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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMC/LSC/2015/0064**
Property	:	**1 Johannes Court, Southcote Road, Reading, Berkshire RG30 2AP**
Applicant	:	**Malcolm Parry** **Alan Russell**
Representative	:	**Malcolm Parry**
Respondent	:	**Johannes Court Property Management Company Limited**
Representative	:	**Mr C Green, Solicitor agent** **Mr M Daniell, employee of Cleaver Property Management Limited (Managing Agents)**
Type of Application	:	**Application under Section 27A and Section 20C of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr D Barnden MRICS** **Mrs J A Hawkins BSc MSc**
Date and venue of Hearing	:	**Reading Magistrates Court & Family Court, Reading on 3rd November 2015**
Date of Decision	:	**1st December 2015**

DECISION

DECISION

1. **The Tribunal finds that the sum claimed in respect of the roofing works in the year 2015 in the sum of £4,384.77 is reasonable and is payable for the reasons set out below.**
2. **The Tribunal declines to make any orders to either party under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 for the reasons set out below.**
3. **The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.**
4. **The Tribunal orders the Respondent to pay the Applicant's hearing fee of £190 for the reasons set out below.**

BACKGROUND

1. By an application dated 30th July 2015 Mr Parry and Mr Russell, the Applicants, sought a determination from the Tribunal as to the reasonableness of the service charges said to be for the years 2012 and 2015 and made an application under Section 20C of the Act. In the grounds in support the only year mentioned is 2015. Although in the description of questions we are asked firstly, whether the works carried out in 2012 were reasonable and were of a reasonable quality and secondly whether those cost were reasonably incurred. Finally we were asked to determine whether the 2015 works are reasonable and necessary in the light of the 2012 works.

2. As a result of concessions made by Mr Parry at the commencement of the hearing, it was not necessary for us to consider the works carried out in 2012 and instead we were asked to confine our decision to determine whether or not the works carried out in 2015 were needed and/or constituted an improvement. Mr Parry told us there was no issue on the quantum of the 2015 works or whether the proper consultation procedure under section 20 of the Act had been followed.

3. In the bundle of papers provided we had a short statement of case from Mr Parry, and a number of documents in support. Court proceedings had been started by the Respondent as Claimant against the Applicants in the Northampton County Court and some of the Court papers were produced. The bundle included numerous copies of the lease, witness statements of Mr Daniell and Miss Sumi Begum a trainee solicitor at Bradley Solicitors acting for the Respondents and various other documents relating to the works. However there was no information in the bundle relating to the works carried out in 2015. We will return to this point in due course.

4. Prior to the hearing we inspected Johannes Court. They are formed of two blocks of flats on three storeys, built in the late 1960's. The blocks are constructed of brick with flat felted roofs. The majority of the external window frames have been replaced with UPVC type windows. The floor plans of the second floor flats are slightly smaller than those on the lower floors, resulting in small areas of flat roof above first floor flats. In some cases these flat roof areas are paved and balustraded to provide balconies for the second floor flats. Scaffolding was in place and works were being undertaken to replace the roof coverings.

5. Externally the blocks benefit from parking areas and garages, a front garden area, and a small, more private rear garden. We were allowed access to one first floor flat, which was being redecorated. The decorator informed us that a lot of mould growth had been present in the area of the ceiling under the balcony, prior to redecoration.

HEARING

6. Mr Parry gave a short explanation as to his reasons for bringing the claim. He said that no evidence had been provided to him that insulation was needed for the top floor flats as he referred to. In fact he did not mean that, what he meant was the balconies or roofs forming the parapet roofs above the first floor flats. He also said that certain documents had not been seen by him before these proceedings were commenced. In particular, exhibit SB14 a document headed Cleaver Property Management Limited which gives a brief history relating to the present work. It is perhaps worth repeating what is said therein. *"Brief History. The main flat roof was previously re-dressed in 2012 because it was leaking. The surveyor that attended drew up a specification that included replacement insulation with some extra to make it more compliant to building standards of today. While on site for pre-works inspection with the approved contractor for these works, they went into a director's flat on middle floor to inspect what she thought was a leak. Upon inspection both the surveyor and contractor agreed that the construction of the roof was the fault and it was not leaking. When they examined the top roof it was clear that insulation in the roof was not working as it should (circa 40 years old) and therefore it was not keeping the roof warm and the difference in temperature from the flat to the outside was causing condensation to form on the ceiling and wall."*

   The roof protrusions above the damaged flat have previously been redressed (as is) but the insulation was not touched and thus it remained a cold roof. It was only after these investigations it was clear the damage was not caused by a leak and therefore a second Section 20 consultation commenced for stripping these roof protrusions back and reconstructing the same way as the main roof at the very top of the flats."

7. With Mr Parry's concession that he was not challenging the works carried out in 2012, the question was whether the works to the protruding roofs and the balconies were required and if insulation was installed whether this constituted an improvement. Mr Parry told us in evidence that he had not been provided with the costs and specifications but that he was a landlord of some 15 years' experience and that in his view condensation occurs where warm air meets a cold surface, although he did accept that insulation could stop this. He was of the view that the works were improvements to the flats and that the work should have been done when the works were carried out in 2012.

