



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

Case Reference : CHI/21UF/LSC/2017/0038

Property : 10 The Esplanade, Seaford, East Sussex.
BN25 1JL

Applicants : Hattenstone Investments Limited

Representative : Godfrey John & Partners – Managing
Agents

Respondents : Katherine Ann Crook, Pauline Esther
Miller & Sarah Elizabeth Pegg

Representative : N/a

Type of Application : Liability to pay service charges

Tribunal Member(s) : Judge JA Talbot, Mr N I Robinson FRICS

Date of Hearing : 30 October 2017 (adjourned)

Date of Decision : 22 January 2018

DECISION

Background

1. This was an application under Section 27A of the Landlord and Tenant Act made by the tenants as to whether service charges are payable for the years 2013/14, 2014/15, and 2015/16. Following a case management hearing on 16 June 2017, Directions were given to prepare the case for an oral hearing, which took place on 30 October 2017.
2. All the named applicant tenants attended in person. Mr John, managing agent, attended for the respondent landlord company Hattenstone Investments Limited, of which he is a director.
3. That hearing was adjourned with Directions issued on 8 November 2017 to give Mr John an opportunity to make a retrospective application under Section 20ZA of the Act for dispensation of the 2nd stage of the consultation requirements to serve a Notice of Estimates. Mr John made the application received on 22 November 2017 and the tenants responded by 12 December 2017.
4. With the agreement of the parties the tribunal considered the S20ZA application on the papers and has issued its decision contemporaneously with this determination on service charges. It is logically prior to this decision on service charges.
5. The tribunal determined to dispense with that part of the consultation requirements, with the result that the tenants' service charge liability with respect to the disputed external redecoration and repair works is not capped at £250 per flat.
6. The tribunal was greatly assisted by the well-organised and comprehensive bundle of documents prepared by the tenants, and by the oral evidence and submissions given at the hearing.

Inspection

7. The tribunal inspected the property, 10 The Esplanade, before the hearing, accompanied by the tenants and Mr John. It comprised an end of terrace late Victorian 5 storey house with rendered and painted elevations under a hipped and pitched tiled roof, a front full gable end, 2 small side gables and a small dormer. The property is situated at the junction of The Esplanade and St John's Road on the seafront at Seaford. The main entrance to the 3 upper flats is on the St John's frontage and faces west.
8. The tribunal was shown the west facing balcony serving flat 3 at 2nd floor level where the railing had been replaced in 2015 with a new galvanised finish unit. Points of concern were the fixing bolts, which were showing signs of rusting where they appeared to have been cut flush with the railing, and the condition of the asphalt bay roof surface on which the railing had been placed, particularly to the north-west corner where the asphalt was damaged. There was also rust staining to the southern abutment of the railing with the building.

9. The tribunal's attention was drawn to spots on the balcony door reveals and on another window to the south, where the decorations had not been touched in following removal of scaffolding poles at the end of the external redecoration works in 2014.
10. Also within flat 3, at 3rd floor level, the tribunal was shown water damage under the dormer window internally which was considered ongoing, and where dampness had been noted to floor-boarding, presumed to come from the dormer window area but still not proven.
11. In the ground floor flat 1, the tribunal was shown the south west facing bay window in the living room, with damp staining above and to the lower left side of the bay window. In addition, the cornicing to the right side of the bay had recently fallen away as a result of ongoing damp problems.
12. The tribunal did not inspect the interior of flat 2, or the Basement flat, which is accessed from the rear north area of the property.
13. As for the exterior, the tribunal noted upvc over-cladding to the south gable end barge boards, areas just below where the masonry paint failed to cover render that had apparently been renewed during the external works. Various cracks to the render and an area of bubbling paint at lower level were noted.
14. On the west elevation, rainwater downpipe joints had come apart, one at high level to the south of the balcony mentioned above, and one at basement level just to the left of the main entrance. The tribunal was told that the guttering to this elevation had been renewed as part of the external works. The timber barge boards to this west elevation were generally in a very poor decorative state.
15. The paintwork to the render (throughout) was generally poor with rust staining to the north side of the bay, and signs of paint having been previously flaked or scraped off prior to redecoration. Cracks to the render were noted, particularly around windows. It could be seen that areas of paintwork had been touched in, with a slightly different paint shade. The rear north elevation had been painted in a different shade to the south and west elevations.
16. Whilst the exterior is generally in poor order, the building is in an extremely exposed seafront position, where the tribunal considered that redecoration should ideally be carried out every 3 to 4 years. Having last been redecorated in 2013/14, not all the current condition of the property could be put down to the poor quality of previous work.

