10591

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HN/LSC/2014/0024
Property	:	31-33 Castle Lane West Bournemouth Dorset BH9 3LH
Applicants	:	Mr Justin Cook and Mrs Sharon Cook
Representative	:	Mr Ian Richards of Morris Scott and Co, Solicitors
Respondent	:	Miss Caroline Willa Morgan
Representative	:	
Type of Application	:	Liability to pay service charges
Tribunal Member(s)	:	Judge Tildesley OBE Mr K M Lyons FRICS
Date and Venue of Hearing	:	9 September 2014 Bournemouth County Court
Date of Decision	:	18 December 2014

DECISION

Decisions of the Tribunal

1. The Tribunal finds that the charge of £13,432.50 (50 per cent of the quotation supplied by Oakley Homes dated 30 August 2013) was not demanded in accordance with the terms of the lease. Also the charge in any event was not payable until a *Summary of Rights and Obligations of Tenants* had been served on the Respondent.

2. The Tribunal determines the Applicants had no authority under the lease to carry out specific works to the rear of the property and to recover the costs of those works from the Respondent through the service charge (see paragraph 54 for the identity of the specific works).

3. The Tribunal finds that if the Applicants had followed the correct procedures for demanding a service charge on account, a sum ranging from £7,500 to £10,000 excluding VAT would have constituted a reasonable contribution from the Respondent towards the cost of the proposed works to the main structure of the property.

4. The Tribunal makes no order for costs against the Respondent pursuant to rule 13 of the Tribunal Rules 2013.

5. The Tribunal considers there is no specific power in the lease which enables the Applicants to recover a contribution towards their legal costs through the service charge. In which case there is no need for an order under section 20C of the 1985 Act. If the Tribunal is wrong in its construction of the lease the Tribunal would have determined that it is just and equitable for an order to be made under Section 20C of the 1985 Act.

6. The Tribunal does not order the Respondent to refund the fees paid by the Applicants in respect of their application.

The Application

7. The Applicants seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Respondent in respect of the service charge year 2014.

8. A case management hearing took place on 27 May 2014 at Bournemouth Combined Court. At which the parties and Mr Richards, the Applicants' solicitor, attended. Directions were drawn up with the agreement of the parties to progress the application. The parties were required to exchange their respective statements of case, and the Applicants were obliged to prepare the hearing bundles. The hearing was fixed for the 9 September 2014.

9. At the case management hearing the following issues were identified:

    - The reasonableness of the proposed service charge for 2014

- Whether the Applicants had complied with the consultation requirements under Section 20 of the 1985 Act.
- Whether the proposed works were within the Applicants' obligations under the lease and whether the cost of the proposed works were payable by the Respondent under the lease.
- Whether the costs of the works were reasonable, in relation to the nature of the works, the contract price and the supervision and management fee.
- Whether the Respondent was entitled to set off the costs expended on works to the property for which she had received no contribution from the landlord.
- Whether an order under Section 20C of the 1985 Act should be made.
- Whether an order for reimbursement of the application hearing fees should be made.

10. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

11. The Applicants appeared with their solicitor Mr Richards at the hearing. The Applicants called Mr Ian Gascoigne-Pees, the former freeholder and landlord of the property as a witness. The Respondent attended with her mother and a family friend.

12. Prior to the hearing the Tribunal inspected the shop premises, and the exterior of the property including the garden at the rear. The Tribunal did not inspect the interior of the residential flat because the Respondent did not give permission for the Applicants to enter the property.

Background

13. The property (31 and 33 Castle Lane West) was built in the late 1930's, constructed of brick with a flat asphalt roof and a parapet. The property formed part of a small shopping parade which had its own access road separating the shop parade from the busy thoroughfare of Castle Lane West.

14. The property had the benefit of a garden and paved area together with a parking space at its rear. Access to the parking space was gained over an unmade track leading to Muscliffe Lane. The property had the benefit of a right of way over the unmade track.

15. In 1986 the property was subdivided into shop premises on the ground floor, and a residential flat on the first floor. The shop premises were known as 31 Castle Lane West, and the residential flat as 33 Castle Lane West.