8. Mr Daniell gave evidence on behalf of the Respondents. Unfortunately his witness statement as with the witness statement of Miss Begum did not seek to address the issues raised by Mr Parry and Mr Russell. Admittedly there is some confusion as to what works were in dispute but none of the papers produced in the bundle initially before us dealt with the 2015 works in any detail. Mr Daniell's witness statement, which apparently had been prepared for him, although approved, dealt

with the terms of the lease, the payment history and the attempts to recover money. At no point in the witness statement did it actually address the works that were carried out or to be carried out in 2015, why they were necessary or the costs. Miss Begum's witness statement is the same. It seeks to explain why the County Court proceedings were commenced when an application had already been started in the First Tier Tribunal and again with no real explanation as to the requirement of the work. What appears to be said is that as there had been a Section 20 consultation, which the Applicants have not disputed, they had no right to challenge the subsequent works.

9. The lack of specifications and tender documents was corrected, to an extent, by Mr Green. He had sent to him on his iPad the Icopal specification prepared in July 2014 for the re-roofing works, the Midland Felt Roofing quotation dated 10th October 2014 and a priced specification which had been prepared for Cleaver Property Management by CMI Associates, chartered building surveyors. In addition we were provided with a copy of a letter from C M Ingram MRICS, the surveyor retained by the Respondent. This letter confirmed the discussions relating to the roof/balcony works and the need for same. It was only on production of this documentation that Mr Parry could see clearly what works were being undertaken. It was a sad state of affairs. Luckily for the Respondents, Mr Parry took no issue with the late delivery of this documentation, which he had the chance to peruse during a short adjournment.

10. Mr Daniell told us that the need to replace the roof covering and to provide additional insulation was a result of condensation being caused in Flats 8 and 9, although he considered that there were also problems in the two flats to the front of the block facing Southcote Road. It was not realised as being a problem when the original Section 20 consultation was undertaken for the works in 2012. Rather than adding to those works it was decided to leave the matter because that would prejudice works to the main roof, where there were leaks.

11. In respect of works to the balcony it was considered that insulating beneath the new felt would cause problems in allowing the access door to open and raising the floor covering in relation to the height of the balustrading edging the balcony. It was decided, therefore, to install the insulation within the flats where there was a balcony above and to achieve this by lowering the ceiling to make way for this increased insulation. Insofar as the roofs were concerned it was not necessary to interfere with the ceilings in the flats below because no access was required and the roof depth could be increased to accommodate the insulation. We were told that no works had been carried to the balconies before now. As to the question of improvements, it was Mr Daniell's view that the re-roofing works had to comply with current building regulations and that required improved insulation to be installed. Mr Parry's rejoinder at this point was there was no evidence of any leakage either in the parapet roofs or in the balconies and that accordingly there was no need for any recovering works.

12. In response Mr Daniell told us that the balcony sat on a concrete slab. This was causing the condensation problem. So bad was it for the owner of Flat 9, who happened to be a director of the respondent company, she had moved out. We were told also that Flat 8 was suffering condensation and mould growth. In

response to this Mr Parry opined that the matter could have been resolved by installing insulation without the need for the internal insulation works.

13. We were told there were four balconies and four roofs and we sought an explanation as to the wording contained in the Icopal specification. The provision for the recovering of both the balconies and the parapet roofs appeared to be identical. This seemed inconsistent given the differences between the works to the balconies and to the roofs. The wording on the recommendations of the reports is as follows: *"The existing waterproofing will only provide short term protection. We suggest the complete removal of the existing roof waterproofing system and reinstate with new icopal insulated high performance waterproofing system to current design standards. The following suggested high performance waterproofing specification is detailed for your consideration."* We asked Mr Daniell why the quotations from Icopal appeared to be identical, yet it was quite clear that different works were being undertaken, depending upon whether it were a balcony or a roof. He could not really help us.

14. The report then went on to recommend that these works were carried out and indeed that formed the subject of the quote from Midland Felt Roofing Limited in the total sum of £33,168. In addition there was a further amount due, which was shown at page 95 of the bundle where Mike Maunders quoted £11,040 inclusive of VAT for the internal insulation works. We were told this was the quote that had been accepted by the Respondent and therefore this was an additional cost to that charged by Midland Felt Roofing.

15. Mr Parry for his part could not understand why the Respondents had carried on with the works when requests for information had been made and not provided.

16. In summation Mr Green told us that in his view the Icopal report and the supporting letter from Mr Ingram the surveyor dated 23rd June 2015 gave evidence as to condition and the need to deal with the works particularly bearing in mind the main roof had been replaced in 2012. It would not, he said, be reasonable to wait for leaks to appear in the main roof when there was clear evidence as to condensation difficulties. He said that the Respondents had attempted to avoid litigation where possible and that the failure by Mr Parry until the morning of the hearing to condense the issues just down to 2015 costs had caused additional problems.

