



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

Case Reference : MAN/00DA/LSC/2017/0072

Property : Flats 1-4, 232 Harehills Avenue,
Leeds LS8 4HX

Applicant : G&O Real Estates Limited

Applicant's Representative : Blue Property Management UK Ltd

Respondents : Flat 1: Ms R Lee
Flat 2: Mr Siobhan
Flat 3: Mrs Shadlock
Flat 4: Mr Coleman & Ms O'Neil

Respondents' Representative : Not represented

Type of Application : Landlord and Tenant Act 1985 -
s27A (&20C)

Tribunal Members : Judge S. Moorhouse LLB
Mr I.D. Jefferson FRICS

Date of Paper Determination : 4 December 2017

Date of Issue of Decision : 7 December 2017

DECISION

DECISION

- (i) The quoted costs of £5,603.18 relating to Fire Alarm and Emergency Lighting Systems represent a reasonable budget figure. However, service charges may only be recovered in accordance with the terms of the leases (which make no provision for one-off advance payments) or by agreement with the Respondents.
- (ii) Additionally, any such service charges are irrecoverable from the Respondents insofar as they exceed the limits referred to in Section 20 of the Landlord & Tenant Act 1985 unless a consultation exercise is carried out in accordance with Section 20 or dispensation is granted pursuant to Section 20ZA. No evidence has been provided to the Tribunal that would enable it to determine that such a consultation exercise has been conducted or to determine that such an exercise was correctly carried out.
- (iii) The Tribunal makes an Order under Section 20C of the Landlord & Tenant Act 1985 that any costs incurred by the Applicant in respect of these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any Respondent for the current or any future service charge year.

REASONS

The Application

1. The application ('the Application') is made under Section 27A of the Landlord & Tenant Act 1985 ('the Act').
2. The Application is made in the name of Blue Property Management UK Limited, the freehold proprietor being G&O Real Estate Limited. Since the former company is not a party to the lease, the Tribunal directs that the freeholder, G&O Real Estate Limited be named as the Applicant, its interests being represented by Blue Property Management Limited.
3. The Respondents are the leaseholders of the 4 flats at the subject property ('the Property'), identified initially by the Applicant as Ms Ramona Jade Lee (Flat 1), Mr Ira Mandela Siobhan (Flat 2), Strategic Property Investments (Flat 3) and Mr Trevor Anthony Coleman & Ms Irene Joan O'Neil (Flat 4). The Applicant later notified the Tribunal of the transfer of Flat 3 to Mrs Zanele Shadlock and Mrs Shadlock has been the one leaseholder to make any submission to the Tribunal. At the Applicant's request and recognising Mrs Shadlock's interest the Tribunal directs that Mrs Shadlock is named as the Respondent for Flat 3 in substitution for the previous leaseholder Strategic Property Investments.

4. The Application concerns a Fire Alarm System and Emergency Lighting System that the Applicant proposes to have installed within the common parts to the Property. The Applicant identifies the total costs as being £5,603.18 (£1,400.80 per leaseholder). This is broken down to £3,897.80 (£974.45 per leaseholder) for the Fire Alarm System Installation and £1,705.38 (£426.35 per leaseholder) for the Emergency Lighting System Installation.
5. The Applicant states within the Application:

'We wish the Tribunal to determine the liability to pay and the reasonableness of the cost of the proposed fire alarm system installation.

We wish the Tribunal to determine that the total costs of £5,603.18... are reasonable and are payable by the leaseholders within 30 days from the date the works are instructed.

We wish the Tribunal to determine that the Section 20 process was carried out correctly and the charges are due under the Section 20 legislation.'
6. Directions were issued to the parties on 26 September 2017. Pursuant to Directions the Tribunal has received a Statement of Case for the Applicant dated 13 October 2017, a letter (including statement of case and an application under Section 20C of the Act) from Mrs Shadlock dated 30 October 2017 and a Reply from the Applicant dated 9 November 2017.
7. Within the Applicant's Statement of Case the Tribunal has been provided with a copy of the lease of Flat 2 at the Property, granted on 31 January 2003 for a term of 125 years calculated from 1 January 2002.
8. None of the parties having requested a hearing, the Tribunal determined the Application on the papers provided.

Submissions

9. The Applicant's Statement of Case includes a copy of a Fire Risk Assessment relating to the Property conducted by Blue Risk Management. The date of assessment is 6 September 2016 with a 'date of review' stated as 5 September 2017. The assessment identifies two 'high priority' deficiencies and 2 'medium priority' deficiencies. The high priority items identify that 'the building needs emergency lights fitting to give clear illuminated route of exit in case of emergency evacuation and/or loss of power' and that 'there is no fire detection in place - an automatic fire detection system needs to be in place...'. A deadline for compliance is given of 6 October 2016. The medium priority items are outside the scope of the Application.

