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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/00MD/LSC/2015/0006**
Property	:	**196 Long Reading Lane, Slough, Berkshire SL2 1QD**
Applicant	:	**Mr Kevin Mark Cremin**
Representative	:	**In person, accompanied by Mr P Sivarajan**
Respondent	:	**Slough Borough Council**
Representative	:	**Mr T Boncey – Counsel** **Mr K Somner, Miss P West and Mr Martin Brown, all employees of the Council**
Type of Application	:	**Section 27A of the Landlord & Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr D Barnden MRICS** **Mr M Bhatti MBE**
Date and venue of Hearing	:	**East Berkshire Magistrates Court, Slough on 24th April 2015**
Date of Decision	:	**13th May 2015**

DECISION

DECISION

1. **The Tribunal finds that the sum due and owing by Mr Cremin is £530.39 as set out on the attached schedule.**
2. **The Tribunal declines to make an order for costs under the provisions of Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the Rules).**
3. **In the light of the Council's confirmation that they would not resist Mr Cremin's application under Section 20C of the Act, we confirm that such an order is made it being just and equitable in the circumstances.**

BACKGROUND

1. This application was made by Mr Kevin Mark Cremin of 196 Long Reading Lane, Slough, Berkshire SL1 2QD. In his application, which is dated 23rd January 2015, Mr Cremin sought to challenge service charges for the year 2013/14 and set those out under five headings as follows:

   - Front gate and door lock repair, cost to him £1.10.
   - Guttering repairs, cost to him £67.85.
   - Replacement of four roof tiles, cost to him £14.82.
   - Relaying of lagging in roof space, cost to him £9.42.
   - Checking of the water tanks in roof space, cost to him £19.34.

   The application then went on to pose seven questions, two of which had no relevance to our jurisdiction and which we do not need to repeat here.

2. Directions were issued on 2nd February 2015 providing for amongst other things the preparation of a bundle by the Applicant for the hearing about which there was some dispute. We will deal with that in due course. Suffice to say that at the hearing, which took place on 24th April 2015, we were presented with a bundle that ran to in excess of 480 pages.

INSPECTION

3. 196 Old Readings Lane is a first floor flat in a 2-storey block of 8 flats having two entrances, each serving four flats. The block was constructed in the 1960's of brick with a tiled roof. The majority of the external joinery including all the windows has been replaced with UPVC. Generally, at the time of inspection, the property presented in reasonably good order. However our attention was drawn to the guttering, roof tiles and front gate, which were in a good state of repair on the date of inspection, but in respect of which earlier defects are mentioned in the evidence. Internally we were given access to the roof space above flats 190 - 196, in which a large amount of somewhat haphazardly arranged loft insulation was in evidence. Two large water storage tanks were visible from the loft hatch area. We were not able to access further into the roof space due to the lack of floor-boards.

HEARING

4. At the Hearing Mr Cremin represented himself but was accompanied by Mr Sivarajan. Mr Boncey, Counsel represented the Respondent. Also in attendance were Mr Somner, Miss West and Mr Brown all of whom gave evidence both in written form and orally. It was agreed that we would work from the bundle prepared by the local authority. The statement of case prepared by Mr Cremin which was to be found at page 71 onwards of the bundle. He broke down the items in dispute mirroring those set out in the application. The first item was the front gate and lock repair which was no longer an issue as this had been removed from the demand. Mr Cremin then moved on to guttering repairs. He said that he did not know when the works were due to start but he believed that some guttering work was carried out in 2013 and then finished in 2015. The total cost of the work was £1,342.80 and his allegation was the Council were charging for works which they did not complete until more than a year later. Apparently some advice had been given to him by LEASE which said that works not completed within 28 days did not have be paid for. It is unclear why such advice was given although it might have been that it stemmed from the service booklet produced by the local authority. Mr Cremin agreed that his share of the service charges was one eighth of the total cost demanded.

5. The next item in dispute was in respect of four roof tiles, which it is said by the Council, were replaced. He alleged that one tile had not been replaced at the front but accepted that three to the rear had been replaced. The cost was minimal. The next item was the laying of lagging in the roof space. Apparently Mr Cremin purchased in property in 2007 but that some time shortly thereafter, the start date of which is unclear, certain loft works were undertaken possibly under the auspices a Government funding scheme. No charge for the initial lagging was made of Mr Cremin whenever it may have been done. However, recently Mr Cremin has noticed that there have been damp problems in the bathroom and as a result of obtaining access to the roof produced photographs showing that there was a lack of insulation in certain places. He also produced a piece of paper left in the loft which appeared to indicate that the lagging works, at least above another flat (202) had been commissioned by a Mr Plummer. Mr Cremin disputed whether the relaying of the lagging had in fact taken place but that even if it had he should not have to pay for this rectification. Furthermore, he said the lagging was blocking the venting in the roof space which contributed to the damp roblems from which he said his flat suffered. In support of this he produced a report from Biocraft dated 4th September 2013 which made certain recommendations, eight in respect of internal matters of which one suggested the necessity of temporarily removing the secondary loft insulation to check that it was correctly fitted.

