



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

Case Reference : **LON/00AG/LSC/2019/0248**

Property : **22 Camden High Street, London
NW1 0JH**

Applicant : **Mr Rene Wilson**

Representative : **Mr Rene Wilson with Mrs A Wilson**

Respondent : **Independent Developments Ltd**

Representative : **Mr T Dewey of Pelham Associates**

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

Tribunal Members : **Tribunal Judge Dutton
Miss M Krisko BSc (Est Man)
FRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR
on 9th October 2019**

Date of Decision : **24th October 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the costs of the major work set out below are unreasonable and that the s20 procedure be undertaken again.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A(3) of the Landlord and Tenant Act 1985 ("the 1985 Act) as to whether costs sought for major works would be payable.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person accompanied by Mrs Wilson and the Respondent was represented by Mr Tim Dewey a consultant at Pelham Associates who are incorrectly shown as the Respondent. The correct respondent is Independent Developments Limited, and with the agreement of the parties we amended the proceedings to record this fact.

The background

4. The property, which is the subject of this application is a mixed use property comprising two residential properties, one being a one bed flat and the applicant property, which is a three bed maisonette (22B). At the ground floor is a dental practice.
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 Applicant holds 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. At the start of the hearing the parties identified the relevant issues for determination as follows:

(i) A section 20 notice has been issued by the respondent. The works to be undertaken are at a total Costs inclusive of VAT is £39,138. The cost allocated to the Applicant is 35% or £13,698.

Section 20 Notice covers following repair and redecoration to the rear elevation of the building:

- Window work: dig out any rotten timber and replace with filler.

-Clean, rub down and prepare surfaces in readiness for painting (windows, soil pipe etc).Paint surfaces with 1 coat primer, 2 undercoats and one gloss top coat.

-Rake out facade and re-point brickwork.

-Clean gutters, test flow of drainage system, and repair any leaking joints.

-Repair one broken glass panel (21cm by 31 cm).

- Remove pipe penetrating brickwork and re-route gutter outlet.

-For Mansard roof: clean, replace broken tiles, repair /replace lead flashings.

(ii) The applicant asks:

(1). Are the costs in the section 20 notice excessive? (out of proportion from independent quotes and previous work carried out on the property).

(2). If these costs are excessive , should the managing agent be made to re-tender and issue a new section 20?

(iii) It is said by the Applicant that the costs are inflated both because, in particular, proposed scaffolding costs are excessive and also they are not in line with previous works of a similar nature carried out in 2014.

8. It seems that in 2014 the cost for replacement of the front roof section, and repairs and redecoration to the front were £14,982. The anticipated

cost for works to the rear roof elevation and for redecoration at the rear were estimated at £39,138.

9. It was noted that the front elevation of the building was rendered and therefore required extra redecoration. The rear elevation is brick.
10. In addition it seems clear from the lease that the windows, and their external surfaces, of the residential units, at least, fall within the demise of the Leaseholder and not the Landlord. Accordingly costs associated with decorating of the windows are not recoverable under the lease. (See First Schedule defining the Demised Premises at paragraph (a)). This did not seem to be originally appreciated by either party although Mr Wilson said he would have no difficulty in agreeing the decoration works and paying for them if the costs were reasonable.
11. It should be noted that the revised CBS quote seemed to reflect the fact that costs associated with yard and windows were accepted as not being recoverable from the Applicant. The revised quote was £35,953 including VAT and Savills fees of 10%.
12. Of particular concern to the Applicant was the proposed scaffolding costs. The Section 20 tender indicated scaffolding costs varied from £15,000 on the revised CBS quote to £10,718 on the quote from Woodsgrove, who now appeared to be the preferred contractor at a total figure of £26,688.
13. In the Applicant's witness statement dated 15th August 2019 these issues are set out in some detail. In particular he provides an alternative estimate for scaffolding costs from ATD. This company appears to meet the requirements of the Respondent as set out in an email from Mr Dewey to the Applicant dated 3rd July 2019 (page 29 of the bundle before us).
14. The ATD quote is £2,208 for up to 10 week hire the work being carried out in compliance with BS EN12811-1 and the Work at Height Regulations.
15. Initially it seemed that the access was a difficulty and was used as an explanation for the higher costs. Mr Wilson explained that access could be had through the building at ground floor level and that whilst ATD had not inspected they had been provided with photographs by Mr Wilson to show the site circumstances. This quote was sent to Pelham on 8th July 2019.
16. It seems that Pelham did seek a meeting with Mr Wilson just before the hearing but he declined as he did not want Savills to be present. This was a pity.

17. Mr Wilson said he did not dispute the 10% charge by Savills for administering the works but was unclear why such a straight forward job required their involvement. Further Savills costs should reflect the errors made in the s20 procedure which we have been required to determine.
18. In summary he told us that in his view the costs were out of proportion, the scaffolding was expensive and the works were in part not within the Respondents obligation.
19. In response Mr Dewey for the Respondent sought to argue that the scaffolding was included in a lump sum contract and that it would be unusual for elements to be dealt with separately. We noted the contents of this witness statement.
20. He did, however appear to accept that the Section 20 process should be revisited.

Findings

21. We heard all that was said . Although it seems the Respondent has, somewhat late in the day, realised that the rear yard and the windows to the residential element are not the responsibility of the Applicant, the costs sought on the current Section 20 notice seem to us to be excessive. We find that the scaffolding costs are clearly too high. The quote from ATD is, we find, comparable and substantially lower than those suggested in the preferred quote of Woodgrove. Some £8000 or thereabouts lower. In addition the overall costs seem out of kilter with those sought in 2014, for what appears to be more extensive works.
22. Accordingly, we have no hesitation in finding that the Applicants application is allowed and that the costs suggested by the Respondent to be incurred for the works fall foul of S27(A)(3) and would not be reasonable or payable.
23. It appears, however, to now be common ground that the Section 20 process will be re instigated with the ATD quote being considered. In addition the tender must remove reference to repairing or decorating the Leaseholder windows, unless of course they agree to pay for any works and works to the rear yard.
24. The fees of Savills should not reflect the repetition to the Section 20 process as the inclusion of the windows and any costs associated with the yard is clearly at variance to the lease terms and should have been known before the process commenced. In addition there was placed before us a demand in the sum of £758.88 dated 19th September 2109 which appeared to include a charge of £525 for legal services. This was not within the scope of this application and it is unclear as to what legal

services this referred. Mr Wilson has the right to challenge this, unless some agreement can be reached.

Application under s.20c and refund of fees

25. At the end of the hearing, the Applicant made an application for the refund of the fees that he had paid in respect of the application/hearing. Having heard the submissions from the parties and taking into account the determinations above, we order the Respondent to refund any fees paid by the Applicant within 28 days of the date of the decision.
26. In the application form the Applicant applied for an order under section 20c of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders that it is just and equitable in the circumstances for an order to be made under section 20c of the 1985 Act, so that the Respondent may not pass any costs incurred in connection with the proceedings before the tribunal through the service charge.
27. Mr Wilson also raised the question of costs. It was explained that these would only be payable under the provision of Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. He was advised to review them and consider the Upper Tribunal case of Willow Court Management Co (1985) Ltd v Mrs Ratna Alexander [2016] UKUT (LC) before taking this issue any further. He has 28 days from the date this decision is sent to him to make an application.

Signed *Andrew Dutton*

Tribunal Judge Dutton

Date 24th October 2019

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

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.