

9227



FIRST - TIER TRIBUNAL

**PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/19UJ/LSC/2013/0026**

Property : **Churchill Gardens, 41 Cross Road,
Weymouth, Dorset, DT4 9QX**

Applicant : **Michael Green**

Representative : **Michael Green**

Respondent : **Churchill Gardens Management Co Ltd**

Representative : **Mr Neil Cliff of NMC Property**

Type of Application : **Section 27A Landlord & Tenant Act
1985**

Tribunal Members : **Judge N. Jutton (Chairman) and A. J.
Mellery-Pratt**

Date : **27 August 2013**

Venue of Hearing : **Best Western Hotel Rembrandt, 12-18
Dorchester Road, Weymouth, Dorset,
DT4 7JU**

Date of Decision : **29 August 2013**

DECISION

1 The Applicant applies under section 27A of the Landlord and Tenant Act 1985 (the Act) to determine liability to pay and the reasonableness of service charges in relation to the Property.

2 A pre-trial review was held in Weymouth on 26 April 2013. At the pre-trial review, the following matters were identified as issues for the Tribunal to determine at the substantive hearing, namely:

- i That in respect of the costs of certain repairs carried out to one of the lifts at the Property during the financial year ending 28 September 2012 whether the statutory consultation procedures pursuant to section 20 of the Act had been complied with, and whether the cost incurred were reasonable.
- ii Whether service charges demanded by the Respondent from the Applicant for the financial years ending 28 September 2012 and 28 September 2013 were reasonable.

3 By a letter to the Tribunal dated 16 August 2013, the Applicant further reduced the issues which he wished the Tribunal to determine. At the hearing, upon being questioned by the Tribunal, he confirmed that the issues were:

- i In respect of the cost of repairs to one of the lifts at the Property incurred during the year ending 28 September 2012 (the Lift Repairs) whether such costs were reasonable and in particular, whether or not the statutory consultation procedure pursuant to section 20 of the Act had been complied with; and
- ii Whether payments demanded from the Applicant of £300 per annum to be placed into a reserve or sinking fund had been properly applied.

4 **Documents**

5 The documents before the Tribunal were:

- a The Applicant's letter to the Tribunal dated 16 August 2013 together with a bundle of documents prepared by the Applicant (the Applicant's Bundle) running to a total of 42 pages.
- b A bundle of documents prepared by Mr Cliff on behalf of the Respondent (the Respondent's bundle) divided into sections and numbered A1-A19, B1-B24, C1-C124, D1-D12 and E1-E50.
- c A copy of the Applicant's lease dated 13 September 2006.

6 **The Inspection**

7 Prior to the hearing the Tribunal accompanied by Mr Green and Mr Cliff inspected the Property. The Property is a development of 2 residential blocks each comprising 5 flats which are understood to have been built some 7-8 years ago. The blocks are built of brick elevations under slate roofs with wooden window frames and fascias. Each block has a lift. The lift in one of the blocks (the lift which is the subject of this application) was inspected by the Tribunal as was the lift motor room.

8 The Property has a communal driveway and car parking area together with a bin store and bicycle store. The communal driveway is also used by two freehold houses.

9 **The Law**

10 The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19, 20 and 27A of the 1985 Act. They provide as follows:

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.*

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 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.

(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.*

20 *Limitation of service charges: consultation requirements*

(1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with either sub-section (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) the appropriate 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*
- (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 sub-section (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 sub-section, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contributions would otherwise exceed the amount prescribed by, or determined in accordance with the regulations, is limited to the amount so prescribed or determined.*

- 11 The relevant contribution under s 20(7) is limited by the Service Charge (Consultation Requirements) (England) Regulations 2003 to £250 per flat. The consultation requirements are set out in part 2 of Schedule 4 of those Regulations.
- 12 It is not proposed to set out those provisions in detail here. In summary the requirements may be divided into 4 stages.
- 13 Stage 1 provides for the Landlord to serve a notice of intention to carry out qualifying works on each lessee. The notice must describe in general terms the proposed works or say where and when a description of the works may be inspected. The notice must state the reason for the works and invite written observations specifying where and when they should be sent, allowing at least 30 days. The notice must contain an invitation for nominations of persons from whom the Landlord should obtain estimates. The Landlord must have regard to written observations that he receives during the consultation period.
- 14 Stage 2 provides for the Landlord to seek estimates for the works including from any nominee identified by the lessees.
- 15 Stage 3 provides that thereafter the Landlord must issue a statement with two or more of the estimates obtained, a summary of the

observations received and his responses to them. If any estimates have been received from the lessee's nominees, they must be included in the statement. The statement must say where and when estimates may be inspected and where and when observations can be sent, allowing at least 30 days. The Landlord must then have regard to written observations received.

16 Stage 4 provides that unless the chosen contractor is the lessee's nominee or the lowest estimate, then the Landlord must give notice within 21 days of entering into the contract to each lessee stating his reasons for the selection or specifying where and when such a statement may be inspected.

17 Section 27A of the Act provides:

27A (1) *An application may be made to the appropriate 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 the appropriate 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.*

18 **The Lease**

19 The relevant provisions in relation to service charge payments contained in the lease are as follows:

- a By clause 2.14.1 the lessee covenants to contribute and pay the costs and expenses, outgoings and matters mentioned in the 5th schedule to the lease.