The lease

17. The tribunal was provided with a copy of the lease for Flat 1 dated 18/07/1977. Insofar as is relevant to this application, at clause 2(21) the lessee covenants to pay to the lessor as a service charge 25% of the annual

costs of maintaining and repairing the property, as set out in the Third Schedule, together with managing agent's fees. Each of the 4 flats has a 25% share of the service charge liability.

Factual Background

18. The overall dispute concerns the costs of redecoration and repair works carried out at the property by Tork Kent & Sussex between September 2013 and June 2014, and attendant management and surveyor's costs.
19. The background to the commencement of the works, the S.20 consultation procedure and site meeting in June 2013 between the parties, has been covered in the linked S.20ZA decision and will not be repeated here.
20. It was common ground that the exterior works were commenced by Tork in September 2013. The contractors went off site in November 2013 with the works not completed. The reason is unclear and Mr John did not respond to requests for information from the tenants. The scaffolding remained in place.
21. At that time, Tork informed Mr John of rusting to the balcony railings in flat 3. In October 2013 Mr John obtained an estimate from Squires of £1,574.40 for new railing to the top of the bay window and a new railing panel to the side door, but no further action was taken at that time.
22. Tork contractors returned in May 2014 to complete some of the works but using paint of a different shade. The railings were not replaced. Mr John instructed a surveyor, Mr W Blake, to inspect the exterior. He provided a brief bullet-point email dated 18 June 2014 outlining 15 points of concern, including cracks to render, flashing and pointing problems, poor render finish and differing paint shades. He charged a fee of £270.00. This email was not forwarded to the tenants at that time.
23. The scaffolding was removed in June 2014. During the summer and autumn of 2014, Mrs Crook (flat 3) reported new roof leaks and the tenants noticed the paintwork started to flake. Tork returned in October 2014 and repainted the side wall again with a different shade of paint.
24. Mr John obtained an undated quote from DD Bray General Building for £1320.00 for works to the chimney stack and dormer to flat 3. In January 2015 further scaffolding was erected for this work at a cost of £1,994 (Impact Scaffolding) which remained in situ until June 2016 but was only used for 5 days. In May 2015 the dormer window started to leak again and the exterior paintwork started peeling. In November 2015 the balcony railings to flat 3 were replaced.
25. In February 2016, Ms Pegg on behalf of the tenants made a formal complaint to the Housing Ombudsman about repairs and maintenance, and the landlord's failure to provide accounts for 2013/14 and 2014/15. The Ombudsman issued a Case Review on 7 June 2016 in which he made an award of £100 for Mr John's lack of communication over the

maintenance works, and £100 for a failure to provide accounts and to respond to tenants' requests.

26. The Ombudsman commented: "I am critical that GJ [Godfrey John & Partners] do not appear to have responded to the Complainant's [Ms Pegg's] correspondence which I consider would have caused her to suffer avoidable aggravation" and "the lack of updates in respect of [the] repair and maintenance issues and the manner in which GJ have communicated with the Complainant has caused her to suffer avoidable aggravation".
27. Following the Ombudsman's report, Mr John again instructed Mr Blake to inspect and on 22 July 2016 he produced a more detailed email with various findings and recommendations for further repair and redecoration works. A S20 Notice of Intention to carry out works was issued in August 2016, and in September 2016 Mr John finally produced accounts for the years 2013-2016.
28. As for the service of demands for payment of service charges and ground rent, there were in the bundle written demands for each flat for ground rent and insurance premium contribution in May & July 2013 and for the major works in November 2013. There were no further demands (apart from insurance contributions in July 2014 & 2015) until September 2016. The demands did not show the payments received from the tenants, that column remaining blank.
29. Mr John was not a professionally qualified managing agent. He had taken over the family business following the death of his father. He charged management fees of £125 per unit in 2013/14, rising to £172.50 per unit in 2014/15 and £175 per unit in 2016/17.
30. In respect of the exterior works, Mr John charged a management fee of £1,389 which he had calculated at 12.5% of the contract cost. For this fee, he said he had carried out 7-8 site visits and liaised with the contractors.
31. By November 2016 the relations between Mr John and the tenants had effectively broken down. By May 2017 they had established a Right to Manage Company and have instructed new managing agents.

