9670

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00ML/LIS/2013/0094**
Property	:	**77 Wilbury Crescent, Hove, East Sussex BN3 6FH**
Applicant	:	**Ruth & Oliver Buckley-Salmon**
Representative	:	**M. Staples MRICS of Deacon & Co**
Respondent	:	**Mr R. & Mrs I. Lloyd**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge D. R. Whitney** **Mr. A. O. Mackay FRICS** **Mrs J. K. Morris**
Date and venue of Hearing	:	**5th December 2013** **The Holiday Inn, Brighton BN1 2JF**
Date of Decision	:	**23rd December 2013**

DECISION

© CROWN COPYRIGHT 2013

1. This is an application by the freeholders, Mr and Mrs Buckley-Salmon, of 77 Wilbury Crescent ("the Property") to determine what service charges are payable and the reasonableness of the same. The Applicants are also the owners of the ground floor flat. The Respondents own the flat on the first floor. The Applicants

seek a determination of the service charges payable and the reasonableness of the same for the periods March 2011 to January 2012 and from February 2012 to 24 July 2013.

2. The application was dated 24th July 2013 and was made by the Applicants representative Mr Staples of Deacon & Co. Directions were issued on 20th September 2013. The Respondents made an application for an order under section 20C of the Landlord and Tenant Act 1985.

INSPECTION

3. The Tribunal inspected the Property on the morning of the hearing. The Property is a mid-terrace Edwardian house which has been converted into two flats. The ground floor flat belongs to the Applicant's and the first floor flat belongs to the Respondents.
4. The Tribunal were shown a tree on the pavement outside the Property the roots of which had clearly damaged the pavement and previously had supposedly affected the drains to the Property and the front wall. The front balcony had been repaired and the front door re-hung. To the rear of the Property the Tribunal were shown various cracks some of which had been repaired.
5. Internally the communal hallway was well decorated and carpeted. Supposedly in the hallway flank wall adjoining number 79 Wilbury Crescent there had been a large crack which had been replastered and decorated over.
6. The Respondents showed the Tribunal what they said was evidence that the flank wall to their kitchen was bowing out causing the kitchen fitments to come away from the wall. Mr Mackay together with Mr Lloyd and Mr Staples inspected the loft and reported a large crack evident in the wall between the Property and number 79. No evidence of the crack could be seen in the walls of the first floor flat which was well decorated.

THE LAW

7. The relevant law is contained in sections 27A and 19 of the Landlord and Tenant Act 1985 as to reasonableness and the payability of the service charges. A copy of those sections is attached in the Annex to this decision.

HEARING

8. The Tribunal explained that its role was to determine what if any service charges were currently payable and the reasonableness of any sums claimed. The Tribunal explained to the parties that it could not determine whether any of the proposed major works which seemed to form a substantial part of the dispute should be covered by any policy of insurance and the parties were urged to take separate advice as to the same.
9. The Applicants relied upon the Fourth and Sixth Schedule of the Respondents lease dated 18th December 1974. A copy of the lease was within the bundle supplied to the Tribunal. The Respondents helpfully accepted that in principle the items the Applicants were seeking to recover, including structural engineers costs, may be recoverable under the lease. The Respondents denied any demands had been received by them. No evidence of any demands was included in the bundle and neither Mr Staples nor the Applicants themselves alleged any had been sent during the course of the hearing.

10. The Tribunal offered the parties the opportunity to have a short adjournment to see if the issues between the parties could be narrowed. This offer was not taken up by the parties.
11. The Applicants were seeking a determination that the proposed costs of Mr Goacher a structural engineer to oversee monitoring of the property and to report on the same and whether the Property was suffering from subsidence were reasonable. It was submitted on the Applicants behalf that Mr Goacher was an engineer whom Mr Deacon had used before. In his submission he did not need to undertake a formal consultation for such an appointment. it was appropriate given the Property's insurer had declined a claim for subsidence yet had withdrawn subsidence cover to investigate to try and determine if the property was suffering from subsidence (as the Respondents believed) or that any movement was simply historical.
12. A quote was provided from Mr Goacher which was included in the Applicants bundle dated 30th October 2013. The quote included figures for inspecting and reporting and for arranging for an external firm to undertake monitoring. The Applicants did not have an alternative quote.
13. The Respondents contended given Mr Goacher had reported in the past (March 2003) he was not independent. The Respondents could not see why the Applicants had not got the insurers surveyor to attend and view their flat. The Insurers report prepared by a Mr Hatchett for the Graham High Group Limited and dated 12 April 2012 recommended certain works to the crack in the party wall but he had not accessed or inspected the first floor flat belonging to the Respondents.
14. The Respondents relied upon their own report from a Mr Aspey which they say shows the flaws in the insurers report. In their opinion all the work proposed to be done by Mr Goacher was not required at this time and the insurers should re-inspect the Property including their flat.
15. The Applicants then asked the Tribunal to consider the various items set out in the document marked "Account for 77 Wilbury Crescent".
16. The Respondents helpfully indicated that the following items were agreed as being reasonable now that invoices had been provided:
    - 18/10/2010 Building Insurance £398.78
    - Removal of initial balance £10
    - 02/09/2011 Building Insurance £529
17. The Applicants explained that much work was undertaken by a Mr Hope and some of his invoicing descriptions were not very accurate. The Applicants explained they had not owned a freehold previously and were trying to do what they thought was correct.
18. The Respondents made the point that until the bundle had been received they had never received any details or invoices for the amounts claimed. They disputed that works had been undertaken as set out in invoices or that the work was a service charge expense. In particular works were being claimed which related to the balcony to the front of the Property. The Respondents alleged that this was within their demise and they had never agreed or approved such works and the same were not recoverable.
19. The Applicants said with regards to the balcony they believed this had been agreed by all parties (both the Respondents and the neighbouring owners of 79 Wilbury Crescent) and this was what they were led to believe on their sale. They had simply arranged for the works to be done and were looking for what they believed was the agreed share. They had no written evidence of this with them or within their

