8939

HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of Sections 20C and 27A of the Landlord and Tenant Act 1985

Case No.	CHI/21UC/LSC/2013/0022
Property:	**Flats 2 and 3 Dene Court** **10-12 South Street** **Eastbourne** **East Sussex** **BN21 4XF**
Between:	**(1) Mr Serrafino** **(2) Ms Cuiesa** **(3) Ms Dobosz** **(4) Mr Nagy** **(the Applicants)** and **Mr Stonham** **(the Respondent)**
Date of hearing:	15th May 2013
Date of the decision:	20th May 2013
Members of the Tribunal:	Mr D Dovar LLB (Hons) Mr N I Robinson FRICS

DECISION

Introduction

1. This is an application for the determination of the payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 for the year ends December 2012 and 2013.

2. Directions were given at a Pre-Trial Review on 1st March 2013. That provided for the Respondent to file and serve a statement of case setting out the accounts for the year end 2012 as well as the invoices and other documents relied upon by them both in relation to that year and for the estimated costs for the year end 2013. The Applicant was then to set out in response their Statement of Case with supporting documentation. Both parties provided their statements of case with supporting documentation.

3. At the Pre-Trial Review, the Tribunal noted that there was a potential issue regarding compliance with statutory consultation and directed that the Respondent should issue any application for dispensation from those requirements at least 21 days before the date set for the hearing. No such application was made.

4. The Applicants appeared in person through Mr Serrafino and Ms Dobosz and the Respondent appeared through his managing agents, Mr Faulkner (Head of Residential Management) and Mr Bargioni (Property Manager) both of the firm Stiles Harold Williams.

The Property

5. The building is double fronted on three stories, originally believed to be constructed with two shops on the ground floor and two flats on each of the two floors above. The communal entrance serving the flats is directly off South Street between the two shops. These shops are now occupied by the same business tenant and there is a large opening between them. Each of the flats has rear access onto a flat roof at the back of the shops and from there to a small rear garden area. Flats 1 & 2 are on the first floor and Flats 3 & 4 on the second floor.

6. The Tribunal inspected the property accompanied by the parties. The communal hallway was well maintained save for the lack of boxing in of the new mains pipe that had been installed. This pipe ran from the external stop cock position in the pavement outside, through the hallway and up to flat 2 where it entered that flat by a hole next to the front door. It entered an airing cupboard in flat 2, then went out of the flat again, going across to flat 1 and upwards to flat 4. The Tribunal also saw where it came into Flat 3.

7. The Tribunal was also taken to the rear of flat 2 and out onto what was the roof of the extended part of the shop below. The Tribunal was shown the adjacent part of the flat roof extending out from flat 1 and was informed that it was in relation to this extended part that it was intended to resurface with asphalt due to water ingress into the shop below. From this vantage point, the Tribunal was able to see the modest and unkempt garden.

8. The Tribunal was taken to the shop below where it saw both the stained tiles from water penetration below the flat roof as well as more substantial damage to the other side of the shop where the water mains had been leaking.

The Lease

9. The Tribunal takes the lease for flat 2 dated 20th September 1984 as varied by the deed of variation dated 1992 as representative.

DECISION

Introduction

1. This is an application for the determination of the payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 for the year ends December 2012 and 2013.

2. Directions were given at a Pre-Trial Review on 1st March 2013. That provided for the Respondent to file and serve a statement of case setting out the accounts for the year end 2012 as well as the invoices and other documents relied upon by them both in relation to that year and for the estimated costs for the year end 2013. The Applicant was then to set out in response their Statement of Case with supporting documentation. Both parties provided their statements of case with supporting documentation.

3. At the Pre-Trial Review, the Tribunal noted that there was a potential issue regarding compliance with statutory consultation and directed that the Respondent should issue any application for dispensation from those requirements at least 21 days before the date set for the hearing. No such application was made.

4. The Applicants appeared in person through Mr Serrafino and Ms Dobosz and the Respondent appeared through his managing agents, Mr Faulkner (Head of Residential Management) and Mr Bargioni (Property Manager) both of the firm Stiles Harold Williams.

The Property

10. The service charge covered both the residential and commercial units in the whole building. Further, as varied, it provided for two schedules to be maintained for the service charge. In essence, one for costs solely related to the residential flats and another for costs which related to the entire building. In respect of the former, each flat tenant was liable to a contribution of 25% and for the latter of 14%. The Applicants were concerned that they would be charged for items or repair taking place inside the shop. However, the Respondent rightly confirmed that they were not items that would fall within the service charge.

