9778

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UC/LSC/2013/0112**
Property	:	**Flat 5, Camden House, The Marlowes, Hemel Hempstead, HP1 1BE**
Applicant	:	**Hazel Grove Limited**
Representative	:	**David Foulds (solicitor) of Foulds Solicitors Ltd**
Respondent	:	**Kyle Stephens**
Representative	:	**(in person)**
Type of Application	:	**Transfer from Watford County Court of case number 2YN80654 (para. 3, Schedule 12 Commonhold and Leasehold Reform Act 2002)**
Tribunal Members	:	**Francis Davey (chair)** **Miss Marina Krisko BSc (EST MAN) FRICS** **Mrs Najiba Bhatti**
Date and venue of Hearing	:	**Holiday Inn Express, Hemel Hempstead** **28 January 2014**
Date of Decision	:	

DECISION

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1. No sums claimed by the Applicant/Claimant are payable by the Respondent/Defendant.

2. The following matters remain to be determined by the county court (or in the case of item (a) transferred to the First-Tier Tribunal):

   a) the Respondent/Defendant's counter-claim; and

   b) costs.

REASONS

Unless otherwise stated, all references to section numbers are to the Landlord and Tenant Act 1985

The Property

The Application

3. By a claim form issued in Northampton County Court and dated 17 December 2012, the Applicant ("Hazel Grove") brought a claim for £1187.80 against the Respondent, Mr Stephens.

4. The particulars of claim state that Hazel Grove is entitled to charge maintenance charges and the administration costs of their collection under the lease; invoices have been rendered for maintenance charges and (in breach of the lease) they have not been paid.

5. A further £75.00 is also claimed for the cost of a letter before action.

6. Particulars of the amounts due are not given. Instead reference is made to a statement of account, from which it can be inferred that the unpaid invoices are for the charges set out in the following table (using headings drawn from Hazel Grove's statement of account):

Date	Type	Reference	Debits
16/12/11	SChar	Flat 5 Camden House SC 01/01/2012 to 30/06/2012	£330.05
24/05/12	SChar	Service Charges Deficit Period Ended-31/12/2011	£308.70
09/08/12	Admin	Management Arrear Fees	£60.00
12/09/12	Schar	Flat 5 Camden House SC 01/07/2012 to 31/12/2012	£330.05
26/10/12	Admin	Referral Management Arrear Fees	£84.00

7. The Defence is not formally pleaded. It may be broadly divided into two sets of complaints.

8. First, it refers to a charge of £9,700 for major works to the property, which will be referred to as "the major works" in this decision. It alleges the building had been in a "disgusting state of disrepair" and that Dacorum Borough Council had ordered Hazel Grove to repair the building. This, so the Defence alleges, was because money paid in maintenance charges should have, but had not been, spent on repairs to the building.

9. The Defence admits that certain works were done, but that the building was still left in a state of considerable disrepair.

10. Most of the allegations of disrepair relate to damage caused by water ingress as a result of the failure of the major works properly to repair the roof and prevent leaks. There are some free-standing complaints such as the presence of graffiti and fly-tipping and an allegation that the intercom system had been removed and not replaced.

11. The Respondent also makes a counter-claim for the full costs of the major works. Again this is not formally pleaded, but it can be taken in substance to be a claim for the money spent on the major works on the basis that the work was either not done or not done to a reasonable standard. There is no free-standing counter-claim for disrepair.

12. The Reply clarifies that the claim is for the items listed in paragraph 6 above.

13. It responds to the Defence and Counterclaim by pleading that the sum of £9,715.51 was properly demanded by an invoice sent on 14 May 2010; the consultation requirements under section 20 of the Landlord and Tenant Act 1985 were complied with; and the sum demanded had been obtained from the Respondent's mortgage company. In consequence, it is pleaded, the allegations of disrepair are of no relevance to the Applicant's claim.

14. The Reply further denies the Respondent's allegations, stating that the property is "in good and tenantable state of condition and repair".

15. On 19 August 2013, District Judge Sethi sitting at Watford County Court, ordered that:

    "The question whether the service charges claimed by the Claimant are reasonable is referred to the LVT for determination."

16. On the day before the hearing, as a result of reading the case papers, the chair of the Tribunal wrote to the Applicant as follows:

    "In pre-reading the case papers, the chair of the tribunal is concerned over two matters. First the summary of tenant's rights and obligations at p36 appears to be in a typeface smaller than 10 point as required by

the Regulations; and second there does not appear to have been compliance with s20 of the Landlord and Tenant Act 1985.

