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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/21UG/LIS/2012/0027

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Applicant: Mr D A J Richard

Respondent: Tuffley (Properties) Limited

Property: 6a Collington Mansions, Collington Avenue, Bexhill on Sea, East Sussex TN39 3PU

Date of Hearing 17th May 2012

Appearances
Applicant

Mr D A J Richard
Mrs J Richard

Respondent

No attendance

Leasehold Valuation Tribunal
Mr D Whitney LLB (Hons)
Mr A O Mackay FRICS

DECISION

INTRODUCTION

1. This is an application by the Leaseholder of 6a Collington Mansions, Collington Avenue, Bexhill on Sea, East Sussex TN39 3PU under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the cost of major works, fees associated with the works, insurance premium and administration charges for the year 2011.
2. Directions had been issued on 16th February 2012.
3. The matter was dealt with at an oral hearing at which the Respondents did not attend, as they had indicated in a letter to the Tribunal offices dated 15th March 2012.

INSPECTION

4. The Tribunal inspected the property prior to the hearing. The subject property was a two storey maisonette in the middle of a terrace above a parade of shops. The major works had been undertaken to the subject property and the adjoining properties which looking at the property from the road at the front were to the left and were known as 7a and 8a Collington Mansions. The upper parts consisted of rendered panels separated by decorative wood. The property had a pitched tiled roof. The tribunal was able to identify the works which formed the subject of the dispute.

RELEVANT LAW

5. The Tribunal had regard to sections 19 and 27A of the Landlord and Tenant Act 1985. The Applicant had referred to in his application and at the hearing to section 20 of the Landlord and Tenant 1985. The Tribunal had regard to this section in reaching its substantive decision.

HEARING

6. At the commencement of the hearing the Applicant advised he had not had sight of the Respondents letter to the Tribunal dated 15th March 2012. The tribunal adjourned to allow the Applicant opportunity to consider this. After a brief adjournment the Applicant confirmed he was happy to proceed.
7. The Tribunal heard evidence from the Applicant, Mr Richards, and his mother Mrs J. Richards both of whom had filed statements in advance of the hearing.
8. The Applicant gave evidence that he accepted that the works were needed but disputed the method adopted by the Respondents. It appeared at some point the freehold of the Applicants property had been acquired by the Respondent who owned the adjoining properties. The Applicant believed that the Respondents should have treated his property

as a separate estate and served separate consultation notices and obtained entirely separate quotes as to work to be undertaken to his part of the property.

9. The Applicant accepted that his lease (dated 10th March 2004) required him to contribute 60% to service charge expenditure save for roof works for which he was required to contribute 50%. He believed however that no proper apportionment of the work was undertaken to his part of the building (i.e. 6 Collington Mansions) by the Respondent. In his opinion his part of the building should pay no more than 20% of the total costs subject to his evidence on what works were undertaken and the reasonableness of the charge for the same. He believed that he was being charged for works which in the main had been undertaken on the adjoining property. In particular:
    - Render: his evidence was that only a small amount was undertaken on his property which would have cost no more than £20/30 to complete
    - Chimney pot: he did not believe any work had been undertaken to chimney pots on his property and this work would have cost about £200
    - Installation of chicken wire: only a limited amount was undertaken on his property and this would only have cost about £30
10. The Applicant further contended that the cost of the works was unreasonable. He believed that the works to his property could have been undertaken for about £2000 (see the Applicants letter to the Respondent dated 31st January 2012) of which his proportion would have been 60%.
11. The Applicant felt he had received no service from the Respondents and should not have to make any contribution to their costs.
12. With regards to the solicitor's fees claimed his evidence was that these were premature as he had raised a dispute and after the first solicitor's letter the amounts claimed were reduced and he still failed to receive any substantive response to his requests for further information.
13. The Applicant believed that the insurance premiums were unreasonably high but he had no alternative quotes to provide the Tribunal.
14. The Applicant alleged there continued to be works required to the building as the upper storey of his property continued to suffer from water ingress.
15. Mrs Richards relied on her statement and also gave evidence that she did not believe a proper section 20 Landlord and Tenant Act 1985 consultation had been undertaken as she believed that a separate consultation for 6/6a Collington Mansions should have been undertaken. In her view the estimate from the contractor who undertook the works was meaningless without a breakdown.
16. The Applicant invited the Tribunal to determine that no proper section 20 consultation had taken place. Even if there was in his opinion the charges were unreasonable and should be reduced.
17. He further submitted that the solicitor's charges were premature and should be disallowed.
18. The Applicant also invited the tribunal to reduce the Insurance premium as unreasonable.
19. The Applicant renewed his application under section 20C of the Landlord and Tenant Act 1985 (raised in his original application) and invited the Tribunal to not allow the respondents to recover any costs and invited the Tribunal to Order that the fees he had paid (totalling £250) should be reimbursed to him.

