



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI43UL/LSC/2015/0048**

Property : **Flat 4, Beechcroft, 46 Busbridge Lane, Godalming, Surrey, GU7 1QD**

Applicant : **Mr D Anderson**

Representative : **In person**

Respondent : **Southern Land Securities**

Representative : **Hamilton King Management**

Type of Application : **For the determination of the reasonableness of and the liability to pay service charges**

Tribunal Members : **Judge I Mohabir
Mr N Maloney FRICS FIRPM MEWI**

Date and venue of Hearing : **7 December 2015
Barnett Hill Hotel, Guildford**

Date of Decision : **7 December 2015**

DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of the reasonableness of service charges totalling £21,141.14 for the year ending 31 December 2015. The Applicant’s individual service charge contribution is £3,283.50.
2. The Applicant is the leaseholder of the subject property, being Flat 4, Beechcroft, 46 Busbridge Lane, Godalming, Surrey, GU7 1QD (“the property”) pursuant to a lease dated 16 March 1988 made between Protax Properties Ltd and Shaun Young for a term of 99 years from 25 December 1987 (“the lease”).
3. The property is described as a 1 bedroom ground floor flat in a converted Victorian house comprised of 8 flats in total, all of which are subject to long residential leases granted on the same terms.
4. It is not necessary to set out the relevant terms in the lease that give rise to the Applicant’s contractual service charge liability, as his challenge is limited to the reasonableness of the service charges in issue.
5. From April 2009, the Respondent’s managing agent, Hamilton King Management (“Hamilton King”) commenced statutory consultation under section of the Act by serving a Notice of Intention to carry out external repairs and redecorations.
6. Eventually, after protracted consultation with the leaseholders and a number of amendments to the specification of works, Hamilton King carried out a tendering process and served a revised Notice of Estimates on the lessees in January 2015. The cheapest tender provided by P & R Domestic in the sum of £19,900 plus VAT was accepted. The tender provided by the contractor nominated by the leaseholders was £32,651 plus VAT.

7. The external repairs and redecorations commenced in September 2015 and had been completed at the time the Tribunal inspected the building.
8. By an application dated 12 July 2015, the Applicant applied to the Tribunal seeking a determination as to the reasonableness the service charges in issue.

Relevant Law

9. This is set out in the Appendix annexed to this Decision.

Hearing and Decision

10. The hearing in this matter took place on 7 December 2015 following the Tribunal's external inspection of the building earlier that morning. The Applicant appeared in person. The Respondent was represented by Mr Cummings from Hamilton King.
11. The Applicant explained that he had no complaint about the need to carry out the external repairs and redecorations, the tender price or the standard of the completed works. He said that he was challenging the reasonableness of the service charges for the works on the basis that the scope and, therefore, the cost of the work had increased as a result of historic neglect on the part of the Respondent.
12. This had occurred because paragraph 5 of the Sixth Schedule to the lease obliged the Respondent to carry out external repairs and redecorations not less than every 3 years and not more than 5 years. He asserted that the last such works had been done between 2003 and 2005. Consequently, he was claiming that the eight items of cost set out in the final specification set out in his statement of case should be variously discounted either completely, by 33% and by 50%. The total discount sought by him was £10,968 including VAT.
12. The Applicant said he had purchased the property at the end of 2009 as an investment and had done so because he believed the purchase price

represented good value for money. He is a builder by trade and was aware of the external condition of the building at the time of purchase. He estimated that his service charge liability for the cost of the required external repairs and redecorations would be approximately £2,000.

13. The Tribunal explained to the Applicant that, because he had brought this application, he had the evidential burden of proving on a balance of probabilities the historic neglect on the part of the Respondent. For example, this would include the following:
 - (a) when each cycle of historic external repairs and redecorations should have been carried out by the Respondent.
 - (b) what items of repairs and redecorations should have been carried out on each occasion, the scope of any such works and, therefore, the service charge liability to the leaseholders (given that nothing had been paid by them).
 - (c) what items of repairs and redecorations had deteriorated as a result of the Respondent's failure to carry out these works, the extent of any such deterioration and the additional costs incurred thereby to enable his claim to be properly quantified.

14. The Applicant candidly admitted that he had no evidence in relation to any of the matters set out above. The figures he contended for were arbitrary and represented his opinion as to value. When asked by the Tribunal, he said that since he had purchased the property he had not complained to Hamilton King about the Respondent's failure to carry external repairs and redecorations. Moreover, the Tribunal noted that in a letter dated 11 February 2011 (presumably addressed to Hamilton King) the Applicant stated, "most of the (proposed) works seem unnecessary". He went on to state "it is an old house which at most needs a lick of paint". In the light of this stance taken by the Applicant, it seemed to the Tribunal that this application was opportunistic.

15. In the absence of any evidence from the Applicant, the Tribunal concluded that there was no basis on which it could make a finding of historic neglect on the part of the Respondent or to quantify any such claim. A mere assertion on the part of the Applicant could not discharge the evidential burden placed on him. The Tribunal was bound to find that the actual cost of the external repairs and redecorations in the sum of £21,141.14 was reasonable. It follows that the Applicant's service charge contribution of £3,283.50 is payable by him.

Costs - Section 20C & Fees

16. Neither party made any oral submissions in relation to the Applicant's application made under section 20C of the Act. The application had not succeeded on any basis and in the Tribunal's judgement "costs should follow the event". Therefore, the Tribunal considered that it was just and equitable not to make any order under section 20C to prevent the Respondent from being entitled to recover its costs incurred in having to respond to this application. Of course, for it to be able to do so, the Respondent must establish that it has a contractual right under the terms of the lease.
17. The Applicant said that he was not seeking to recover the fees he had paid to the Tribunal to have this application issued and heard. Accordingly, it was not necessary for the Tribunal to consider and make any order in this regard.

Judge I Mohabir

7 December 2015

Appeals

1. Any party wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.