10624

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOME/LSC/2014/0110**
Property	:	**Flat 2, 78 Osbourne Road, Windsor, Berkshire SL4 3EN**
Applicant	:	**Mr Sulinder Singh Ojalla, in person**
Respondent	:	**(1) Fastwick Building Limited** **(2) Osbourne Road Residents Association Limited**
Representative	:	**Mr E Goodwin, Director of Fastwick Building Limited**
Type of Application	:	**Application for determination of liability to pay and the reasonableness of service charges, Sections 27A and 20C of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs S F Redmond BSc (Econ) MRICS** **Mrs J Hawkins**
Date and venue of Hearing	:	**Royal Windsor Race Course, Windsor SL4 5JJ on 18th February 2015**
Date of Decision	:	**4th March 2015**

DECISION

DECISION

1. **The Tribunal finds that the budgeted figures for the period 1st July 2014 to 31st December 2014 and for the 1st January 2015 to 30th June 2015 in the sum of £1,116.83 for each period is reasonable and in respect of the second period is payable.**
2. **The Tribunal finds that the demand on account of major works in the sum of £11,893.94 is reasonable and is payable.**
3. **The Tribunal declines to make an order under Section 20C of the Landlord and Tenant Act 1985.**
4. **The Tribunal makes no order for costs against either part or a refund of the application or hearing fee.**

BACKGROUND

1. This application was made by Mr Ojalla (the Applicant) and received by the Tribunal on 9th February 2015. The Respondents named in the application were a Mr E Goodwin of Fastwick Building Limited, the first Respondent and the same person in respect of 78 Osbourne Road Residents Association Limited, the second Respondent. The years challenged were 2014 and 2015.

2. The issues the Applicant wished us to deal were set out in his statement of case and are as follows:

   - Is the service charge due for the period 1/7/2014 – 31/12/2014 and if so what is a reasonable amount?
   - Is the service charge due from period 01/01/2015 onwards? How much and under which circumstances should this be payable?
   - What is the correct and fair apportionment of costs to be applied to service and levy charges?
   - Is the levy charge due? If so, at what level and under which circumstances?
   - How is the cost of address the water damage to my spare bedroom to be handled and resolved? Is it reasonable this cost should be shouldered by leaseholders?
   - Which brackets, if any, costs incurred by the freeholder may be passed to the leaseholders?
   - Technically, in the absence of the original management company, the management of the building must fall to the freeholder. Is it then reasonable for the leaseholders to be responsible for the current situation and associated costs of rectification?

3. The matter came before us for Hearing on 18th February 2015 and before the Hearing we inspected the subject premises in the company of the Applicant and Mr Goodwin on behalf of the Respondents. Prior to the Hearing we received a bundle of papers which included the application, the directions order, the Applicant and Respondent's statements of case and other associated papers including a copy of the Applicant's lease.

4. Before we deal with the inspection and the Hearing, it is perhaps helpful to record the history which led to this matter coming before us. In 1985 Quinlake Limited, a

company owned by Mr Goodwin, refurbished the property at 78 Osbourne Road, Windsor (the property). Leases were granted to purchasers of the six flats within the property. There are two flats in the basement and then 4 flats each taking up a floor of the building. A residents association was set up, 78 Osbourne Road Residents Association Limited (the Company) and is named in the lease as the company which carries out the maintenance works to the property. Each leaseholder is required to be a member of the company and such obligation is passed to any successor in title.

5. It appears for reasons that are not wholly clear that in 1995 the Company was struck off the company register. It seems that annual accounts were not filed. This remained the position until February 2014 when it seems that Mr Goodwin took steps to resurrect the Company and in the papers before us we had a late filing penalty notice in the sum of £1,500 dated 22nd July 2014, dated the day before a letter from Companies House which said as follows:- *"As a result, the company has been restored to the register on 16th July 2014. A notice to the same will shortly be published in the London Gazette. Upon its restoration the company has deemed to have continued in existence as if it had not been dissolved or struck off the register and any assets are now held by the company."*

6. It appears in the intervening period residents had set up a separate company entitled the Residents Association of 78 Osbourne Road Limited but their obligations appear to have been relinquished, as evidenced by a letter from Urban Owners dated 3rd October 2013 to Mr Guy Goodwin, the son of Mr Edward Goodwin. Accordingly at the time the matter came before us the Company as referred to in the lease had been reinstated and was taking on the responsibility for the maintenance works, although as we will comment in due course, the running of the Company was in the hands of Mr Edward Goodwin alone and shares had not been issued to any other leaseholder.

