11015

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00KF/LSC/2015/0020**
Property	:	**Flat 3, 2 Runwell Terrace, Southend-on-Sea, Essex SS1 1HA**
Applicant	:	**Jane Aprile-Smith (self represented)**
Respondent	:	**Jamie-Lee Ryan (self represented)**
Date of transfer from the county court at Southend	:	**9th February 2015**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Stephen Moll FRICS** **John Francis QPM**
Date and venue of hearing	:	**13th July 2015, Park Inn By Raddison Palace, Church Road, Southend-on-Sea, Essex SS1 2AL**

DECISION

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1. In respect of the amount claimed from the Respondent in service charges set out in the claim, the sum of £313.60 has been paid by the Respondent. As to the balance of £216.66, the amount which the Tribunal considers to be reasonable and payable is £133.33 subject to any counterclaim or setoff.

2. The Tribunal makes no order in respect of the Applicant's claim for court fees and costs as these are matters for the county court.

3. This case is now transferred back to the county court sitting at Southend under claim number A3QZ042V so that any matters not dealt with in this decision such as any counterclaim or setoff, interest, costs and enforcement can be resolved.

Reasons

Introduction

4. This is a claim by the landlord under a long lease for service charges totalling £530.26 from her tenant. The Respondent has been the leaseholder since 2012.

The court form says that the claim is made up as follows:

> *"I am the freeholder for 2 Runwell Terrace and own 2 of the 3 flats, the top flat that belongs to Jamie-Lee Ryan whom is a lease holder, has not paid her insurance that was due 13.3.14 £313.60 her third share, which was requested in March and an email sent in November. Some emergency works needed to be carried out on the lease holder's balcony in October, resulting in ceiling of middle flat being damaged which needed remedial work Jamie-Lee Ryans third proportion £216.66. Total amount outstanding after numerous requests £530.26"*

5. The defence makes a number of points which can be summarised as follows:

   - A letter of request for an insurance premium dated 09/01/2012 asks for £633.64 and her solicitor asks for proof but this has never arrived. The premium in 2013 was £173.48
   - On 01/04/2013, a request was received for money for a blocked drain but this is a shared drain and the Respondent was only liable for a third. When payment was not received the Applicant threatened that she would cut off the water supply
   - In August 2013 the roof leaked and cost £915 to repair. The Applicant would not give the insurance company authority to speak to the Respondent who paid for the repair herself
   - The roof leaked again in October and the Applicant said that until the Respondent paid what was due, she would have to deal with the repair which she did at a cost of £785
   - The request for the insurance premium came in February 2014 with a request to pay for balcony works. The amount paid by the Applicant was only £400 for such works
   - The insurance premium is excessive and *"I am also within my rights to find a cheaper alternative for the insurance"*.
   - She makes the point that the balcony and roof works should have been claimed for on the insurance

6. The order from the court says that so much of this case as is necessary to be transferred is sent to this Tribunal *"for determination as to the reasonableness of the charges claimed"*. The remainder of the claim is stayed pending this determination. The 'defence' is certainly suggesting that there may be a counterclaim or setoff but the court has only asked the Tribunal to determine the reasonableness of the claim itself. For the avoidance of doubt such matters as any setoff/counterclaim, court fees and costs or enforcement are matters which remain in the court's jurisdiction.

7. The Applicant sent in a bundle for the Tribunal. Unfortunately, despite being ordered to file and serve statements of case, neither party has, which means that the members of the Tribunal have had to search through pages of e-mails, notes and copy documents to try to ascertain what documents are relevant. At the hearing, it transpired that the Respondent had paid the insurance premium of £313.60 some time ago which meant that all the work undertaken by the Tribunal

to consider and research that item was wasted.

8. There are 2 invoices dated October 2014. One is for £480 from a firm called Crabb Appleby dated 3rd October 2014 for 'roof repair'. The other is a cash receipt for £250 addressed to the Applicant and dated 23rd October 2014. It simply says "*2 RUNWELL TERRACE WORKS TO CEILING MAKING GOOD CAUSED BY DAMAGE BALCONY TOP FLAT RUNWELL TERRACE*". There is no name of who did the work or provided the receipt. The claimant says she only paid £400 to Crabb Appleby which means that the total allegedly paid is £650 and one third of this is £216.67 which is the figure in the claim.

