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

Case Reference : **CHI/43UE/LSC/2013/0053**

Property : **Lyne House, Rusper Road, Capel,
Surrey, RH5 5HH**

Applicant : **Lyne House Management Co Ltd**

Representative : **Crickmay Asset Management LLP**

Respondents : **The Lessees of Flats 1-12 and Mews
1-6**

Representative : **In person**

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

Tribunal Members : **Judge I Mohabir
Mr N I Robinson FRICS**

Date of Decision : **9 December 2013**

DECISION

Introduction

1. This is an application made by the Applicant seeking a determination under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) of the Respondents’ liability to pay for the proposed cost of repairing and maintaining the windows of the property known as Lyne House, Rusper Road, Capel, Surrey, RH5 5HH (“the property”).
2. The Tribunal was told that the property is a Victorian mansion that has been converted into 18 flats, which are each subject to a long residential lease.
3. The Tribunal was provided with a copy of the lease granted in respect of Flat 10 dated 18 August 1987 (“the lease”). The Tribunal proceeds on the basis that the leases of the other flats have been granted on the same terms.
4. The lease is (now) a fairly common form of lease made between the lessor, the Applicant management company and the lessee. Essentially, the lease obliges the management company to repair and maintain the property and also obliges each lessee to become a shareholder of the company. In effect, it is a “tenant owned” company. The present managing agent is Crickmay Asset Management LLP (“Crickmay”).
5. It seems that the Respondents have not been able to agree whether the terms of the lease permit the cost of repairing and maintaining the windows to be recovered through the service charge account or should be the responsibility of individual leaseholders. Apparently, in recent years the cost of doing so has been applied to the service charge account.
6. The external redecoration of the south and west elevations of the property is due to take place shortly and whilst scaffolding is in place it is proposed that the south facing window of Flat 10 is to be removed and a lead tray installed under the window frame. This is to prevent further water ingress through and around the window, which has caused damage

to the plaster and décor below the window. It is the belief of Crickmay that the removal of the window is likely to lead to it being damaged and it will need to be replaced.

7. On 10 May 2013, Crickmay applied to the Tribunal seeking a determination as to whether the cost of repairing and maintaining the windows at the property is recoverable as relevant service charge expenditure.
8. On 9 July 2013, the Tribunal issued Directions that required the Respondents, either jointly or severally, to file any evidence in reply to the application. None has done so, save for Mr Reed, the lessee of flat 6. In a letter dated 11 October 2013, he stated that he has had 2 windows installed in his flat at his own cost and he contends that each lessee should bear the cost of repairing and maintain the windows of their flats.

Relevant Law

9. This is set out in the Appendix annexed hereto.

Decision

10. Pursuant to the Tribunal's directions, the determination of this application took place on 22 October 2013 and was based solely on the documentary evidence before it.
11. The relevant lease terms are as follows.
12. Clause 1.10 of the lease provides that the "demised premises" are defined in Part One of the Third Schedule. This Schedule defines the physical boundary of the flat, which includes "*windows bounding the same*".
13. Clause 1.12 provides that the "Maintained Property" which the Applicant is obliged to repair and maintain is defined in the Second Schedule of the lease. This Schedule requires the Applicant to, *inter alia*, repair and maintain all external parts of the building, but not including the glass in

the windows of the individual flats. It is for this ambiguity that the Applicant seeks clarification as to whether the cost of repairing and maintaining the windows of individual flats are recoverable as service charge expenditure.

14. The Tribunal found that the windows of the individual flats fall within the definition of "external parts" in the Second Schedule and, therefore, form part of the maintained property, which the Applicant is obliged to repair and maintain. Otherwise, it would be wholly illogical for the draftsman to expressly exclude the glass in the windows in Part One of the Third Schedule. The Second Schedule and Part One of the Third Schedule have to be read together. Had it been intended that the lessee should also be responsible for repairing maintaining the external window frames then this would have been made express and clear in the wording of Part One of the Third Schedule that they should form part of the demised premises. It does not. Furthermore, the lessee's repairing covenant found at paragraph 8 of Part Two of the Eighth Schedule of the lease also omits any express reference to the tenant being obliged to repair and maintain the external parts of the windows.

15. The inference to be drawn from this is that it was the intention that the Applicant should repair and maintain the external parts of the window frames as part of the maintained property. Further support for this view can be found in paragraph 2 of the Sixth Schedule, which sets out the expenditure that can be recovered through the service charge account. Reference is made there to including the cost of externally painting all wood, metal and stone surfaces and the exterior of door in the buildings and flats that are or ought to be painted. As a matter of proper construction, this must also apply to the exterior surfaces of the windows where appropriate. When read together with the other lease terms set out above, it leads to the conclusion that the Applicant is also obliged to repair and maintain the external parts of the windows.

16. Where the level of disrepair, as is the case here, the potential level of disrepair requires the removal of the entire window (including the glass), that obligation falls on the Applicant and it is entitled to recover the cost as service charge expenditure. It should be noted that the Tribunal's decision is limited to the narrow point on the recoverability of the potential expenditure in relation to the windows. The Tribunal does not also find that the scope and specification of any proposed works are reasonable.

Fees

17. The Applicant has paid the sum of £100 to have this application issued. It has rightly brought the application to have an arguable point about the meaning and effect of the relevant lease terms resolved. The Tribunal, therefore, considered it just and equitable to make an order requiring the Respondents to reimburse the Applicant this sum.

Appeals

18. 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.
19. 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.
20. 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.

Judge I Mohabir
9 December 2013

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 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.