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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/34UF/LAM/2013/0002**
Property	:	**First Floor Flat** **120 Ashburnham Road,** **Abingdon,** **Northampton,** **NN1 4RB**
Applicants (Tenant)	:	**Sue Battams**
Respondent (Landlord):		**Richard Marchant**
Date of Application	:	**19th March 2014**
Date of Hearing	:	**9th June 2014**
Type of Application	:	**To appoint a manager (Section 24(1) Landlord and Tenant Act 1987)** **To limit the service charge arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985)**
Tribunal	:	**Judge JR Morris** **Mr R Brown FRICS** **Mr PA Tunley**

DECISION

Decision

1. The Tribunal makes no order for the appointment of a manager.

2. The Tribunal made an order under section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Respondent Landlord in connection with 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 Applicant Tenant.

32. The Applicant said that she had obtained legal advice from Franklin's Solicitors who advised that the Respondent was in breach of Clause 5 (4)(a)(i) of the Lease, which was quoted as follows:

To maintain and keep in good and substantial repair and condition the main structure of the Building including the principal internal timbers and joists and the exterior walls and the foundations and the roof thereof with its main water tanks, main drains, gutters and rain water pipes (other than those included in the demise or in the demise of the other flat in the Building)

33. The Applicant then set out terms on which the matter might be remedied namely instructing Allen & Jayne to repair the roof and guttering with the Respondent enabling access. It was submitted that the Applicant would pay the invoice and then off set 50% of the invoice from her share of the insurance premium. A response was requested by 21st June 2014.

34. The Applicant also produced from the Respondent a letter dated 26th June 2009, which set out the payments for Ground Rent and Insurance for the period 2006-07, 2007–08, 2008-09, 2009–10, a hand written letter dated 20th August 2010 which set out the ground rent and insurance contribution for 2010-11 and a letter dated 6th December 2012, which set out the Ground Rent and Insurance for the years 2011-12 and 2012-13. It was agreed that these were the only demands for Service Charges that had been made and the reasonableness of their amount was not in issue.

35. The Respondent submitted written representations in a letter to the Tribunal and the Applicant dated 26th May 2014. In the letter the Respondent stated that he purchased the freehold interest in the property some 25 years ago from the previous owners, Perchwall Properties Ltd who had already sold a leasehold interest in the first floor flat on a 999 year Lease from 1988 with a ground rent of £5.00 per annum.

36. The ground floor flat is retained by the Respondent as Freeholder and was, and continues to be occupied by a tenant under the rent Act 1977 at a rent of £45.00 per week. The total income for the two flats is therefore £2,345.00 per annum.

37. Until recently he said that the relationship between the Tenant of the Ground Floor Flat and the Leaseholder of the First Floor Flat had been excellent and maintenance issues had been dealt with as they occurred. However, the Applicant has sought capital improvements rather than basic maintenance. The Respondent stated that the annual income he received from the two flats precluded large expenditure for other than basic maintenance and that the quotations obtained by the Applicant for repairs to the roof amounted to two years' rent.

38. The Respondent stated that the insurance premium for the Building was split 60% payable by the Ground Floor Flat and 40% payable by the First Floor Flat. The reason for this was said to be the difficulty a previous leaseholder had experienced in obtaining insurance for the first floor flat alone. He said maintenance costs have been split 50/50. He said that he had sought to obtain

best value in good quality workmanship by purchasing materials and delivering them to the site for the sub-contractor.

39. The Respondent then catalogued the works undertaken in the past 12 months as follows:

A) Replacement of cast iron guttering to the rear of the Building with a plastic system due to the gutters overflowing causing water ingress into the Property. In the two successive years the gutters had had to be cleared annually. The Respondent, following the receipt of information from the Ground Floor Flat Tenant, subsequently believed that the overflowing of the gutters might have been due to the rainwater drainage channel in the rear garden having been blocked by cement by workmen of a leaseholder. The debris, which might have caused the blockage, has since been removed. At the hearing the Applicant stated that the work referred to, had been undertaken by a previous leaseholder.

B) Replacement of cement fillet between tiles of rear extension portion of the main roof and the upright parapet wall of the adjoining property. The opportunity was taken to re-bed and/or replace any worn or cracked tiles.

C) Refurbishment of existing lead work over the first floor roof bay window with the latest epoxy sealant poured into cracks or defects in line with the latest available techniques. The gutters to the front were inspected and found to be serviceable.

40. He said that he was baffled by the request to appoint a manager. He noted that the Lease enabled him to appoint a manager as his discretion but that he did not wish to take this option. He added that the low rental income made it impractical to employ a chartered surveyor. However, he said that he would be happy to discuss the maintenance of the Property with the Applicant's surveyor should she wish to employ one. He said that he felt the matter had arisen due to a clash of personalities rather than any lack of management and that he was keen to ensure that the building was sound and watertight provided the financial constraints were understood.

41. At the Hearing in response to the Tribunal's questions the Applicant stated that she had sought to have a manager appointed because she did not consider the Property was being maintained properly. The Respondent as Landlord did not inspect the Property regularly with a view to carrying our maintenance work. He waited until a defect occurred when she would bring a matter to his attention and after she had complained for some time he had remedied the matter. She said that when work was carried out it was done by odd job men and not qualified contractors. She said that the issue with regard to the guttering had taken 3 years to resolve and that of the roof over a year and she was still not sure that the work carried out would be effective.