16. Access to the shop premises was gained from 35 Castle Lane which was part of the shop also owned by the Applicants. They had made an opening from 35 Castle Lane into 31 Castle Lane. The main entrance to the residential flat was off Castle Lane from which access to the flat was via an enclosed hall and stairway. The shop premises and the residential flat had rear doors which opened onto a concrete slab supported by a steel beam with stairs leading to the basement to the shop premises, and the garden area for the residential flat.

17. The Applicants were originally under-lessees of the shop premises from which they ran a fancy dress business under the trading name of *Hollywood Fancy Dress*. The head lessor at the time was the company controlling *Blockbusters* which got into financial difficulties. Its lease in the premises expired in August 2011. In September 2011 the Applicants acquired a business tenancy in the shop premises for a term of 25 years from 27 August 2011. On 29 April 2013 they purchased the freehold of the property (31 and 33 Castle Lane West) from Mr Gascoigne-Pees.

18. In September 1993 the Respondent acquired a long lease of the residential flat with a term of 99 years from 10 November 1986. The lease was made between Mr Gascoigne-Pees of the one part and Mr J S McGarrick and another of the other part. Under the lease the landlord was required to provide services with the tenant contributing towards the costs of the services by way of a variable service charge. The specific provisions of the lease will be referred to below.

19. Mr Gascoigne-Pees testified that he was an experienced lessor with a wide portfolio of freeholds that were let out to lessees or business tenants. Mr Gascoigne-Pees stated that where there were only two tenants he did not engage a managing agent because of the additional costs that would arise. Mr Gascoigne-Pees accepted that he did not personally look to have communal repairs done to the property for a number of years. It appeared to the Tribunal that Mr Gascoigne-Pees only got involved in the property in 2012 after the granting of the business tenancy to the Applicants. In his witness statement he made several disparaging remarks about the Respondent and her mother which the Tribunal found unhelpful. The Tribunal placed no weight on his evidence. In the Tribunal's view, Mr Gascoigne-Pees' abdication of his responsibilities as landlord for a significant period of time was one of the contributory factors for the ill-feeling between the parties.

20. According to the Applicants, the property was in serious need of urgent repair. In this regard the Applicants gave notice by letter dated 26 July 2013 to the Respondent of their intention to consult on proposed works to the property in accordance with stage 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003.

21. The letter dated 26 July 2013 stated as follows:

- Works were urgently required to the building which included repairing the concrete pathway, the boundary fence and the rear

wall and a drain repair to the rear parking area. Further the gutters, fascias and soffits required an overhaul, together with a replacement of the rear communal steps. Finally works were required to the main roof, and the front and rear walls were in need of decoration and rendering.

- The reason for the works was to preserve the fabric and construction of the building, and to fulfil the Applicants' repairing obligations under the lease.

- The description of the works was set out in the estimates from the three contractors chosen by the Applicants. They were Oakley Homes (£26,865.00), Vogue Windows UK Limited (£24,908.33 plus VAT = £29,890.00), and Bridgewater Contractors Limited (£23,958.00 plus VAT = £28,750.00). Copies of the estimates were included with the letter.

- The Respondent was given 30 days in which to make comments on the proposed works and to nominate any possible contractor who might be able to quote for the works.

22. On 29 July 2013 the Applicants' solicitors wrote a further letter to the Respondent requiring removal of a garden shed at the rear of the property together with wiring over the communal area. The Applicants also required the Respondent to cut back trees and bushes impeding the fire escape and to pay arrears of ground rent and her share of the annual insurance premium which had been outstanding since 1 August 2012.

23. On 29 August 2013 the Respondent through her solicitor replied to the Stage 1 consultation notice dated 26 July 2013. The Respondent made the following points:

- The damage done to the fence panels was caused by unauthorised building works carried out by the Applicants on 35 Castle Lane.

- She challenged the necessity of the works associated with the removal of trees, the garden shed and asbestos survey.

- The Respondent held serious reservations about the Applicants' preferred contractor Oakley Homes. The Respondent observed that Oakley Homes had the same trading address as Greystone which according to the Respondent had made an excessive charge for a repair to the cellar door.