In the interests of being fair to all sides, the parties, and in particular the Applicant, are invited to bring any evidence that bears directly on those questions to the hearing on Tuesday 28/1/2014.

Whether late evidence of this kind will be admitted and/or whether these points may or will arise in practice will be a question for the tribunal on the day, but the chair considers that it would be unfair to the Applicant not to give it an opportunity to meet any such question that might arise."

Inspection

17. The property is a purpose built block of flats above a parade of shops accessible on the front elevation by two inset access points leading to stairways at each end of the building providing staircase access to the first floors.

18. The building is located on a sloping site and from the half landings access to rear stores and the rear roadway can be gained through the rear ground floor areas.

19. The Southern entrance is accessible using a key fob, but there is no entry phone system. The Northern entrance may only be used for exit. There is no way to open it from the outside, although there is an old, broken, entry phone system on the outside.

20. The two rear entrances are also "one way" – allowing residents to exit but not permitting them to re-enter. A resident wishing to access the refuse collection facilities could use a rear entrance but would then have to walk around the block to the front South entrance in order to re-enter the building.

21. When we inspected there were clear signs of water penetration throughout the common parts. Most of the floor area of the common parts was affected with significant pools of water collecting in some places.

22. The glass over the Southern stairwell appeared to have been taped using black masking tape. It seemed most likely to us that this had been a temporary fix for places where the glass was broken.

23. Some of the staircase treads – particularly those on the stairs to the Southern stairwell – were worn and in some places holes had been filled with a black filler not in keeping with the existing risers.

Hearing

24. The Applicant's only witness was Benjamin Conway, the managing director of HML Hathaways who are the Applicant's managing agents.

25. Mr Conway had asked "his IT people" about the font size of the statement of leaseholders' rights. He believed that the documentation had been set up so as to produce 10 point font size but thought that there might be some wording that was not 10 point and others that was.

26. Asked about the section 20 notice in the trial bundle, he said that there were 5 individual freeholders of separate parts of the building. The Applicant had asked them to serve the section 20. Hathaways had not been involved in managing the property in any other way.

27. Mr Foulds interjected that according to his records there were 6 individual freeholders. Of these flats 2 – 7 were contained in the part owned by the Applicant.

28. Mr Foulds accepted, on behalf of the Applicants, that the section 20 notice did not comply with the section 20 procedure.

29. Mr Conway said that the specification of works in the section 20 notice did not reflect the works that were actually carried out. He had recently been in contact with the chartered surveyors who had supervised the works. They told him that some of the specified work had been altered and some had not been carried out.

30. Mr Conway was pressed by the tribunal to explain the disparity between the specification of works and the apparently poor quality of the building and common parts found in the inspection.

31. Mr Conway said that he had not prepared the specification of works and had no direct knowledge of what work had been done. Other than serving the s20 notice, Hathaways had no involvement in the management of the building until March/April 2011. He accepted that the defects period for the major works continued until March 2011.

32. Mr Conway said that on taking over management of the building his company had taken no steps to establish what work had been done on final payments for the works. He felt that receipts from the leaseholders for the major works and payments to contractors for the major works were not within his remit.

33. In response to a question from the tribunal about the cleaning, he explained that they had obtained quotations and appointed a cleaner. The project manager attends approximately every 2 months to check the work has been done. The project manager would be in regular and frequent communication with the cleaning contractor or any other contractor who was needed to attend the building.

34. In cross-examination, Mr Stephens pressed Mr Conway on several items of the service charge bill, which remained in issue.

Cleaning

35. Mr Stephens suggested that the invoices for £244.80 per month represented two visits per month each for one hour, amounting to a cost of £122.40 per hour which he suggested was very high for the quality of cleaning delivered.

36. Mr Conway did not know what the specification of work for the cleaner might be. He thought it would amount to ensuring that the floors were swept and washed, and that the staircase, bannisters, and edges around the doorframes were kept clean. He agreed that cleaning took place approximately twice a month, but that £122.40 was a "per visit" rather than a "per hour" fee. He did not know how long the cleaner did, in fact, spend on each visit.

Padlocks

37. Mr Stephens referred to an invoice for padlocks in the bundle and said he did not know of any padlocks in the communal areas and so could not understand why there had been a charge for padlocks. Mr Conway did not know.

Pest Control

38. Mr Stephens asked about an item of £100 for "pest control". He thought that a call out to pest control would mean an infestation of rodents and suggested that, as a health and safety matter, was there any reason it was not communicated to the leaseholders?

