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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/45UE/LSC/2017/0062**
Property	:	**6 Ashdown Drive, Crawley, RH10 5HB**
Applicants	:	**(1) Mark Young** **(2) Matthew Fincham**
Representative	:	**In Person**
Respondent	:	**Crawley Borough Council**
Representative	:	**Ms Thomas of Counsel**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge I Mohabir** **Mr A Mackay FRICS**
Date and venue of Hearing	:	**26 February 2018** **Brighton Tribunal Hearing Centre**
Date of Decision	:	**21 May 2018**

DECISION

Introduction

1. This is an application made by the Applicants under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of estimated service charges in the sum of £4,119 claimed by the Respondent in respect of roof works carried out to 6 Ashdown Drive, Crawley, RH10 5HB ("the property"). The Applicants' liability for these costs arises in the 2017/18 service charge year.

2. The Respondent has also made an application under section 20ZA of the Act for retrospective dispensation of all or any of the consultation requirements provided for by section 20 in relation to the roof works. Unfortunately, although the application was made in March 2018, it has only just reached the Tribunal. As both applications are linked, this has led to the delay in making this determination.

3. By a lease dated 13 March 2001, the Respondent demised the property to Robert George Carter and Edward George Carter for a term of 125 years from 26 March 1986 ("the lease"). The Applicants were the joint leaseholders of the property, having acquired the leasehold interest on 1 September 2015. Apparently, it has since been transferred into the joint names of the Second Applicant and a Ms Aliya Meena Shaffiq. Nevertheless, it is common ground that liability for the service charges in issue remains with the Applicants.

4. The Applicants do not dispute their contractual liability to pay a service charge contribution under the terms of the lease. It is, therefore, not necessary to set out how that liability arises. It is sufficient to note that it is 1/6th of the total service charge expenditure incurred or to be incurred by the Respondent in any given year, which commences on 1 April and ends on 31 March of the following year.

5. Prior to the Applicants' purchase of the property, they had only been notified of proposed loft void works to upgrade the loft insulation to

270mm and to provide lap vents to the sarking felt, to fit an insulation pack to the cold water storage tanks and associated pipework and to install fire rated hatches between the first floor flats and common parts of the loft space. These works were identified during a loft void works programme during 2014. Of the estimated cost of these works, the sum of £619.95 has been credited to the Applicants' service charge account in October 2017 in relation to the cost of installing roof vents.

6. On 1 September 2015, the Applicants completed their purchase of the property. On 21 September 2015, a contractor working for the Respondent identified that various areas of the roof of the building were in disrepair and would require re-roofing. On 21 April 2016, the condition of the roof was brought to the attention of Mr Geoffrey Tarran who is an Asset Surveyor employed by the Respondent. He inspected the roof and confirmed that tiles had dropped in multiple locations due to the timber battens being rotten.

7. The remedial roof works were carried out between 25 July and 19 August 2016 during which it was also confirmed that the battens had failed. They could not be seen from inside the loft space because they were covered by the sarking felt. The conditions of the battens could only have been discovered by carrying out a detailed inspection using a destructive test, that is, opening up various sections of the felt. This did not form part of the 2014 loft void works and, therefore, the condition of the roof battens was not known at the time.

8. The Applicants complained to the Respondent that they should have been told about the roof works prior to their purchase of the property. Had they known this, they may not have gone ahead with the purchase. It seems that the parties attempted unsuccessfully to negotiate matters and on 5 June 2017 they made this application to the Tribunal to determine their liability to pay and/or the reasonableness of the cost of the roof works.

Relevant Law

9. This is set out in the Appendix annexed hereto.

Decision

10. The oral hearing took place on 26 February 2018. The Applicants appeared in person. The Respondent was represented by Ms Thomas of Counsel.

11. At the commencement of the hearing, Ms Thomas conceded that the Respondent had not validly complied with the statutory requirement to consult the leaseholders under section 20 of the Act. The Notice of Intention dated 15 June 2016 had not allowed the requisite 30-day notice period for the leaseholders to make their observations known to the Respondent. The notice period was 1 day short. It is for this reason that the subsequent cross application under section 20ZA of the Act was made by the Respondent. This was dealt with based solely on the statements of case and documents filed by both parties and took place on 18 May 2018.

Section 20ZA Application - Dispensation

12. Logically, it was necessary for the Tribunal to consider the section 20Za application first before going on to decide the substantive service charge application.