42. She referred to the need for a rolling programme of inspection and maintenance with the engagement of a surveyor to inspect the Property at six monthly intervals and for agreed works to be carried out. She felt that the Respondent did not appreciate that this was her home and that she had had water running down the walls of each room, referring particularly to the

bedroom because he had failed to maintain the Property properly. The Applicant said that there was a lack of communication. She questioned whether the repairs to the roof were of a satisfactory standard to stop the ingress of water.

43. The Tribunal referred to the two requirements of (1) serving a notice under section 22 of the Landlord and Tenant Act 1985 unless it was not practicable to do so and (2) to make an order under section 24 a manager must be proposed in order for him or her to be appointed. In response the Applicant said firstly that she had not served a notice under section 22 of the Landlord and Tenant Act 1985 because she did not know that was required.

44. Secondly she said that she was not able to propose a manager to the Tribunal for appointment because she had not been able to find a person prepared to carry out the work. She said she had approached several agents. She said that smaller property managing agents had said that it was uneconomical for them to manage a building with only two flats (letter from an agent provided). Whereas larger property managing agents had said that their unit charge would be likely to be so high as to make it uneconomical for the tenants to employ the agent. She added that she wishes to sell the Lease of the Property but it needed to be in good condition to attract a purchaser.

45. The Respondent in reply said that the income from the flats was insufficient for him to be able to carry out the level of maintenance on the Property that the Applicant seemed to require. He said that the ground floor flat was a tenancy under the Rent Act 1977 and gave a low return. He managed to renew the guttering and repair the roof by employing people he knew and keeping the costs down by buying the materials. He said the cement fillet was a standard form of repair to the roof. In response to a question from the Tribunal the Respondent agreed that to chase in a lead flashing into the parapet with dressed lead from the coping bricks on top of the parapet would provide a better seal but would be more expensive. He said that he had employed two men with a ladder to clear the gutters. If he had employed a company as the Applicant suggested it would have cost much more.

46. The Respondent said that so far the Applicant had not paid for the work, if she did not he would tell a prospective buyer that there were outstanding service charges. He said that previous Leaseholders had been happy with the more informal arrangements. In response to the Tribunal's question the Respondent said that he was a landlord to 11 other properties all of which were subject to short term tenancies under the Rent Act 1977 or the Housing Act 1988.

47. The Tribunal commented that a Landlord must not inform a prospective buyer that service charges were outstanding unless he was sure that they had been properly demanded and were payable.

Decision

Appointment of a Manager

48. The Tribunal firstly considered whether the Applicant had fulfilled the formalities of the application for the appointment of a manager. It considered whether the letter of the 15th June 2013 from the Applicant to the Respondent had amounted to a notice under section 22. The Tribunal determined that it did not as it did not state that the tenant intended to make an application for an order under section 24 nor did it specify the grounds on which the Tribunal would be asked to make an order and the matters that would be relied on by the tenant for establishing those grounds and it proposed a course of action rather than stating what remediation was required by the landlord. The Tribunal also considered that it was reasonably practicable to serve the notice.

49. In addition the Applicant had not proposed a manager for appointment.

50. In the absence of the section 22 notice and a proposed manager the Tribunal determined that it would not make an order for the appointment of a manager. The Tribunal orally informed the parties of this decision at the Hearing.

Section 20C Order

51. Secondly the Tribunal considered whether the Applicant was justified in seeking the appointment of a manager. The Tribunal considered this issue because the Applicant applied for an order to limit the service charge arising from the landlord's costs of proceedings under Section 20C Landlord and Tenant Act 1985 and the Respondent had referred to the matter of costs.

52. The Tribunal was of the opinion that neither party understood their rights and obligations under the Lease and the legislation relating to long leaseholds or in respect of these proceedings.

53. The Respondent did not appear to be able to distinguish between the different types of tenancy and to accept that his personal circumstances were irrelevant as to whether works should be undertaken and the manner in which they should be carried out under the Lease in respect of the Property. The Tribunal appreciated that for a building with only two flats it was understandable that informal arrangements may be made for repairs. However, as the Tribunal made clear at the Hearing, it is the Lease and Legislation that will determine any dispute that may arise.

54. With regard to the obligations under the Lease the Tribunal found that repair work had been carried out and there was insufficient evidence adduced at the Hearing to make a finding that the Respondent was in breach of the Lease for failing to repair. With regard to the Service Charge the only item that had been demanded was the insurance premium. This had not been demanded in accordance with the Lease or the legislation. In particular no summary of rights and obligations had been issued and therefore the amount was not payable until this had been done.

55. The cost of any repair work had not been demanded. If it were, the parties agreed it exceeded £250.00 a unit. If the Respondent sought reimbursement of more than £250.00 a consultation under section 20 of the Landlord and Tenant Act 1985 would have been required. As the Respondent admitted this had not taken place it would be necessary for him to apply for dispensation under section 20ZA if he claimed payment of more than £250.00. As no service charge demands had been received the reasonableness of the cost of the work undertaken was not in issue although the Applicant had questioned the reasonableness of the standard of the work although since no charge had been made this had not been put in issue in the Application.

56. The Respondent did not appear to be aware of a Code of Management practice.

57. Therefore notwithstanding the Applicants failure meet the requirements of this Application, the Tribunal was of the opinion that the Applicant was justified in seeking to regularise the informal arrangements that had prevailed to date. The Tribunal recommended that both parties familiarise themselves with the Lease and the legislation and communicate more effectively. The Respondent should also acquaint himself with the RICS Code of Conduct for Residential property Managers.

58. The Tribunal made an order under section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Respondent Landlord in connection with 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 Applicant Tenant.

Judge JR Morris

21st July 2014