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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UF/LSC/2015/0087**
Property	:	**42 Spring Rise,** **Galleywood,** **Chelmsford,** **Essex CM2 8SH**
Applicants **Self representing**	:	**Mr. and Mrs. C. Kennedy**
Respondent **Represented by**	:	**Chelmer Housing Partnership** **Angela Vale**
Date of Application	:	**13th 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 of hearing	:	**11th February 2016, Best Western Ivy Hill Hotel, Writtle Road, Margaretting, Essex CM4 0EH**

DECISION

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1. In respect of the amount claimed by the Respondent from the Applicants in the sum of £1,932.27 for cyclical decoration and repairs for the estate in which the property is situated, the Tribunal finds that this sum is reasonable and payable.

2. The Tribunal makes an order pursuant to section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondent from claiming its costs of representation within these proceedings as part of a future service charge.

Reasons

Introduction

3. This is a claim by a landlord against a long leaseholder for one item of service

charge, namely the cost of major works undertaken in about 2014 with an invoice for £1,932.27 being sent to the Respondent on the 22nd September 2015. The work entailed 'pre-paint repairs and external decoration' according to the first section 20 (of the 1985 Act) consultation letter and, at that time, the anticipated cost to the Applicants was £1,271.05.

4. The problem in this case is that this anticipated cost completely under estimated the actual cost and this seems to have been for a number of reasons, the main ones being the cost of scaffolding and the need to replace certain soffits and fascias rather than paint them. No indication of the under estimate was given until a letter dated 11th February 2015 which just predated the first invoice which arrived from the Respondent. It was a demand for £2,136.94 dated 24th February 2015.

5. The Applicants then pursued the Respondent arguing that the invoice was wrong and also claiming that it was wrong in principle to increase the cost by such a large amount without any indication of their 'mistakes'. Following the complaints, there was a revised invoice in the sum of £2,078.36 sent on the 27th March 2015 and then the current invoice in the sum of £1,932.27. The Applicants have now apparently exhausted the Respondent's complaints procedures and the bundle submitted for the Tribunal contains the written response to the complaint.

6. This has been useful as the Tribunal was able to see that scaffolding costs were not included in the original estimate in the 1st section 20 letter. This was an error on the part of the contractor and then on the part of the Respondent for not checking the estimate properly.

7. The Applicants' present position from the papers is not entirely clear. In their last statement dated 19th November 2015, they say that the last invoice *"include(s) items in dispute of the sum of £918.72"*. They go on to say:-

> *"We feel works to be carried out should be capped as first invoice being a sum of £2,136.94 is a large sum of money for any individual to find. Had we been advised of above additional costs we would have had the opportunity to discuss with CHP and advised we were not able to afford such an amount and arrived at an agreed outcome. We need to remember people are living in flats for a reason and our block is made up of the elderly and single parents and finding an additional 60% to such a large sum without any warning is unfair"*

8. There was no indication from the papers as to how the £918.72 is made up or precisely what it relates to. The response of the Respondent is that the initial invoice and comments from the Applicants resulted in *"the costs of two items being omitted; the costs for relocation of a scaffold tower and the cost for removal of the satellite dish; plus amendments to the 'property type' resulting in a cost reduction. The latter was to reflect omitting the cost of re-painting*

timber soffits and fascias that had been replaced with UPVC". Following the complaint, a concession was made in that the £98.26 administration charge was removed as a gesture of goodwill.

9. The witness statement of Denise Kent, the Respondent's Director of Commercial Services, confirms that throughout the complaints procedure, Mr. Kennedy "*a practising Quantity Surveyor, confirmed that he was not disputing the quality of the works*".

10. In essence, the case for the Respondent is that they admit they made errors but the cost now being claimed reflects the true cost of the works and should be paid. The Tribunal was somewhat concerned to see comments in the notes made of the meeting for the 3rd stage of the complaints procedure and in the subsequent letter about the role of this Tribunal. The notes say, for example, at page 4, "*Andrew Ives reiterated that the panel cannot consider the matter in a legal way, it would need to be taken by Mr. Kennedy to a First Tier Tribunal if he wishes. Stuart Stackhouse affirmed that this appeal meeting is not a legal process and the issue could only be determined by a First Tier Tribunal*". At page 7, it says "*Mr. Kennedy asked whether he could go to the Ombudsman. Kay Caldwell advised that as this is a contractual obligation matter it would need to be considered at a First Tier Tribunal. Stuart Stackhouse advised that CHP's response to any enquiry from the Ombudsman would be that it is a decision for a First Tier Tribunal*".

11. Further, it is noted that the letter of response from the Respondent dated 26th August 2015, confirms that advice i.e. "*the Panel would recommend that you refer your complaint to a First Tier Tribunal*".

12. The Respondent should, respectfully, reconsider these comments and whether they should be repeated in future cases. The first thing that should be said to people in these circumstances is that they should take advice, not rush headlong into litigation which involves considerable public expense. The second thing is to acknowledge that the complaints do involve legal issues and the Respondent should have done its best to explain the legal matters rather than seek to avoid their impact which is one interpretation of the notes.

The Law

13. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

14. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

15. Any service charge which involves a payment by an individual leaseholder of more than £250 for a particular contract requires a consultation to be undertaken by a landlord. As there is evidence in the bundle of the consultation letters and

there is no dispute that there was a consultation, the full details of this process will not be set out here.

The Lease

16. The Tribunal was shown a copy of the lease of this flat. It is dated 7th September 1998 and is for a term of 125 years from the 20th January 1989 with a ground rent of £10 per annum. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and to insure it and the Respondent is liable to pay a reasonable proportion of the cost.