6. The next item was water tanks. Apparently a leak had been reported by Mr Sivarajan but it became clear that that leak had nothing to do with water emanating from the roof space. It appears that a number of years ago the central heating to the flats in the building, which were owned by the local authority, was changed and this resulted in the water tanks by and large becoming defunct. It is said by Mr Cremin that these water tanks should have been drained down at that time and that the need to go and check them again, and indeed to fail to pick up the fact that one tank was still full, meant he did not have to pay for this unnecessary work.

7. Finally, there was a dispute as to the internal and external decorations although it was a dispute in historic terms only. Apparently an allegation was made by Mr Cremin that the Section 20 consultation procedures relating to internal and external decorations had not been properly concluded. However, this really went nowhere because it was agreed that the sum claimed by the Council of £260 per leaseholder was reasonable and payable.

8. Mr Cremin's view generally was that he was not prepared to pay the full amounts of the items he had challenged but he would consider over the lunchtime adjournment whether there was any offer that he could make. In his statement of case, he had set out three bullet points which he said showed the Respondent had acted improperly. The first was that they had manipulated service charges by including other block repairs, although conceded that this did not apply for the year in question. The second was that they had fabricated false works to add to the demands that were never carried out, a matter upon which we will no doubt have to make a finding, and thirdly that the Council had "fraudulently" extracted service charge monies when the works were not complete. He conceded that perhaps the use of the word fraudulently was inappropriate and it should have been negligently.

9. Mr Sivarajan had prepared some handwritten witness statements which were in the bundle and was asked questions on those by Mr Boncey. They did not really take the matter any further.

10. Mr Cremin was then asked some questions both by Counsel for the Respondent and by us. He accepted that £260 was due for the decorative works. He was shown a letter written by Mr Thomas on 4th September 2013 which quite clearly sets out the extent of the guttering works to be carried out to the property at that time, which was limited, and that further works subject to additional costs were carried out in 2015. Mr Cremin accepted that the guttering which was replaced in 2013 was not defective, nor did he have any complaints about the works that were done. He did however think that the cost of the works in 2013 was unreasonable, although had no alternative quotes to put to us.

11. In respect of the water tanks, he accepted that the draining of the tanks in 2008 would have been reasonable. However, he said it was not necessary to remove the water although had suggested that the presence of water could create a health issue. No works order was produced for the draining down of the water tanks or indeed any other item of works carried out at the property.

12. Asked about the roof insulation, he was referred to the letter showing Mr Plummer as the client suggesting that the Council was not responsible for the work that was done in 2008. He had no real response to that. However, he did not believe that there was evidence to show that Interserve, the Council's present contractors, had recently gone back to the loft to relay the insulation.

13. After the luncheon adjournment, Mr Boncey confirmed that the Council would not resist an application under Section 20C of the Act.

14. We heard briefly from Mr Brown who had prepared two witness statements. Mr Cremin had no questions of him and his witness statement stood. He was followed by Mr Ken Somner who is the Contract Project Officer for the Council. He told us that there was a term maintenance contract apparently with Interserve for a 15 year period and it was part of his responsibilities to deal with day to day issues arising from that contract. He took up his post in January of 2008. His statement dealt with the cyclical decoration, the water tanks, loft insulation, guttering, roof tiles and incorrect billing. On the question of the water tanks he told us that the central heating had been replaced some time ago, he thought perhaps 2007 under the Decent Homes scheme. His understanding was that all residents were now on a direct mains water supply and he believed those leaseholders in the block, of which it seems there are two, heated their flats by way of a combination boiler. There were, he thought, two main cold water tanks in the block and two expansion tanks. As a result of a complaint about possible leakage, Mr Somner went into the roof, but not above Mr Cremin's property, and arranged for a tank that he found to be full of water to be subsequently drained. Subsequently it was discovered that the tank above the Applicant's property was still charged and remained full of water at this time. The works of drainage of one tank were apparently carried out in September of 2013.

15. On the question of the loft insulation, his view was that funding for the insulation was available to home owners, local authorities and housing associations. He was not aware that the council had engaged anyone in 2008. The company carrying out the work would have been provided with Government funding so that if a tenant wanted to have the loft insulated it would be possible for them to make arrangements directly with the contractor even though as in this case the tenant appeared to have no right of access to the loft. From his inspection he thought that the insulation complied with the original requirements but that there was something of a topping up process undertaken more recently. So far as he was aware, the additional lagging complied with any building regulation requirements. His view was that best practice determined that where additional insulation was laid, it should be at 90° to the original, therefore would lie across ceiling joists as opposed to between them. At an inspection he undertook in December of 2014 he thought that the insulation appeared to cover all areas.

