10682

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/OOCU/LIS/2014/0026**
Property	:	**17 Keats Road, Walsall, West Midlands, WV12 5HY**
Applicant	:	**Mrs Susan Kendall**
Respondent	:	**Walsall Housing Group (WHG)**
Type of Application	:	**To determine whether service charges are payable and, if so, as to their reasonableness under 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge S McClure** **D Satchwell FRICS**
Date and venue of hearing	:	**26 November 2014, Priory Court, Birmingham**
Date of Decision	:	**17 March 2015**

DECISION

Decision of the tribunal

(1) The work related to renewing the roof felt and tiles is disallowed.

(2) The work related to the full repointing is disallowed.

(3) The work related to the landing and stairwell is allowed.

(4) The remaining works are allowed.

The application

1. The Applicant is the leaseholder of 17 Keats Road (the Property). The Property is a ground floor flat, in a block of four flats. The block is one of several similar blocks within an estate of similar properties. The Respondent is the freeholder of the Property, and of the whole estate.

2. The estate comprises a mixture of properties let on long leaseholds, such as the Applicant's property, and properties let by the Respondent on weekly or monthly tenancies in its capacity as a Registered Social Landlord.

3. The Respondent proposed to carry out works to the estate and on 5 August 2014 wrote to the Applicant as part of the consultation process, and enclosed an estimate for the proposed works (Appendix 1). The estimate stated the Applicant's contribution to be £10,321.19. The date given for the end of the consultation period was 7 September 2014.

4. The Applicant's application was received at the Tribunal on 1 September 2014. The main grounds of the application were that the works proposed were too expensive in relation to the Property, that the Respondent should have made arrangements such that the Applicant was not presented with such a large sum to pay in one go, and that not all of the proposed works were necessary.

5. The issues for the Tribunal to determine are whether the works proposed by the Respondent are reasonable in terms of the nature and extent of the works proposed, and also whether the costs of such works is reasonable.

The law

Landlord and Tenant Act 1985

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.

Section 27A

(2) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for [services etc], a service charge would be payable for the costs and, if it would, as to and, if it is, 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.

Inspection and hearing

6. The inspection and hearing took place on 26 November 2014. Present at the inspection and hearing were Mrs Kendall and her friend Mr Harper. Present for the Respondent were Miss Caney of counsel; Miss Bridges, Market and Leasehold Services Manager and Mr Reece, Senior Building Surveyor.

7. The subject property is a purpose built ground floor maisonette, being one of a block of four, constructed of brickwork under a pitched concrete tiled roof. There are a number of similar and larger blocks in the area.

8. The parties made oral and written submissions, which are mentioned specifically below where necessary.

The issues

9. The Tribunal identified the relevant issues for determination as follows:

   (i) Issues raised by the Applicant with regard to her general liability for the works. These issues are dealt with at sections A to D below.

   (ii) Whether the extent of the works proposed by the Respondent was necessary. In general the Applicant does not dispute the cost of each item of works, but disputes more generally that much of the works proposed by the Respondent are not necessary. These issues are dealt with at sections E to H below.

(A) Consultation procedure

10. The Applicant contends that the Respondent did not use the correct consultation procedure. She contended that the Respondent was not a Registered Social Landlord (RSL) and so was required to follow the consultation procedure that required the Respondent to provide her with two estimates for the works as part of the consultation process. The Applicant contends that as the Respondent did not provide those two estimates the correct consultation procedure was not followed.

11. The Respondent provided evidence that it was an RSL and contended that, accordingly, it had followed the correct consultation procedure, which did not require two estimates to be provided to the Applicant.

12. The Tribunal accepts the evidence of the Respondent that it is an RSL, and finds that the Respondent is a public authority for the purposes of the consultation requirements of the Landlord and Tenant Act 1985. As such, the evidence shows that the Respondent followed the correct consultation procedure as set out Part 1 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.

(B) Whether the Respondent was correct to carry out all of the works in one go

13. The Applicant made several contentions that are relevant to the issue of whether the Respondent was correct to carry out, or propose to carry out, all of the works in one go. The Applicant contended that:

    (i) The Respondent should not have scheduled the works to be done together at one time. Because of the large sums involved, the Respondent should have done the work in phases to spread the cost to the Applicant out over time.

    (ii) The Respondent should have made annual provision within the service charge to build up a reserve to fund large items of expenditure.

    (iii) The Respondent failed to carry out sufficient general maintenance over previous years, with the result that the costs of the works now is higher than if such maintenance had been carried out.

14. The Tribunal finds that it was reasonable for the Respondent to carry out all of the work at one time for two reasons. Firstly, the nature of the works means that it is more efficient and, therefore, cheaper for the works to be carried out at one time. For example, scaffolding to the building is required for the pointing to the walls, the roof work and some of the work to the stairwell and landing. Secondly, the

Respondent has stated, and this was not disputed by the Applicant, that they offer payment by instalments where necessary.

15. The Respondent states that there is no provision in the lease for a reserve fund, and that no charge is included in the annual service charge relating to repairs or building maintenance. The Applicant has not disputed these statements.