13. In their statement of case dated 7 April 2018, the Applicants oppose the application to dispense for two main reasons. Firstly, they dispute that the roof works commenced on 25 July 2016. They maintain the works commenced before this date. Secondly, they dispute receiving the Notice of Intention served on 15 June 2018 within the time frame prescribed by the Respondent and that the notice was inadequate by failing to inform them that the works would be carried out under a long term qualifying agreement using a pre-selected contractor.

14. The relevant test to the applied in application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

15. The Tribunal granted the application for the following reasons:

(a) the fact that there has been broad compliance by the Respondent with the consultation process.

(b) the fact that each of the leaseholders had been informed of the need to carry out the proposed remedial works and the reasons why. The date when the Notice of Intention was received by the Applicants is irrelevant because the Respondent accepts that insufficient notice had been given to the leaseholders. For this reason, it is obliged to seek dispensation in any event. Similarly, the date when the roof works commenced is also irrelevant because the statutory protection for the cost of the works lies in section 19 of the Act not under section 20ZA, which is only concerned with dispensation. In other words, the failure to consult does not prevent a landlord from going ahead with proposed works. The sanction for the landlord is it cannot recover more than £250 of the cost of the works unless it either carries out valid consultation first of all or obtains dispensation from the Tribunal.

(c) the adequacy of the Notice of Intention is also irrelevant because it was invalid. In any event, there is no legal requirement for the Respondent to inform a leaseholder that the proposed works are to be carried out under a long-term qualifying agreement with a pre-selected contractor. The Notice of Intention is served pursuant to paragraph 1 of Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003. All it

is required to do is, generally speaking, to describe the proposed works, the reason for the works, the total estimated expenditure and to invite observations with the prescribed 30-day time period after service. The Respondent purported to do so. The notice was only invalidated by giving insufficient notice to the leaseholders.

(d) importantly, any prejudice to the Applicants would be in the cost of the works and they have the statutory protection of section 19 of the Act and they did in fact make an application under section 27A of the Act, which is considered below.

16. The Tribunal, therefore, concluded that the Respondents had not been prejudiced by the failure to consult by the Applicant and the application was granted as sought. Therefore, the statutory "cap" of £250 that the Respondent can recover in relation to the cost of the roof works no longer applies.

17. To the extent that the Applicants have suffered any prejudice, the Respondent has offered the sum of £200 by way of compensation. The Tribunal does not understand what "dispensation from their consultation period" the Applicants seek, but this is not something that it can grant in this application.

Section 27A Application – Service Charges

18. The Applicants do not challenge either the need to carry out to roof works or the cost. Their case, apart from the failure to consult which has already been dealt with above, is that they were taken by surprise by having to pay these significant costs so shortly after having purchased the property.

19. By inference, they suggest that the Respondent would have known at about the roof repairs were required because it had already identified other roof works. Alternatively, they contend that the Respondent was negligent by not carrying out adequate inspections prior to the works

being identified. It should be noted that the Tribunal does not have jurisdiction to decide issues based on negligence because these are tortious claims and the Tribunal's jurisdiction is limited to the statutory powers under the Act to deal with service charge disputes.

20. The Tribunal accepted the evidence set out in the witness statement of Mr Tarran dated 24 January 2018 and finds that he (acting on behalf of the Respondent) did not become aware of the need to carry out roof repairs and the extent of the works until his inspection on 21 September 2015. It also accepted his evidence that the loft void works proposed in 2014 could not have identified that the roof battens were in disrepair because they were covered by the sarking felt. This could only have been ascertained by carrying out s destructive test, which did not form part of the scope of the 2014 works.

21. As stated earlier, the Applicants accept that it was necessary to carry out the roof works. They also do not challenge the amount of the cost of the works. Therefore, the Tribunal was bound to conclude that the roof works were reasonably incurred and the cost of the works was also reasonable. The Applicants' surprise at having to face a large service charge liability so soon after purchase represents no more that the inherent risks of property ownership. It is also perhaps surprising that if they had a survey carried out of the property prior to purchase, this did not raise any concerns about the condition of the roof tiles.

Section 20C & Fees

22. At the hearing, the Applicants made an oral application under section 20c of the Act in relation to the Respondent's costs incurred in these proceedings.

23. Given that they have not succeeded at all on any of the issues and that the Tribunal found no merit in any of their arguments, it did not consider it just or equitable to make an order under section 20C

depriving the Respondent of its entitlement to recover any costs it had incurred in these proceedings through the service charge account.

24. For the same reasons, the Tribunal also makes no order requiring the Respondent to reimburse the Applicants any fees they have paid to the Tribunal to have this application issued and heard.

Judge I Mohabir
21 May 2018

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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).