7. The Applicant acquired his interest in his flat in 2009. It appears that no information was supplied to him with regard to the discontinuance of the Company and he proceeded to make payments in respect of service charge contributions as required under the terms of the lease to the newly formed residents company. In 2011 the Applicant sought a quote for works to the exterior of the property by CLC Contractors Limited, which was in the bundle before us and approximately a year later, we understand as a result of complaints made by the Applicant to the Local Authority, the Royal Borough of Windsor and Maidenhead issued a notice under the Town and Country Planning Act Section 215 requiring works to be undertaken to the property upon penalty of fine if it was not done. This letter was sent to Mr Guy Goodwin, who was by now was the owner and occupier of the basement Flat B at the property. It appears that this had been gifted to him by his father together with the freehold. This was something of a poisoned chalice and as a result of the Council's intervention it would seem that Mr Goodwin senior arranged for the freehold to be transferred back into one of his companies, Fastwick Building Limited, the first Respondent in these proceedings, and subsequently resulted in steps being taken by Mr Goodwin senior to reinstate the Company to carry out its obligations under the lease.

INSPECTION

8. This took place on the morning of the hearing, which followed. The property is a substantial 19th Century five storey converted house with two flats at lower ground floor level and four flats, one on each floor rising above. There is side access and some garden space to the rear which is mostly gravel and overshadowed by substantial evergreen trees. Access to the lower ground floor flats, which are A and B, is to the side of the property and they, therefore, have no need to use the front access steps or the internal common parts. At the time of our inspection the property was shrouded in scaffolding and indeed more was being erected. This appeared to be to facilitate the external works to the property required by the notice issued by the Council but in addition to do further works. We inspected the interior of the main property noting that there was a fairly narrow staircase leading to the second floor where the flat on the top floor also had a front door, within internal stairs. We did not inspect any of the flats save the Applicant's who wanted us to see water damage to the second bedroom to the rear. This we noted. It appeared that the wall affected by the water ingress was partly internal and partly external and from an inspection via the main bedroom window we could see that a metal fire escape was fitted to the external wall. The internal common parts require some redecorating and although they are carpeted, the carpet is quite well worn and somewhat grubby.

HEARING

9. At the Hearing Mr Ojalla represented himself and Mr Goodwin represented both Fastwick Building and the Company. Prior to the Hearing we had the opportunity of reading the papers within the file and in particular the Applicant's statement of case and the replies made by Mr Goodwin thereto. We have set out above the issues that the Applicant wished us to deal with. The Applicant initially told us that the company had been dissolved in 1995. That he had bought in 2009 and that the newly formed residents association had relinquished its duties in 2013. He said it had been a frustrating situation since he bought in 2009 in trying to get any works carried out to the building.

10. Mr Goodwin told us that he had transferred the flat that he owned to his son and had tried to get a deed of variation in place to deal with the maintenance of the building but this had not come to fruition. In the end he had stepped in as the leaseholders were not willing to deal with the property and the works required. He told us that the original lessor, Quinlake was one of his companies. The freehold, which had initially been transferred to his son was transferred back to Mr Goodwin senior and was now vested in the first respondent. Mr Goodwin told us he had no interest in the basement flat which remained owned by his son.

11. The Applicant told us that he had approached CLC Contractors Limited in 2011 to provide details of costings to bring the property up to a good standard. However, no agreement could be reached with any of the leaseholders in respect of any aspect of work or the costs of same. He told us, however, that it was not until 2013 that he discovered that the Company was dissolved.

12. At this point Mr Goodwin told us that the difference between the quote obtained from CLC in 2011 and the quote that he had obtained under which the current

works were being undertaken, which was in 2014, was only about £1,000 more when allowing fro RPI uplift. The main difference he told us was that in the latest quote a contingency fund of £9,000 had been provided for as against £2,000 in the 2011 quote and that nearly £1,000 plus VAT was required for works though the main steps to the building

13. We were told that Section 20 procedures had been invoked to deal with the works and for reasons that were not wholly clear the managing agents, John Mortimer ,had divided the works into two parts. The Section 20 notices were included and the Applicant took not issue with the Section 20 procedures. He did say, however, that he thought the costs were high because in the bundle was a quote from a Mr Lee Hall in September 2012 of £20,690. Mr Goodwin told us that he had taken Mr Bird, who is Mr Hall's father-in-law and known to Mr Goodwin, around the building and the estimate had been produced for his purposes. However, subsequently this contractor was not interested in carrying out the work and therefore any figures he may have put forward were irrelevant.

14. Mr Goodwin told us that he had put £30,000 of his own money into the "pot" for the purposes of commencing the works and that no leaseholder had challenged the costs that were put forward in the Section 20 notices. The Applicant confirmed that he had not put forward another contractor. He did, however, think that the works that were now required had greatly increased because in 2009 he had received a decorating quote of under £5,000. This quote was provided by SC Reid Contractors and in fact was dated 6th April 2010. It was, however, only for decorating and not carrying out any substantial repairs to the render. When asked whether or not he thought that the difference between the CLC quote in 2011 and that in 2014 was unreasonable, the Applicant told us that he did not and confirmed that he had no evidence to produce to show that the costs being sought in respect of the present building works were too high.