- Quality First Roofing Services and Mallwood Roofing Limited were nominated as alternative contractors.

- The Respondent questioned the reasonableness of the costs of the works. She referred to a dilapidations survey served on the previous tenants of 31 Castle Lane before the expiry of their lease in August 2011. The external works listed in the survey were similar to those now required to carried out by the Applicants, and were priced at £13,490.00, almost half of the estimate supplied by Oakley Homes.

24. On 22 November 2013 the Applicants responded to the Respondent's letter of 29 August 2013. Essentially the Applicants disagreed with the Respondent's comments. The Applicants did obtain quotations from the contractors nominated by the Respondent. Mallwood required the assistance of Porteaus Construction Limited and quoted £30,480.00 including VAT for the works proposed. Mallwood was unable to quote for the roof boards and required an additional £600 plus VAT for the asbestos test. Quality 1st Roofing Services Limited quoted solely for the roofing works which was £12,642.00 including VAT.

25. The Applicants' solicitors concluded the letter of 22 November 2013 with the following passage:

> "We look forward to your client's response as soon as possible but from our clients' point of view we formally now nominate Oakley Homes as the contractor to deal with work ie as the most economical and suitable contractor. Without wishing to repeat earlier details supplied the contribution is 50:50 between our respective clients. Please let us have your comments and please the 50 per cent contribution based on the Oakley's estimate (ie at this point £13,432.50) to enable the protective and essential work quickly to go ahead.
>
> Your client's cheque should be made payable to this firm to be held pending requirements for deposit payments. This of course would be in conjunction with our client's funding and the work then going through".

26. On 20 January 2014 the Applicants submitted an application to the Tribunal to determine the following question regarding service charges:

> "The year in question is 2014 (but the consultation took place in 2013)
>
> The work urgently required and the costings in respect of the same are as follows:
>
> Remedial work to concrete paving, rear parking area, boundaries and communal areas generally, external paintwork, guttering, communal steps, windows, drainage, roofs and parapets as more particularly described in a quotation supplied by Oakley Homes dated 30 August 2013 and which was the cheapest of three quotes obtained by the Applicants and which remained the cheapest after the obtaining of two further quotes from contractors nominated by the Respondent.

The question that the Tribunal is asked to decide is as to the need for the work to the building and the reasonableness of the service charges".

27. On 1 May 2014 the Applicants served the Respondent with a statement totalling £554.69 payable immediately. The statement comprised charges for insurance for periods 1 August 2012 to 29 April 2013 and 29 April 2013 to 28 April 2014, and ground rent for periods 1 January 2013 and 31 October 2014. The Respondent accepted that she had stopped paying the ground rent and insurance. The Respondent mentioned that she had taken out insurance in respect of her flat but did not produce a copy of the policy document at the hearing.

28. On 27 May 2014 a case management hearing was held at Bournemouth County Court. The Applicants disclosed that Mr Cook's brother was a partner in the firm, Oakley Homes Property, and that the Applicants had been granted favourable family concessionary rates in respect of the quotation for the works from Oakley Homes.

29. Following the case management hearing the Applicants appointed Bryan Hoile and Associates, Consulting Civil and Structural Engineers, to undertake a condition survey on the property. The Respondent allowed Mr Hoile to inspect her property. Mr Hoile expressed the view that the roof boards required replacement and that the rendering was coming away from the brickwork. Mr Hoile gave an estimated cost of £29,080.00 for the required works to the property.

30. On 26 July 2014 Oakley Homes supplied a revised quotation based on the findings of the condition survey. The revised quotation was in the sum of £36,675.00.

The Tribunal's decision

Background

31. The Applicants asked the Tribunal to determine the reasonableness of the service charges for the proposed works to the building. The amount demanded as set out in the Applicants' letter dated 22 November 2013 was £13,432.50 (50 per cent of the quotation supplied by Oakley Homes dated 30 August 2013) payable in advance.

32. The Applicants were not requesting the Tribunal's decision on whether the charges for insurance were payable. At the hearing the Tribunal reminded the Respondent of the requirement under the lease to contribute towards the costs of insurance and to pay the ground rent.