17. Mr Parry requested that he have costs paid for dealing with the matter as the Respondents had been unreasonable in not providing him with the information when he had sought before proceedings had been commenced. If he had been supplied he would have anticipated it was possible to settle the issue without bringing the matter before the Tribunal.

THE LAW

18. The law applicable to this case is set out in the appendix attached.

FINDINGS

19. The first question we must consider is whether or not it is the responsibility of the landlord to carry out the repairs to the balcony. We turn to the lease of which there are numerous copies but importantly a copy of Flat 10 which has the benefit of a balcony. The description of the demise for Flat 10 is as follows: *"All those several rooms (and balcony) known as Flat 10 on the second floor and the garage no 10 on the ground floor of the building as the same are for the purposes of identification only delineated on the plan numbered 1 and on the plan no 2 annexed here ... including the main outer walls and timbers of the demised premises and the ceiling boards attached to the floor of any flats or garage above the same and one half (severed vertically) of the internal walls of the flat and garage hereby demise dividing the same from the adjacent flat or flats and garages in the remainder of the building".* The building covers both blocks.

20. Under Part 3 of the schedule to the lease the lessor's obligations undertaken by the company, which is the Respondent in this matter and now we are told the owner of the freehold, are to as is reasonably necessary, *"maintain, repair, redecorate and renew: (a). the external walls and structure and in particular the foundations, roof, stacks, gutters and rainwater pipes of the building."*

21. Our understanding of the roofs and the balconies at second floor level is that they sit on a concrete slab, which in our findings is part of the structure of the building. Furthermore, it could be argued that for the benefit of the first floor flat the balcony is a roof. In addition it seems to us that to expect owners of balconies to maintain them and to ensure that there is no water ingress into the flat below is a matter that would ordinarily fall within the ambit of the responsibility of the landlord. We find, therefore, in this case that the repairs to the balconies and the roofs are a landlord's responsibility and are recoverable as a service charge. Each lessee, therefore, has to contribute towards the cost.

22. We are satisfied that a repair can include an improvement. There is no doubt that in recovering the roofs the question of insulation would need to be considered to meet building regulations. In respect of the roofs this has been done by installing insulation beneath the immediate decking and on top of the concrete slab. It was not possible to do this for the balconies because of the difficulties with the balcony railings and the access door if the levels were raised significantly. In those circumstances it was considered prudent and appropriate to install the insulation to the underneath of the concrete slab, which has resulted in a lowering of part of the ceiling in the living rooms of the flats at first floor level. We understand that the installation of the insulation in these circumstances and the creation of a slightly lower ceiling level with associated redecoration have been dealt with by a separate contract as mentioned above and is an expense that should not be borne by the individual leaseholder. It is wholly inappropriate for a landlord to allow condensation to occur, particularly where it appears to be solely as a result of the structure of the property, as this in turn creates mould and is a danger to health. The works, therefore, are quite properly undertaken.

23. We were somewhat confused as to the Icopal recommendations and the works that were actually undertaken. However, we think the situation is this. The insulation referred to in the Icopal report is within the roof covering itself, not additional. Of

itself it does not create substantial rise in the level. The additional insulation that has been added to the flat roofs and to the balcony to prevent condensation had to be dealt with differently as we have set out above.

24. No challenge is made by Mr Parry to the cost of this work. We, therefore, find that the costs are reasonable and are payable in the amount claimed of £4,384.77.

25. On the question of Section 20C, we consider that an order should be made. The late delivery of the documentation at the hearing was inappropriate. If this documentation had been produced earlier then it may well have impacted on Mr Parry and his wish to proceed with the hearing. In addition also, the witness statements of Mr Daniell and Miss Begum were unhelpful. They did not address the issues but instead sought to hide behind the terms of the lease and the procedures that had been undertaken both in the Tribunal and the County Court. For that reason, therefore, we conclude that the Respondent should not be entitled to recover their costs under Section 20C. This, however, is something of a pyrrhic victory for Mr Parry because we understand that each leaseholder is a member of the respondent company and therefore any costs incurred will need to be recovered in some way. We leave that to the respondent company to resolve with the managing agents.

26. As we have indicated above, the late delivery of the documentation may well have resulted in this matter proceeding when it might not have done. There is no certainty in that regard but we do think it would be reasonable to order the Respondents to refund to Mr Parry the hearing fee of £190. That should, therefore, be offset against the sum claimed from himself and Mr Russell for these works.

27. We do not consider that the Respondents have acted so unreasonably as to have a claim for costs under Rule 13 visited upon them. Mr Parry is at fault in that in his application and in the statement of case he refers to the 2012 costs. It was only at the hearing that he made it clear he was not challenging those matters and instead concentrating solely on the 2015 costs. He, therefore, has fault, as do the Respondents, as we have indicated above. We think that one cancels the other out and by making an order under Section 20C it seems to us the corollary of that is that Mr Parry should not get his costs under Rule 13.

Judge: *Andrew Dutton*

A A Dutton

Date: 1st December 2015

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 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.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.