15. We then moved on to deal with the service charge specifics in respect of the two six monthly payments in the periods ending December 2014 and June 2015. After discussions and following confirmation that the Applicant had actually paid the first six month's sum, he agreed that there was no issue. This was the more so as it appears that draft accounts would indicate that the likely costs for that period were in line with what were, in effect, budgeted figures.

16. For the second period ending June 2015, the same sum of money had been claimed, namely £1,116.83, but it was told to us by Mr Goodwin that this element included a contribution towards the insurance, which had not been included in the previous six months' payments. The Applicant told us that upon reflection he was prepared to accept the figure of £1,116.83 for the money due to June of 2015 and he would make that payment within 28 days. He did, however, suggest that such payment should be made conditional upon him being made a member of the Company. Mr Goodwin, who we have indicated above had resurrected the Company, had not invited any of the leaseholders to become members and he was the sole director and the controller at present. This, he said, was essential to ensure that works were done because previously there had been animosity between leaseholders and no works of repair had been undertaken.

17. The third issue raised by the Applicant was the apportionment of costs. The lease in the fifth schedule, paragraph 1 says as follows:- *"The maintenance charge for the Demised Premises shall be a sum equal to a fair proportion as certified by the Lessors' surveyor whose decision shall be absolute (hereinafter called "the appropriation apportion") of the aggregate cost to the association of (a) complying with the association's covenants in this lease and the association's lease and (b) providing such reserves for future anticipated maintenance as the association shall from time to time think desirable."* The association is the Company. It appears that the proportions have been calculated by reference to the square footage of each flat. These square footages had been calculated by Mr Goodwin by reference to the lease plans. This appears to have given the following percentages to be attributed to each flat:-

- Flat 1 - 20.9%
- Flat 2 – 19.2%
- Flat 3 – 19.2%
- Flat 4 – 16.2%
- Flat A – 11.8%
- Flat B – 12.7%

It appears that the lessee of Flat 1 has raised some concerns about the percentages but the Applicant told us that he would agree the measurements are accurate for any internal works but for external works he considered they should be divided equally. Historically it appears that the costs had been divided on a one fifth basis with the two basement flats sharing a fifth contribution. Mr Goodwin told us that in fact there were two percentages applicable. Neither of them appeared to relate to the percentage splits that were put forward by John Mortimer in respect of the external repairs and which we recited above. He told us that he had calculated the service charge contributions to be for the Applicant's flat 19.2% for general service charges which includes external works and 25.5% for internal common parts services. The Applicant said he would like a surveyor to review the measurements for the flats but reiterated the major works should be shared equally between the parties. Mr Goodwin's response was that the square footage contributions were fair and that he was entitled to do this under the terms of the lease. The Applicant put forward no alternative method for apportioning the service charges.

18. The next issue that the Applicant raised was whether the major works contribution was due. There appeared to be no argument that it could be claimed under the terms of the lease and indeed the Applicant had already paid £5,000 towards the costs. Mr Goodwin told us that the other leaseholders had paid their share and that he was only short the amount due from the Applicant which was about £6,000. The Applicant accepted that the charge was due but not the amount that he was required to pay. However, he put forward no alternative sum as being due.

19. In respect of the issue relating to the internal damage to his flat he did not pursue this before us. The final issue that he did ask us to consider was the fine imposed by Companies House and whether that should be paid by the leaseholders and if it was what percentage should he be required to pay. He thought that if he had responsibility he should only pay any fine that was attributable to the costs from 2019 and should not be charged any element of the fine that related to earlier

periods. Mr Goodwin told us that he had incurred costs somewhere in the region of £3,500 in resurrecting the Company. He did not propose to pass those costs on to the leaseholders but he did think it was fair that they should pay a contribution towards the fine imposed by Companies House of £1,500.

20. The last issued raised by the Applicant was the responsibility of the leaseholders in the absence of the Company. This, however, he did not pursue through us.

21. At the end of the Hearing the Applicant sought a refund of the application and hearing fee and made an application under Section 20C for the landlord's costs not to be added as a service charge.

22. Mr Goodwin said that he had incurred costs of somewhere around £1,000 having to deal with this matter and asked that there should be some recompense to him in respect thereof.

THE LAW

23. The law applicable to this application is set out in the appendix hereto.

FINDINGS

24. The Applicant raised some seven issues, two of which we were not required to consider. The first two that we will deal with are his concerns that the budgeted figures in the period ending December 2014 and June 2015 were not payable by him. In the course of the Hearing he retreated from these concerns. He had already paid the first tranche in respect of the period to December 2014 and the indication given by Mr Goodwin, albeit somewhat on the hoof, was that the total costs for the year were in line with the budget prepared by John Mortimer of something just under £11,000 and that the contribution that had therefore been paid by the Applicant was reasonable. The Applicant did not seek to challenge this further and accepted that the payment was due in respect of the period to June 2015.