33. At the hearing the Applicants referred to the revised quotation of £36,675.00, from Oakley Homes dated 26 July 2014 of which the Respondent's contribution was £18,337.50. This amount had not been demanded from the Respondent. Thus the Tribunal was concerned

with the reasonableness of the amount of £13,432.50 as detailed in the Applicants' letter of 22 November 2013.

34. Under section 27A(3) of 1985 Act the Tribunal has jurisdiction to determine whether a service charge is payable for costs to be incurred on repairs, maintenance and improvements. Section 19(2) of the 1985 Act provides that 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. In general the reasonableness of a service charge payable in advance will depend upon whether the amount demanded is based upon a sensible projection of the expected costs that will be incurred on the proposed works.

The Lease

35. Ultimately the Respondent's liability to pay the £13,432.50 is determined by the terms of the lease. In this respect the Applicants relied upon clauses 2 and 3 of B of Part V to the lease entitled *Covenants with landlord and tenants of other demised premises* which stated as follows:

> "2. On First January each year the Tenant shall pay to the Landlord the interim service charge the first proportion thereof in respect of the period from the date hereof to the next following payment all to be made on the execution hereof.
>
> 3. To pay forthwith to the Landlord upon service on him of a service charge statement any service charge shown thereon being that share specified in paragraph 11 of the Particulars of the expenses which the Landlord shall in relation to the property reasonably and properly incur in each service charge year and which are authorised by Part VI and Part IX of the amount of such service charge to be determined by the Landlord's managing agents or accountant acting as an expert and not an arbitrator PROVIDED THAT all the interim service charge paid shall be taken into account and the balance paid forthwith".

36. Clause 19 of Part I to the lease entitled *Interpretations and Definitions* defined the interim service as:

> "the sum specified in paragraph 10 of the Particulars or such other sum to be paid on account of the service charge in respect of each service charge year as the Landlord his managing agents or accountant from time to time and at any time shall specify at his direction to be a fair and reasonable charge".

37. Paragraph 10 of the Particulars stated that an interim service charge of £100 is payable in advance on the First day of January in each year. Paragraph 11 of the Particulars stated that the tenant's share of the service charge fund is one half.

38. Clause 17 of Part I to the lease stated that the service charge is the amount payable from time to time under clause B3 of Part V hereof and shall include any value added tax thereon. Clause 18 defined service charge year as from 1 January to 31 December.

39. Clause 21 of Part I to the lease defined the service charge statement as:

> "(a) the expenditure on services within the specified service charge year.
> (b) the amount of service charge due in respect thereof.
> (c) sums to be credited against that service charge".

40. Clause 4 of Part VI of the lease required the landlord to keep a detailed account of the expenditure and services and prepare a service charge statement annually, a copy of which was to be served on the tenant.

41. The landlord's expenses which could be recovered under the service charge were found in Parts VI and Part IX to the lease. Part IX dealt with the specification for the insurance. Clause 3 of Part VI said as follows:

"Subject to and conditional upon payment being made by the Tenant of the interim service charge and the service charge in the manner hereinbefore provided:

(a) To maintain and keep in good and substantial repair and condition:
    (i) the main structure of the property including the roofs and foundations the principal internal timbers and the exterior walls the timber joists and beams of the floors ceilings and roof in the property the chimney stacks gutters rainwater and soil pipes of the property.
    (ii) All conducting media in under or upon the property used by the Tenant in common with the tenants of the other unit at the property.
    (iii) the common parts.
    (iv) all other parts of the property included in the foregoing sub-paragraphs (i) (ii) and (iii) hereof but not including the demised premises or the demise of any other unit or part of the property.
(b) To maintain insurance in accordance with Part IX subject to payment of the service charge by the Tenant
(c) As and when the Landlord shall deem necessary to decorate the exterior of the property and common parts
(d) So far as practicable to keep clean and reasonably lighted the common parts.
(e) *Not relevant*
(f) For the purposes of performing the covenants on the part of the Landlord herein contained the Landlord at its discretion may employ a firm of managing agents to manage the property and further to employ such surveyors builders architects or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the property.