39. Mr Conway's response was that it was good management to have a pest control contractor, who could lay baits, particularly as the property lay above commercial premises.

40. This seemed an odd response to us and we pointed out to Mr Conway that the charge was for removal of a wasps nest in November 2011. There would be no wasps active in November, so why, we asked him, was £100 necessary for removing an empty nest?

41. Mr Conway did not know but suggested that it could have been for the erection of a ladder. When pressed as to why he did not know – since he represented the managing agents – he was unable to say.

Roof leaks

42. Mr Stephens asked why there were two items (dated 7 September and 11 October) concerning a leaking roof that, he thought, were the same leak. Mr Conway responded that for flat roofs it was sometimes difficult to identify where the leak was coming from. Two trips might be needed: one to identify the leak and the next to fix it.

43. Mr Stephens then asked why, given that there had been major works to the roof, the contractors had not been called back to carry out the repairs since they ought to have been responsible for it.

44. Mr Conway's response was that "we" (that is Hathaways) had no involvement with the major works and no contact with the contractors. He did not know whether there was a guarantee for the major works. Even if there was one Hathways did not have it or any documentation referring to it.

45. When asked whether Mr Conway had tried to obtain any documentation when Hathaways took over management he was told that, no, it hadn't. Nor did he know why it hadn't been asked for.

46. When it was put to Mr Conway that a landlord paying their own money for roof repairs would have tried to discover if the contractors were responsible, Mr Conway did not indicate disagreement.

Management Fee

47. Mr Stephens asked whether, given the lack of clarity in the answers to his questions what was included in the management fee?

48. Mr Conway said that it was the fee for the management agreed between the freeholders and Hathaways. It would specify the terms and services to be given to the building.

49. It would cover all 20 flats in the building and would probably cover the collection of the service charges, arrangement of repairs and maintenance, arrangement of the various services to the building as required, for example pest control, the arrangement of accounts, health and safety inspections and general administration.

Evidence for the Respondent

50. In evidence Mr Stephens was asked by the tribunal what his knowledge was of the work that was actually carried out as part of the major works.

51. He said that he remembered scaffolding being put up and a long delay in work starting on the roof for some reason. Work did appear to take place – he remembered the smell of re-roofing.

52. He was told by someone connected with the work that the leaks in the roof had been fixed but he did not believe it. The leaks continued and he was sure they were not leaks that were new, they were leaks that were there previously.

53. The existing Georgian wired glass panels on the communal corridors were not replaced except for a few that were replaced by a small number of plastic sections seen by the panel during the reception.

54. The communal walls had been painted, though not very well and some patches of wood had been left. The entry phone system serving his flat was removed and not replaced. There had originally been a cork floor, which was replaced with the soft floor covering now in the building.

The staircase treads had been done at this time as well as rails on the stairways at an increased height.

55. There had been no lighting in the common parts. Sensor lights were installed as part of the major works but many of them are now non-functional because of water ingress. A new fire alarm system was installed.

Respondent's submissions

56. In submission Mr Stephens argued that the major works were not done to a reasonable standard, in particular the building was not watertight and much of the lighting does not function. He submitted that further service charges were not reasonable while these problems remained uncorrected.

Applicant's submissions

57. Mr Foulds's central submission was that we should confine ourselves to considering whether the sums demanded were reasonable within the meaning of s19 of the 1985 Act.

58. He submitted that the sums claimed were under clause 3 of the Second Schedule to the lease, which was a standard term for the advance payment of service charges. The question for the tribunal was simply "was this a reasonable estimate of future service charge expenditure" in the circumstances.

59. He suggested that, clause 4(b) of the lease was "entirely independent" of clause 3. Its purpose is to deal with adjustments at year end. The amounts payable under clause 3 could not be affected by historic overpayments.

60. As an alternative point he suggested that we were confined by the order of the county court to consider only the reasonableness of the sums claimed by the applicant. "Historic issues" were irrelevant to that exercise.

61. As to the particular charges that should be considered, he said that the charges marked "Admin" in the statement of account attached to the Claim Form were "administration charges" and not "service charges" because:

   a) they were "administration charges" within the meaning of schedule 11 to the 2002 Act;

   b) they were claimed under clause 3(19) (requiring the tenant to pay the landlord's costs in certain circumstances) rather than under paragraph 1 of the second schedule (requiring the payment of a proportion of the maintenance charge).