16. The Tribunal finds that the provisions of the lease do not allow the Respondent to demand payment from the Applicant toward a reserve fund.

17. The Tribunal finds that the cost of the proposed works is not higher to any significant degree, or at all, than it would have been if there had been more general maintenance work carried out in the preceding years. Any reduction in cost now would have been offset to some extent by the increased annual service charge cost in the preceding years if there had been more extensive general maintenance. Additionally, the majority of the proposed works would not be affected by the type of general maintenance suggested by the Applicant.

(C) Whether the value of the property is relevant to the extent of the works proposed

18. The Applicant contends that the value of the Property is a little over £40,000. She contends that the costs of £10,000 are disproportionately high, being some 25% of the value of the Property. The Applicant referred the Tribunal to the requirement that a service charge must be reasonable, and contended that as the charge was 25% of the value of the Property it was not reasonable.

19. The Respondent contends that the value of the Property has no relevance to the amount of the service charge.

20. The Tribunal finds that, in the context of the necessary repair and maintenance works proposed by the Respondent, the value of the Property is not material. The issue, as correctly identified by the Applicant, is whether the service charge is reasonable. If, for example, the Respondent had chosen to replace the concrete stairwell with expensive natural stone solely on the basis that it looked nicer, that would be likely to be found to be unreasonable in the context of the Applicant's modestly priced Property, but may be reasonable in an expensive block of flats in central London. The works the Respondent has proposed are reasonable, subject to the Respondent only actually carrying out such works to the extent that they are necessary in compliance with section 19 of the 1985 Act, as discussed below.

(D) Liability to pay for works to the stairs and relocation of satellite dishes

21. The Applicant contends that she should not have to pay for the works to the stairs because her flat is on the ground floor and she does not use the stairs. She contends further that she should not have to pay for relocation of satellite dishes as she does not have a satellite dish.

22. The Respondent states that the stairs are part of the fabric of the building and the lease provides, at paragraph 5D of the 5th Schedule, that the service charge shall be shared in proportion to the number of dwellings in the estate. The Respondent states, with regard to the satellite dishes, that the Applicant has so far only received an estimate not an invoice and the final amount will reflect the work carried out on that particular block.

23. The Tribunal finds that the Applicant is liable, under the terms of the lease, for the costs of works to the stairs. She is also liable to pay toward any reasonable consequential works arising from works for which she is liable under the lease. The relocation of satellite dishes following works to the roof and/or walls may be such reasonable consequential work, whether or not the Applicant has a satellite dish herself.

Introduction to the discussion of the reasonableness of the extent and cost of the proposed works

24. The Applicant has not yet received a service charge demand for the works in issue. She has received an estimate for the proposed works. The Applicant disputes the extent of the proposed works.

25. The Respondent contends that the proposed works, as set out in the Estimate, are subject to confirmation and that the final costs will only include costs in respect of work that had to be done.

26. The requirements of Section 19 of the 1985 Act requires two separate questions to be asked. First, was the action taken reasonable? Second, was the cost of the action taken a reasonable amount? A response to the first question requires consideration of whether the extent of the works, or proposed works, are reasonable. That is an issue raised by the Applicant, and one which is discussed in detail below.

27. The Tribunal emphasises that this determination is in respect of estimated expenditure and, as such, does not preclude an application under section 27A by either party in respect of actual expenditure when the works have been completed and final costs ascertained. It may be that when the works have been completed the Respondent will be able to demonstrate that some of the items disallowed in this determination

do meet the requirements of section 19 of the 1985 Act, in which case the Applicant may be liable to pay the cost of those items.

(E) The extent of the works to the roof

28. The Respondent states that the Property was built in the early 1960s, and contends that, at 60 plus years, the roof is at the end of its natural life span. Mr Reece stated in his witness statement that the concrete roof tiles have a life expectancy of 50 years, but the underlay and batten system will generally have to be replaced after around 30 to 40 years.

29. Miss Caney told the Tribunal that the felt had to be renewed. As the tiles would have to be removed in order to replace the felt it was sensible to renew the tiles now, as the tiles were at the end of their natural life. It was most cost effective to do the works in this way.

30. The Applicant contends that the proposed works to the roof are too extensive. The Respondent's survey, dated 7 July 2014, did not recommend renewing the roof felt and tiles, although some deterioration to the roof felt was noted. The Applicant accepted that there may some repair work necessary, but not the extent of the extensive work proposed by the Respondent.

31. The Tribunal was unable to assess the condition of the roof for itself, as the Respondent had completed the roof works by the date of the inspection. When asked why the Respondent had not delayed the works to the roof for the few weeks necessary to enable the Tribunal to inspect the roof in its pre-refurbishment state, Mr Reece said that although this would have been possible it would have disrupted the works programme.

32. The evidence available to the Tribunal regarding the condition of the roof comprised the witness evidence of the parties, a set of colour photos of the interior and exterior of the roof, and the survey of 7 July 2014.