42. Under clause 8 of Part I to the lease the property was defined as 31 and 33 Castle Lane West, Bournemouth and included the demised premises except where the context indicated to the contrary.

43. Part II of the lease set out the extent of the demised premises which incorporated the flat above 31 Castle Lane West, known as 33 Castle Lane West and shown edged red on the plan attached including the garden area coloured blue and boundary walls or fences hereto, the front entrance hallway on the ground floor of the property and the internal staircase leading to the flat[1].

44. Clause 15 of Part I to the lease defined common parts as:

> "all main entrances passages landings staircases (internal and external) gardens gates access yards roads footpaths (if any) means of refuse disposal (if any) and other areas included in the Title above referred provided by the Landlord for the common use of the residents in the property and their visitors and not subject to any lease or tenancy to which the landlords are entitled to the reversion".

45. Clause 4 of Part IV to the lease gave the landlord and the tenant of 31 Castle Lane West (the shop premises) the right to use the steps (fire escape) coloured yellow on the plan for the purposes of gaining access to the basement of the property subject to the landlord contributing one half of the cost of maintaining the same.

Whether the Service Charge had been demanded in accordance with the lease?

46. The first issue for consideration is whether the Applicants' demand for service charge was made in accordance with the lease. Under the lease the Applicants are entitled to an interim service charge of £100 payable on 1 January or such other sum as specified by them as landlord to be fair and reasonable payable on account and a balancing charge following the issue of a service charge statement on the Respondent. A demand must also be accompanied by a *Summary of Rights and Obligations of Tenants* on a form prescribed by section 21B of the Landlord and Tenant Act 1985.

47. The Applicants' demand for payment was set out in their solicitor's letter of 22 November 2013. The demand was for a contribution to charges not yet incurred on proposed works. In the Tribunal's view, the demand included in the letter constituted a request for an interim service charge payable in advance. It would appear the Applicants were relying on the wording of clause 19 of Part I to the lease which enabled the Applicants to demand such other sum paid on account of the service charge in respect of each service charge year.

[1] See Part 11 of the lease for a fuller description of what constituted the demised premises.

48. The Tribunal is not satisfied that the wording of the solicitor's letter dated 22 November 2013 met the requirements of clause 19. The Tribunal considers that clause 19 required the Applicants to specify the service charge for which payment on account was requested together with the service charge year. In essence clause 19 envisaged the setting of a service charge for a specific year by the landlord before a payment on account other than the fixed sum of £100 could be demanded. In this case the Applicants had not set a service charge for 2013 or for 2014. The Applicants were simply requesting the Respondent to pay on account a contribution towards potential charges for proposed works with no date for when the works would be carried out.

49. The Tribunal would add that the Applicants also failed to serve the *Summary of Rights and Obligations of Tenants* with the letter of 22 November 2013.

50. The Tribunal, therefore, finds that the charge of £13,432.50 (50 per cent of the quotation supplied by Oakley Homes dated 30 August 2013) was not demanded in accordance with the terms of the lease. Also the charge in any event was not payable until a *Summary of Rights and Obligations of Tenants* is served on the Respondent. The Tribunal, however, acknowledges that the Applicant is able to put these matters right by serving a valid demand for 2015 accompanied by the *Summary* in the prescribed form. In those circumstances the Tribunal decides that it is prudent to examine the other issues raised by the Application.

Were the Applicants entitled to demand a contribution from the Respondent to the costs of the proposed works to the rear of the property?

51. The second issue concerned whether the Applicants were entitled under the lease to carry out works to specific parts of the property and require the Respondent to pay a contribution to those works. The Respondent maintained that the Applicants had failed to understand the extent of the demised property (33 Castle Lane West), and were interfering with her quiet enjoyment of the property[2].

52. The Respondent referred to the plan attached to the lease and to the filed plan to the registered title for the property (DT 142837) in support of her contention about the boundaries of the demised property. At the hearing the Tribunal examined the original leases for 31 and 33 Castle Lane West and the counter part for 33 Castle Lane West. The Tribunal also adjourned the hearing briefly to give the Applicants an opportunity to re-consider the Respondent's submission on the boundaries for 33 Castle Lane West.

