



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

Case reference	:	LON/00BD/LSC/2018/0109
Property	:	1 Mountstuart Court, 2 Southcott Road, Teddington TW11 0BF
Applicants	:	Miss Chris Williams and Miss Jo Williams Swo
Representative	:	Miss Chris Williams in person
Respondent	:	Sandy Lane Residents Management Company Limited
Representative	:	Mr Andy Duncan, solicitor, of Allsquare Legal Limited
Also present	:	Mr Anees Anwar of Hazelvine Limited, Respondent's property manager
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal members	:	Judge P Korn Mr S Mason BSc FRICS FCI Arb
Date and venue of hearing	:	9th July 2018 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	9th July 2018

DECISION

Decisions of the tribunal

- (1) The Applicants' share of the 2017 and 2018 contributions demanded towards a roof replacement reserve fund are payable in full.
- (2) The tribunal makes no cost orders.

The application

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the payability or otherwise of certain service charges.
2. The Property forms part of a purpose-built block ("**the Building**") comprising 14 flats.
3. The Applicants' lease ("**the Lease**") is dated 23rd July 2008 and was originally made between Linden Homes South-East Limited (1) Gold Avenue Limited (2) and the Respondent (3). The Respondent is the management company under the Lease and is the party entitled to be paid service charges under the Lease.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. Miss Chris Williams appeared in person on behalf of herself and Miss Jo Williams Swo. The Respondent was represented by Mr Andy Duncan, a solicitor from Allsquare Legal Limited.

The background and the issues

6. The tribunal has not inspected the Property or the Building, as an inspection was not considered necessary and neither party requested an inspection.
7. At the hearing it was established (and agreed by Miss Williams) that although the Applicants had various concerns, including in relation to alleged poor communication, there was in fact only one issue before the tribunal over which it had jurisdiction. The issue was whether the level of contribution demanded towards a roof replacement reserve fund was reasonable.
8. It was common ground between the parties that the amount demanded from the leaseholders of the Building in aggregate was £3,600 in 2017 and a further £3,600 in 2018. The Applicants' proportion is 5.5882%

and therefore the total amount demanded from the Applicants was £402.35.

9. This decision does not record those written and oral submissions which are not relevant to the issue in dispute, save to a limited extent to provide some context.

Applicants' case

10. The Applicants state that the Respondent intends to replace the whole of the flat roof and that these contributions have been demanded in order to build up a fund to facilitate this. The managing agents have produced a document entitled Scope of Work but have failed to supply a roofing report to demonstrate what works are required.
11. The Applicants also state that the managing agents have written to leaseholders explaining that the flat roof is not covered by the NHBC warranty, but the Applicants believe this to be incorrect. There is also a separate 15 year roof warranty with Prestige Builders and the Respondent has failed to enforce this. Communication has been very poor, and the Respondent's managing agents have failed to keep the Applicants updated regarding their dealings with NHBC, with Prestige Builders and with the original developers.
12. The Applicants have had the roof inspected by Stay-Dry Roofing Specialists, and there is a half page report from them in the hearing bundle. The Applicants state that the report highlights poor repairs and workmanship in relation to work previously carried out but that it also concludes that it is unnecessary to replace the roof in its entirety. They have apparently also had the roof inspected by a firm of managing agents called Wallakers but there is no report from them.
13. In the Applicants' view it is unnecessary to have demanded such large contributions towards a roof replacement reserve fund, as all that is needed is repair and there is already enough money for this in the reserves. At the hearing Miss Williams said that instead of £402.35 a more reasonable contribution would be £200.00. The amount should reflect the cost of repair, not replacement, although she accepted that she did not have any evidence as to what the repairs should cost.
14. Regarding the issue of consultation, the Applicants state that some other leaseholders did not receive the relevant section 20 notice.

Respondent's case (including cross-examination of Mr Anwar at the hearing)

15. The Respondent's position was that there are problems with the flat roof and that it is unclear how long the roof will last. The Respondent

had submitted a claim to NHBC under the NHBC warranty. NHBC had requested further information but the Respondent was waiting to hear whether the claim was going to be successful. Mr Anwar was unable to speculate further on this point.

16. The Respondent was entitled to set up a reserve fund under paragraph 12.8 of the Lease. In the Respondent's submission it was prudent for it to set up a reserve fund for the roof in circumstances where it was clearly in need of repair and would at some stage need replacing. If it transpired that the NHBC claim was successful then the Respondent would be able to consider whether the amount of money standing in the reserve fund was still appropriate or whether, for example, some money should be returned to leaseholders. However, based on the information that the Respondent currently had Mr Duncan submitted that the contributions demanded were very modest ones, and that arguably if anything they were too low if serious work was going to be needed.

