts of the expenditure which the Tribunal could see were capable of being reduced. For example, the common parts inside the building did appear to be in reasonable decorative order and there would be no detriment to the landlord if those works were not done on this occasion. Mr. Hill said that he had employed contractors who had checked the rainwater goods and drains and had declared that they were free of blockages and needed no more work. If Mr. Mullen were to talk to those people he may be satisfied that those 2 areas of work need not be done on this occasion.
32. On the other hand, the 2 areas of work which needed to be considered were the removal of or the cutting back of the bay tree and the roof. As far as the roof is concerned, it may be that when the scaffolding or other access to the upper parts of the building are in place, a roofing specialist could be asked to

make a proper inspection and give advice as to what could/should be done. In this way, the allowance for roofing could be removed from the works at this stage on the basis that further work could well be needed.

33. It does seem clear that both sides are willing to compromise and the Tribunal certainly wishes them well seeking to achieve agreement. A delay in carrying out the works may assist the Applicants, but they should be aware that this could cost them more, both in terms of the condition of the property deteriorating and the obvious fact that contractors do not keep estimates open without time limits.

.....  
**Bruce Edgington**  
**Regional Judge**  
**18<sup>th</sup> August 2017**

#### **ANNEX - RIGHTS OF APPEAL**

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.