

12797



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

Case Reference: CHI/18UB/LSC/2017/0106

Property: Flat 1, 20 Morton Road, Exmouth, Devon
EX8 1AZ

Applicant: Mrs Lisa Lodge

Representative: In Person

Respondent: Mr James Ward

Representative: Mr Colin Stephens of APS-UK Ltd

Type of Application: Section 27A
Tenant's application for the determination of
reasonableness of service charges for the year
2017.

Tribunal Members: Judge A Cresswell (Chairman)
Mr W H Gater FRICS ACI Arb

Date and venue of Hearing: 20 April 2018 in Exmouth

Date of Decision: 30 April 2018

DECISION

The Application

1. This case arises out of the Applicant tenant's application, made on 21 November 2017, for the determination of liability to pay service charges for the year 2017.

Summary Decision

2. The Tribunal has determined that, with the agreement of the parties, the landlord has demonstrated that charges to 20 April 2018 of £11,264 inclusive of VAT were reasonably incurred and that the services or work was of a reasonable standard and that they are reasonable in amount and are payable by the Applicant.
3. The Tribunal orders, with the agreement of the parties, the reimbursement of £200 fees paid by Applicant.

Inspection and Description of Property

4. The Tribunal inspected the property on 20 April 2018 at 1000. Present at that time were the Applicant, Mrs Lodge, her friend, Mrs Jenny Clark, and the landlord's representative, Mr Stephens. The property in question consists of a mid terrace 3-storey house converted into 3 flats, Flat 1 occupying the ground floor (and, by a separate lease, the rear garden).

Directions

5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
6. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by Mr Stephens and Mrs Lodge. At the end of the hearing, the parties told the Tribunal that they had nothing further to add.

The Law

7. The relevant law is set out in sections 18, 19, and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
8. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
9. In reaching its Determination, the Tribunal also takes into account the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and*

any provision that appears to be relevant to any question arising in the proceedings is taken into account.

Ownership and Management

10. The Respondent is the owner of the freehold. The property is managed for him by APS-UK Limited.

The Lease

11. The Applicant holds Flat 1 under the terms of a lease dated 4 April 2008, which was made between Dennis Neville Griffith and Christina Anne Griffith as lessors and Benjamin Dennis Peter Griffith as lessee. The Tribunal understood this lease to be representative of all 3 leases at the property.

Agreed Facts

The Respondent

12. The Respondent, via Mr Stephens, detailed the history to date which, with input by her, Mrs Lodge agreed to be correct.
13. The building was purchased by the current landlord in 2015. It had been converted into 3 residential dwellings, one on each of its 3 floors. Flat 1 is on the ground floor with an extension with a pitched roof. The outside at the rear of Flat 1 was leased separately to the Applicant recently for the same time period as the flat lease.
14. A RICS report dated 24 July 2014 identified works required to the property.
15. The Applicant, Mrs Lodge, became a leaseholder on 24 February 2017.
16. A Section 20 process, to give effect to the recommendations of the RICS report, began as the Applicant came into residence. The first Section 20 notice was sent on 23 March 2017, inviting names of builders for quotations to be sought.
17. Flat 3 is sublet; the leaseholder indicated contentment for any contractor to be approached. Flat 2 is a second home/wider family home and the leaseholder was concerned only that its windows would be sorted out during the process. The Applicant put forward nominations for contractors, some 3 names.
18. The Respondent approached 5 contractors by letter of 6 May 2017, enclosing a copy of the RICS report and setting out 2 lists of priorities from the list identified by the report.
19. The Respondent received a tender for the windows from MS Windows and a full quotation from Haven Build. The Respondent was unable to contact one of the contractors nominated by the Applicant and sought further contact details.
20. The Applicant responded to the effect that Gary Stone had provided a quotation for much of the required works, but excluding re-glazing of the internal front door and repair to the front elevation and replacement of an asbestos downpipe.
21. The Applicant was keen to progress the works and she asked if she could make alterations to her property at the same time. The Respondent gave his consent.
22. The Respondent made decisions based on lowest prices and divided the required works between Mr Stone and Haven Build.
23. On receipt of the tender letters, the Respondent, on or about 25 July 2017, sent a spreadsheet to all leaseholders indicating choice of contractors and relevant costs for the proposed works. The Respondent requested payment from the leaseholders, being 38% from Flats 1 and 2 and 24% from Flat 3 in accordance with the proportions in the terms of their leases. Some £9,903.34 was requested from the Applicant.
24. The Respondent accepts that this was not a service charge demand in accordance with the terms of the lease.

25. Flats 2 and 3 agreed to the proposals verbally.
26. By email of 9 August 2017, the Applicant said that she would pay for the roof to be fixed, the walkway to be repaired and for her front window to be replaced with an expectation of proportional reimbursement by Flats 2 and 3.
27. Work commenced on 14 August 2017 and Gary Stone completed some of the required works.
28. On or about 31 August 2017, the Applicant told Mr Stephens that she disputed the cost of the works to the front elevation. The Applicant had been told by 2 local builders that the estimate for the works to the front elevation from Haven Build was excessively high. She also queried whether further fire retardation works were required to the communal stairway.
29. Mr Stephens was unwilling to provide the Applicant with a copy of Haven Build's quotation. He was concerned that the Applicant appeared to be trying to re-negotiate after works had started. The work came to a halt.
30. To date, 20 April 2018, building costs of £11,264 including VAT have been incurred. The works remaining are repairs to the front elevation and any required fire protection works in the communal stairway.

Agreed Outcome

31. The parties agreed the outcome.
32. They agreed that the landlord has demonstrated that charges to 20 April 2018 of £11,264 inclusive of VAT were reasonably incurred and that the services or work was of a reasonable standard and that they are reasonable in amount and are payable by the Applicant. Accordingly, the Tribunal so orders.
33. The Tribunal notes that it is the intention and agreement of the parties that a local structural engineer would be asked to provide a report in relation to the front elevation and specify any works required; that a suitably qualified fire safety expert would assess the requirement for any further fire retardation works to the communal stairway and specify any necessary works; thereafter, the Respondent would seek 2 estimates for any works required. Accordingly, the Tribunal makes no decision in relation to the proposed works to the front elevation or the communal stairway, thus leaving the parties the opportunity to make fresh applications to the Tribunal, should that be necessary.
34. Mr Stephens indicated that it was the intention of the Respondent to collect any monies due from the leaseholders by operation of the system of service charge demands required by the lease.

Fees

35. Under Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"): *The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*
36. The Respondent agreed, via Mr Stephens, that he should reimburse part of the fees paid by the Applicant (and reflect the work done by the Applicant in preparing the bundles) and that that reimbursement should be in the sum of £200. Accordingly, the Respondent is ordered to pay the sum of £200 to the Applicant in reimbursement of fees.

A Cresswell (Judge)

APPEAL

1. A person 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.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.
4. The application for permission to appeal must 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.