33. The roofs to the Applicant's block are to numbers 15 and 19 Keats Road. The survey stated the following with regard to number 15; displaced roofing felt in one area, possible slight water ingress. With regard to number 19, the survey stated; displaced felt around chimney planking, slight water ingress stains noted at apex in one area, roof timbers appear in good condition. The photographs provided by the Respondent were consistent with the report.

34. The evidence showed that the roof tiles were in reasonable, if not good, condition as were the batons. The Tribunal accepted that if the felt did, indeed, need to be renewed then this would necessitate removing (but not necessarily renewing) the tiles and the batons (lath), as set out in

the Estimate. However, the modest deterioration in the felt, as set out in the survey and shown in the photographs, did not necessitate its replacement. Mr Satchwell put it to Mr Reece that the roof felt was not the waterproofing element of the roof, the tiles were. He said that when torn and displaced felt occurred it would not normally result in the works proposed by the Respondent. Mr Reece responded that the roof work was carried out because they had the budget to carry out the roof work to every block, and the roof refurbishment was part of their programme of works. They had a responsibility to keep their properties in good condition.

35. The Tribunal accepts that some repair work to the roof may be necessary. For example, the photos show what appears to be some deterioration to the verge pointing. However, the extent of the work proposed by the Respondent is not necessary and, if it were carried out to the extent proposed in the Estimate, would not be reasonably incurred for the purposes of section 19 of the 1985 Act.

36. The items disallowed by the Tribunal in respect of the proposed roof and consequential works, using the numbering on the Estimate at Appendix 1 are: 1, 2, 3, 4, 5, 6, 8, 12, and 18.

(F) The extent of the repointing to the walls

37. The estimate for repointing the Applicant's block of four flats is nearly £7000, which would indicate extensive repointing. However, on inspection it was clear that most of the pointing was sound and £7000 of pointing was not necessary. Because the Respondent failed to provide evidence of the actual work required to the Applicant's block it is not possible for the Tribunal in its decision to specify exactly the work that is necessary and the costs of that work.

38. The items disallowed by the Tribunal in respect of the proposed repointing, and consequential, works, are: 10, 11, 13, 14, and 20.

(G) The extent of the concrete repairs

39. The Applicant had no specific submissions with regard to the extent of these works.

40. The Respondent's survey of 7 July 2014 sets out the defects to the stairwell and landing to the Applicant's block, being to properties 15 and 19, and to flat 23 of the adjacent block. It is clear from the survey that some work is required to the stairwell and landing. It is also clear that this work is less extensive than that required to other stairwells, the surveys for which show more extensive defects. The evidence suggests that the Respondent puts the highest likely cost in the

Estimate. Accordingly, it is probable that the estimated costs of £6,118.55 are too high.

41. The items allowed by the Tribunal in respect of the proposed works to the stairs and landing are: 7, 9, 27.

42. With regard to the reasonableness of the cost of the works, that will need to await the final costings after the works have been completed.

43. The Tribunal notes that whilst the cost of the majority of the works on the Estimate are divided by four in respect of the four flats in the block, it appears that the costs in respect of the stairwell and landing should be divided between the flats of two blocks. The stairwell and landing serves flats 15 and 19 in the Applicant's block, and also flat 23 in the adjacent block. The Respondent should ensure that the final costs accurately reflect the proportion payable by the Applicant in respect of each item, and provide the Applicant with sufficient information that she can be sure she has been charged the correct proportion.

(H) Whether the remaining works are reasonable in extent and in cost

44. The following works are disallowed:

(i) Item 22: gas fires. It appears this work is consequential to the chimney work, which appears consequential to the disallowed roof work.

(ii) Items 23 and 24: resite/tidy up satellite dishes, phone cables etc. It appears this work is consequential to the disallowed roof and/or repointing work.

45. The remaining items on the Estimate are allowed. They appear reasonable in extent and in cost. The items are: 19 (window service and clean), 21 (paint gate), 25 (Heras fencing), 26 (paint outhouse).

Application under S20C

46. The Respondent has confirmed that it would not in any case seek to recover its legal costs through the service charge. The Tribunal therefore grants the section 20C Application and orders that no part of the Respondent's costs incurred in connection with the proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Application for reimbursement of fees

47. The Respondent contended that they should not be ordered to reimburse the Applicant in respect of the fees she incurred for two reasons. Firstly, the Respondent conceded the S20 application. Secondly, the Applicant's application was premature as it was made before the end of the consultation process.

48. The Tribunal would have made the same order under S20C even if not conceded by the Respondent, as The Tribunal's findings are largely in favour of the Applicant. The application was not premature. The Applicant received an estimate for over £10,000. She was alarmed at the sum, and submitted her application to the Tribunal as she had the right to do.

49. The Tribunal's findings are largely in favour of the Applicant and the Tribunal, in accordance with its powers conferred by Rule 13 (2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, therefore orders the Respondent to reimburse to the Applicant the application fee of £250.00, and the hearing fee of £190.00.

50. In reaching their determination the Tribunal has had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

51. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision which is given below (regulation 52 (2) of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely on in the appeal.

Name: Judge S McClure

Date: **17th March 2015**