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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00BH/LSC/2013/0105**
Properties	:	**30, 32 and 32C Markhouse Road, Walthamstow, London E17 8BD**
Applicants	:	**(1) Mildred Rose Selormey (32)** **(2) Suzanne Richards (30)** **(3) Victor Boyko (32C)**
Respondent	:	**Atol Property Ltd.**
Date of Application	:	**13th July 2013 (to London region)**
Type of Application	:	**To determine reasonableness and payability of service charges and administration fees**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Gerard Smith MRICS FAAV** **David Cox**
Date and venue of hearing	:	**12th November 2013, Packfords Hotel, 16 Snakes Lane West, Woodford Green, IG8 0BS**

DECISION

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1. The Tribunal determines the gross service charge demands for the years referred to in the application as follows:-

Year ending 24th March 2013

Item	Amount(£)	Decision
Audit & accountancy	400.00	unreasonable and not payable
Insurance	1,429.63	reasonable and payable
Drain clearance	180.00	reasonable and payable
General repairs & maintenance	510.00	reasonable and payable
Pest control	170.40	reasonable and payable
Valuation for insurance	378.00	unreasonable and not payable
Management fees	1,440.00	reasonable and payable
	4,508.03	

Thus, of the amounts claimed, the total sum of £3,730.03 is determined as being reasonable

and payable. Ms. Selormey's share of this (16.7%), less a proportion of a small interest charge credit of £1.34 mentioned in the accounts is £622.69. The Tribunal has not seen the leases for 30 and 32C and therefore cannot give figures for those.

Budget for year commencing 25th March 2013

Item	Amount(£)	Decision
Audit & accountancy	420.00	unreasonable and not payable
General repairs & maintenance	1,000.00	reasonable and payable
Insurance	1,655.00	reasonable and payable
Bank charges	30.00	unreasonable and not payable
Out of hours service	25.00	reasonable and payable
Management fees	1,440.00	reasonable and payable
Roof works	25,000.00	unreasonable and not payable
Damp works	22,000.00	unreasonable and not payable
	51,570.00	

Of the amounts claimed, the total sum of £4,210.00 is reasonable and payable subject to the reservations set out below. Ms. Selormey's share of this is £688.04.

2. For the avoidance of doubt, the Tribunal's decision dated 31st January 2013 (paragraph 1) that £34.26 is not payable stands.

3. The administration fees claimed of £25 per letter are not reasonable and are thus not payable.

4. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act** 1985 ("the 1985 Act") preventing the Respondent from recovering its costs of representation before this Tribunal from the Applicants in any future service charge.

5. The Tribunal also orders the Respondent to refund the fees paid to the Tribunal by the Applicants of £440.00 by way of a set off against service charges.

Reasons

Introduction

6. This is the 2nd application made by the 1st Applicant against this Respondent relating to services charges claimed for 32 Markhouse Road. Ms. Selormey seems to be the main applicant in this case as there is only a letter from Ms. Richards and nothing from Mr. Boyko. There are few documents from Ms. Richards and none from Mr. Boyko.

7. The 1st application was heard on the 29th January 2013 and the decision was dated 31st January 2013. It is exhibited in the hearing bundle provided by Ms. Selormey which is helpful because all the parties will therefore be aware of it. It sets out a description of 32 Markhouse Road and a broad description of the building in which all 3 properties in this case are situated. It sets out the law and the relevant sections of the lease of 32 Markhouse Road. The Respondent's evidence is that the leases are all in the same terms.

8. One decision made by the Tribunal on that occasion was to say that a claim for £34.26 as a service or administration charge was not reasonable because no evidence had been produced to justify it. It can be seen from the correspondence which has followed that decision that the Respondent is now saying that this is unpaid ground rent. A statement was produced at this hearing by the Respondent's managing agent with the word 'ground rent' alongside that item.