53. The Tribunal finds the following facts in respect of the extent of the demised property:

[2] See Respondent's letter dated 16 May 2011 (pages 45-48 of the bundle).

(a) The demised property is edged red on the plan attached to the lease and counterpart, and on the filed plan to the registered title. The rear area to the property (31 and 33 Castle Lane West) in its entirety was part of the demised property belonging to the Respondent. Thus the Respondent's leasehold interest covered not only the garden area marked blue on the lease plan but also the patio adjacent to the basement, the area immediately behind 31 Castle Lane on which the rear steps (fire escape) was situated, the pathway leading to the gate and the car park area outside the gate.

(b) The Applicants in their capacities of landlord and tenant of 31 Castle Lane had a right to use the entrance steps at the rear (*fire escape*) marked yellow on the plan for the purpose of gaining access to the basement subject to the landlord contributing one half of the cost of maintaining the entrance steps. The wording of clause 4 of Part IV to the lease confirmed that the rear entrance steps were part of the Respondent's demised property, and that the right of the landlord and the tenant of 31 Castle Lane to use these steps was limited solely to gaining access to the basement of the shop premises.

(c) The Applicants had no right of way over the rear path leading to the parking area except in an emergency or after giving reasonable notice in relation to those matters identified in clause 2 of Part IV to the lease.

(d) The Applicants' contention that the rear area to the property except the area marked blue on the plan was common parts was not supported by the wording of the lease. The Tribunal notes that Mr Gascoigne-Pees in a letter dated 16 January 2012 to the Respondent referred to a Deed of Variation of lease which purportedly re-defined the common parts. A copy of this deed, if it existed, was not supplied in evidence.

54. The implication of the above findings was that the Applicants had no authority under the lease to recover the costs of the specific works to the rear area of the property through the service charge. Clause 3 of Part VI to the lease restricted the recoverable costs to those that were incurred on the repair and maintenance of the main structure of the property (31 and 33 Castle Lane West) and the common parts. In respect of the other parts of the property (31 and 33 Castle Lane West) the Applicants' repairing and maintenance covenant did not extend to those parts included in the demised property belonging to the Respondent except conducting media (such as drains) which did not serve the demised property exclusively. The rear area of the property was incorporated in the Respondent's demised property. The rear area was not part of the main structure of the property, and did not constitute common parts. Under the lease it was the Respondent who was entitled to recover 50 per cent of the costs incurred on the repair and maintenance of the external steps (fire escape) from the Applicant.

55. The Applicants were, therefore, not entitled to carry out works and to charge the Respondent her contribution to those works in respect of the following items included in the quotation of Oakley Homes dated 30 August 2013 which formed the basis of their service charge demand of 22 November 2013:

Item Number	Brief Description	Cost (£)
1.01	Remove and clear existing pathway and re-concrete	675.00
1.02	Unlock drain and replace cover	75.00
1.03	Remove and replace fence boundary to 33/35 Castle Lane West	595.00
2.06	External concrete steps	6,950.00
2.11	Remove trees and shrubs	275.00
2.12	Relocate shed and raise concrete	425.00
Total		8,995.00
Respondent's share (50%)		**4,497.50**

56. The Applicants may have the right under the lease to enforce the tenant's repairing covenant in respect of the above items. This, however, was not a matter within the Tribunal's jurisdiction, and not part of the application.

The Reasonableness of the Costs of the Proposed Works to the Main Structure of the Property?

57. The third issue concerns the reasonableness of the costs for the outstanding works which fell within the terms of the Applicants' repairing covenant for which they were entitled to demand a 50 per cent contribution from the Respondent. The works are set out in the table below together with the estimated costs from the various contractors, dilapidations survey (where appropriate) and the condition survey.

