12395

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LSC/2017/0174**
Property	:	**Flat A 52 Redcliffe Square, London SW10 9HQ**
Applicant	:	**52 Redcliffe Square Limited**
Representative	:	**Brethertons LLP**
Respondent	:	**Tracey Ann Lee**
Representative	:	
Type of application	:	**S27A Landlord and Tenant Act 1985**
Tribunal member(s)	:	**Judge Shaw** **Mrs Sarah Redmond, MRICS**
Date and venue of determination	:	**15th August 2017 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**15th August 2017**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the Respondent is liable to pay service charges in the sum of £16,051.30.

(2) The Tribunal makes the determinations as set out under the various headings in this decision

The application

The Applicant seeks a determination pursuant to S27A of the Landlord and Tenant Act 1985 to the effect that service charges in the sum of £16,051.30 are reasonable and payable by the Respondent to the Applicant.

Introduction

(1) This case involves an Application dated 21st April 2017, and made pursuant to the provisions of section 27A of the Landlord and Tenant Act 1985 ("the Act"). The Application is made by 52 Redcliffe Square Limited ("the Applicant") in respect of Flat A at the property of the same name ("the Property"). The property is part of a six storey building comprising 5 residential apartments all let on long leases. The subject property is the basement flat and Tracy Ann Lee ("The Respondent") is the long leaseholder of the property. The Application is for an Order from the Tribunal made pursuant to the above statutory provisions, for a determination that the total sum of £16,051.30 is payable and reasonable by way of service charges for the years 2012 to 2017 inclusive. The charges for the first 5 years for that period are supported by final accounts and the final year is supported by a budget.

(2) Directions were given in this case on 6th June 2017. Part of those Directions required the Applicant to prepare a bundle of documents, and send three copies to the Tribunal, and one to the Respondent. The Respondent was invited to indicate whether she wished a hearing (as opposed to a paper determination) to take place. No such request for a hearing was received. Accordingly the Tribunal is making its

determination in this matter on the basis of the papers supplied by both parties. Both the Applicant and the Respondent have supplied helpful statements of case, together with accompanying documents running to some 200 pages in all which have been compiled in a comprehensive bundle prepared by the Applicant.

(3) The background to the matter is helpfully set out by the Applicant in its statement of case appearing at page B18 of the bundle. That statement of case sets out the relevant provisions of the Respondent's lease and has attached to it the relevant accounting documents as referred to above in respect of the relevant years. The Respondent's statement of case appears at page E151-E153 of the bundle and has various documents attached. There is a Reply from the Applicant dated 7th August 2017 which, together with attached documents appears at page F174 – F201.

Analysis

(4) As appears from the Respondent's statement it is clear that a single issue is raised by her in opposition to the payment of the charges for the relevant period of 6 years. There is no challenge to the reasonableness or payability of the charges save in respect of a possible set-off in relation to a discovery of rat infestation in the property in May 2012. The Respondent claims that as a result of this infestation, which she contends is a consequence of a breach of the Applicant's maintenance and repairing obligation at Clause 5 (4) (a) (iii) of her lease, and also breach of the covenant for quiet enjoyment. She has suffered consequential losses of £8,773.56. The Applicant contends that the Respondent has failed on the evidence to make out any such breach or consequential loss on its part.

Summary of the Respondent's Case

(5) The Respondent's evidence is that she has lived at the property since June 1998 (although it appears that the property was tenanted at the time to which these matters relate). She alleges, and it is not disputed, that until 2012 she had always paid her appropriate proportion of the

service charge, but in that year stopped paying because of the incident which she describes.

(6) That incident was that in May 2012 whilst sharing the flat with a tenant she was informed that there was a bad smell emanating from the drains. Some days later the Respondent was informed by her tenant that she had seen a rat in the property. She had the matter investigated by the Pest Control Team of the Royal Borough of Kensington and Chelsea and a report has been prepared and supplied following the attendance of that Team at the property on 8th June 2012. The Respondent was informed that the main drain under the pavement was blocked and that a missing interceptor cap had allowed rats to travel along the pipe and into the flat. She says that she informed the then managing agents of the Applicant to arrange for the drains to be unblocked and an interceptor cap to be added. The smells eventually diminished and the rats were eradicated by about 6 weeks later. The report of the Local Authority Pest Control Unit is exhibited to the Respondent's statement. The Respondent claims losses as tabulated at page 3 of her statement including loss of rental income, cost of take-away meals and replacement of damaged wiring, this last head of loss being £4,000. There are clear photographs of the dead rats after treatment had taken place.