bundle. The Applicants did accept that the first floor balcony was within the Respondents demise.

20. Various invoices were included which included the redecoration and refurbishment of the communal hallway and also works to the balcony and front path at this same time. The Respondents submitted as there was no consultation the amount should be limited to £250 as these were in effect one set of works and given the total cost meant they would be required to pay more than £250 the cost should be capped. Save for this the Respondents were prepared to concede the costs were reasonable.
21. The Applicants alleged each item was separate although they accept they did not consult.
22. The Applicants looked to recover a cost of £10 for a copy statement to prove the amounts claimed whilst they were dealing with the management themselves.
23. The Applicants then moved on to the costs for works undertaken whilst Deacon & Co have managed. There were no accounts in the bundle or invoices but a statement headed "Service Charge Account Details".
24. Mr Staples explained there was a written contract and he charged £90 per quarter inclusive of VAT. Mr Staples tried to explain other items but had no supporting documentation so the Tribunal issued directions as explained below.
25. The Respondents in support of their application for an Order under Section 20C that no costs be added to the service charge relied predominantly on the fact that in their opinion the application was premature. The Respondents had been trying to communicate and discuss matters with the Applicants and their agents without success. The Respondents had requested copy documents etc but until they received the bundle for this hearing had received nothing back.
26. The Applicants said that the Respondents had refused access to anyone save the insurers. The Applicants and their managing agent believed they needed the direction of the Tribunal and the application was reasonable.

FURTHER DIRECTIONS

27. The Tribunal directed that the Applicants should by 4pm on 12th December 2013 file with the Tribunal four sets of all additional invoices and documents including the management contract which they sort to rely upon in respect of the costs claimed in the "Service Charge Account Details" prepared by Deacon & Co. The Applicants must also serve a complete set upon the Respondents.
28. The Respondents must then by 4pm on 19th December 2013 file with the Tribunal four sets of their response and serve a copy upon the Applicants.
29. The Tribunal would then take account of the same in reaching its determination.

FURTHER DOCUMENTS

30. The Applicants filed various further documents in accordance with the directions and the Respondents filed a reply.
31. The documents filed by the Applicant included what were referred to as service charge demands and accounts. These had not been directed and no suggestion had been made at the hearing by the Applicants that they had such documents. The Respondents denied they had received any such documents.
32. The Applicants provided an invoice for the Insurance in the sum of £456.41. No comment was raised to this by the Respondent.
33. The Applicants explained that charges for £125 and £90 were Tribunal fees. The Respondents objected to paying these and reiterated their submissions that the

application was premature and that they had been happy to discuss matters with the Applicants who had refused to meet and discuss.

34. The Applicants also provided invoices for Deacon & Co's management fees.

DETERMINATION

35. At the outset the Tribunal reminded the parties of its role and jurisdiction. The parties appeared to assume that the Tribunal could assist with determining whether or not the Insurance company should cover any costs. The Tribunal explained its role in this application was to determine what amounts if any are currently payable under the lease and whether any amounts claimed are reasonable.
36. The Tribunal reminds itself that the Applicant is the freeholder and had employed professional managing agents who made the application on their behalf.
37. In respect of what amounts if any are payable the Tribunal finds that currently none of the sums for the period covered by this determination being March 2011 to January 2012 and January 2012 until 24 July 2013 are payable. That is not to say they will not be payable at some point in the future if properly demanded in accordance with the lease and statute.
38. The Tribunal determines this since in its opinion no valid demands have been sent. Whilst demands were included in the response to the further directions no reference was made at the hearing to these demands by the Applicants or their representative and it is denied they have been received.
39. The Tribunal finds that the demands were not sent. Further in any event the Tribunal is satisfied that the demands do not comply with the relevant passages of the Respondents lease, particularly the Fourth and Fifth Schedule. The lease allows the Applicants to collect £30 per annum as advance payments payable by equal half yearly payments on the 24th June and 25th December. As to other amounts a detailed written request for a one half share of expenditure incurred as certified by a qualified accountant is required. In the Tribunals opinion the demands produced do not comply with this. The demands also do not contain all statutory information for a valid demand.
40. As to the reasonableness of the sums claimed the Tribunal was able to assess these.
41. As to Mr Goachers estimate the Tribunal finds there is no evidence that this is reasonable. The Applicants had no alternative quotes and it was unclear what steps had been undertaken to test the reasonableness of the same. The Tribunal were also unclear why given the Property had a managing agent that another professional was required to oversee and instruct a firm to undertake the actual monitoring. It was also unclear as to the methodology to be adopted and until someone had inspected the whole property including the First floor flat and its loft it was unclear what may be required. The Tribunal takes account of the correspondence which was had with the Respondents plainly challenging this matter and the way forward. Given the cost has not been incurred the Tribunal makes no determination as to what is reasonable.
42. Turning to the items claimed when the Applicants personally managed the property the Tribunal determines that those sums agreed by the Respondents are reasonable. As to other amounts the Tribunal finds as follows:

