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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/OOHY/LCS/2013/0087**
Property	:	**Raleigh Court, Polebarn Road, Trowbridge, Wiltshire BA14 7EF**
Applicant	:	**Hanover Housing Association**
Representatives	:	**Ms Jane Devlin, Area Manager** **Ms Amy Ling, Local Manager**
Respondent	:	**The Lessees of the Property**
Representative	:	**None**
Type of Application	:	**Section 27A, Landlord and Tenant Act 1975 (Service Charges)**
Tribunal Members	:	**Judge Professor David Clarke** **Jan Reichel MRICS**
Date and venue of Hearing	:	**4 October 2013, Melksham, Wilts**
Date of Decision	:	**9 October 2013**

DECISION

The Tribunal determines, after consideration of the written evidence, and the representations made at the hearing, that the cost of materials and installation of two sets of external doors, one door of each set to be automated; the cost of the annual service contract for subsequent maintenance of the automatic doors; and the cost of materials and installation of wired door openers on all internal fire doors are all costs that may properly be recovered under the service charge under the Lease; and that it is reasonable that such charges be recovered.

STATEMENT OF REASONS

1. This application is made to determine the liability of the 54 Respondent Lessees to pay for proposed works to the Property, the cost of which the Applicant proposes to include in the service change. The Property is a multi-story purpose built block of sheltered accommodation for elderly residents. It includes a lounge for residents and there is a resident warden.

2. We were provided with a copy of the lease of Ground Floor Flat 13; there are covenants to ensure all Leases of flats in the Property are in the same form. We therefore refer to the Lease, but on the basis that it covers all Leases in the Property.

3. None of the Respondents attended or were represented. This is perhaps not surprising as the hearing had to be held away from the Property and in essence this application is made with their encouragement. Evidence was given that a majority of the Lessees requested the works that are the subject of this application be done and have approved the work in a general meeting. The Applicant merely wishes to ensure that, before commencing those works, it is subsequently able to ensure that the cost can be recovered under the terms of the Leases.

4. There are two separate pieces of proposed work that we have to consider and we discuss each in turn in the order they were covered at the hearing.

Installation of wired door openers on all communal doors

5. There are 26 communal doors across the corridors in the Property, principally to comply with fire regulations. The Applicant proposes to upgrade these doors in two ways. Firstly, they wish to replace the door hinges, which do not meet current regulations, and upgrade the standard of the strips

around these doors so that in the event of a fire, smoke does not penetrate through the doors. The approximate cost is £4,000 inclusive of VAT.

6. However, while doing such works, the Applicant also wishes to fit wired door hold open magnetic door retainers. By being wired to the nearest smoke alarm and fire alarm, they permit the doors to remain open during the day but a fire alarm will cause them to release and close.

7. In determining that the cost of these works can be recovered under the terms of the Lease, the Tribunal finds that the internal doors are not in disrepair. There is therefore no question of these works being subject to or covered by the repair and maintenance covenants in the Lease. However, Schedule 6, Part II, of the Lease, headed 'Expenditure to be recovered by means of the Maintenance Charge' includes:

> "All sums paid by (the Applicant) in and about the maintenance decoration cleaning lighting and running the common parts . . .whether or not (the Applicant) was liable to incur the same under its covenants herein contained'.

8. The Applicant has not specifically sought the Tribunal's approval of the work to introduce seals to improve fire safety notwithstanding (we were told) that it is not an absolute requirement of current regulations. It is a recommendation of the Applicant's technical manager. But we agree with their assessment that the cost of this work is recoverable under the terms of the Lease.

9. The Applicant does however seek our approval and determination in respect of the installation of wired door hold open magnetic door retainers. It was explained to us that, without such a device, fire regulations require the doors to be closed at all times. However, many elderly residents find considerable difficulty in opening the doors, either because of the weight of the doors, or because it is very awkward to open such doors while relying on a wheeled walker aid; or because they are wheelchair bound or in a motorised chair. Despite being told not to do so, it is tempting for a resident to have a door propped open for a time and such instances do occur.

10. In our judgement, both aspects of the proposed work to the internal doors are recoverable under the maintenance charge. Both give better fire security, the first preventing or reducing smoke in the event of a fire, the second not only removing the risk of a propped open door if a fire occurs but also giving the residents who are less strong or mobile better access their communal facilities. They will enable them better to visit other residents and to get to the external doors of the building. The costs estimated of about £100 per door are reasonable. We therefore determine that these costs, if and when incurred, are recoverable under the maintenance charge and may be debited to the reserve funds.