The Inspection

17. The members of the Tribunal realised before the hearing that an inspection of the property was not needed as there appeared to be no dispute about the standard of workmanship or that the claim was a fair reflection of the work undertaken. They therefore informed the parties that there would be no pre-hearing inspection. Obviously if anything had arisen during the hearing which required an inspection, that would have happened. In fact this was not necessary.

The Hearing

18. The hearing was attended by Mr. and Mrs. Kennedy On behalf of the Respondent were Angela Vale, leasehold services coordinator, Graham Thomson, surveying and contracts manager and Martyn Wild, general practice surveyor.

19. The Tribunal chair started the hearing by making introductions and then seeking clarification from the Applicants as to their case. Firstly he asked whether it was the Applicant's case that the final claim of £1,932.27 was a reasonable reflection of the work actually undertaken. Mr. Kennedy said that it was.

20. Secondly, he was asked how the figure of £918.72 was made up and what it related to. Mr. Kennedy could not really say how the figure was made up save to say that it was the figure claimed less those items the Applicants felt were overcharged. He referred in particular to section 11 in the bundle where he had presented the list of costs and his comments. He pointed to the sum for scaffolding which he said should have been included in the original estimate but was not. He then pointed to the 2 figures for the scaffold tower and said that it was his belief that there was only one tower and it was already on site when needed on the second occasion which meant that a second fee was not justified. Finally, he referred to the replacements of various fascias and soffits and said that he and his wife should have been consulted about the need for those works before they were undertaken.

21. When asked whether any monies had been paid towards the claim, Mrs. Kennedy said that instalments totalling £450 had been paid. When asked about the request for a section 20C order, Ms. Vale on behalf of the Respondent said that there would be no item for representation in these proceedings in any future service charge claim.

22. The Respondent, through Mr. Thomson, explained about the scaffolding tower. He explained that it had been moved to another part of the estate for other works

and it then had to be returned. He and Mr. Wild confirmed that those fascias and soffits in the final account did need replacing once a close inspection was undertaken whilst the works were progressing. Because of the position of the guttering and the fact that woodwork behind these items could not be seen from ground level, these replacements had not been anticipated. Rather than include replacing everything in the original estimate, they had assumed that painting would be sufficient.

Discussion

23. This has been an unfortunate case for a number of reasons. However, the only question for this Tribunal to determine is whether or not the service charge of £1,932.27 is reasonable. As the Applicants themselves sensibly and fairly confirmed that the work had been done and that the cost of £1,932.27 was reasonable for that work, it was difficult to see from the papers and from the hearing what else the Tribunal could do other than confirm that the cost is reasonable.

24. However, it is necessary to consider each of the complaints levelled by the Applicants in turn to see whether anything arising from those complaints has an effect on whether the claim is actually payable.

25. As far as the **scaffolding** is concerned, there are 2 issues i.e. whether it is fair for the cost of scaffolding to be charged when it had been omitted from the original estimate and whether there should be 2 charges for the scaffolding tower. On the first issue, the Respondents had readily accepted that the contractor had made a mistake in not including it and they had made an error in not spotting this. They had apologised. Mr. Kennedy said that if the contractor or the Respondent had made an error, then they should be held to account for this.

26. The problem faced by Mr. Kennedy is that the contractual position is not as simple as that. This was an estimate and not a quotation or tender. As an estimate, the only argument that could be pursued is that there was an implied term in the contract that either scaffolding would not be needed or that the cost was included. The evidence pointed only one way i.e. that the cost had been omitted in error and that scaffolding was needed. Thus a county court judge is highly unlikely to imply a term into the contract as suggested. As far as the scaffolding tower is concerned, an explanation has been given by Mr. Thomson and the Tribunal accepts that the cost was incurred.

27. As far as the replacement of the **fascias and soffits** is concerned, the Tribunal accepts the explanation given by the Respondent. It is clear that the works were supervised and part of the job of a supervisor is to prevent a contractor doing unnecessary work. Further, it is often said that replacing wood with uPVC can actually amount to a long term cost saving because it will be unnecessary to decorate those items in the future.

28. The problem in this case is that there should have been more communication by the Respondent and that has been acknowledged. Procedures have changed to take this into account. There was an under estimate and additional work had to

be done as a result of damage to fascias and soffits which had not been seen from the ground. The Applicants believe that they are being made to pay because of these communication failings.

29. The Tribunal can see why they would think that way. The situation has not been helped by the rather unattractive argument put forward by the Respondent i.e. 'we have complied with the law and there is nothing more we should have done'. Strictly speaking that is correct. Consultation is different when qualifying long term agreements are being used. The consultation requirements are less than for normal qualifying work when outside contractors are used. However, if an estimate has been grossly understated, or if substantial additional work is needed, it is a simple matter of courtesy and good budgeting sense to warn people as soon as the problem is known rather than send out large invoices and expect immediate payment.

Conclusions

30. The Tribunal has to conclude, with some misgivings, that the claim for £1,932.27 for these works is reasonable and payable. However, in view of the way this matter has been handled by the Respondent it is hoped that, exceptionally, sensible and reasonable facilities will be offered for payment over time.

31. As far as the Respondent's costs of representation are concerned, the Tribunal is grateful for the indication given by the Respondent i.e. that such costs as may have been incurred will not form part of any future service charge. However, as it will not affect the Respondent in any way, the Tribunal will make the order requested so that there will be no doubt about the position.

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Bruce Edgington
Regional Judge
16th February 2016

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.