16. On the question of guttering, he confirmed that the charge made in 2013/14 was only for the works specified in Mr Thomas's letter, which was referred to above. There were no to that work but subsequently because some problems with overflowing and leaks arose all guttering which had not previously been replaced was so replaced in 2015. As to the roof tiles, he stood by that which was said in his witness statement.

17. He was then asked some questions by Mr Cremin and by the Tribunal. He confirmed that he thought the property was built around the mid-60s and at that time was doubtful whether the roof space required eaves ventilation. He did, however, concede that the Council would be prepared to go back and check the loft lagging and put the insulation properly in place over Mr Cremin's flat, without charge, within 14 days. In respect of the water tanks he thought that all tanks had been drained and on the question of the guttering was unable to provide a breakdown of costs but thought that it was in the contract terms and that it would

have been two men, two days to carry out the work with labour therefore in the region of £1,000.

18. After Mr Somner we heard from Miss West but her evidence was confined almost exclusively to the alleged behaviour of Mr Cremin prior to commencement of the proceedings.

19. Following the discharge of the witnesses Mr Boncey confirmed with us that insofar as the claim for costs under Rule 13 was concerned, there was no allegation that they thought Mr Cremin was unreasonable in bringing the proceedings. It was the conduct of the proceedings which they found was unreasonable. In particular, it was the preparation of the bundle. It was suggested that Mr Cremin had concocted an argument about what should go in the bundle and this had resulted in the Council preparing their own at an additional charge of somewhere between £300 and £450. They also would rely on his pestering correspondence and the fact that there were matters which really should not have been disputed such as the decorating and the guttering. No offer had been made which would have enabled them to have been settled. There was an unnecessary dredging up of historical issues which was irrelevant and allegations of fraud which were wholly inappropriate. It was said by Mr Boncey that Mr Cremin had acted frivolously and vexatiously.

20. In response Mr Cremin told us that he had produced the bundles first, providing four for the Tribunal and one for the Council. However, when he did so the Council indicated that documents were missing so they produced their own bundle, which Mr Cremin was not happy with. He had prepared a substantial document in which each item produced by the local authority that he thought was inappropriate was challenged, but this did not add to the costs of the Hearing and all that went into the bundle was all that was required by both parties. Mr Boncey confirmed that the primary application related to the extra time spent in preparing these bundles. He then went on to make final submissions indicated that as far as the Council was concerned the lease enabled the recovery of the various items. He confirmed that in the block of eight there were six tenanted flats and that the costs being sought by the Council were reasonable.

21. Finally, Mr Cremin said he would offer to pay £410.24 in respect of the items in dispute but that was not accepted by the Council.

THE LAW

22. The law applicable to this application is set out in the appendix attached.

FINDINGS

23. In reality the issues between the parties were fairly confined and the sums involved really quite small. We are not convinced this warranted the extent of paperwork that was produced but it is fair to say that there is a certain element of duplication as a result of two bundles being somewhat merged into one.

24. As we have indicated above, there are four matters upon which we need to make a determination and we start first with the replacement of the alloy guttering carried

out in 2013/14. We have read the letter from Mr Thomas which makes it quite clear to any person reading it the extent of the works that were to be carried out by the Council at that time. Accordingly for Mr Cremin to argue that the contract provided for the total replacement of the guttering is clearly wrong. This of course defeats his argument that he was being asked to pay in advance for something that was not undertaken until 2015. We are somewhat surprised at the cost of the guttering but Mr Cremin produced no evidence that would enable us to review the level of costs and if, as Mr Somner said the works required two men for two days at around £250 per day, then one can see how the figure of £1,342.80 has amassed. We feel we have no alternative but to accept that sum is payable in the absence of any compelling evidence to show that the works could have been conducted more cheaply.

25. The next matter on the list was the replacement of a roof tile to the front and three to rear of the building. With respect to Mr Cremin, this is a somewhat pointless dispute. It is quite clear that three roof tiles had been replaced at the rear and we were told that the roof tile to the front was not so much a replacement as a reinstatement of an existing tile. Such an amount being claimed by the Council is £118.57 which on a tile by tile basis gives Mr Cremin a liability of around £3.70 per tile. We are satisfied with the Council's evidence that these tiles were either replaced or reinstated and that the sum is therefore payable.