Installation of replacement external aluminium doors, one of each to be automated

11. The applicant seeks a determination that the replacement of two sets of external doors at the property, with aluminium as the material rather than

hard wood, and with one door of each set to be automated, may properly be charged to the service charge; and that while the automatic doors remain that the annual service contract to maintain such automatic doors may also be so charged.

12. The work can, if at all, only be justified under the repairing obligation in the Lease, of which the relevant part reads:

"To keep the ... external doors ... of the Property in good and substantial repair"

In short, the issue the Tribunal has to decide is on the well trodden path of determining whether on the particular facts of this case the proposed works qualify as repair or whether they go beyond repair and are improvements not within the repairing covenant.

13. On our inspection of the Property, we found the external doors to be of hardwood and we were told that they were probably the original doors when the property was constructed some 25 years ago. The doors to the rear were clearly in disrepair; the front pair very dilapidated at least and probably qualified to be considered in a state justifying replacement now.

14. The first, and easier, issue is whether it is justifiable to replace these hardwood doors with more expensive ones constructed in aluminium. The aluminium option would cost £4600 plus VAT; the hardwood less at £2800 plus VAT. However, the aluminium option is recommended by the surveyor as best value for money coming with a much longer and insurance backed guarantee. We heard evidence that aluminium will be more hardwearing and that it is now the standard choice for such schemes. The residents in general meeting backed this option. There is clear case law that in appropriate circumstances replacement with more modern or better materials may be within a repairing covenant (*Minja Properties Ltd v Cussins Property Group plc* [1998] 2 EGLR 52; *Stent v Monmouth BC* (1987) 54 P&CR 193). We consider it is appropriate in this case, taking account particularly that this is a more hardwearing option appropriate for the projected lifespan of the building, and more closely accords with current building practices. Finally, the difference in price is acceptable.

15. The second, and much more difficult issue is whether under the straightforward terms of the repairing covenant, the Applicant can install an automatic opening and closing facility on one of each set of external doors. The cost is not insignificant, some £3,360 plus VAT. There is no doubt that the majority or residents wish to have this facility; and there is more than sufficient in the reserve fund to cover this cost. But the Applicant, sensibly, is not prepared to do the work unless it can be sure that the cost is properly chargeable under the terms of the Lease.

16. At first blush, the answer seems clear. Doors without an automatic closure will do the job. Adding the automatic facility would seem to be an improvement beyond the terms of the repairing covenant.

17. However, the Tribunal must examine the facts of this particular case. It is a question of fact and degree. We must look at this particular building and the

precise terms of the Lease. Repairing damage may involve improving the Property to some extent if to do so would accord with, or be required by, modern building standards (see *Elmcroft Developments Ltd v Tankersley-Sawyer [1984] 1 EGLR 47, CA*).

18. We heard evidence that many frail and elderly residents find it difficult or impossible to push or pull open heavy doors. Indeed, some find it impossible to use the doors without assistance. The Applicant therefore regards this as a health and safety issue, a conclusion supported by other agencies. Secondly, many residents have to use mobility buggies, wheeled walkers or walking aids. Sitting on a mobility buggy, or standing with a wheeled walker between the individual and the door, makes opening a door nigh impossible for such a resident.

19. We also heard evidence that automated doors are now the industry standard and considered an essential feature of sheltered accommodation. Any new scheme would include it without any question. As Ms Ling put it, such a feature is not considered an improvement but part of the standard service to be expected in sheltered accommodation. It is part of the positive environment that should be created.

20. There is no regulation, at least not yet, requiring automatic doors in such accommodation. We have to decide whether, in all the circumstances, we can properly deem inclusion of an automatic opening door facility as covered by the repairing covenant.

21. We have concluded that we can, not only for the reasons outlined above, and not just because the Applicant is keeping the cost to a minimum by only automating one door of each pair (important though that is); but for the basic reason that, for a majority of the Lessees these doors cannot operate as doors unless automated. A door must be a means of ingress and egress. They should be able and designed to let the residents in and out yet, at the moment, many residents cannot use them as a door without assistance. They are a barrier to them being able to get out in the garden or to enjoy a short walk. It is therefore right that when they are repaired they should be refitted in a way that makes them usable by those who cannot use them at the moment.

22. It is only in particular circumstances that such work can qualify as valid within a standard repairing covenant. But on the facts of this case, we are satisfied that it does. For these reasons we determine that the replacement of two sets of external doors at the property, with aluminium as the material rather than hard wood, and with one door of each set to be automated, may properly be charged to the service charge and debited to the reserve funds; and that while the automatic doors remain the annual service contract to maintain such automatic doors may also be so charged.

Judge Professor David Clarke
9 October 2013