The Submissions

32. The tenants in support of their application put forward essentially three main arguments: (1) that the redecoration and repair works carried out by Tork were of poor quality, took far too long to complete and as a result the property now needs further works; (2) that the service provided by Mr John as managing agent was ineffective and at times non-existent; and (3) that in the absence of timeously served demands and service charge accounts, certain items were not recoverable by virtue of S.20B of the 1985 Act (the 18 month rule).
33. Taking these in turn, the tenants were dissatisfied with several aspects of the Tork and other works. This included poor quality preparation and

paintwork, which quickly deteriorated and patched with different shades, and rust stains running the length of the building. Cracks in the render were not properly repaired. Some of the rainwater goods had come apart. Delays in completing the works were unacceptable. Scaffolding remained in place for too long and was only in use for a short time.

34. In respect of ongoing damp problems to the dormer in flat 3, work was carried out by DD Bray of repointing to the chimney stack and works to the dormer cheeks. The tenants argued that no S.20 Notice was served and that the work was inadequate as it did not resolve the problem.
35. Other work carried out in 2015 to the balcony of Flat 3 by Squires, were also sub-standard. The asphalt covering had been poorly fitted, and when the railings were finally replaced the old rusted fittings were not removed (leading to the rust staining). According to the invoice dated 30/11/2015, Squires quoted for the work over two years before on 11/10/2013 but the tenants were not informed and no S.20 Notice was served.
36. Turning to management fees and contract supervision costs, the tenants were very dissatisfied by the service provided by Mr John. In particular they were unhappy with the delays and Mr John's failure to communicate or respond to their emails and phone calls without chasing. Examples included not being kept informed about inspections and recommendations by surveyor Mr W Blake in June 2014, and failing to take timely action regarding the balcony and railings to flat 3.
37. Both in the papers and at the hearing Mr John at the hearing accepted some of these points. Although he defended his choice of Tork for the repair and redecoration works, he did not defend the quality of the works and could not adequately explain why they took so long or why he had not instructed a surveyor to inspect and prepare a specification of works. He had no answer as to why he did not promptly action various other issues reported to him by the tenants or act on the bullet point items identified by Mr Blake.
38. As for management fees, Mr John accepted that he had not kept the tenants informed as much as he should, but relations with the tenants had become strained. He could not explain why no proper service charge demands or accounts had been sent. He had taken over the firm Godfrey John & Partners following the sudden death of his father. Although not professionally qualified, he believed he had a reasonable understanding of his father's business and set the management fees accordingly. He believed his fees per flat and the 12.5% charge for supervising the Tork contract were reasonable.
39. Mr John made some concessions in respect of some of the disputed service charges and the S.20B point which were accepted by the tribunal and set out in the determination below.

Tribunal's consideration

40. The tribunal carefully considered the written evidence, the oral evidence given at the hearing, and the parties' submissions. All the sums below determined to be payable are expressed exclusive of VAT, which is to be added where charged.
41. The tribunal broadly accepted the case put forward by the tenants. It agreed that the Tork works were of poor quality and that the management service provided by Mr John fell below the standards that could reasonably be expected, especially with regard to communication with the tenants and acting on issues reported by them.

External redecoration and repair works: Tork contract & scaffolding

42. In relation to the Tork works, the tribunal considers that given the exposed position of the property, redecoration would be necessary every 3-4 years and the parties agreed that it was not in very good condition before the work started. Against this background, the tribunal considered initial quote from Tork of £5,900 + VAT for the external works to be on the low side given the nature and extent of the work needed.
43. Nonetheless, Tork could reasonably be expected to carry out the contracted works to a reasonable standard, overall the tribunal considered that the quality of the works carried out by Tork was generally poor. It was likely that proper preparation was not done, leading to early blistering and flaking paintwork and inadequate subsequent touching in. Cracks to the render were not properly repaired. The delay in completing the works was not satisfactory.
44. The tribunal has retrospectively granted Mr John's S.20ZA application so the costs are not capped. The total cost of the Tork quote was £11,112 (excluding VAT) of which £5,900 related to the external redecoration. Because these works were not overall of a reasonable standard the tribunal considered that a reduction of 20% was appropriate. **The recoverable amount payable as service charges is £4,720.**
45. The overall quote requires breaking down as certain elements are to be deducted. The amounts finally charged appear in the 2013/2014 accounts which were not served until September 2016.
46. The internal works to the lobby area as per the quote were not carried out so £315 is deducted. A budget price of £500 for cutting out metal to the rear extension was charged at £150 (as in the 2013/2014 accounts). Guttering work was charged separately at £700. The total is therefore £850. The tribunal applied the same deduction of 20%. **The recoverable amount payable as service charges is £680.**
47. The scaffolding element of the Tork quote was £3,800 but by agreement between Mr John and Tork, this was reduced to £2,834 which the tribunal regarded as reasonable and payable as service charges.

