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Case Number: CHI/18UB/LSC/2012/0078



HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

PROPERTY: Flats 1-5, 80 Exeter Road, Exmouth, Devon, EX8 1PZ

Applicant: Remus Management Ltd on behalf of C A Church Ltd

and

Respondents: Ms M L Hale, Miss J Cole, Mr M G and Mrs H P Cole, Mr G Pearce
and Mr W O Jones

In The Matter Of

**Section 27A of the Landlord and Tenant Act 1985
(Liability to pay service charges)**

**Landlord's application for the determination of reasonableness of
service charges for the year 2012.**

Tribunal

Mr A Cresswell (Lawyer Chairman)

Mr J S McAllister FRICS (**Chartered Surveyor**)

Mr P G Groves (Lay Member)

Date of Inspection and Hearing: 20 August 2012

Appearances: Mr J Matika for the Applicant
Mr J Cole and Mrs R Boxall for Mr and Mrs Cole

DETERMINATION

The Application

1. On 29 May 2012, Remus Management Ltd on behalf of C A Church Ltd, the owner of the freehold interest in Flats 1-5 80 Exeter Road, Exmouth, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of one element of the service charge costs claimed by the landlord for the year 2012, being £10,850 for the removal of a fire escape, upgrading of the internal staircase and fire escape.

Inspection and Description of Property

2. The Tribunal inspected the property on 20 August 2012 at 10.00. Present at that time were Mr D Matika and Ms L Ellis for the applicant. The property stands in an elevated position and consists of a 5-storeys mid-terraced former house, traditionally built with rendered elevations and a slate covered roof. There is a yard at the rear and garden at the front of the property. At the rear of the property is a metal spiral staircase with access to each of the floors above ground level. The staircase was badly rusted and corroded and there were signs of the rust on the rear elevation. The basement flat has a separate means of entry.

Summary Decision

3. This case arises out of the landlord's application, made on 29 May 2012, for the determination of liability to pay a specific service charge for the year 2012. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that the landlord has demonstrated that the charge in question would be reasonably incurred, and that charge would be payable by the respondent tenants.

Directions

4. Directions were issued on 30 May 2012. These directions provided for the matter to be heard at an oral hearing.
5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
6. This determination is made in the light of the documentation submitted in response to those directions and the oral evidence and submissions at the hearing.

The Law

7. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
8. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act

1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

Ownership and Management

9. The freehold of the property is owned by C A Church Ltd. The property is managed for it by Remus Management Ltd.

The Leases

10. There are 2 forms of lease. One form relates to the basement flat and the other to the other 4 flats. Each tenant has an obligation to pay towards the costs of works detailed in the Fourth Schedule of the leases. The only relevant difference in the forms of lease relates to liability to pay towards a service charge for the common internal parts of the building, in respect of which charges the tenant of the basement flat is excluded from requirement to pay. The consequence is that the tenant of the basement flat is required to contribute 1/5th of the costs of works in Part II of the Fourth Schedule and that the other tenants are required to contribute 1/5th of the costs of works in Part II of the Fourth Schedule and 1/4 of the costs in Part I of the Fourth Schedule.
11. The Fourth Schedule provides, in part, that:

Part I

1. *The cost of cleaning and lighting such of the passages landings staircases and those other parts of the Mansion which are enjoyed or used by the Lessee in common save such passages landings staircases which are for the sole use and enjoyment of the flat numbered one on the basement floor of the Building*
2. *The expenses of maintaining repairing redecorating and renewing the main entrance passages landings and staircases of the Mansion save that this clause shall not be deemed to apply to such entrance and passages which are for the sole use and enjoyment of the flat numbered one on the basement floor of the Building*

Part II

1. *The expenses of maintaining repairing redecorating and renewing:*
 - (a) *the main structure and in particular the foundations roof chimney stacks gutters and rainwater pipes of the Mansion*
3. *The cost of decorating the exterior of the Mansion*
7. *All other expenses (if any) incurred by the Lessors in and about the maintenance and proper and convenient management of the Mansion*

The Applicant's Case

12. Mr Matika explained that the fire escape at the rear of the building had been "condemned" a number of years ago. He was unable to tell us when the fire escape metal staircase ("the metal staircase") had been "condemned", nor point us to any documentation to show that such a decision had ever actually been taken. Certainly, correspondence between the parties had proceeded over a number of years upon the basis that the metal staircase was unsafe,

should not be used and was in real need of attention. Mr Matika was unable to tell us when the landlord had last completed cyclical decorations. There was no evidence of such decorations in the papers, only a limited list of works completed in 2004.