9. This was not the description given to the Tribunal in January and £34.26 is not a figure which is recognisable as being anywhere near to the ground rent charge. Ms. Selormey is convinced that this is for interest on unpaid ground rent or service charges. On balance, and in the absence of any real evidence to say what this amount is, the Tribunal concludes that it is interest, in which case, the Tribunal's decision still stands because the definition of an administration charge includes interest for unpaid ground rent. The January decision was not appealed and it therefore stands.

10. As has been said, there is a hearing bundle but unfortunately, and contrary to the terms of the directions order, it does not have numbered pages which has made preparation and conduct at the hearing much more difficult than it needed to be.

11. Finally, it should just be explained that the original application to the London regional office was made by Ms. Selormey and Ms. Richards. There was a pre-trial review held at the London regional office on the 13th August 2013 which was attended by Ms. Selormey and Mr. Boyko but not by either Ms. Richards or the Respondent. Mr. Boyko asked to be an Applicant and was told that he would have to write in formally. He had in fact done this on the 5th August and was therefore made an Applicant.

12. It was only after the pre-hearing review that it was realised that the properties were still being managed by Regent Properties Ltd. This is a company in which Clifford Simons, a London First-tier Tribunal member, is involved. The case was therefore transferred, once again, to the Eastern regional office.

13. In essence, the Applicants complain that the property is still in a state of disrepair and that the efforts to rectify this have been badly handled and the proposed cost is simply too high. Indeed Ms. Selormey has complained about Regent Property Management Ltd. to the London regional office of the Tribunal. Obviously no member of this Tribunal has had anything to do with the investigation of that complaint.

The Inspection

14. The members of the Tribunal inspected the properties in the presence of Ms. Selormey, Ms. Richards, Mr. Simons and a colleague of his. They were able to see the interior of 30, 32 and 32C all of which had evidence of damp. Ms. Richards also complained of some fairly minor hairline cracks in her plasterwork. The decision following the 1st application contains a description of the building and that is not repeated here.

15. However, the Tribunal did notice that the gutters at the front of the property were blocked and there was evidence that water had been cascading down the wall which was obviously very wet. The explanation was given that the Respondent was waiting for the roof work to be done. Such a comment was not helpful when it was so obvious that damage or prospective damage was being caused to the fabric of the building.

The Lease

16. The leases are said to be for terms of 99 years from the 24th June 2007 with an increasing ground rent. Once again, the relevant terms are described in the decision following the 1st application.

The Law

17. This is set out in the decision following the 1st application.

The Hearing

18. The hearing was attended by those who attended the inspection. The Tribunal chair put various questions he had following his preparation for the hearing as follows:-

- Firstly the Tribunal needed to know what was being challenged. It was confirmed that it was the amount of the service charges claimed for the year ending 24th March 2013 plus the demand for monies on account of the year commencing 25th March 2013. Mr. Boyko was not at the hearing but Ms. Selormey and Ms. Richards confirmed that this was the case.
- The parties were asked whether there was a report and specification for the roof work because there was none in the bundle. Mr. Simons produced a specification prepared by Mr. Wates FRICS but there was still no report setting out what was wrong with the roof. It was also noted that the specification which had presumably been used for tendering purposes provided no condition that the insulation work had to be to Building Regulation standard and there was no requirement for any sort of guarantee – bonded or otherwise.
- Questions were asked about the £34.26 and, at that stage, Mr. Simons had no information about it other than to claim it was for ground rent.
- Mr. Simons was asked why it was necessary to have the simple and straightforward service charge account certified by an accountant. He claimed variously that it was the law, was good practice and was good for the lessees because it gave them re-assurance that the charges were accurate.
- He was also asked why there were 2 claims in successive years for insurance valuations. After investigation, he was able to say that the second one was wrongly described. This was for the work undertaken by Earl Kendrick Associates in December 2012 when they looked into the damp problem.

19. It is clear that there has been some activity since the last hearing. There has been some consultation pursuant to the provisions of section 20 of the 1985 Act in respect of works needed to the roof and damp problems. However, even this process has been fraught with difficulties. As far as the roof is concerned the second stage of the consultation process is a letter dated 24th May 2013 which simply refers to estimates having been obtained in the sums of £17,690.00, £30,040.00 and £35,870.00 plus VAT in each case.

