10653

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMA/LSC/2014/0117**
Property	:	**72,74 and 75, Ullswater, Bracknell, Berks RG12 8XH**
Applicant	:	**Mr K J Foulger (flat 74)** **Mr N Chambers (flat 72)** **Mr Benson (flat 75)**
Representative	:	**Mr Foulger**
Respondent	:	**Bracknell Forest Homes**
Representative	:	**Ms N Smith-Crallan** **Mr C Withnall** **Mr R Courtney**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs S F Redmond BSc Econ, MRICS** **Mr A K Kapur**
Date and venue of Hearing	:	**9th March, Hilton Hotel, Bracknell**
Date of Decision	:	**11th March 2015**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes the determinations as set out in the Findings section below

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge

(3) The Tribunal determines that the Respondent shall pay the Applicant £157.50 within 28 days of this Decision, in respect of the partial reimbursement of the tribunal fees paid by the Applicant

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges that would be payable in respect of proposed major works to the estate of which the Applicants' flats form part.

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

The hearing

3. Mr Foulger represented himself and his fellow leaseholders Mr Chambers and Mr Benson and the Respondent was represented by those people named on the front page of this decision.

4. Prior to the hearing we received a bundle of documents containing, amongst other documents, copy correspondence, the Tender specification completed by the winning company, Bell Group, the Application and copy lease of the Applicant's flat. In addition we were supplied with copies of the parties' statements of case and various witness statements.

The background

5. The flats, which are the subject of this application, are situated in a 1960's three storey purpose built block containing one ground floor single bedroom flat and 8 two bedroomed flats. There are apparently 6 blocks on the estate.

6. We inspected the block before the hearing in the presence of Mr Foulger, Ms Smith-Crallan and Mr Courtney. Externally the block is brick built with what appeared to be UPVC double glazed windows and cladding. There was evidence of water staining. Opposite the main door to the block is a covered area which houses the bin store and what would appear to be a bike storage area. This is presently unpainted. The common parts are somewhat utilitarian comprising bricks walls and a concrete stair way leading up to the top floor. The entrance lobby and landings are covered with what we were told were dated floor tiles containing some asbestos. They were in a worn condition. There is a small inserted rubber mat by the front door.

7. We also inspected the common parts of the Block containing flats 28 – 36 Halewood, which is wholly tenanted and is undergoing the refurbishment works planned for the Applicant's block. We noted the new floor and the wall covering. The area outside the front door had been painted white, which is what is planned for the Applicant's block.

8. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. It is accepted that Mr Foulger's lease and those of this co-applicants, does not include a liability to contribute in respect of improvements.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) Was the work to the common parts walls, i.e, erection of plaster board, plastering of same, decorating of the plastered finish and the installation of a dado rail, an improvement and not something the Applicants would be required to pay towards?

   (ii) Was the replacement of the floor covering to the lobby, stairs and landings an improvement and therefore not something the Applicants should pay towards?

   (iii) Was the cost associated with the painting of the brickwork by the bin/bike storage area and the concrete external beams a cost for the Applicant to pay towards.

10. Mr Foulger told us that he represented Mr Chambers and Mr Benson, although neither attended nor filed any form of evidence. Mr Foulger confirmed that in respect of his standard service charge costs e.g. cleaning insurance etc., he contributed 11.11% (1/9th) of the expenditure. He confirmed that he had no issue with the s20 procedures leading to the proposed major works. He confirmed that his

earlier case had been withdrawn and that there had been no earlier Tribunal decision. He told us that he disputed the costs of the major works but accepted that some works would be required to the banisters and handrail capping. He was concerned that the costs of the work would not be fairly apportioned between long leaseholders and the tenants of the Respondent.

11. Much of his case was taken up with the costs of the works to the wall. However, in documents issued prior to the hearing and confirmed at the hearing by both Ms Smith-Crallan and Mr Withnall, for the Respondent stated they would not be seeking to recover the costs of those works from any of the Applicants as their leases did not include provision for works of improvement. We will return to this point in the findings section below. Mr Foulger maintained that the proposed installation of a new floor covering was an improvement as well. As to the exterior concrete/brickwork, the actual cost was really quite low but Mr Foulger was of the opinion that painting the wall opposite the main front door was an invitation to graffiti artists.