9. Although it is not relevant for the purpose of the claim, as far as any counterclaim/setoff is concerned, there are quotations from Haydon Roofing dated 27th June and 16th October 2013 for £915 and £785 respectively at pages 20 and 21 in the bundle. There are then invoices at pages 53 and 54.

10. Finally, at page 34, there is a claim by the Applicant for her costs and expenses for the court proceedings. If she intends to pursue these, she will need to apply for a hearing before the District Judge.

The Inspection

11. The Tribunal inspected the property in the presence of the parties and a number of other individuals who were not identified. It was a damp summer morning. The property is part of what appears originally to have been a Victorian terraced house built of brick under a slate roof. The front is rendered and lined to give a faux Stucco appearance. The property is in a pleasant residential area within easy walking distance of Southend town centre and railway stations to 2 main line termini in London used by many commuters.

12. The balcony was inspected. It is a small area enclosed in a metal balustrade which has obviously been mended relatively recently by a covering of asphalt. The Tribunal was also able to see into the flat below and noted that the ceiling under the balcony was in good order consistent with having been recently repaired and decorated.

13. The Tribunal was also able to go to the rear of the building and noted that the flat roof over flat 2 needs attention as the covering has lifted. No-one asked the Tribunal to look at any evidence relating to the work allegedly undertaken to the main roof although the Tribunal did note a skylight to the rear of the roof.

The Lease

14. There is a copy of the lease in the bundle. It is dated 30th September 2003 and is for a term of 99 years from that date. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and to insure it. There is a letter from the Applicant to the Respondent in the bundle stating that it is the leaseholder's responsibility to maintain the windows. That does not appear to be the case.

15. The demise is for the top flat "*including the interior faces of such exterior walls as bound the flat the floor structure and ceilings (but excluding the joists supporting such ceilings) and all systems tanks sewers drains pipes and wires*

with the same limitations (hereinafter called "the Flat") as the same is for the purpose of identification only shown on the plan annexed hereto and edged red". The only plan annexed to the copy lease seen by the Tribunal is a very small scale plan from which it is impossible to see whether the red edging includes the windows.

16. Having said that, the line along the front of this building and all the adjoining terraced properties on that side of the road is just a straight line. In other words there is no change in the line where the balconies stick out over the bay windows below. The end result of this is that it does not appear to the Tribunal that the balcony is demised to the Respondent although there would clearly be an implied right to use it. Whether the plans to the ground floor properties include the bay windows is not known. This may have been an error when the lease was drawn but nevertheless, that is the position.

17. Under clause 5(5) the landlord covenants to paint the exterior parts of the building usually painted at least every 3 years. This is the only other part of the lease to mention what could be the windows. Thus, on a construction of the documents seen by the Tribunal, it would also appear that the windows have not been demised which means that they are the landlord's responsibility to maintain.

18. The service charge arrangements are set out in clause 4(2) and Schedule 3. Clause 4(2) says that the tenant must contribute one third of the cost of maintenance and decoration of the common parts of the building and its structure. Clause 4(3) is a covenant by the tenant not to do anything to render the insurance policy void which means, of course, that the tenant must have a copy of the insurance policy.

The Law

19. Section 18 of the **Landlord and Tenant Act 1985** ("1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

20. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

21. Section 27A of the 1985 Act says that no application can be made to the Tribunal in respect of service charges which have been agreed or admitted by the tenant.

22. Works which involve a cost of more than £250 to the tenant are 'capped' at that figure unless the landlord has either consulted properly or obtained this Tribunal's dispensation from consultation.

23. As far as insurance is concerned, the Respondent's assertion that she is entitled to obtain alternative quotes in the sense she means i.e. that she is entitled to force the landlord to accept a lower quote is not correct. As the premium has been paid, the issue is not now relevant to this decision but, for the avoidance of doubt,

the legal position is as follows. In the case of **Berrycroft Management Co. Ltd. and others v Sinclair Gardens Investments (Kensington) Ltd. [1997] 22 EG 141**, a management company acting for tenants thought that premiums were excessive and applied to the county court for, amongst other things, a declaration that there was an implied term in the lease that such premiums would be reasonable.