Consideration

The County Court Order

62. First, when the county court order was made, the leasehold valuation tribunal (LVT) in England had been abolished. LVT's have, since 1 July 2013, existed only in Wales. The court order must be intended to refer to the First-Tier Tribunal (Property Chamber) ("FTT") that has replaced the LVT in England since that date.

63. Before 1 October 2003, the then LVT had a jurisdiction under section 19 of the Landlord and Tenant Act 1985 ("the 1985 Act") to decide whether a service charge was reasonable.

64. Since then, that jurisdiction has been replaced by a wider jurisdiction under section 27A of the 1985 Act to consider whether a service charge is payable. While the question of payability may include a decision as to reasonableness, the FTT no longer has a jurisdiction to answer a question confined to reasonableness.

65. Paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") permits a court to transfer so much of the proceedings before it as relate to a "question falling within the jurisdiction of a leasehold valuation tribunal". In our view the question "are these service charges reasonable" does not by itself fall without our jurisdiction.

66. For that reason, and trying to interpret the county court order so that it makes sense, we interpret it to mean that we are to consider the payability of the service charges claimed by the Applicant.

Which charges?

67. In our view, Mr Foulds's submissions on this point are misconceived.

68. Section 27A of the 1985 Act states:

(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.

69. Thus the statutory jurisdiction of the FTT under s27A depends on whether or not the charges are "service charges". The definition of "service charge" is in section 18 of the 1985 Act:

(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.

70. Thus, whether or not a charge is a "service charge" depends only on whether it meets the statutory definition in section 18. The label the parties place on it, or the particular provision of a lease under which it is claimed cannot affect that.

71. Similarly, whether or not a charge is an "administration charge" as defined in Schedule 11 to the 2002 Act or not cannot, in our view, affect whether it is a "service charge".

72. While the terms "administration charge" and "service charge" are sometimes used as if they must be non-overlapping terms, there is nothing in the 2002 Act to suggest this. If it had been Parliament's intention that some charges would be removed from the statutory protection of the 1985 Act and be subject to different forms of protection under the 2002 Act then they would have amended section 18 to say so. Nothing like that was done.

73. It was the unchallenged evidence of Mr Conway in his written witness statement that the charges marked "Admin" were for the writing of a letter to Mr Stephens claiming arrears and then for writing instructions to the Applicant's solicitors to take on the county court case.

74. Both of these payments fall squarely into the "landlord's costs of management" and we cannot see any reason not to treat them as service charges along with the other sums claimed.

Scope of the Tribunal's enquiry

75. The Second Schedule of the lease contains the provisions on service charges. Paragraph 3, under the heading "Advance Payments on Account" says:

"3 (a) The Tenant shall pay on account of the Service Charge such amount as the Surveyor shall estimate and certify as is likely to be the Service Charge for the relevant Service Charge Period such amount to be paid in advance by two equal payments on the on the 1st January and 1st June in each year

(b) If such estimate is not notified to the Tenant prior to the commencement of a Service Charge Period the Tenant shall pay as

aforesaid the amount payable in the immediately preceding Service Charge Period and when the estimate shall have been notified to the Tenant any shortfall due or excess paid shall be adjusted on the next ensuing payment."

76. There seemed to be agreement that our task in deciding payability under paragraph 3(a) is to consider what sums would be reasonable having regard to the work that needed to be done. In other words looking forward only and not backward.

77. Paragraph 4 of the Second Schedule states:

"(b) If Service Charge shall be more or less than the total of the advance payment (or the grossued-up equivalent of such payments if made for any period of less than the Service Charge Period) then any sum due to or payable by the Landlord by way of adjustment in respect of the Service Charge shall forthwith by paid or allowed as the case may be"

78. It seems to us that, where the tenant has paid more in an advance payment than the Service Charge, the slightly convoluted wording of 4(b) may be read as "any sum ... payable by the Landlord by way of adjustment ... shall forthwith [be] allowed". That seems to us to be language which requires the advance payment under paragraph 3 to be reduced by any overpayment of service charges by the tenant.

79. That means that, in assessing payments under paragraph 3 it is right for us to consider the extent to which the service charges for the year 2011 were properly spent. For example if, having regard to the work done, the amount paid for those services in advance for 2011 exceeds the amount that would be reasonable, then the amount payable under paragraph 3 for the year 2012 should be reduced accordingly.

80. In any event, the charge dated 24 May 2012 is said to be for service charges deficit for the period ended 31 December 2011. We cannot see how it would be possible for us to consider the reasonableness of that charge without considering the work that was actually done in the year 2011.