- 30th March 2011 Invoice £179.10: This is refused. No invoice was produced and the Respondents disputed the works. It is for the Applicants in making such an application and in managing a building to be able to demonstrate what has been undertaken.

- 8th July 2011 Copy statement £10: allowed, as a one off charge when the building was being managed by the Applicants personally this is reasonable.
- 7th August 2011 Invoice £199: allowed. Whilst the Respondents disputed the need for the work or the cause of damage to the window they appeared to accept some work had been undertaken and overall the Tribunal felt this was a reasonable cost.
- 15th August 2011 Payment for balcony work £171: Refused. No invoice was produced by the Applicants who accepted the Respondents submission that the balcony did not form part of the Property for which the freeholder was responsible. There was no invoice and no evidence of any agreement as to these works which was specifically denied by the Respondent.
- 16th September 2011 Invoice £55: Refused, this appeared to the Tribunal to be a duplication of the 7th August invoice or it related to balcony works. There was not sufficient certainty and so the Tribunal, taking account of this being the freeholders application refused the same.
- 28th January 2012 £468 Leo Horsfield: allowed. In the Tribunals opinion his instruction was reasonable and the Tribunal had seen the report. The fee appeared within the bands of reasonableness for such a report.
- Invoices from G. Hope dated 20th December 2011 x 2, 30th December 2011 and 21st January 2012: Amount recoverable from the Respondents for these limited to £250. Whilst the Respondents accepted the amounts were reasonable they contended that consultation should have been undertaken. The Tribunal determines that this is correct. These works were clearly all part of the same although divided into individual elements by Mr Hope. All the works were undertaken on or about the same time period and so consultation should have been undertaken. No application was before the Tribunal to dispense with the statutory requirements and so the sum claimed is limited to the statutory maximum. In all other respects the Tribunal was satisfied the costs of these works were reasonable and the works had been undertaken to a reasonable standard.

43. Next the Tribunal consider the items which Deacon & Co on behalf of the Applicants sought to recover:

- £125 and £90: Tribunal fees, the Tribunal does not find these recoverable as a service charge item. Please refer to determination in respect of Section 20C application for reasons.
- Insurance £456.41: no specific challenge was made to this and given it was similar to the previous years accepted by the Respondents the Tribunal allows this as a reasonable sum.
- Management fees: It appears that there is a written contract which allows for a charge of £150+VAT per flat giving a total of £360 per annum inclusive of VAT. Whilst the Respondents highlighted they had not been aware of the amount of the fees before the hearing they did not raise specific objection. Invoices have been produced showing the amounts and a contract. The Tribunal allows the fees for this period as reasonable.

44. Turning to the Respondents application under section 20C the Tribunal makes such an order. This order includes the fees paid by the Applicants to the Tribunal and means none of the costs of making this application are recoverable as a service charge expense including any and all fees paid to the Tribunal.
45. The Tribunal makes such an order as it agrees with the Respondents that the application was premature. Even at the hearing after detailed written directions had been given not all the documents were present. At the hearing no evidence of any demands were available for the years for which the Applicant freeholder was

seeking a determination. Further at the hearing there was no evidence of compliance with the lease terms or the statutory requirements for recovery of service charges from the Respondents. The Tribunal has also determined many issues (when not conceded by the Respondents) in the Respondents favour. Plainly if the Applicants had engaged with the Respondents the application may not have been required.

46. As the Tribunal has said sadly it cannot resolve any dispute which exists between the parties and the buildings insurers. The parties must look to take their own advice on this. Whilst the Tribunal had before it many reports relating to the building and the possibility of subsidence this is not an issue which the Tribunal can assist the parties with under this application.

JUDGE D. R. WHITNEY

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX

Sections 27A and 19 of the Landlord and Tenant Act 1985

Section 27A Liability to pay service charges: jurisdiction

(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.

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination— .

(a)in a particular manner, or .

(b)on particular evidence, .

of any question which may be the subject of an application under subsection (1) or (3).

(7)The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

19 Limitation of service charges: reasonableness. .

(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 provision 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.