20. The Applicant also made an application for the Tribunal to find that the respondent had acted frivously and vexatiously and that they should pay his costs. He had lost a £100 from being at the hearing and Mrs Richards a similar amount. He had also spent not inconsiderable time preparing his application to the Tribunal.
21. The respondents did not attend but the Tribunal had regard to their letter and attachments dated 13th March 2012.

FINDINGS

22. The Tribunal noted that the Application referred to Ground Rent. Whilst not expressly raised at the hearing this is not a sum over which the Tribunal have jurisdiction and so make no determination in respect of this sum.
23. The Tribunal determined that the consultation undertaken by the Respondent in respect of the major works complied with the terms of section 20 of the Landlord and Tenant Act 1985. Whilst the Notices served did not specify exactly what parts of the building were being covered the Applicant clearly understood that these related to 6,7 and 8 Collingham Mansions. In the Tribunals decision separate Notices did not have to be served in respect of number 6 although the respondent has an obligation in determining the costs to do so fairly and reasonably .
24. In respect of the major works the Respondent seeks a total sum of £3820 for number 6. In the Tribunals judgement the invoice from the contractor lacked particularity and it was difficult for the Tribunal to assess what work was undertaken to which parts of the building. The Tribunal relied upon the inspection, the evidence at the hearing and their own expertise. The Tribunal accepts the Applicants case that in respect of certain parts of the works either none applied to his portion of the property or only limited amounts. In the absence of costings in their elemental form, the Tribunal has used its judgement and experience in determining that £3,000 in total should apply to No. 6. Of this 60% is payable by the Applicant being £1800.
25. The Tribunal finds that in it's judgement a fee of 12.5% of the contract sum for a contract of this size was not unreasonable and therefore determines that the Applicants share inclusive of VAT is £270.
26. Further the Tribunal determines that the Respondents agents fee for preparation of the section 20 Notices of £250+VAT (£300) of which the Applicant should pay 60% being £180 inclusive of VAT is reasonable. Plainly consultation had to be undertaken and a fee of this level is reasonable in the Tribunals opinion.
27. The Tribunal finds that the insurance premium charged of £374.34 is reasonable. The Tribunal had no alternative quotes and felt this appeared in their experience to be reasonable given the nature of the premises and risk to be insured.
28. The Tribunal finds that the solicitors fees which the Respondent seeks to charge were premature as alleged by the Applicant. The Applicant was corresponding with the Respondents agents and it was clear that there were discrepancies evidenced by the reduction in the amounts billed after the first solicitors letter. The Tribunal finds that no sollcitors fees for this period whether those referred to in the solicitor's letters of 24th August 2011 or 9 January 2012 are payable by the Applicant.

29. To summarise the Tribunal finds the following items payable which were the subject of this application:

- Major works £1800
- Professional fees for major works £270
- Share of section 20 costs £180
- Insurance premium £374.34

30. The Tribunal determines under section 20C of the Landlord and Tenant Act 1985 that even if the lease did allow recovery of any costs the Respondent may not treat any of the costs incurred by them in dealing with this application as relevant costs in determining any service charge payable by the Applicant. The Tribunal determines this having had regard to the application as a whole. Whilst the Applicant has not been successful on all points he has been to a large degree and it is clear from the correspondence that he was left with no choice but to issue such proceedings. Whilst the Respondent has had some involvement their involvement has been extremely limited. For the same reasons the Tribunal determines that it is just and equitable that the Respondent do reimburse to the Applicant the Application and Hearing fee totalling £250.
31. In respect of the Applicants application for recovery of his costs the Tribunal has had regard to paragraph 10 Schedule 12 of the Commonhold and Leasehold Reform Act 2002 which provide limited circumstances in which the Tribunal may award costs. In the Tribunals judgement no order for costs should be made. The Tribunal do not find that the Respondent has acted frivously and vexatiously in that they did respond to the Directions issued indicating that they would not attend at the hearing as is their right. In the circumstances the Tribunal is satisfied that an order for costs is not merited in this case.

Mr D R Whitney LLB(Hons)

Dated 30th May 2012