Relevance of the major works

81. Unfortunately, no part of the Counter-Claim has been transferred to us by the county court, but the major works remain relevant in two ways:

   a) Mr Stephens has paid for the major works, albeit indirectly. If that constituted an overpayment, he would be entitled to be given credit for it against future payments under paragraph 3 of the Second Schedule.

   b) If work done in 2011 or scheduled to be done in 2012 overlaps work that ought to have been done by the contractor under the major works scheme, it may be unreasonable to charge a tenant

for that overlapping work to the extent that the work could be done by, or the costs of the work recovered from, the major works contractor.

Payability

82. Regulation 3 of the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 begins as follows:

"*Where these Regulations apply the summary of rights and obligations which must accompany a demand for the payment of a service charge must be legible in a typewritten or printed form of at least 10 point, ...*"

83. Mr Conway accepts that the summary of rights and obligations attached to the demands for service charges were – at least partly – written in less than 10 point size. That seems correct to us having reviewed the copies of the demands in the trial bundle. What appears most likely to have happened is that someone has shrunk them so as to fit into a single page.

84. In *Avon Freeholds v Regent Court RTM Limited* [2013] UKUT 0213 (LC) at [27] to [32] the Upper Tribunal reviewed the authorities on non-compliance with a statutory provision and in particular Lord Steyn's reference in R v Soneji [2006] 1 A.C. 340 to

"*a more flexible approach of focusing intensely on the consequences of non-compliance, and posing the question, taking into account those consequences, whether Parliament intended the outcome to be total invalidity*"

85. In our view, Parliament intended that a summary of rights and obligations should have a minimum point size so that it would not only be readable, but accessible, to tenants. A summary of rights and obligations that was smaller than intended would be invalid.

86. A key factor in suggesting that was Parliament's intention was the fact that invalidity is a temporary matter. The landlord may re-serve demands for service charges with a summary of rights and obligations of the proper font size. A failure to comply does not permanently deprive a landlord of service charges to which it is entitled

87. In consequence, none of the charges claimed by the Applicant are payable. A further consequence is that the two charges described as "Admin" are unlikely ever to be payable because they relate to a premature demand for service charges not yet due and the premature commencement of legal action.

88. If we are wrong about that, we need to consider the payability of the service charges. That consideration falls into three parts:

a) the reasonableness of the prospective charges for 2012;

b) the reasonableness of the charges for 2011;

c) whether any repayment is needed in respect of the major works.

Prospective charges for 2012

89. Mr Stephens did not suggest that the two advance service charges for £330.05 each were unreasonable amounts to allow for expenditure in 2012. In our view that is right. Using our local knowledge we would not find £660.10 an unusual amount for a flat in a block of a similar kind.

Reasonableness of charges for 2011

90. The items challenged by Mr Stephens that remain in issue are:

Cleaning

91. We find that the property should be very simple to clean. There are no carpets, so a sweep only would be needed. Graffiti and cobwebs on the ceilings and in the light wells are not removed and so this appears not to be a part of the regular cleaning schedule.

92. For such very basic cleaning, Mr Stephens may well be right that at most an hour is needed. Even allowing an hour and 30 minutes and 30 minutes travel time all at £30 an hour would give at most £60 per visit. We therefore find that £1,150 for cleaning in 2011 would be reasonable, which would reduce the service charge owed by £1,157.60.

Roof repairs

93. If the major works had been carried out properly, there should have been no, or at most a minimal, need to carry out any roof repairs. A landlord paying their own money for roof repairs would either claim under a guarantee for the roof (if there was one) or take steps to recover the cost of repairs from the roof contractors. At the very least enquiries would be made as to the existence of a guarantee and the possibility of recovering from the contractors. Failure to do any of these things, in our view, renders the cost of repairs to the roof unreasonably incurred.

94. Repairs to the main roof amount to two payments: one for £310 dated 22 December 2011 and the other for £130 dated 13 October 2011. These sums were unreasonably incurred and should be disallowed.

Padlocks

95. The charge of £425 for padlocks and the installation of a heavy duty enclosure is for labour not parts. Mr Stephens has challenged this cost and the Applicant has failed to give any justification for it – Mr Conway did not even know what the payment was for.

96. On the inspection we saw padlocks fixed to an electrical cabinet pictures of which were in the trial bundle. We think the payment is most likely for work to the electrical cabinet. Using our local knowledge a reasonable amount for the work would be £300.