26. The question of the lagging in the roof space is not so straightforward. It is not clear who installed the original lagging. The Council has no records but the evidence produced showing a Mr Plummer's involvement may only relate to the roof space immediately above his property which was 202 Long Reading Lane, the other side of the block. What does seem to be clear, however, is that as a result of complaints made by Mr Cremin, the Council attended to inspect the lagging and to lay extra. Our brief inspection from a ladder into the roof hatch showed that the lagging was laid in a somewhat haphazard manner and photographs taken by Mr Cremin, which were not challenged appeared to indicate that there were patches where no lagging was in situ. As they were supposed to attend to put these things right, it seems to us appropriate to disallow the sum of £75.37 as the work appears not to have been done properly. We appreciate that the Council has now agreed to re-attend to correct the lagging issues immediately above Mr Cremin's flat but they have agreed to do so at no cost to Mr Cremin. The roof space so far as we can tell remains in the ownership of the local authority and as the works for which a charge is being made were in our findings somewhat substandard it seems reasonable to disallow this sum.

27. The final matter that we need to consider in the question of responsive repairs is the checking of the tanks in the roof space and the costs for the draining down. Again it is unclear as to the circumstances surrounding the continued presence of these tanks. It seems from the evidence we were given that the tanks should have been removed or at least emptied some time ago when the central heating systems were changed. It is assumed that if the central heating system was changed for the tenants then the local authority would have been undertaking works in the roof space to facilitate such change. It seems that the two leaseholders in the property may well now have a combination boiler and therefore do not need the water tanks in the loft. The removal of the remaining tank or at the draining of same is something which should be undertaken for health reasons. It is the Council's error

when they attended previously that they failed to spot that another tank was in need of draining. It seems to us that undoubtedly if those plumbers had dealt with the other tank at the same time there would have been a lower cost than returning to undertaken the work. In any event, we find that this is something which should have been dealt with some years ago when the central heating systems were altered. If it were done at that time, there would be no liability attaching to Mr Cremin's service charge account. We find, therefore, that it is unreasonable for the Council to seek to recover the cost of £154.78 by way of service charge. Whether the Council seeks to recover the costs of this second emptying exercise in respect of the cold was tank immediately above Mr Cremin's property is a matter for them to consider. If as was suggested to us the simple way of dealing with the matter is to take the lid off and let the water evaporate then the cost associated with it must be minimal and perhaps could be dealt with at the same time as the contractor's return to complete the lagging works which the Council has already agreed to undertaken at no cost.

28. The remaining items of responsive repairs are not challenged and are due and owing. We will leave it to the parties to decide about settlement but it seems to us that payment should probably be made within the next 28 days.

29. Insofar as the claim for costs under Rule 13 is concerned, we considered carefully the submissions made to us by Mr Boncey. We bear in mind that the jurisdiction of this Tribunal is generally cost free. We bear in mind also the provisions that existed under the Commonhold and Leasehold Reform Act 2002 and the requirements to establish that unreasonableness was linked to vexatious, frivolous and abusive behaviour. We should consider also whether the behaviour of Mr Cremin in this case, which can only be during the 'conduct' of same, is so unreasonable as to result in costs being ordered against him. The issue seems to centre around the preparation of the hearing bundle. Mr Boncey's claim was that some two to three hours extra had been incurred although he did not resile from the fact that the Council were looking for the totality of their costs in dealing with the matter. We think that is unreasonable. The Applicant is a litigant in person. He tells us, and it was not challenged, that he had prepared bundles that the Council were not happy with and they then prepared their own bundle, which he was not happy with. There seems to have been something of a lack of communication but that does not seem to us to constitute unreasonable behaviour which would result in an order for costs being made against him. We therefore decline to make an order under Rule 13.

30. Mr Boncey confirmed during the course of the hearing that the Council would have no objection to an order being made under Section 20C of the Act. Accordingly we make such an order considering it just and equitable so to do. Mr Cremin has had some success in bringing his application before us. We would urge him next time to consider the proportionality of some of the issues. It does seem that the Council operated its complaints system in a somewhat "by the letter" manner. We can appreciate Mr Cremin's correspondence was probably excessive and on occasions somewhat ill-tempered. However, it must be in both parties' interest to resolve any further differences without the need to incur the costs clearly associated with bringing this matter to the Tribunal.

31. The attached schedule sets out the service charges which are recoverable. We have amended the management fee to represent 25% of the sums which we have allowed, showing £530.39 as being the sum outstanding after taking into account a payment made earlier.

Judge: *Andrew Dutton*

A A Dutton

Date: 13th May 2015

Schedule of Service Charges

Re: 196 Long Reading Lane
Case CAM/OOMD/LSC/2015/0006

	Claimed	**Allowed**
Insurance premium	£84.75	£84.75
SBC Caretaking	£163.07	£163.07
Total block expenditure Electricity Repairs	 £18.40 £484.63	 £18.40 £455.86
Management	@ 25% £187.71	@ 25% of £722.08 £180.52
		£902.60
Less payment on a/c		£372.21
Outstanding		**£530.39**

The relevant Law

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.