20. The letter then just says that including professional and management fees, the total estimated cost is £25,344 including VAT. Logically, this must be on the basis that the cheapest proposed contractor is used although the notice does not actually say that.

21. There is a letter in section 8 of the bundle from a Mr. Afrim Reka, the lessee of flat 32A who says that he volunteered his company to do the work but he was never asked for a quotation. He had also asked to quote for the plaster work. Mr. Simons said that these requests came in after the consultation process and he had no idea whether Mr. Reka's business was of sufficient standing with insurance, financial stability and a good reputation. Equally, Mr. Simons said that he did not know whether the surveyors had even looked into this or had sent a specification to him. He, Mr. Simons, certainly had no objections if Mr. Reka's businesses were approved by the surveyor.

22. As far as the damp work is concerned, only the 1st stage of the section 20 process has been

undertaken. There is an estimate of £22,000 for the cost of this work. However, the evidence from the Respondent at the end of the bundle makes this far from satisfactory. The statement from Julian Davies MRICS dated the 21st October 2013 is in the form of a witness statement. It contains none of the requirements of an expert witness report such as a commitment that his primary duty is to the Tribunal.

23. However, it does confirm in paragraphs 5, 8, 19, 20 and 22 that the cause of some if not all of the damp has been defects to the parts of the building that are maintainable by the Respondent i.e. defective external plaster, pointing, seals around the windows and external rear door frame, and possible the existing external plaster bridging any damp proof course. Mr. Davies revises down the estimate for the damp work to £6-8,000 plus VAT and fees.

24. There are comments that the work could not be progressed because access could not be obtained to Ms. Selormey's flat. However, it is clear that she allowed access to Bruce Knight Construction in November 2012 and to Mr. Davies' colleague, Mr. Philip Smith on the 6th December 2012. Following that inspection, a report was prepared. There also appears to have been access permitted to Mr. Davies' other colleague, Andrew Houghton, on 28th March 2013 and he has also prepared a report. The only inferences that this Tribunal can draw are that such reports were defective as Mr. Davies clearly has a different view as to the cost of what is needed and the order in which it should be done. Some may draw the conclusion that any reasonable person could well be a bit upset by all this intrusion without any real progress.

25. Whatever the situation is with regard to internal access to flat 32, it appears that Mr. Davies is clear that the repairs to the external plasterwork and door frames etc. is needed before the chemical damp proofing work and there also needs to be some drying out before such damp proofing is done. Presumably, it would also be sensible to see whether the repairs to the plaster, seals around the window and door frames etc. do actually cure the damp problem. None of that requires access to flat 32 and it should have been done before now.

Conclusions

26. Dealing firstly with the level of service charges, it is the Tribunal's view that the claim for the year ending 24th March 2013 is reasonable and payable save for the audit fee and the fee for Mr. Philip Smith's time in December 2012. As far as an audit fee is concerned, each case must be viewed on its merits. In this case, the service charge account is as straightforward as it can be. Under the RICS code, a managing agent's fixed fee per flat per annum shall include an annual service charge statement and an estimate of service charges due in the following year i.e. a budget. The relevant part of section 152 of the **Commonhold and Leasehold Reform Act 2002** has not yet been put into effect which means that there is no legal requirement for certified accounts at the moment.

27. For the year commencing 25th March 2013, the claims as set out above are reasonable and payable save for the audit fee, bank charges (of which there was no evidence) and the amounts for the 2 large projects i.e. the roof and the damp work.

28. As far as the roof work is concerned the Tribunal was puzzled about this for several reasons:-

- Why was there no report on the condition of the roof? The Tribunal was assisted by noting Mr. Reka's letter of the 9th October 2013 where he says that he thought that the work to the roof was "*was necessary and agreed*". On balance, the Tribunal therefore considered that the proposed work is reasonable.