Window Renewal

97. An invoice for £330 dated 28 November 2011 reads:

"(Sal)esman attended, removed battens and disposed of dangerous glass. Measured opening to panel above door (sec)ond floor corridor. Returned at later date with glass. Supplied and fitted Georgian wire clear caste (..)ed rubbish on completion and left in good clean order."

98. The poor quality of the trial bundle prepared by the Applicant required some interpolation.

99. On the inspection we found no new Georgian wired glass. As far as we can tell, this work was either not done, or not done as described and would require re-doing. We therefore disallow this sum.

Wasps nest

100. Two charges are made relating to the wasps nest. One for £100, dated 27 November 2011 for "wasps nest treatment" and another for £420 dated 28 November 2011 which included the removal of rubbish, the discovery of an old wasps nest in a discarded mattress and the attendance (for no charge) of pest control.

101. We cannot see any reason why there needed to be a charge for wasps nest treatment. All that was needed was the nest's removal. There was no charge by pest control. We therefore disallow the charge of £100.

Annual maintenance of exit button

102. One of Mr Stephens's complaints concerned the lack of any practical entry mechanism other than a simple fob-operated lock with exit button. Given the very simple nature of the locking arrangements we cannot see any need for "annual maintenance" charge at £144 in an invoice dated 1 October 2011. We disallow this sum as well.

Management Fee

103. Management has not been up to scratch.

104. In the first place the general state of the property is simply not good enough. Graffiti on walls and fly tipping were in evidence during the inspection. The graffiti, at least, was quite old. It did not seem that anything had been done about it.

105. Secondly, Mr Stephens's evidence that leaks have continued for a period of years since before the major works had been carried out and that those leaks continue to date, is uncontradicted by the Applicant and entirely consistent with what we saw during the inspection. The

leaks are serious and widespread throughout the common parts and affecting also the flats within the building.

106. A managing agent, doing its job properly, ought to have taken firmer and swifter action to deal with the problem.

107. Lastly we would expect a managing agent to be able to give a clearer and better account of the service charge expenditure than we had in the hearing from Mr Conway.

108. On the basis that the work done was not a reasonable standard, we reduce the fee to £150 per unit per annum, making a total of £2,250.

The effect of the major works

109. We have been given very little information about the major works. We have seen a tender for works, contract and a summary of costs in the sum of £194,314.25 (inclusive of VAT) for which the liability per unit is £9,715.71.

110. It is quite clear that much of the proposed work was either not done or not done to a satisfactory standard. In particular there was no replacement of entry phone systems and no new Georgian wired glazing has been installed to replace defective segments.

111. Most seriously the tender included the complete replacement of the roof. We have not been able to inspect the roof, but it is clear that there are a very large number of places in the building where water is coming through the roof. On the evidence we have seen and heard, the roof works have been done so badly that they might as well not have been done at all.

112. We cannot make an exact finding on the basis of the evidence we have seen, but the value must fall sufficiently far below the amount paid by Mr Stephens as to extinguish any liability Mr Stephens has under this claim.

113. Given that the counter-claim is, in essence, an allegation that the work paid for was not done to a reasonable standard, it would be possible for the county court to transfer a consideration of that question to us. If the matter were to come before us for that reason, or as a result of another claim made by either party, we would need to consider this question more carefully and hear proper evidence on what work was done.

114. But since our task is limited to deciding the payability of service charges and we have already decided they are not payable, there is no need for us to investigate this point further.

The consultation process

115. As explained at the outset of this decision, we had been concerned about whether the process required by section 20 of the 1985 Act for

consultation with leaseholders had been carried out. The notice relied on in the bundle fails to invite leaseholders to suggest contractors from whom a quotation might be obtained.

116. In the hearing Mr Foulds admitted that the section 20 process had not been complied with. He did not ask for more time to obtain evidence of any other notice served.

117. After the hearing we received further evidence from the Applicant with a document that purports to be an earlier notice that might have brought the Applicant in compliance with section 20.

118. In the light of our findings on payability we do not need to explore this point, so we make no finding as to whether or not consultation was properly carried out or the cost of the major works was otherwise payable.

Application Fees

119. The Applicant made an application for the payment of its application fee to the FTT by the Respondent. In the light of our decision we decline to make that order.

Conclusion

120. In conclusion, none of the charges claimed by the Applicant in the claim are payable by the Respondent, first because no proper summary of rights and obligations was served on the Respondent and second because overpayments in previous years have eliminated any liability of the Respondent under paragraph 4(b) of the Second Schedule.

....

Francis Davey
26 March 2014

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