24. The county court and the Court of Appeal found no difficulty in deciding that, on a true construction of the lease, this could not be implied. In this case, the insurance provisions are entirely in the discretion of the landlord and this Tribunal has no doubt that a similar application to the court in this case would produce the same result. In **Berrycroft** the court said that provided the insurance was arranged in the normal course of business with an insurance company of repute, the landlord was entitled, under the strict terms of the lease, to insist on insurance through its nominated company.

25. On the question of the discrepancy between premiums claimed and alternative quotations obtained by tenants, a well established line of cases has developed a rule which successive Tribunals have found themselves obliged to follow. As Evans LJ said in **Havenridge Ltd. v Boston Dyers Ltd [1994] 49 EG 111**:-

> *"....the fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insurers might have charged. Nor is it necessary for the landlord to approach more than one insurer, or to 'shop around'. If he approaches only one insurer, being one insurer 'of repute', and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of that kind then, in my judgment, the landlord is entitled to succeed"*

The Hearing

26. The hearing was attended by the parties. It turned out to be a fairly bad tempered affair with each party accusing the other of telling lies.

27. The Applicant explained that there is a legal problem over the title to the property although she was unable to explain exactly what this was, which was particularly unhelpful. Ms. Aprile-Smith said that she was a freehold owner but that another individual or individuals were also freeholder(s) and she did not know his/her/their whereabouts. This was particularly odd because the lease was only dated 12 years ago and a Patrick John Betson is named as the reversioner and landlord therein. How such a muddle can have occurred since then is difficult to understand.

28. She also explained that flat 3 had been re-possessed and was sold in 'doubtful' circumstances to Ms. Ryan. She hastened to say that Ms. Ryan was not involved in this and had obtained a good leasehold title.

29. Ms. Aprile-Smith went on to say that some work done to flat 3 by the previous owner was bad and, for example, the soil pipes were too narrow. She had tried to

discuss this and other matters with Ms. Ryan and there was a dispute about whether Ms. Ryan had given her a telephone number. Ms. Ryan, when leaving the hearing, did promise to give or to re-give her telephone number to the Applicant there and then.

30. The Tribunal explained the problem over the lease and the fact that the balcony did not appear to have been demised. The Applicant was asked whether there was a clearer plan or, indeed, another larger scale plan. She said that she could not produce one.

31. There was then a discussion over the work to the main roof allegedly paid for by Ms. Ryan. In essence, the Applicant was alleging that this work was never done. She pointed to an e-mail from the Respondent to her dated 28th October 2013 (page 73) asking when the repairs would be undertaken. The invoice for that work was dated for the 21st October 2013. Ms. Ryan could not explain why this was the case.

Discussion

32. In the present climate of private 'buy to let' arrangements, the problem which has arisen in this case is not uncommon. Many private landlords do not obtain professional help in management and they sometimes fail to understand the serious responsibility attaching to this task. Service charge and ground rent demands have to be in a particular form which does not appear to have happened in this case. These are required by statute and regulation to ensure that tenants have all the information available to them to challenge service charges. Ground rent is not actually payable until the correct demand is sent.

33. On the other hand, it is often the case that if a tenant does not agree with something that has happened, Ms. Ryan just stopped paying which obviously puts the landlord in a difficult financial position.

34. At the end of the day, a freehold owner would maintain and insure any freehold home in which they live. If part or the whole of a property is let on a long lease, as in this case, such lease requires such insurance and maintenance to be done by the freeholder as a matter of contract. Thus there should be a proper management plan with regular inspections to ensure that the structure and common parts are in good condition. For example, in this property, the Tribunal noted that some of the wooden frames to the balcony windows were rotting badly. There should also be proper documentation to support any claim to include receipts. Proper liaison with the tenant is essential and this seems to have fallen down in this case.