10. The Applicant has supplied two quotations relating to the high priority items. The first is from Grainger Fire and Security in Liverpool and dated 14 July 2017 (in the sum of £5,532). The second is dated 13 October 2017 and is from a company named Jackson in Leeds (in the sum of £5,603.18 for an 'addressable' system). The second quote corresponds to the amount referred to in the Application.
11. The Applicant's Statement of Case includes a letter to the Tribunal dated 12 September identifying the Respondents and their contact details. The letter is headed 'Section 20ZA - Dispensation from the requirement to consult'. There is no further reference in the papers to any intention to seek dispensation from consultation requirements nor any statement in support of such an application. Whilst the Application indicates that the Tribunal is asked to determine that a consultation exercise has been carried out correctly under section 20 of the Act, no correspondence or other documents have been submitted on the subject of consultation.
12. The letter to the Tribunal from Mrs Shadlock dated 30 October 2017 brings to the Tribunal's attention the date of the Fire Risk assessment, the deadline for compliance and the stated review date. Mrs Shadlock states that since she was unaware of the risk assessment at the time of her purchase, she feels there is some injustice in being asked to make a payment of £1,400.80 at this stage.
13. The Applicant's Reply notes that no other Respondents have made a submission and states that the risk assessment was supplied to Mrs Shadlock's seller. Further copy e-mails are supplied which appear to be between the Applicant's representative and Mrs Shadlock's seller's solicitor, relating to the possibility of future qualifying major works.

Determination

14. The Tribunal have reviewed the 2 quotations supplied by the Applicant. None of the Respondents have indicated that they object to the fire safety works or that they consider the quotations to be unreasonable. No alternative estimate or other evidence has been submitted. In these circumstances the Tribunal determines that the amount of £5,603.18 represents a reasonable budget figure.
15. The Applicant seeks a determination that contributions on the part of the leaseholders are payable within 30 days of the works being instructed. Recoverability is dependant upon the terms of the relevant lease.
16. The Tribunal has a copy of the lease for Flat 2. Clause 2.3 requires the leaseholder to pay service charge in accordance with the Fourth Schedule to the lease. For the purpose of the Fourth Schedule 'Expenditure' recoverable pursuant to the service charge provisions is defined to include expenditure of the landlord in complying with its obligations under Clause 5 of the Lease.

17. Clause 5.6 requires the landlord to 'comply with....the provisions of any Act of Parliament relating to the Common Parts or the Property as the Landlord shall in its absolute discretion determine'. Clause 5.8 states: 'to provide any additional service and make any other payment which the landlord shall from time to time deem reasonably necessary for or incidental to the landlord's obligations under this Clause or for or incidental to the proper care maintenance and good management of the Common Parts or the Property'. The Tribunal determines that the installation of Fire Alarm and Emergency Lighting Systems falls within the scope of sub-clauses 5.6 and 5.8.
18. The Fourth Schedule provides for Expenditure to be accounted for on an annual basis, the leaseholder's share of a provisional sum being payable in quarterly instalments with a balancing payment to be made (or credit given) following the year end accounting. There is no provision for the landlord to make a demand for a one-off payment, but the definition of 'Expenditure' allows the landlord to make reasonable provision for future expenditure on such items as call for intermittent expenditure and to recover interest paid on amounts borrowed to fund expenditure in excess of the provisional sums received.
19. Assuming all of the leases are in the same form, the Applicant must anticipate future expenditure in setting the provisional sum or be prepared to use its own funds or borrow where necessary, rather than relying on being able to make a 'one-off' charge. Nothing contained in the lease prevents the landlord and the leaseholders reaching an agreement to fund necessary works, for example to avoid incurring interest charges.
20. Section 20 of the Act makes provision for statutory consultation with leaseholders in the event that qualifying works are proposed. On the basis of the quotations received the proposed Fire Alarm and Emergency Lighting Systems would be subject to the consultation requirement. The Applicant seeks a determination that the Section 20 consultation process has been carried out correctly. In the absence of any evidence that such a process has been conducted, the Tribunal can make no such determination. Unless such a process is conducted in accordance with Section 20 (or dispensation granted under Section 20ZA of the Act), any service charges relating to the works would be irrecoverable from the Respondents insofar as they exceed the limits prescribed by the Act.
21. The Applicant's letter to the Tribunal dated 12 September 2017 makes reference to dispensation under Section 20ZA within the heading. There is however no statement that the Applicant intends to seek dispensation of consultation requirements nor has the Tribunal received any statement or evidence to support an application under section 20ZA. The Tribunal accordingly makes no determination under Section 20ZA.

Section 20C

22. Mrs Shadlock makes an application under section 20C of the Act. The Applicant has had the opportunity to respond to this within its Reply but has simply noted the application.
23. On the Application itself the Tribunal has determined that the proposed costs represent a reasonable budget figure however the Tribunal has determined that the costs are not chargeable within 30 days of instructing the works and that there is no evidence before it of the consultation requirements having been met. The works were identified as high priority in September 2016 and it is apparent from correspondence accompanying the Applicant's Reply that the Applicant was aware before March 2017 that they would almost certainly be qualifying works. The Applicant has been slow to action its own risk assessment.
24. In the circumstances the Tribunal makes an Order under Section 20C of the Act that any costs incurred by the Applicant in respect of these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any Respondent for the current or any future service charge year.

Appendix

Extracts from Statute

Landlord and Tenant Act 1985

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 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 adjustments shall be made by repayment, reduction or subsequent charges or otherwise.

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 or first-tier 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 specified in the application.
- (3) The court or tribunal to which the application is made may make any such order on the application as it considers just and equitable in the circumstances.

Section 27A

(Subsections (1), (2) and (3))

- (1) An application may be made to a 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 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.