11845

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LAC/2016/0198**
Property	:	**19 Cliveden Place, London SW1W 8HD**
Applicant	:	**Grosvenor Estates Belgravia**
Representative	:	**Mr Peter Smith**
Respondents	:	**First Floor Flat- Annaliese Stubbs & Osman Vlora**
Representative	:	**Blake Morgan LLP**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mr M C Taylor FRICS**
Date and venue of Hearing	:	**3rd August 2016 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**31st August 2016**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the reasonable costs of the proposed works, namely, the installation of a fire alarm and the installation of emergency lighting in the common areas and "associated electrical works", are recoverable under the terms of the lease.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The applicant landlord seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the reasonable costs of proposed works are recoverable under the terms of the lease as a service charge.

2. The relevant legal provisions are set out in the Appendix to this decision.

3. The applicant confirmed it was happy for the application to be dealt with on paper if the tribunal thought it appropriate. There was a Case Management Conference on 13/5/16. The tribunal considered that if none of the respondents requested an oral hearing then it would be appropriate for the application to be dealt with in this manner (without a hearing). None of the parties requested an oral hearing so the matter was listed to be dealt with on paper.

The background

4. The property which is the subject of this application is a converted house comprised of a garage, a commercial office, and two self contained flats.

5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The respondents hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. In light of the application notice, the respondents statement of case, the applicants reply to the respondents statement of case, and the various correspondence between the parties, the tribunal identified the relevant issues for determination as follows:

   (i) Whether the reasonable costs of the installation of the fire alarm and the emergency lighting in the common areas are recoverable under the lease (the tribunal is not required to determine whether the actual costs are reasonable or the proportions payable by each lessee).

   (ii) The application for a determination of whether the reasonable costs of the proposed redecoration works (to include new heater, electrical repairs, new carpet and associated works to the common parts) are recoverable under the lease were withdrawn by the applicant as the applicant had decided not to carry out the proposed redecoration of the common parts.

8. Having considered all the evidence prepared by the applicant for the final hearing, as directed by the tribunal, and a copy of which has been served upon the respondents, the tribunal has made determinations on the issues as follows.

Are the reasonable costs of the installation of the fire alarm and the emergency lighting recoverable under the lease?

9. The respondents main arguments may be summarised as follows:

10. The applicants proposed work is based upon a report by Brian Holden of Frankham Risk Management Services dated 13/8/14 ("the report"). The report does not describe the building as including a garage and so it is not known whether the garage was inspected, bearing in mind the proposed works include the garage.

11. The report recommended that any action had to be taken within 60 days from the date of the report. Therefore, the proposed works should have been done by October 2014 or as soon as possible, not now.

12. The report does not explain why a "Grade A" fire detection and alarm system needs to be installed as opposed to any less comprehensive installation which may also be acceptable under the relevant Building Standards taking into account the nature and relatively low fire risk.

13. The applicants proposed works are based upon its claimed responsibilities under the Regulatory Reform (Fire Safety) Order 2005 which came into effect in 2006. The applicant did not commission any fire risk assessment until the first report in 2013, almost seven years after the applicants obligation arose under the 2005 Order, therefore

the proposed works cannot be considered as necessary now if they were not considered necessary before. The common parts for which the applicant is responsible has not changed.

14. The report recommends fire detection and warning within the communal areas due "to the type of property and the internal layout" but does not explain why that is so.

15. If the risk of fire is increased due to the ground floor being used for commercial purposes or by the presence of a garage, then the lessees of the commercial premises and the garage should pay for the cost of the proposed works.

16. The applicant acted reasonably by not carrying out these works as a consequence of representations made by the leaseholders in 2007 and in 2014.

17. The report refers to the installation of fire detection and warning equipment not only within the communal areas but also to the private and commercial accommodation. However, this would be a trespass on the property of each lessee that does not consent to any such installation within their private premise and in any event such private premises are not covered by the obligations of the 2005 Order.

18. The report justifies works being carried out pursuant to BS5266 and BS5839 which are building standards and should not apply retrospectively but only prospectively.

19. The tribunal has carefully considered the Fire Risk Assessment. The tribunal is satisfied that the fire risk assessment was carried out by a recognised and reputable company. The 35 page report is sufficiently detailed and is based upon a physical inspection of the premises (as clearly stated on page 10 of the report). The tribunal notes that the garage is separate and independently accessed and the applicants proposed works do not include works to the garage, therefore, the tribunal is satisfied that it was not necessary to inspect the garage. The tribunal further notes that the respondents have not provided any reports of their own to demonstrate either that the applicants proposed works are not required or that the extent / grade of work recommended is not reasonably required or is excessive. In the circumstances, the tribunal accepts the report and the recommendations contained therein as reasonable.

20. The tribunal notes the point raised by the respondents concerning the delay in carrying out the proposals and the fact that the applicant had previously decided not to carry out the proposed works. However, the tribunal did not find the issue of delay or the applicants previous decision (to not carry out the proposals) to be significant. Given the

tribunal is satisfied that a Fire Risk Assessment has been carried out by a recognised and reputable company and no report has been provided by the respondents to suggest the contrary, the tribunal is satisfied that the proposals contained within the report are reasonable and remain valid despite the proposed works not being carried out within the recommended period. There is no evidence before the tribunal to suggest that there has been any material change since the report was completed in 2014 such that the recommendations made in 2014 are no longer valid.

21. The recommendation within the report, for the installation of fire detection and warning equipment within the communal areas and the private and commercial accommodation, is irrelevant to the question of whether the applicant as the landlord is required to carry out the proposed works to the common areas and whether the cost of such work is recoverable under the lease. The applicants responsibility is for the common parts only. The tribunal agrees with the applicant that the lessees of each premise are responsible for their own private premise and may be in breach of their respective lease if they refuse to carry out any necessary / reasonable works that need to be carried out within their demised premise under the terms of their respective lease.

22. Under clause 7 of Part 3 of the 8th Schedule of the lease, the applicant is entitled to recover the cost of "*Such alterations improvements or services as the Landlords may consider necessary*". Whilst both parties disagree on whether the proposed works are an "alteration" or an "improvement", the tribunal does not have to resolve the dispute as it does not matter whether it is an alteration or an improvement so long as it is one or the other. The tribunal is satisfied that the proposed works amount to either an alteration or an improvement.

23. The respondents submit that the word "reasonably" must be implied before the word "necessary". Even if that were to be the case, on the facts of this case, the tribunal has no hesitation in finding that the proposed works are not only necessary but also reasonable given that the proposed works are based upon a risk assessment carried out by a reputable company.

24. The reasonable cost of any "associated electrical works" relating only to the installation of the fire alarm and the installation of the emergency lighting would clearly be recoverable under the lease. However, we make no findings with respect to any "associated electrical works" not relating to the installation of the fire alarm and the installation of the emergency lighting as the applicant has not provided adequate information for the tribunal to make any such findings.

Application under s.20C and refund of fees and costs

25. Neither party made any application therefore the tribunal makes no order under s.20C or any orders concerning refund of fees or costs.

Name: Mr L Rahman **Date:** 31/8/16

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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) the appropriate 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.