The Statutory Provisions

11. Section 18 of the Landlord and Tenant Act 1985 defines service charges as those amounts payable by a tenant as part of or in addition to rent, which are payable directly, or indirectly for services, repairs, maintenance or insurance or the landlord's costs of management and the whole or part of which vary or may vary according to the relevant costs. Relevant costs are defined as the costs or estimated costs incurred or to be incurred by the landlord in connection with matters for which the service charge is payable.

12. Section 19 places a statutory limit on service charges by only allowing their recovery to the extent that they are reasonably incurred and where the service or work is to a reasonable standard.

13. Section 20 of the 1985 Act and Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 require statutory consultation to be provided in cases where expenditure on major works is in excess of £250 per flat. If the Landlord does not comply with those requirements it will be limited to recovering no more than £250 per flat. That is unless they apply for and obtain dispensation under section 20ZA.

14. Section 27A confers jurisdiction on the Tribunal to determine whether a service charge is payable and if so, (amongst other matters) the amount

which is payable and the date at or by which it is payable. The determination can be made whether or not any payment has been made and also in respect of anticipated expenditure.

The sums in dispute

15. The Tribunal had been provided with an account for the year end December 2012 in the bundle as well as a break down for the estimated service charge costs for the year end December 2013.

16. Both at the Pre-Trial Review and at this hearing, the parties agreed that the issue for the year end 2012 related to the major work costs for the mains pipes and water tank. For the on account costs for 2013, they were limited to: partial asphalt roof covering, cleaning and gardening costs.

Major works

17. In the year end December 2012, the Respondent claimed that £16,495.20 had been spent on replacement water mains pipe and ancillary work including a new water tank and water tank housing. Given that the total amount spent on the works was in excess of £250 per tenant, there was a requirement under section 20 of the 1985 Act to carry out the statutory consultation procedure.

18. The Respondent accepted that they had not complied with the statutory consultation process. However, they maintained that following *Daejan Investments Ltd v. Benson* [2013] 1 WLR 854, SC, if they could demonstrate that the Applicant had not suffered any prejudice by the failure to adhere to the process, they were not limited to £250 as per the statutory cap. *Benson* is not authority for such a proposition, the considerations in *Benson* where whether dispensation should be given under section 20ZA. The Tribunal enquired whether the Respondent intended to make such an application and the Respondent said it had no instructions on that point. Given that there was no application for dispensation, the considerations set

10. The service charge covered both the residential and commercial units in the whole building. Further, as varied, it provided for two schedules to be maintained for the service charge. In essence, one for costs solely related to the residential flats and another for costs which related to the entire building. In respect of the former, each flat tenant was liable to a contribution of 25% and for the latter of 14%. The Applicants were concerned that they would be charged for items or repair taking place inside the shop. However, the Respondent rightly confirmed that they were not items that would fall within the service charge.

The Statutory Provisions

11. Section 18 of the Landlord and Tenant Act 1985 defines service charges as those amounts payable by a tenant as part of or in addition to rent, which are payable directly, or indirectly for services, repairs, maintenance or insurance or the landlord's costs of management and the whole or part of which vary or may vary according to the relevant costs. Relevant costs are defined as the costs or estimated costs incurred or to be incurred by the landlord in connection with matters for which the service charge is payable.

12. Section 19 places a statutory limit on service charges by only allowing their recovery to the extent that they are reasonably incurred and where the service or work is to a reasonable standard.

13. Section 20 of the 1985 Act and Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 require statutory consultation to be provided in cases where expenditure on major works is in excess of £250 per flat. If the Landlord does not comply with those requirements it will be limited to recovering no more than £250 per flat. That is unless they apply for and obtain dispensation under section 20ZA.

14. Section 27A confers jurisdiction on the Tribunal to determine whether a service charge is payable and if so, (amongst other matters) the amount

out in *Benson* were not relevant for the determination before the Tribunal; being whether there had been compliance with the statutory consultation procedure.

19. Further, given the Respondent's acceptance that there had not been any statutory consultation, the Tribunal determines that the maximum recoverable in relation to the water pipe and tank works for the year end December 2012 is £250 per flat and the accounts should be adjusted accordingly and the sums in excess of £1,000 (i.e. £250 per flat) should be credited to the tenants. The Respondent stated that the sums had come from the reserve account and so there should be a re-credit to the reserve account of £15,495.20.