Tribunal's analysis

17. Having seen the written submissions and heard the parties at the hearing, it seems to us that this application has arisen out of poor communication and lack of trust. Whose fault this is, in the context of the issue in dispute, is not for this tribunal to determine, but it would seem that it may be in both parties' interests to take confidence-building measures to try to improve relations.
18. The actual issue before the tribunal is whether the amount of the Applicants' share of the contributions towards the roof replacement reserve fund demanded by the Respondent is reasonable for the purposes of section 19(2) of the 1985 Act, this being a demand levied in advance of the costs actually being incurred.
19. Connected to the issue above is the separate question as to whether the Respondent went through the necessary consultation procedures. Aside from the question of whether this is even relevant to the level of contributions towards a reserve fund, which is not a point that was argued in written or oral submissions, the Applicants' only argument is that they believe that some other leaseholders may not have received a section 20 notice. If that is indeed the case then it is for those leaseholders to raise this if they wish to do so, but it is not relevant to the Applicants' own challenge to the service charge, particularly when they have no real evidence to support their assertion nor (even if they are correct) any evidence that these other leaseholders were prejudiced in some way. Therefore the section 20 challenge is not accepted.
20. The Applicants have placed much emphasis on the reserve fund being labelled a roof replacement (rather than a roof repair) reserve fund. The evidence does in our view point to some confusion on the Respondent's part as to whether the intention was to replace the roof or

just to carry out further repairs, and communication with the Applicants on this point could in our view have been clearer. Similarly, the evidence suggests that the Respondent's thinking regarding the basis on which it could/should be seeking to enforce the NHBC warranty and/or the Prestige Builders warranty has either been slightly muddled or has not been effectively communicated to the Applicants.

21. However, on the key issue of the level of the contributions we do not accept the Applicants' arguments. There is clearly work that needs to be done to the roof. Paragraph 12.8 of the Lease allows the landlord to seek contributions towards a reserve fund and the contributions sought in 2017 and 2018 seem perfectly reasonable to us. The Applicants have not provided any independent evidence to show how much is likely to need to be spent on the roof over the next few years, and therefore their offer of £200.00 is little more than a guess. Therefore, these contributions are payable in full.

Cost applications

22. The Applicants have applied for (a) a section 20c order and (b) an order pursuant to paragraph 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Tribunal Rules**"). The Respondent has applied for an order under 13(1)(b) of the Tribunal Rules.
23. We will take the Applicants' applications first. The section 20C application is an application under section 20c of the 1985 Act that the Respondent should not be allowed to put through the service charge its costs incurred in connection with these proceedings. The application under paragraph 13(2) of the Tribunal Rules is an application that the Respondent be ordered to reimburse to the Applicants the hearing fee (apparently they did not have to pay an application fee as well).
24. The Applicants' substantive application has been unsuccessful. It was perfectly reasonable for the Respondent to have opposed it and the Applicants have failed to persuade us that the Respondent has acted unreasonably in connection with the application. Whilst we do have some concerns regarding lack of clarity of communication from the Respondent to the Applicants, it is also fair to note that the Respondent did afford the Applicants an opportunity to examine the Respondent's records with the help of the Respondent's accountant and a trainee solicitor. Therefore in our judgment it is not appropriate either to make a section 20c order or to order the Respondent to reimburse the hearing fee under paragraph 13(2) of the Tribunal Rules.
25. As regards the Respondent's application under paragraph 13(1)(b) of the Tribunal Rules, it has sought an order that part of its costs be reimbursed by the Applicants on the basis that the Applicants have acted unreasonably in bringing and/or conducting these proceedings.

The claim is limited to the modest amount of £36.00 for Mr Anwar's travel costs.

26. The test as to what constitutes unreasonable conduct for the purposes of paragraph 13(1)(b) is quite a tough one, in that it needs to be shown that the conduct admits of no reasonable explanation. In our view this test has not been met; the Applicants are litigants in person and the evidence indicates that the Respondent could have done much more to make the decision-making process in relation to the roof works and the pursuing of warranties clearer and to communicate more effectively to the Applicants. It was therefore understandable that the Applicants felt the need to make an application to the tribunal and that, in their confusion, they conducted the case in the way that they did. Therefore in our judgment it is not appropriate to order the Applicants to reimburse Mr Anwar's travel fees under paragraph 13(1)(b) of the Tribunal Rules.
27. There were no other cost applications.

Name: Judge P Korn

Date: 9th July 2018

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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.