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FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference :	CHI/OOHN/LSC/2013/0048
Property :	38b Fitzharris Avenue, Winton, Bournemouth, Dorset BH9 1BZ
Applicant :	Stephen Joyner (the Landlord)
Representative :	--
Respondent :	Alan Gilmore (the Tenant)
Representative :	--
Type of Application:	Application for determination as to reasonableness of service charges pursuant to Sections 19 and 27A Landlord and Tenant Act 1985
Tribunal Members :	Judge P.J. Barber — Chairman Miss R B E Bray BSc MRICS — Valuer Member Mr J Mills — Lay Member
Date and venue of Hearing :	26th July 2013 — Menzies East Cliff Court Hotel, East Overcliff Drive, Bournemouth BH1 3AN
Date of Decision:	2nd August 2013

DECISION

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Decision

The Tribunal determines in accordance with the provisions of Sections 19 and 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") that the reasonable sum payable by the Respondent to the Applicant for the service charge elements for the service charge year 2012, relating to (1) tarmac front drive (2) chimney works and (3) tarmac side path is £3,651.00.

Reasons

INTRODUCTION

1. This is an application made under Sections 19 and 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for determination of liability to pay and reasonableness of service charges in respect of 38b Fitzharris Avenue, Winton, Bournemouth BH9 1BZ ("the Flat"). The Flat was demised by a Lease dated 22 July 1985 ("the Lease"). A copy of the Lease was produced to the Tribunal; the Lease contains the following tenant covenant at Clause 2(10)

   "To pay to the Landlord one half of the cost of :

   (a) *maintaining and repairing the roof and foundations of the property and all pipes wires and cables used in common by the upper and lower flats (but not including a garage used with either flat)*

   (b) *insuring the said building in accordance with the Landlord`s covenant hereafter contained.*

   (c) *Maintaining the pathway edged brown and the driveway edged yellow on the said plan No.2"*

2. Directions in this matter were issued on 1st May 2013 requiring the parties to prepare and file bundles of the written statements and documents on which they would respectively seek to rely at the hearing; no bundle or response were received from the Respondent.

INSPECTION

3. The Tribunal's inspection took place in the presence only of the Applicant Mr Joyner; the Respondent was not present.

4. The Flat is a first floor flat in a converted house and is occupied by sub-tenants; consequently no internal inspection was possible. 38 Fitzharris Avenue ("the Building") was originally constructed as a single detached house; the building is constructed of face brick, with bay windows to the front elevation under a pitched roof. The area demised by the Lease includes a part of the front garden and also the rear most section of the back garden.

THE LAW

5. Section 19(1) of the 1985 Act provides that :

"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 provision 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."

Section 20 of the 1985 Act provides that :

(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.

....

(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.

The "appropriate amount" prescribed by Regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations No. 1987 of 2003, is £250.00.

Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

"(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 cost, 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.

"Service Charges" are defined in Section 18 of the 1985 Act as follows

(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, 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

18(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.

HEARING & REPRESENTATIONS

10. The hearing was attended only by the Applicant, Mr Joyner. The Tribunal sought clarification from Mr Joyner regarding the amounts being claimed in respect of service charges; Mr Joyner confirmed that his claim is in respect of three items :-

Tarmac to the front drive	£3,540.00	
Chimney works	£2,658.00	
Tarmac to the side path	£1,104.00	
TOTAL	£7,302.00	x 50% = £3,651.00

11. Mr Joyner submitted that he had encountered difficulty in obtaining payments generally from the Respondent over the course of the last six years, in respect of ground rent, insurance and service charges. Mr Joyner further submitted that it had become necessary during the course of 2012 to carry out certain works at the

Building, in regard to the communal roof, the communal driveway and other common parts; Mr Joyner added that owing to previous reluctance by Mr Gilmore to pay service charges, certain works to the Building had, by 2012, become increasingly urgent. Mr Joyner confirmed that he is the owner of the freehold of the Building and that the Lease is the only leasehold interest which has been granted out of the Building.

12. In regard to the tarmac works relating to both the front drive and the side path, Mr Joyner said that he had arranged for service of a first stage notice pursuant to Section 20 of the 1985 Act, upon the Respondent on 16 January 2012; this notice referred to the Applicant`s intention *"To carry out essential maintenance of the common parts of the development, drive way and foot paths"*. The notice invited written observations from Mr Gilmore within a 30 day consultation period ending on 15 February 2012; the notice further invited Mr Gilmore to propose within 30 days, the name of a person from whom the Applicant should try to obtain an estimate for carrying out the works. On 17 April 2012, a second stage Section 20 notice was served by the Applicant upon the Respondent referring to 3 estimates obtained for the works as follows :

S & L Construction

Block Pavers 4,505.00 & VAT

Tarmac 4,110.00 & VAT

Stuart Fencing & Landscaping

Block Pavers 4,385.00 & VAT

Tarmac 3,845.00 & VAT

Steve Collins

Block Pavers 4,500.00 & VAT

Tarmac TBA

The second stage notice further provided a 30 day notice period during which any observations or comments in respect of the above estimates could be made by the Respondent, expiring on 17 May 2012. Mr Joyner said that he had obtained two alternative estimates from each of the three contractors, allowing either for pavers to the entire drive, or tarmac finish. In the event, Mr Joyner had selected the lowest estimate, being that for a tarmac finish, from Steve Collins; Mr Joyner said that the term *"TBA"* had inadvertently appeared in the second stage notice in relation to the estimate for tarmac work given by Steve Collins; however he was clear in his evidence, to the effect that copies of the actual estimates, including that from Mr Collins, had nevertheless been attached to the second stage Section 20 notice sent to the Respondent.