12. We investigated the breakdown of the costings and will return to this in due course.

13. For the Respondent we heard from Mr Withnall, Ms Smith-Crallan and Mr Courtney, all of whom, together with Stephanie Verstraeten, had made witness statements, the contents of which were noted by us. Mr Withnall, the Development and Assets Director of the Respondent told of the history of the Respondent and the 'journey' being taken to improve the housing stock. Part of this was to replace dated elements to "a contemporary standard" He confirmed the Respondent's agreement not to charge for the works to the walls in the common parts but thought that the leaseholders should pay towards the floor covering. He considered that leaseholders would benefit from additional value to their properties as a result of these works. Ms Smith-Crallan told us of the generous repayment plans on offer to leaseholders. Discussion took place with Mr Courtney over costings which we reflect in the Findings section.

14. At the conclusion of the hearing Mr Foulger initially asked for his expenses but did not, in truth pursue that, but did ask for reimbursement of the Application fee (£125) and the hearing fee (£190). The Respondent, through Ms Smith-Crallan confirmed they would not be seeking costs and were content for an order under s20C of the Act to be made.

Findings

15. As we indicated above the Respondent has conceded that the works to the walls in the common parts are improvements and will not be passed on to the Applicants. After a review of the priced specification and with

the assistance of Mr Courtney, we were able to record that the Applicant's contribution in this regard was priced at £846.50 inclusive of VAT. This represented 1/9th of the cost, the apportionment to be applied throughout. Pausing there, on the question of apportionment we find that Mr Foulger's concerns are unjustified. The Respondent made it quite clear that he would be charged 1/9th, as he is being charged for regular service charge items. The cost of the wall works, if we may describe them as such, is made up of the decorating cost of £607.40 and the costs of the plaster board, plastering and dado rail of £5,741.72. This gives a total cost of £6349 (rounded down), which is divisible by 9, giving a credit due to each Applicant, based on the specification price of £705.42, plus VAT of £141.08. This sum should be removed from the anticipated cost of the major works.

16. As to the floor covering. Our inspection revealed that it was worn, cracked and broken in places. We suspect it is difficult to keep clean. The proposed replacement, which includes the removal of asbestos, which is no bad thing, is not in our finding an improvement. The Respondent is obliged to keep in repair the common parts (see clause 7(ii) of the lease. Repair can and over the passage of time is likely to include an improvement in materials. The floor needs attention and the proposed works, we find, are both reasonable and the cost payable. It has the double effect of improving the appearance of the entrance and stairs, which can only be of benefit to the Applicants. The sum attributed to this element, which includes the new door mat is £515.67 plus VAT. We find that the replacement of the door mat with one which will run the width of the doorway both reasonable and the cost, apparently only £150.68 per block, payable and the 1/9th share of this sum is included in the per leaseholder figure of £515.67 excluding VAT.

17. In respect of the remaining works of external decoration we say this. The costs are really quite insignificant. The painting of the concrete beams is both reasonable in intention and price. The beams are at present stained and cracked and need attention. Mr Foulger's objection to this was misplaced. He appeared to object to the colour used on the neighbouring block, an inoffensive cream, which in our finding was unreasonable. As to the exterior brickwork by the bin store and the bike storage area we do wonder whether the Respondent is to be held a hostage to fortune. Whilst the cost of painting this area is small we cannot help but be concerned that a fresh white wall, in a somewhat secluded area is likely to be a magnet to graffiti in the future. If this results in expenses being incurred Mr Foulger may well consider that any costs associated with same, save regular maintenance, to be an unreasonable expense.

18. Finally, and not a matter upon which we need to make a finding, the question as to whether future maintenance work to the walls of the common parts is recoverable as a service charge, given that the works were improvements, for which the Applicants had no liability, is something that the Respondent might wish to consider.

Application under s.20C and refund of fees

19. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders order the Respondent to refund half of the fees (£157.50) paid by the Applicant within 28 days of the date of this decision.

20. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Although the Respondent indicated that no costs would be passed through the service charge, for the avoidance of doubt, we nonetheless determine that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Name: Tribunal Judge Andrew Dutton **Date:** 11th March 2015

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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.

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.