Item	Oakley (£)	Quality 1st (£)	Porteaus (£)	Dilapidations(£)	Condition Survey (£)
2.02 Ivy	375.00		Included in 2.04 below	155.00	300.00
2.04 Gutters etc	950.00	1,540.00	1,800.00	200.00	1,400.00
3. Front & Rear Elevations & Painting	5,550.00	Not quoted	3,250.00	1,185.00 (2.01 + 2.04 +4.01 + 4.02)	8,400.00 (including cavity wall ties)
6. Flat roof	5,200.00	8,995.00	5,450.10	4,850.00	7,000.00
7. Internal Wall	400.00	Not quoted	500.00	500.00	
Asbestos Audit	495.00	Not quoted	600.00	500.00	
Scaffolding	4,650.00	Included in the price	3,700.00	Not quoted	4,500.00
Total	17,620.00	10,535.00	15,300.10	7,390.00	21,600.00
Respondent's contribution	8,810.00	5,267.50	7,650.05	3,695.00	10,800.00

58. Bridgewater and Vogue Windows supplied overall quotations for the proposed works including those items which were not authorised by the lease. The Tribunal estimates their costs for the authorised works would be in the region of £15,000 (excluding VAT)[3].

59. Mr Samways reported in the Dilapidations Survey dated 21 July 2011 that the exterior of the building was in need of repair, the main roof was showing signs of being at the end of its useful life, and that the parapet walls and lead-work were in need of overhaul.

60. At the hearing the Respondent accepted that the exterior of the property and the roof were in need of repair, and that she was liable to contribute to the costs of repair. The Respondent, however, expressed concern at the level of costs demanded, relying on the dilapidations survey which in her view indicated a lower cost than that quoted by Oakley Homes. The Respondent pointed out that the previous business tenant and previous landlord had neglected the property, and that she had undertaken works to the property for which she had received no contribution from them. Finally the Respondent had no confidence in Oakley Homes as a contractor, particularly in view of her previous dealings with its proprietor in respect of access to the basement area and the water stop-cock.

61. It would appear that the Applicants had used the dilapidations survey as their starting point for identifying the required works to the property. The Applicants, on the whole, had adhered to the

[3] The estimated figure was arrived at by deducting £9,000 from the quotation excluding VAT. The origin of the £9,000 is the figure given by Oakley (see paragraph 52 above). The quotation from Vogue Windows would be slightly higher than £15,000.

consultation requirements as set out in part 2 to schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the proposed works to the property. Although the Applicants failed to disclose their connection to the proprietor of Oakley Homes during the consultation process, they did obtain quotations from two other contractors not connected to them. The Applicants also secured quotations from the two contractors nominated by the Respondent. The Applicants subsequently obtained a conditions survey dated 18 July 2014 from Bryan Hoile and Associates, Consulting Civil and Structural Engineers, who confirmed the state of disrepair of the main structure of the property (31 and 33 Castle Lane West).

62. The Tribunal was unable to inspect the interior of 33 Castle Lane to assess whether there had been water ingress because of the Respondent's reluctance to allow the Applicants into her property. The Tribunal, however, was satisfied that the main structure of the property was in disrepair and that it was necessary for the Applicants to carry out works to the roof and the exterior of the property. The Tribunal considers from its examination of the various quotations that the likely costs of the works would be in the region of £15,000 to £20,000 excluding VAT. Further, if the Applicants had followed the correct procedures for demanding a service charge on account, a sum ranging from £7,500 to £10,000 excluding VAT would have constituted a reasonable contribution from the Respondent towards the cost of the proposed works to the main structure of the property.

63. The Applicants, however, have not demanded the charge on account in accordance with the terms of the lease. It would also appear that the Applicants were looking for an increased contribution from the Respondent following the issue of the condition survey in July 2014. In which case the Applicant's reliance on the revised quotation of Oakley Homes dated 25 July 2014 would fall foul of the statutory consultation requirements, in that there was no proposal for the revised works from a contractor who had no connection with the Applicants.

64. The Tribunal notes that the Applicants' reasons for choosing Oakley Homes as the preferred contractor was that they gave a price for all the jobs requested. Further their quotation was lower than those of the other contractors because Oakley Homes had granted the Applicants favourable family concessionary rates. The Tribunal observes that the principal difference in price between Oakley Homes and the other contractors was that Oakley Homes did not charge VAT. This may raise a question about whether Oakley Homes had the capacity to carry out the work specification, particularly as its turnover was insufficient to cross the threshold for VAT registration. Also some of the other contractors supplied guarantees with their quotations, no mention of which was made on the Oakley Homes' quotation included in the bundle of documents.