- Why did the specification not include conditions that all work which needed building regulation approval had to be to that standard? In the Tribunal's experience, this would be standard practice.
- Why did the specification not make it conditional that the work must be guaranteed by a bond? Again, in the Tribunal's experience, this would be standard practice. Why would anyone spend thousands of pounds on this sort of work and not make it conditional on a bonded guarantee?
- Why hadn't the work been completed? If the Respondent was waiting for the lessees to pay, in advance, for both sets of work, then this was unreasonable. The lessees had paid their service charges up to the point when the latest demands were sent out and the lease provides that, in such an event, the landlord must keep the roof etc. in repair.

29. As far as the damp work is concerned, it is fortunate that there was an up to date report from Mr. Davies which, in effect, said that the previous reports from Earl Kendrick Associates were wrong. That is clearly not the managing agent's fault although the Tribunal was a little worried that Mr. Simons did not seem to have digested this report and understood its consequences.

Costs and fees

30. There has been some measure of success for all the parties in this case. However, it is clear to this Tribunal that unless this application had been made, there would have been no concessions as far as the damp work was concerned. It was all very well for Mr. Simons to suggest that better dialogue between the parties would have resolved matters. As Mr. Simons was clearly relying on expert advice which was wrong at the time, it is doubted that this could have happened even with the best will in the world.

31. It is the Tribunal's view that the just and equitable answer is to make an order under Section 20C of the 1985 Act preventing the recovery of the Respondent's costs of representation before this Tribunal as part of any service charge demand; to order the Respondent to reimburse the Applicants for the fees of £440.00 they have had to pay to the Tribunal and to prevent recovery for any 'arrears' letters because, as it has turned out, they were clearly wrong.

32. Whether the Respondent intends to seek recovery from Earl Kendrick Associates is a matter for that company.

The Future

33. It is hoped that all parties in this case will have learned some lessons from the facts leading up to this hearing and decision. So far as the Respondent is concerned, it is simply not reasonable to let the roof and the fabric of the building deteriorate to the extent that damp was penetrating in a number of different areas. It is the landlord's responsibility to keep the structure in repair. The end result of this course of action is that the landlord now expects the lessees to stump up the resulting costs in one payment whereas if the problems had been properly diagnosed as soon as they were occurring, there would undoubtedly have been a saving and the lessees would have been better able to manage the payments.

34. The damp work needs to be undertaken as recommended by Mr. Davies i.e. the defects identified in the fabric of the building need to be rectified first in case they cure the problem without the need for internal plaster to be removed and chemicals applied. There needs to be a substantial gap to enable the building to dry out. If water is penetrating through the bricks, perhaps a waterproof coating could be applied which, if successful, may indicate that external

rendering would be a better solution.

35. There needs to be better planning to ensure that the cost is at least spread over a reasonable amount of time. The lessees, and Ms. Selormey in particular, place the blame for this situation entirely on the shoulders of Mr. Simons and his company. They should understand that a managing agent works to the instructions of the landlord. If this is a landlord which does not want to spend any money, there is nothing Mr. Simons can do to produce money out of thin air and the lessees may therefore have to contemplate court action if they feel that the landlord (not Mr. Simons) is in breach of contract.

36. As far as the lessees are concerned, it seems clear that the roof of the front of the building and the rear extension of number 30 needs work and probably replacement. The lowest quotation seems a little high particularly as there is no guarantee or confirmation the works would be carried out in accordance with current building regulations. It may be that Mr. Reka can provide a more competitive quote. However the lessees must understand that this work will be expensive (i.e. many thousands of pounds) and they should have a reserve to pay for it. Once the cost has been ascertained, it is not unreasonable for a landlord to expect some payment on account of such cost.

37. As to the programme from now on, the roof work should be sorted out as soon as possible. The remedial work to the fabric should be undertaken as soon as possible and there will have to be a decision taken in due course as to whether any chemical damp proofing is needed and, whether some or all of the total cost should be met by the Respondent for letting the fabric of the building get into disrepair.

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Bruce Edgington
Regional Judge
14th November 2013