13. In regard to the chimney works, Mr Joyner said that he had arranged for service of a first stage Section 20 notice upon the Respondent on 6th May 2012; this notice referred to the Applicant`s intention *"To carry out essential works to the slates, lead flashings and chimneys"*. The notice invited observations from Mr Gilmore within a 30 day consultation period ending on 5th June 2012; the notice further invited Mr Gilmore to propose within 30 days, the name of a person from whom the Applicant should try to obtain an estimate for carrying out the works. Evidence was given that on 18th June 2012, a second stage Section 20 notice was

served by the Applicant upon the Respondent referring to 3 estimates obtained for the works as follows :

Quality First *£3,400.00 & VAT*

Davids Roofing *£5,700.00 & VAT*

AST Roofing *£2,995.00 & VAT*

Mr Joyner said the second stage notice had further provided a 30 day notice period during which any observations or comments in respect of the above estimates could be made by the Respondent, expiring on 18th July 2012.

14. The Tribunal pointed out to the Applicant that no copies of the estimates for work had been included with his bundle and similarly no copies of any of the Section 20 notices relating to the chimney works, had been provided. A short adjournment was allowed to enable the Respondent to obtain and provide such copies. Once the hearing had reconvened, Mr Joyner produced hard copies to the Tribunal of each of the three estimates relating to all the tarmac works; Mr Joyner also showed to the Tribunal in electronic format, copies of the Section 20 notices relating to the work to the chimneys.

15. Mr Joyner said that the driveway work had been completed in November 2012 and the pathway work in March 2013; he added that the work had been split to assist Mr Gilmore in relation to costs. The estimate for all the tarmac works had been £4,560.00 including VAT, but in the event the combined invoices amounted to £4,644.00. Mr Joyner advised that the additional sum of £84.00 had arisen in regard to certain edging stones which it transpired, had had to be used to improve the level of the side path. Mr Joyner further submitted that in May 2012, the Respondent advised that there had been a leak in the roof above the Flat, as reported by the Respondent`s tenant, to the Respondent some months earlier. Mr Joyner said that he had issued a further Section 20 notice to Mr Gilmore in respect of the cost of the required roof repairs on 6th May 2012, but there had been no response, Mr Joyner said it subsequently transpired that Mr Gilmore had arranged to have certain work done to the roof himself, notwithstanding the provisions of the Lease. Mr Joyner produced five photographs to the Tribunal in relation to damp problems resulting from the valley defect; however it was clear in any event those works do not form part of the service charge claim.

CONSIDERATION

16. The Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.

17. The Tribunal noted that no evidence or response to the Directions had been provided by the Respondent, Mr Gilmore, nor was he present at either the inspection or the hearing. On the face of it the Applicant had obtained estimates for the works concerned from more than one contractor; no evidence or case had been made to the Tribunal by the Respondent to suggest that the cost had been other than reasonable or to suggest that the works had been carried out other than to a reasonable standard. Mr Joyner had in each case selected the lowest estimate. The Tribunal noted during the course of the inspection, that the works appeared to have been carried out to a reasonable standard and no evidence to the contrary had been submitted. The Tribunal noted that the invoice for the chimney works at Page

23 of the Applicant`s bundle referred to a total of £2,724.00 including VAT, whereas the total referred to in the Applicant`s demand on Page 38 was only £2,658.00; however there was no prejudice to the Respondent since the effect was that the sum being demanded from the Respondent was less than it might otherwise have been. The Tribunal noted the erroneous clerical reference in the second stage Section 20 notice relating to the tarmac work, but were satisfied with the explanation provided by Mr Joyner that this had simply been a typographical error. The electronic copies of the Section 20 notices relating to the chimney works had appeared on screen in a slightly fragmented form, but the Tribunal nevertheless accepted evidence which had been given by Mr Joyner as to the notices having been provided to the Respondent in the required form. Mr Joyner had further given evidence to the effect that copies of all the estimates had been given to Mr Gilmore and that the Applicant`s solicitors had subsequently re-served all the Section 20 documents by recorded delivery, for good measure and the avoidance of any doubt. Accordingly the Tribunal is satisfied that there had been no prejudice occasioned to the Respondent. Consequently the Tribunal is of the view that the amounts claimed by way of service charges from the Respondent by the Applicant, being £1770.00 for the tarmac drive; £1,329.00 for the chimney works and £552.00 for the tarmac side path are reasonable and payable by the Respondent.

14. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal
appointed by the Lord Chancellor

Appeals :

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.