48. Further, Tork invoiced for some additional work to the roof and building. These costs were incurred by invoices dated 08/06/2014 and 18/06/2014 of £1,554 and £1,080 respectively but were not demanded from the tenants until September 2016. This was more than 18 months later. Mr John conceded that these costs were not recoverable under S.20B.

Other costs in the year 2013/2014

49. In relation to the management fee charged by Mr John for the major works of £1,157.50, calculated at 12.5% of the total quote £11,112, the tribunal agreed with the tenants that no effective management or control over these works was exercised by Mr John. The tribunal therefore disallowed these costs in full so **nil is recoverable as service charges.**

50. There was an invoice of £270 inclusive of VAT from Mr Blake for inspection of the Tork works in June 2014. Whilst the tribunal accepts that Mr Blake did attend at the property, the resulting bullet point email is not considered to be a satisfactory report of the outcome. The tribunal therefore reduced the allowable costs by 50%. **£135 is recoverable as service charges.**

51. The cost of £100 for work carried out by Hiscocks to the balcony railings was conceded by Mr John and is not payable.

52. Turning to management fees, the charge was £125 per flat totalling £500 for 4 flats in the property. The tribunal found that the service provided by Mr John fell below the professional standards that could reasonably be expected by the tenants and the RICS Code of Management. In particular the tribunal agreed with the tenants and the Housing Ombudsman that he had failed to communicate properly with the tenants or respond promptly to their concerns. He had, however, arranged insurance and eventually produced accounts. The tribunal allowed 50% of the fees. **£250 is recoverable as service charges.**

Year 2014/2015

53. In respect of the works by DD Bray, there was one single quote of £1,320 so Mr John should have followed the statutory consultation procedure and served S.20 Notices. He failed to do so. The recoverable cost would therefore be capped at £1,000. However, the tribunal considered that only the work to the chimney had been satisfactory because the work to the dormer was not effective in resolving the damp problem. It therefore allowed 50% of the total cost. **£660 is recoverable as service charges.**

54. Charges by Impact Scaffolding of £1,944 for the Bray works, £108 by AA Ariels and £227.09 by Eastbourne Fire Alarms were all conceded by Mr John and not payable.

55. Regarding management fees, there was an increase to £172.50 per flat, but that year, the service was even less satisfactory in that no service charge

demands were issued (apart from insurance costs) and no accounts served. The tribunal allowed a total of **£150 recoverable as service charges**.

56. Bank charges are not within the terms of the lease and therefore **£52.40 is not recoverable as service charges**.

Year 2015/16

57. In respect of the work by Squires, Mr John conceded that the recoverable cost was restricted to £1,000 due to failure to follow the S.20 consultation procedure. The tribunal did not reduce this amount. The replacement railings were of an acceptable standard. The faulty asphalt covering was not included in the cost and was being pursued against a separate contractor by Mr John. **£1,000 is recoverable as service charges**.

58. The cost of Impact Scaffolding of £864 was conceded by Mr John and is not recoverable.

59. Management fees were reduced as before to **£150 recoverable as service charges**.

60. For the sake of clarity, other items in the service charge accounts such as insurance and electricity to the common parts were not disputed and are not included in this determination.

Section 20C

61. The tenants made an application under S.20C of the 1985 Act for an order that all of any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before the tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the tenants.

62. Even though Mr John confirmed at the hearing that he did not intend to charge for his time or to pass on any charges to the tenants as service charges, the tribunal took the view that the tenants had been largely successful in the proceedings and acted reasonably. The tribunal therefore considered that it was reasonable in all the circumstances to make the order under S.20C.

Dated: 22 January 2018

Judge J A Talbot