35. Just saying, as the Applicant did on several occasions during the hearing, that the Respondent had not allowed her access to the balcony or problems with the roof, is simply not good enough. The balcony and roof can be inspected either from ground floor level or with the assistance of a ladder or 'cherry picker'. Having said that, it is obviously sensible for leaseholders to co-operate because that is likely to reduce cost.

36. Most leases enable a landlord to obtain money on account of future works but this one does not. The Applicant must therefore understand that she must plan

properly for work which is needed and have documentation including receipts available for inspection in respect of each item of claim. She suggested during the hearing that there should be a reserve or 'sinking fund' which is certainly a good idea but, unfortunately, this lease does not provide for it. Having said that, the Respondent could agree, voluntarily, to set up a reserve fund which would obviously help her in the future with large items of expenditure.

37. Unless and until there is a reserve, the Respondent must understand that she must pay promptly for the maintenance and insurance costs which will inevitably include large bills from time to time for e.g. external decoration subject, of course, to proper consultation.

Conclusions

38. The lease appears to have been badly drawn in a number of respects although the Tribunal was not able to see the original, coloured, plan. From the evidence available, it does not appear that the balcony was demised to the leaseholder which means that whilst she can recover a third of the costs of repair, she cannot recover consequential losses such as the cost of repair to the ceiling of flat 2. That expense was incurred because she, as landlord, did not maintain the surface of the balcony/roof over the bay window. The cost of repair was £400 and the Respondent's share of that is £133.33.

39. Whilst the counterclaim/setoff was not transferred to the Tribunal for determination, the Tribunal will try to assist the court by raising the following issues. It is clear that if the court is to deal with this, it will need direct evidence from the contractor, including attendance for cross examination:-

- The issue raised by the Applicant i.e. the e-mail request for work to be undertaken to the roof which post-dated the invoice for the same work will need some explanation.
- The invoice for the work to the rear of the property at page 53 has larger amounts for labour and materials than the other work to the front whereas the scaffolding charge is 'only' £250. The work to the front involved a scaffolding charge of £520. It appeared to the Tribunal that erecting scaffolding to the front would probably be easier than at the rear.
- Ms. Ryan was asked whether it was actually scaffolding or a tower. She said she did not know because she was at work. However, the work to the rear included substantial work to the roof e.g. fitting a new window. It is likely that the contractors would have had to have access to the inside of the property to deal with finishing work to the inside of the window at least. It would be surprising for a previously unknown contractor to be allowed free unsupervised access.
- The Tribunal did note that there was at least one loose roof slate to the front

40. Having set out these points, and subject to the issue over the cost of scaffolding being resolved, the Tribunal did consider that the amounts allegedly charged for the work set out in the invoices was reasonable. The Applicant will also have to explain why she apparently did not respond to the requests for work to be done. Just saying that the Respondent did not allow her access is not good enough. She has to maintain the roof and should have inspected from the outside or

obtained a mandatory injunction to gain access.

41. On the issue of the Applicant's claim for costs, the Tribunal explained that this was a matter for the court to deal with. Having said that, this was always going to be a small claim and the Applicant will have to accept that the court's powers to award costs are extremely limited. It is unlikely that she will be awarded an hourly rate for her time, let alone £42.70 per hour.

42. With the greatest of respect to the Applicant, she may feel that she has been hard done by because of the problem over the title. It would be extremely sensible if she took urgent legal advice over the problem. If, as she states, she is one of the freehold owners, she will be jointly and severally liable under the terms of the lease for complying with all the landlord's covenants.

43. On the other hand, if she were to employ professional managing agents, the Respondent will inevitably find that her service charges will increase because the cost of a managing agent is likely to be in the region of £200 per flat per annum which cost can be passed on to the leaseholders. Thus, there is every incentive for both parties to let bygones be bygones and sit down and work out what needs to be done and when.

44. Finally, the Respondent has referred several times to her lack of access to insurers. Having heard the parties' explanations and descriptions of the various works to the roof and balcony, the Tribunal doubts whether any of these works would have been accepted by insurers as storm damage because they all seem to have arisen from basic lack of maintenance even though the evidence of leaks would appear to have been without much notice.

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Bruce Edgington
Regional Judge
14th July 2015