- b By clause 2.14.2 the contribution to be paid by the lessee shall be estimated by the management company (the Respondent) or its managing agents and paid in advance by two equal instalments on 25 March and 29 September in each year.
- c 2.14.3 provides that at the end of the financial year once the actual amount of expenses incurred have been ascertained that the lessee will pay any balance due or otherwise will be credited with any over-payment.
- d By clause 3.1 the management company covenants to maintain and repair, decorate and renew as often as is reasonably required the main structure, conduits, common areas, communal gardens, entrance lobbies and lifts.
- e By clause 3.3 the lessor can employ a managing agent to manage the Property on its behalf.
- f By clause 3.4 the management company can make provision for a reserve fund in respect of items of expenditure expected to be incurred in the following three years.
- g Clause 7.14 provides that any reserve fund should be kept in a separate account by the management company on trust for its members.
- h The fifth schedule provides that the lessee's service charge contribution shall be $\frac{1}{12}$ th of the expenses incurred by the management company pursuant to its obligations under clause 3 (at the pre-trial review Mr Green accepted that the fifth schedule to the lease in error omitted a reference to clause 3.1.8 which provides for the maintenance and repair, decoration and renewal of the lift and he reasonably accepted that he was liable to contribute in respect of expenses arising under that clause).

19 **The First Issue**

20 **The Lift Repairs.**

21 **The Applicant's Case**

22 Works were carried out to the lift in one of the blocks at the Property in or about June 2012 in accordance with a quote produced by a company called Onyx Lift Services Ltd (pages B5 and B20 in the Respondent's bundle). Those works comprised draining the lift system of oil and replenishing, pressure testing the system and changing the valve block. The cost of the works was £3100 plus VAT a total of £3720. Invoices for the works appear at pages C78 and C85 of the Respondent's bundle.

23 It is Mr Green's case that there was a failure on the part of the Respondent to comply with the statutory consultation requirements

provided for in section 20 of the Act. That accordingly, the Respondent was limited to recovering from Mr Green in respect of those works as service charge contribution a total of £250. Mr Green said that he felt in any event that a contribution of £250 would be reasonable.

24 **The Respondent's Case**

25 Upon being questioned by the Tribunal, Mr Cliff accepted that there had been a failure to follow the section 20 consultation process. He accepted as such that Mr Green's contribution in respect of the Lift Repairs was limited to £250. He explained there had been a significant delay in obtaining quotes for the work. Further, that the Respondent had been under some pressure to complete the Lift Repairs. That Mr Cliff had discussed the matter at the time with the directors of the Respondent company and it was agreed simply to press on and accept the lowest quote in order to get the Lift Repairs completed.

26 The Tribunal asked Mr Cliff whether it was the Respondent's intention to make an application pursuant to section 20ZA of the Act for dispensation from complying with the section 20 consultation process. If so, would he be seeking an adjournment to allow time to make that application. Mr Cliff said that as matters stood there was no intention to make such an application. That was essentially a commercial decision. That although there was a shortfall between the cost of the Lift Repairs and the amount that could be recovered by way of service charge contributions by reason of the limitation that would be placed upon the contribution to be made to the Lift Repairs by Mr Green, it was financially disproportionate to incur the fees and time in making a separate application for dispensation.

27 **The Tribunal's Decision**

28 The Tribunal notes that there is no dispute that there was a failure to comply with the section 20 consultation requirements. Further, that there was no application before the Tribunal to dispense with all or any of those consultation requirements. Nor was there an application before the Tribunal to adjourn the hearing to allow the Respondent time to make such an application.

29 That accordingly the amount that the Respondent can recover from Mr Green by way of service charge in respect of the Lift Repairs is limited to a total of £250.

30 **The Second Issue**

31 **The sinking fund contribution of £300.**

32 **The Applicant's Case**

33 Upon being questioned by the Tribunal, Mr Green confirmed that he accepted that the Respondent was entitled under the terms of the lease to seek a payment from the lessee to be placed in a reserve or sinking fund to cover future items of expenditure. Mr Green also accepted that the payment of £300 per lessee was in his view reasonable.

34 Mr Green explained however that he understood that the payment of £300 per annum into the reserve or sinking fund was to be in effect ring-fenced, as he put it, to cover primarily the cost of external works of decoration. In fact it was not clear to him what had become of the reserve or sinking fund which had thus been created. It was not clear whether it had been placed into a separate account as required by the lease. There was also concern on his part that the monies collected for the reserve fund may have been used not for works of external decoration (which had yet to be carried out) but to cover the costs of the Lift Repairs.

35 The Tribunal explained to Mr Green that its jurisdiction was limited to determining whether or not a payment by way of service charge contribution to provide for a sinking or reserve fund was payable under the terms of the lease and if so, whether the sum demanded was reasonable. It was not for the Tribunal to address how in practice such funds recovered by the Respondent had been used.

36 Mr Green confirmed that he understood. However he had wished to take the opportunity of the hearing to voice his concerns.

37 **The Respondent's Case**

38 Mr Cliff explained that he had only taken over the management of the Property from another firm of managing agents a couple of years previously. That if he received from lessees monies which had been 'ring-fenced' for external decoration, then he would use it for such works. In fact he said he only received £985.96 from the previous managing agents which had not as far as he was aware been designated for any particular purpose. That the monies that had been received had been put to a specific purpose, being towards the costs of the Lift Repairs.

39 Mr Cliff agreed that external decoration of the Property was needed. That he would in due course be starting a section 20 consultation process in that regard with a view to the works being carried out probably in the next financial year.

40 **The Tribunal's Decision**

41 The Tribunal notes that Mr Green accepts that a payment of £300 as part of the service charge towards a reserve or sinking fund for each of the years ending 28 September 2012 and 28 September 2013 is

payable under the terms of his lease and that such sums are reasonable. In the circumstances, the Tribunal has no jurisdiction to address this matter further.

Dated: 29th of August 2013.

Judge N. Jutton

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.