Summary of the Applicant's Case

(7) The Applicant points out that there is no dispute as to the reasonableness or payability of the service charges save for the contention that the Respondent is entitled to deduct her incurred costs in respect of dealing with the rat infestation. It also points out that while the Respondent alleges that she was first informed of the infestation in May 2012 (the rats being eradicated within 6 weeks thereafter) the first occasion that the Applicant was informed was 3rd July 2012.

(8) The Applicant commissioned its own report by Direct Pest Solutions which report is dated 20th April 2016. That report is in the form of an expert's report containing the required declaration as stipulated in the Tribunal Rules 2013. The report highlights the fact that, as already stated in the Respondent's own report, it is common for pests of this kind to enter areas

of building within a terrace. It also supports the finding made by Earl Kendrick Associates in a report dated 20th July 2015 (also obtained by the Applicant) that if there was an interceptor cap which was missing in the main drain "rats can enter a property through a functioning interceptor trap, as rats can swim through the trap." Mr Ben Johnson the maker of the Direct Pest Solutions report concludes that "it is entirely possible for rats to gain access from the sewer network into a domestic property....regardless of the presence of an interceptor cap."

(9) Mr Johnson's conclusion as to the most likely route by which the rats entered the property is in accordance with a finding made by the local authority Pest Controllers called by the Respondent. This finding was that "an access point was located under the last kitchen unit where the waste pipe from the sink drops into a bigger waste pipe leaving a gap which connects to the main drain where the interceptor cap was missing." Mr Johnson states that "it is highly likely that the rat used all of its senses....to find its way into the flat by this carrier pipe that housed the smaller dimension domestic waste pipe." He notes from the photographs that "the sink waste from the kitchen drops straight into the open soil pipe leading to the sewer. If this connection had been property sealed in the first instance (by an end cap or other suitable end seal) as distinct from simply leaving a gap more than sufficient for a number of rats to gain access, the rat would more than likely have turned around to find an easier option elsewhere and thus access to the flat would have been denied."

The finding of the Tribunal

(10) The burden of proof in establishing this set-off is upon the Respondent. There is expert evidence that the most likely mode of access to the property was through the waste pipe in the kitchen which had not been sealed. The fact of this lack of sealing appears from the Respondent's own report. It also appears that once the seal was provided the infestation ceased. There is no evidence of any complaint of any similar infestation into other flats at the building which, on the balance of probabilities indicates that the entry to the property was through some feature peculiar to the property rather than to the building generally.

(11) The Tribunal prefers the evidence of the Appplicant for the reasons stated at paragraph 22 of the Applicant's Reply and especially because it is in the form of expert evidence and because the Respondent's evidence is not entirely conclusive.

(12) There are six further reasons for preferring the Applicant's evidence in this regard, all as set out at paragraphs 21-31 of the Applicant's Reply, all of which are adopted by the Tribunal. In particular, as stated therein it is not firmly established that an interceptor cap was ever present, or that had it been present this would have precluded entry by rats. Yet further, liability, if it exists would only be triggered after receipt of notice by the Applicant. The Respondent's case is that the infestation commenced in May 2012 and was remedied within 6 weeks. The first report to the Applicant was on 3rd July 2012 so there would have been no opportunity for the Applicant to carry out any repairs before its effective remedy by the Respondent. Finally, on the question of quantum only, a relatively small part of the sum claimed by the Respondent is evidenced, even if, which is not the case, the Tribunal had been persuaded on her evidence that such losses flowed from any act or omission on the part of the Applicant.

Conclusion

(13) For the reasons indicated above, the Tribunal is not satisfied that, on the balance of probabilities the Respondent has made out her case for any diminution of the service charge claim as referred to above. Accordingly the Tribunal finds that the sum of £16,051.30 is both reasonable and payable for the purposes of S27A of the Act. It should be noted that this finding insofar as it relates to the final year of these charges (that is to say £1,639.08 in relation to 2017) is in relation to a budget only, and it is open to the Respondent to challenge the finalised account in due course under S27A should she have grounds for doing so.

JUDGE SHAW

Dated: 15th August 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).