



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

Case Reference : **CHI/29UL/LSC/2017/0033**

Property : **10 Earls Avenue, Folkestone, Kent,
CT20 2HW**

Applicant : **Maxine Investments Ltd**

Representative : **Mr Faiman, Director**

Respondents : **(1) Mr & Mrs Brinton
(2) Mr D Dowsett
(3) Reverend K Mentzel
(4) Miss E Beedham**

Representative : **In person**

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

Tribunal Members : **Judge I Mohabir
Mr R Athow FRICS MIRPM**

Date of Hearing : **26 September 2017**

Date of Decision : **14 November 2017**

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”) to determine the Respondents’ liability to pay and/or the reasonableness of service charges for the year ending 31 December 2017.
2. The subject property is a large semi-detached Victorian house that has been converted into 5 self-contained flats. Each of the flats is subject to a long residential lease currently held by each of the Respondents.
3. The service charges in issue here are the total estimated cost of £5,100 for carrying out remedial damp proofing works to external and internal walls of the front living room and right internal wall of the rear bedroom of the ground floor flat. The lease of this flat is held by Mr and Mrs Brinton.
4. It was common ground that the Applicant had already carried out valid statutory consultation with the Respondents under section 20 of the Act in relation to the proposed works.

Relevant Law

5. This is set out in the Appendix annexed to this decision.

Decision

6. The hearing in this case took place on 20 September 2017 following an earlier inspection of property by the Tribunal.
7. The Applicant was represented by Mr Faiman who is a Director of the company. He was accompanied by his witness, Mr Godden, who is a Chartered Building Surveyor. He had been instructed by the Applicant to investigate the cause of the existing damp.
8. Of the Respondents, only Mr Brinton and Mr Dowsett appeared in person.

Submissions

9. The Applicant relied on the report prepared by Mr Godden dated 26 May 2017¹. He had conducted a number of inspections of the ground floor flat to ascertain the cause of the damp found in the premises. The material inspection took place on 31 August 2016 when Mr Godden attended the site with a local builder, Keith Warwick, to open up the affected areas.

10. When the cavity wall adjacent to the chimney stack serving the rear bedroom of the ground floor flat was opened, it was found to be filled with brick rubble and mortar, some of which was present as a result of the former chimney stack being partially demolished. The moist debris may have bridged the cavity thereby causing the damp found there. To prevent this occurring, 4 bricks were removed from the external face of the eastern end of the wall, the cavities cleaned and the bricks were replaced with air bricks to dry the cavity.

11. When asked by the Tribunal as to why there was the continued presence of damp in the rear bedroom, Mr Godden said that this was being caused contaminated salts in the plaster.

12. The removal of a section of wood panelling from the party wall at the front of the floor in the lounge of the ground floor flat revealed timber decay. As to the cause of this, Mr Godden concluded in his email to Mr Faiman dated 17 November 2016 that prior to the replacement of the rainwater gutter and pipe on the front elevation in 2013, water penetration may have affected the party wall. However, he found the rainwater goods to be generally serviceable and, materially, there was no obvious staining to the face of the building adjacent to the downpipe.

¹ see pages A3-17 of the bundle

13. As to the proposed remedial works, Mr Godden confirmed that these are set out in the (accepted) estimate of MTS Damproofing Ltd² following consultation with the Respondents.
14. Mr Brinton told the Tribunal that he was not opposing the application and simply wanted the remedial works to be carried out as soon as possible. He had attended the hearing to observe proceedings.
15. Mr Dowsett submitted generally that the Applicant should be liable for the cost of the proposed works. He was not objecting to the need to carry out the remedial works or the estimated cost.
16. In relation to the presence of damp in the rear bedroom of the ground floor flat, Mr Dowsett was unable to say what was causing this. However, he offered a number of possible reasons as to why the damp rubble found by Mr Godden had been present. These were:
 - (a) that the roof had been damaged in the October/November 2016 storm, which had led to water ingress.
 - (b) that defective works carried out in or about June 2015 could be contributory factor, although he was unable to say which items of work could have done so.
 - (c) that some of the external pointing may have been defective.
17. As a consequence, Mr Dowsett submitted that the proposed works to the rear bedroom should be the subject matter of an insurance claim or paid for by the Applicant.
18. In relation to the front lounge of the ground floor flat, Mr Dowsett contended that the replacement of the hopper and downpipe carried out by the adjacent property owner in November 2013 was not done sufficiently well. Until this was remedied, he argued that the problem

² see page B60 of the bundle

would reoccur and submitted that the Applicant should pay for these costs and/or that they would not be reasonably incurred.

Decision

19. The only expert evidence given to the Tribunal was that of Mr Godden. Although he had been instructed by the Applicant, and was not strictly independent, nevertheless he struck the Tribunal as a knowledgeable and reliable witness. The Tribunal, therefore, attached the most weight to his evidence and accepted his conclusions as to the causes of the damp found in the ground floor flat.
20. Accordingly, the Tribunal made the following findings:
 - (a) that the damp in the rear bedroom was probably as a result of historic damp rubble in the wall cavity (since removed) and that the continued presence of damp was because of contaminated salts in the wall plaster.
 - (b) that the presence of damp/wet rot in the front lounge was probably as a result of historic water penetration to the party wall and not as a consequence of the rainwater goods found there. Indeed, this was confirmed by the Tribunal's own physical inspection of the property.
21. It follows from the above findings, the Tribunal concluded that the various causes of the damp and internal damage found in the ground floor flat fell within the landlord's repairing obligation in clause 6-2.1 of the leases and for which the Respondents' are obliged to make a service charge contribution in relation to any costs so incurred.
22. Given that there was no challenge to either the need to carry out the proposed works or cost, the Tribunal found that there are reasonably incurred and the estimated cost to be reasonable.

Section 20C & Fees

23. Mr Faiman confirmed that the Applicant was not seeking to recover any costs or fees incurred in making this application through the service charge account or at all. Therefore, the Tribunal is not required to consider whether an order should be made under section 20C of the Act or the reimbursement of fees by the Respondents.

Judge I Mohabir
14 November 2017

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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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.