25. On the question of apportionment of service charges, we had little evidence to go on. Certainly the Applicant produced no evidence whatsoever to suggest that the percentage figures put forward by Mr Goodwin were inappropriate. Mr Goodwin said he was quite happy for a surveyor to be appointed at the leaseholders' expense to measure each flat and to calculate whether his percentage contributions were correct. Doing the best we can with the information available to us, it would seem to us that the two differing percentages certainly in respect of the Applicant's flat of 19.2% for general repairs including the exterior and 25.5% for the internal repairs, is reasonable. We find that the principle of dividing the obligations to pay service charges on the basis of the square footage size of the flats a reasonable way of dealing with the matter. The previous arrangements of dividing the costs into five with the basements paying half of one fifth does not depart greatly from that which has now been calculated by Mr Goodwin. We do bear in mind, however, that Mr Goodwin's son occupies one of the basement flats and is therefore in his interests to ensure that the percentage contribution is kept as reasonable as possible but we accepted that Mr Goodwin was an honest witness and that as things presently stand those percentages which he has attributed to service

charges will stand. If any leaseholder wishes to arrange for flats to be measured and for the percentages to be reviewed, that it is for them to deal with.

26. The fourth matter that we were asked to consider was that which was entitled "levy charge" but which was, in effect, the down payment in respect of the works to the exterior as required under the notice from the Council, although we understand the work went beyond that. The total sum we are told is £61,947.60 of which the Applicant will be asked to pay 19.2%. There may be a rebate due if the provisional sum of £9,000 is not required. We are, however, satisfied that the increase from the CLC quote in 2011 to that in 2014 is perfectly reasonable and reflects an RPI uplift and the additional provisional sum together with extra works. We are, therefore comfortable that the total charge of just under £62,000, which we remind ourselves was not challenged, reflects the works to be done and the contribution at 19.2% again seems to us to be reasonable. We therefore find that that sum of £11,893.94 is properly due and owing.

27. The question of damage to the Applicant's flat was not within our jurisdiction. We understand that an insurance claim is pending and it seems to us the parties should await the outcome of same.

28. Finally, we deal with the issue raised by the Applicant as to whether the costs incurred by the freeholder could be passed to the leaseholders. We remind ourselves that Mr Goodwin has not passed on the costs of reforming the Company. However, under the terms of the lease the leaseholders are meant to be members of the Company. Mr Goodwin showed acertain reluctance at sending invitations to the leaseholders to enable them to join. It seems to us that the recovery of the sum of £1,500 by way of service charge account is inappropriate. It is not a service charge. It is an expense of the Company and if the leaseholders are members of the Company then they may well be required to make a contribution towards same. However, they are not. The only share that has been issued was that to Mr Goodwin and he is the only director of the company. In those circumstances we do not think it appropriate that the sum of £1,500 should be included as a service charge. It is not clear whether this is going to appear in the service charge accounts for the year ending December 2014 or December 2015. If it is the former then it should be removed and credit should be given to leaseholders who have paid a sum which includes the £1,500. If, however, it is to appear in the 2015 accounts it should not and any final payment at year end should reflect the fact that this sum should not have been included in any budgeted figures.

29. We do not consider that the Applicant has been so successful as to warrant making an order under Section 20C of the Act. This does not of course stop the Applicant, or indeed any other party, challenging such costs as may be sought.

30. It is a great pity that the property has been allowed to deteriorate and that there appears to be animosity between the leaseholders to the extent that they have not been able to work together to sort out the refurbishment. It is to Mr Goodwin's credit that he has grasped the nettle and is undertaking that responsibility, although we are concerned as to his apparent unwillingness to allow the other leaseholders to become directors and indeed his own status as a director of the company when he is not a leaseholder. Be that as it may, it seems to us essential that Mr Goodwin was involved to get the works underway, which are now apparent

from our inspection. However, we do not think that either party has acted in such a way that there should be any costs visited upon them under the provision of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules of 2013 (Rule 13) and accordingly make no provision for costs for or against either party. Neither do we think it appropriate that there should be any refund of the application or hearing fee as we have in the main found in favour of the Respondents.

31. It is essential that leaseholders realise their responsibilities under the terms of their lease and become members of the Company. We understand that Mr Goodwin may be reluctant to part with control whilst these works are ongoing but it does seem to us this step should be taken in the not too distant future to resolve the Company position without any further unnecessary costs being incurred.

Judge: Andrew Dutton

A A Dutton

Date: 4th March 2015

Relevant Law

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.