13. Mr Matika told us that the applicant had been engaged in a series of consultations with the respondents with a view to either repairing the metal staircase or removing the metal staircase ("Option 1"), making good the external appearance of the rear of the property and providing a safe fire exit internally ("Option 2"). We were not asked to comment upon the consultation exercise undertaken, but have concluded that the applicant has followed correct procedures of consultation in accordance with Section 20 Landlord and Tenant Act 1985 and Service Charges (Consultation Requirements) (England) Regulations 2003. The consultation exercise, we were told, had involved also seeking the views of the local authority Building Control officials and the local Fire Authority.
14. The consultation exercise had led to tenders being sought from 4 builders, including Mr Pearce, who had been nominated by the tenants, for the 2 options. This had resulted in quotations from 2 builders. The preference of the applicant was to proceed with Option 2 on the basis of the lower quotation of £10,850 from one of the 2 builders providing a quotation. Mr Matika told us that this option also found favour with Building Control Department of East Devon District Council and the Fire Authority, although he was unable to point us to any written evidence of this. Mr Matika pointed to the fact that the quotation for Option 2 by Advanced Builders was considerably less than a quotation of £16,517.50 to bring the metal staircase up to standard in August 2003.
15. Mr Matika told us that Remus Management Ltd would make no charge whatsoever of the respondent tenants for any work by it in relation to the remedying of the issues relating to the metal staircase. He told us that he would make enquiries as to the scrap value of the metal staircase and that that value would be deducted from the overall cost. He told us also that he intended to complete the consultation exercise and that the contract price was fixed for a 12-month period from the date of quotation.

The Respondent's Case

16. We had received a written communication from Miss J Cole, tenant of the basement flat. She wanted us to be aware that she had no need of a fire escape as she has a separate means of egress. She said that her lease says that she does not need to pay for any fire escape works. She pointed to a poor level of management of the property by Remus and a belief that that had contributed to the poor state of the metal staircase. She raised concerns about rust damage to the walls and rust falling from the metal staircase.
17. With regard to Mr and Mrs Cole, we heard from their son and daughter, Mr J Cole and Mrs R Boxall. On behalf of his parents, Mr Cole raised concerns that there was no written evidence of the condemnation of the metal staircase. He queried whether works required by regulations in 2004 may have been different. He was concerned that the applicant had not complied with the cyclical works required of it by the lease. He queried whether fire stopping was included within the works detailed in the Fourth Schedule. He made the point that his parents, as tenants of the ground floor flat, did not need to use the metal staircase as they had a separate means of egress. He accepted that the lease was clear as to the responsibilities of the tenants to make payments.

He had no serious questions to raise as to the cost of the works proposed in Option 2, but queried whether there is a scrap value of the metal staircase, which could operate so as to reduce the overall cost.

18. No written or oral submissions were received from the other tenants.

Consideration and Determination

19. The Tribunal started with a consideration of the leases. The Fourth Schedule of each of the leases covers works connected with maintaining repairing redecorating and renewing the internal common parts (Part I) and maintaining repairing redecorating and renewing the main structure and the cost of decorating the exterior of the building and all other expenses incurred by the Lessors in and about the maintenance and proper and convenient management of the property (Part II). Maintenance of fire safety and adherence to fire safety regulations is clearly part of the proper management of the property.
20. The Tribunal could find no support for Miss Cole's suggestion that her lease exempted her from payment for any fire escape works. She would be required by the terms of her lease to pay 1/5th of the cost of removing the metal staircase and making good the external elevation of the building.
21. The other 4 leaseholders are required by the terms of their leases to pay 1/5th of the cost of removing the metal staircase and making good the external elevation of the building and 1/4 of the costs of the internal works.
22. The Tribunal finds it clear from examination of the papers and the evidence and submissions made to it and from its own inspection that the metal staircase is in a very poor and clearly unsafe state. It is equally apparent that no remedial work has been performed for a considerable period of years. Mr Matika ventured an estimate of no work being done to the metal staircase for some 10 years. Whilst it did not have direct evidence about that, it did have available to it a quotation for remedial work in August 2003 of £16,517.50 which, to some extent, renders irrelevant considerations as to what might have been the cost today of remedial work had proper maintenance been applied over the intervening years. The cost of Option 1 today would be over £20,000. The benefit of Option 2 is the removal of maintenance costs for the metal staircase in future years.
23. The Tribunal finds that the reasonable costs of Option 2 are recoverable under the terms of the leases, for the reasons we have already given. It finds that the cost of Option 2 (£10,850) is a reasonable cost. It does so for a number of reasons. The applicant has received the advice of a chartered surveyor; the tenants have been given an opportunity, through consultation, to comment on the works and to put forward an alternative builder; the applicant has involved the Fire Authority and Building Control in its considerations of a solution; the figure itself appears to be reasonable to us and we have been able to note that proper specifications have been identified; the applicant has chosen the cheapest option; the quotation holds good for a 12-month period; the cost is more reasonable now than would have been the cost of repair some 9 years ago.

Andrew Cresswell (Chairman)

Date 25 August 2012

A member of the Southern Leasehold Valuation Tribunal

Appointed by the Lord Chancellor