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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00KF/LSC/2015/0088

Property : 43 & 43a Gainsborough Drive,
Westcliff-on-Sea,
Essex SS0 9AH

**Applicant
Represented by** : **Stephen John Williams**
Sandra Farmer – lay representative

**Respondent
Represented by** : **Westleigh Properties Ltd.**
Heidi Slassor – managing agent

Date of application : 19th October 2015

Type of Application : **To determine reasonableness and
payability of service charges and
administration charges**

The Tribunal : **Bruce Edgington (lawyer chair)**
Stephen Moll FRICS
John Francis QPM

**Date and venue for
Hearing** : 5th February 2016 at The Court House, 80
Victoria Avenue, Southend-on-Sea, SS2 6EU

DECISION

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UPON the parties agreeing the following terms, this application is withdrawn with the consent of the Tribunal:

- (1) The Applicant and Louise Clark shall undertake the decoration and other work set out in the quotations from PJW Property Maintenance at pages 7 and 8 in the Applicant's section of the bundle of documents supplied for the Tribunal on or before the 5th June 2016 to include replacing the window frames on the ground floor.
- (2) In addition they shall undertake the pointing work required to the outside surface of the flank wall and any further works of repair or restoration needed when the scaffolding has been erected and the full extent of any such works are identified, by the same date.

- (3) When the work has been completed and before the scaffolding is taken down, the Respondent's managing agent shall be given notice so that an appointment can be made for them or their surveyor to inspect the work to ensure that the terms of the lease have been complied with.

Reasons

Introduction

1. The Respondent is the freehold owner and the Applicant is the leasehold owner of 43a being the first floor flat. He is supported by Miss. Louise Clark, the leaseholder owner of 43, the ground floor flat.
2. In essence, this dispute concerns a consultation undertaken on behalf of the Respondent by its managing agents Gateway Property Management ("Gateway") to, according to the first consultation letter sent on the 20th October 2014, 'decoration and repair of the exterior if applicable to the common parts of your property of which your flat forms part'.
3. On the 24th April 2015, Gateway wrote explaining that they had received 3 tenders in the sums of £10,498.20 plus VAT, £7,965.00 plus VAT and £5,196.00 plus VAT, of which they proposed to accept the lowest. There was further correspondence culminating in a demand for £2,934.00 from each lessee dated 8th October 2015.
4. The Applicant and Miss. Clark say that the amount requested is too much and they produce cheaper quotations. They say that if the Respondent had decorated as required then the windows to the ground floor in particular would not have got into such a poor state of repair that they need replacement. Further, they complain about the administration charge being claimed by Gateway for dealing with the section 20 consultation and supervising the works.

The Lease

5. The lease is dated 24th August 1988 and is for a term of 99 years from the 24th June 1988 with a rising ground rent. As much of the argument in the correspondence revolves around the wording of the lease, it is necessary to deal with this in detail, particularly as there appear to be misunderstandings on both sides.
6. The first section 20 letter says that the redecoration and repair to the exterior and common parts are 'required in accordance with the terms of the lease'. However, under clause 2(e) of the lease, it is the lessee who covenants:-

"at least once in every third year of the said term to paint at a time and in a colour to be approved by the surveyor for the time being of the Lessor all the outside wood and ironwork of the demised premises and all additions thereto with two coats of good quality paint in a proper and workmanlike manner"

7. Under clause 4(i), the lessor then covenants:-

"that subject to the Lessees giving reasonable notice of any

requirement in this connection and paying one half of the costs thereof (the approximate amount of which is to be paid in advance) the Lessor will at all times throughout the said term repair paint maintain and renew the main structure roof foundations entrance porch gutters drains sewers and any other part of the property used by the Lessees in common with all or any of the other occupiers of the property..."

8. The Respondent has also drawn the attention of the Tribunal to clause 2(i) which is further covenant by the lessees to:

"...pay one half of the expense of making repairing amending supporting rebuilding and cleansing..."

the parts of the building used by the lessees and the landlord. This clause makes no mention of decorating anything.

9. Thus, the regime is that it is for the lessees to decorate although they can ask the landlord to do it if they wish. It should be mentioned that if the lessees are in breach of the terms of the leases relating to the repair of the premises, the landlord can step in and undertake the works (clauses 2(l) and (m)) and claim the cost from the lessees. However, this would not appear to cover mere decoration unless it could be established that there was a want of repair. Further the landlord can only claim the cost of repair, not payments in advance.
10. Finally, Gateway, on behalf of the Respondent has claimed in correspondence that the windows are part of the demises. The Tribunal cannot see how this interpretation can be put forward as the lease seen by the Tribunal does not appear to say this.

The Hearing

11. The hearing was attended by the Applicant and his representative, Sandra Farmer, Miss. Clark and a friend together with Heidi Slassor and Carly Melling from Gateway. The Tribunal chair pointed out the difficulty in this case i.e. that the regime for decorating the property was that it was the lessees' responsibility and if the ground floor window frames were in such a state that they had to be replaced, then that was because of a failure to comply with the terms of the lease on the part of the lessees.
12. It was also pointed out that the lease seen by the Tribunal is extremely unusual in requiring the lessees to decorate the exterior and structure and there was some discussion about other aspects of the lease and a suggestion, to put it no higher, that the parties consider agreeing variations to put the lease more in line with other long leases. Alternatively an application could be made to this Tribunal pursuant to Part IV of the **Landlord and Tenant Act 1987**.
13. Ms. Slassor did try to suggest that the works set out in the section 20 process were demanded because the lessees were in breach of the terms of the leases. However, this is clearly not the case in view of the wording of the first section 20 letter and the fact that at no time had she or Gateway suggested that. It was clear that Gateway also thought that it was the landlord's responsibility to decorate.

After all, if they had written a clearly worded letter to the Applicant and Miss. Clark pointing out the term in the lease and asking when they were going to comply with it, this application would probably not have been made.

14. At the Tribunal's suggestion, the parties were invited to agree the compromise as set out above. They did so. The Tribunal did consider whether there should be any consideration of the expense to which the Respondent has been put because of the section 20 process or the substantial Tribunal fees paid by the Applicant. However, it was decided not to raise this issue as both amounts had been incurred because of both parties' failure to take legal advice on the terms of the lease. Thus, there is no justifiable reason why either party should be put to yet more expense in these circumstances.

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Bruce Edgington
Regional Judge
10th February 2016