65. In all the circumstances the Tribunal considers it would be prudent for the Applicants to start afresh with consultation on the revised works schedule which would take account of the restrictions in the lease on the extent of the service charge clause before the works are started on the main structure of the property.

Costs and Section 20C Application

66. The next issue concerned the Applicants' application for the Respondent to pay their legal costs in connection with the Tribunal proceedings. As a matter of general principle the Tribunal operates a no costs regime with each party bearing its own costs in relation to the proceedings. The Tribunal has the exceptional power to order a party to pay the other party's costs if that party has acted unreasonably in bringing or defending the proceedings[4].

67. Although the Applicants complained about the Respondent's dilatoriness and obstruction in connection with the service charge, the Applicants cited no specific examples of the Respondent acting unreasonably in relation to the Tribunal proceedings. The Respondent attended the hearings and supplied a statement of case, albeit a brief one. The Tribunal is satisfied that the Respondent's conduct in connection with the Tribunal proceedings did not pass the high threshold of unreasonableness. The Tribunal, therefore, makes no order for costs against the Respondent pursuant to rule 13 of the Tribunal Rules 2013.

68. The other avenue open to the Applicants is to recover their legal costs through the terms of the lease. Clause 4 of Part V to the lease requires the Respondent to pay to the Applicants all expenses including solicitor's fees incidental to the preparation and service of a notice or in contemplation of proceedings to forfeit the lease in respect of the Respondent's property. Strictly speaking this matter only comes before the Tribunal if the charge is levied against the Respondent, and the Respondent challenges the charge before the Tribunal under the administration charge jurisdiction. The Tribunal, however, observes that if the Respondent made such a charge it is unlikely to be successful as there was no evidence that the Tribunal proceedings were launched in contemplation of forfeiture proceedings.

69. At the case management hearing Respondent applied for an order under Section 20C of the 1985 Act preventing the Applicants from recovering their legal costs through the service charge. The Tribunal considers there is no specific power in the lease which enables the Applicants to recover a contribution towards their legal costs through the service charge. Clause 3(f) to Part VI of the lease is too vague and does not expressly state legal costs incurred in Tribunal proceedings. In which case there is no need for an order under section 20C of the 1985

[4] Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Act. If the Tribunal is wrong in its construction of the lease the Tribunal would have determined that it is just and equitable for an order to be made under Section 20C of the 1985 Act, particularly as the Respondent was largely successful with her defence of the application. Given those circumstances the Tribunal does not order the Respondent to refund the fees paid by the Applicants in making their application.

Concluding Remarks

70. The Tribunal's decision is based upon the application and the evidence before it. The Tribunal acknowledges that the parties must find a route to resolve the outstanding issues of disrepair, otherwise their respective investments in the property will be adversely affected.

71. In the Tribunal's view, the problem of disrepair was due to the historic neglect by the previous landlord, and it was not good enough for the previous landlord to abdicate his responsibilities under the lease to the then tenants. The previous landlord accepted that he did not personally look to have communal repairs undertaken on the property for a quite a number of years. According to the evidence in the bundle, the previous landlord only in January 2012 began writing to the Respondent about her contribution to the repairs which was shortly after the date when the Applicants took on the business tenancy for 31 Castle Lane West.

72. The parties have blamed each other for the state of disrepair which was not of their own making. The result is that the parties' relationship is one of mutual mistrust which does not bode well to finding a joint solution for the future of the property. The Applicants should have more regard to the terms of the lease, particularly in respect of the boundaries of the Respondent's demised property. Equally the Respondent needs to face up to her obligations under the lease to contribute towards the repair and maintenance of the main structure of the property. There is power under the lease for the appointment of a managing agent but that will add to the costs of the service charge. Ideally the parties should bury their differences, and agree a phased programme with costs for the repair of the main structure of the property.

RIGHTS OF APPEAL

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

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.

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) the appropriate 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.