20. The Tribunal also considered that even if the statutory cap had not applied, that the sums claimed by the Respondent could not be supported. The Respondent candidly accepted in submissions that they had a paucity of evidence in relation to how the cost of the works had been arrived at. As far as the tribunal could ascertain, the work involved renewing the main in plastic from the stop tap in the pavement just outside the building to just inside the building and then running new copper piping along the ground floor common way ceiling and then as detailed in paragraph 6 earlier, with the pipe continuing up to the roof to serve the water tank. Some scaffold was necessary to access the roof. The tank itself was replaced and repairs undertaken to the timber framing although no detailing was provided other than a temporary tank was necessary during the work and apparently dry rot had been found – although none of the paperwork refers to this dry rot or any treatment that might have been carried out. Given the layout of the building, and the amount of pipework that appeared necessary, to the Tribunal, the sum claimed of £16,495.20 was excessive. The Tribunal was concerned that there was no contract or quote or estimate provided from the contractor, S.Graham & Son in relation to this work. The Tribunal did not have access to the tank housing to inspect it and neither were any

photographs, before or after, provided. The only evidence provided were three requests for interim payments, which provided no detail as to the actual work. The Respondent had also, post event, obtained two quotes for the work which were roughly similar to that charged. However, the Tribunal set no store in those quotes for the following reasons:

a. They appeared to be from 'friendly' contractors, in that as the work had already been carried out, there was no work available and so these quotes were provided as a favour to the Respondent;

b. More significantly, Mr Faulkner stated that he had asked his in-house team to assess the cost, but they had refused to do so without properly checking out the property, which would have included scaffolding. It is therefore difficult to see how the contractors could have come up with an accurate quote.

21. The Applicants accepted that the pipe work needed replacing. They were less convinced of the water tank and timber surround in that they thought there was a cheaper alternative. That would have entailed flat number 4 replacing their cylinder boiler with a combination boiler. The Tribunal did not consider that this was a realistic alternative in that the Respondent was not in a position to compel a tenant to change their heating system. Further as Mr Faulkner pointed out, there remained a right of the leaseholders to connect to a tank and for the Respondent to maintain it. Therefore the Tribunal considers that the works were necessary. However, to the extent that the sums paid were excessive, it does not consider that they were reasonably incurred. Doing the best it can with the limited evidence provided by either party (especially the Respondent), the Tribunal considers that no more than £8,000 including VAT should have been spent on these works and even then, that could have been on the high side. Despite making this determination, only £1,000 of this is payable given the statutory cap of £250 per tenant referred to above.

Year end 2013 – estimated costs

22. During the course of discussion with the parties, it became apparent that the Applicant's objections to the cost of cleaning and gardening was borne more out of a lack of faith that these works would ever be carried out than an objection to the need for them or the cost claimed. It was pointed out to the Applicants that if the work was not carried out then sums paid in advance would go to their credit. On that basis, the Tribunal finds that the sums claimed for cleaning (£400) and for gardening (£250) are reasonable.

23. In relation to the costs of the renewal of the roofing of £3,000, it appeared to the Tribunal that there was water ingress (as evidenced by the stained tiles in the shop below) and that the sum of £3,000 was a reasonable amount. Again, this is only a claim on account and the Applicants can scrutinise the actual work and cost once it is carried out. The Respondent assured the Tribunal and the Applicants that they would comply with the statutory consultation requirements in respect of this work.

Section 20 C and refund of application fee and costs order.

24. The Applicant made an application for an order under section 20C of the Landlord and Tenant Act 1985 to limit the recovery of the costs incurred in these proceedings under the service charge and for a refund of their application and hearing fee.

25. The Respondent stated that it did not intend to recover the costs under the service charge and made no comment in relation to the reimbursement application. The Tribunal makes both those orders. It is noted that the previous manager of the Property, Mr Patterson, appeared to have had no regard to the Applicants in carrying out the works and was the cause of the dispute. Fortunately for the Applicants it appears that they now have people managing their homes who are more engaged with the correct processes.

Conclusion

26. In respect of the year end December 2012, the Respondent is not entitled to charge £16,495.20 to the service charge for the water mains works. Instead, given the lack of consultation, only £250 per tenant; being £1,000 in total should be put against the service charge and a credit should be given accordingly. In relation to estimated accounts for the year end December 2013 the Tribunal finds that the items challenged are reasonable and therefore the sums sought on account are payable.

27. The Tribunal makes an order under section 20C of the 1985 Act and for the application fee and hearing fee, being a total of £220, to be reimbursed to the Applicants by the Respondent by 4pm on 16th June 2013.

Daniel Dovar LLB (Hons)

Chairman

20th May 2013