11451

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/29UP/LSC/2015/0027**
Property	:	**17 Lambe Close, Snodland, Kent ME6 5PE**
Applicant	:	**Mr Nick Young**
Representative	:	**in person**
Respondents	:	**Holborough Management Limited**
Representative	:	**Residential Management Group**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge S.Lal** **Mr R. Athow FRICS MIRPM**
Date and venue of Hearing	:	**17th July 2015, Judge Lal's home**
Date of Decision	:	**17th July 2015**

DECISION

Application

1. On 6th April 2015, the Applicant applied to the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 (as amended) (the "Act") as to the Applicant's liability to pay service charge and the reasonableness of such service charge. The service charge to be considered by the Tribunal relates to the year 2013 and the item in issue is the Applicant's liability to contribute £1,154.90 as a reserve fund charge for the external decoration and repair of the Property.

2. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.

3. Directions were issued on 1st May 2015. The Directions made it clear that the Application is to be dealt with on the paper track on the basis of written representations without a formal hearing. Neither party has objected to this procedure.

4. The parties have provided the Tribunal with copies of the statements and documents outlined in the Directions.

Inspection

5. The Tribunal inspected the subject premises on the day of the hearing. The Tribunal notes that both parties are agreeable that the matter be listed for a determination on the papers. The Tribunal is satisfied that it could do so justly.

6. Lambe Close forms part of the Holborough Lakes development complex which is current under construction by Berkeley Homes (Eastern) Limited. The development started in 2006 and will eventually comprise about 1100 homes as well as communal facilities such as the gymnasium, school village hall and lakes and a nature conservation area. Currently there are about 900 units occupied. The development is a mix of houses and flats.

7. The subject property is in Phase 1 of the development and was built about 8 years ago. The Building as defined in the lease is a single block of 39 flats on a mix of 3 and 4 floors. There are 6 separate communal entrance halls with staircases to each floor. The building is typical of today's style of timber framed construction with a tiled roof. Windows and doors are Upvc and the exterior of the building is clad in painted shiplap timber.

8. Internally the communal hallways are mainly carpeted and it was noted that the carpets are beginning to wear and will require replacement in the foreseeable future. Internal decoration was fair. The representative from the Managing Agent reported that the occupation was 50/50

owner-occupiers to rented occupiers. This mix has the effect of increasing the frequency required to regularly redecorate communal hallways – usually caused by regular changeover of tenancies who scuff the walls during their moving in and out process.

9. The Tribunal noted that the blocks of flats in other parts of the development had been finished externally in a plastic composite finish. This later finish tends to have a longer life expectancy than traditional timber finish as well as being easier to maintain.

10. Natural timber is subject to weathering and is susceptible to deterioration especially wet rot over a period of years. It also requires regular attention and maintenance, typically needing redecoration every 4 – 5 years, depending on weather conditions and exposure of the site.

11. The communal facilities will also require capital expenditure from time to time, as wear and tear takes place.

The Applicant's Case

12. The Property is held by the Applicant under a long lease dated 28th May 2012 between Berkeley Homes (Eastern) Limited (the "Landlord"), the Applicant and the Respondent (the "Lease"). The Property is a two-bedroom apartment in a purpose built block of apartments. The Property is managed by Residential Management Group ("RMG").

13. The matter which the Applicant asks the Tribunal to consider is the reasonableness or otherwise of the Applicant's liability to pay a reserve fund charge of £1,154.90 for the year 2013. The Applicant disputes this amount as it represents a considerable increase from the previous year's reserve fund charge of £384.64. The Applicant claims that poor management in previous years has resulted in insufficient funds being collected from previous tenants of the phase 1 development. The Applicant considers that this has had the effect of penalising existing tenants to make up for the shortfall in the reserve fund.

14. The Applicant further asserts that the budget for the external decoration was based on an estimate for the redecoration works and the price for the actual works was £40,000 less than the estimate. The Applicant claims that the reserve fund charge should therefore have been far less and has suggested a figure of £400 to be fair and reasonable.

The Respondents' Case

15. The Respondent claims that the service charge, including the reserve element, for the year ended 31st December 2013 was calculated and demanded pursuant to the provisions set out in Schedule 5 to the

Lease. The Respondent claims that the reserve element was primarily increased to fund the major works for Phase 1 as required by the Lease and all of the section 20 consultation requirements were met by the Respondent. The Respondent therefore claims that the reserve element of the 2013 service charge is fair and reasonable and consequently payable by the Applicant.

The Law

16. Sub-sections (1) and (2) of section 27A of the Act provide that:

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 to whom it is payable
b. the person by 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.

17. The Tribunal, on the basis of the evidence before it, the written submissions of the Applicant and the Respondent and exercising its own independent expertise has determined the following:

18. The Lease obliges the Applicant to pay his share of Expenses to the Management Company. These include Building Expenses under Schedule 4 which include the painting and decorating or otherwise treating in accordance with best practice the parts of:

the outside of the Building; and
the Building Managed Areas.

19. Furthermore those sections of the lease that deal with Reserve funds note that "Reserve" is defined as anticipated future expenditure, which the Management Company decides it would be prudent to collect on account of its obligations in this lease.

20. The Tribunal was unable to ascertain that the Respondent has done anything obviously wrong or inconsistent with the Lease. The Applicant or his representative at the time of purchase should have considered what was in the reserve fund when he signed the lease in 2012 and what works were envisaged in the future. This should have revealed the possibility that there was the existence of a shortfall as well as the phase 1 obligation.

21. The Tribunal has reminded itself as to the approach to be adopted in assessing reasonableness. The notion of something being reasonable

has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in **Plough Investments Ltds v Manchester City Council [1989] 1 EGLR 244** that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease.

22. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself. Ultimately it is for the court or tribunal to do decide on the basis of the evidence before it and exercising its own expertise. In that regard the Tribunal is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it.

23. In the instant case the Applicant has paid £400 because he deems this to be a reasonable amount and the actual sum in dispute is therefore approximately £700.

24. The Tribunal determines, that to now say more monies should have been collected in the reserve fund in previous years when the Applicant was not a lessee is an argument that has little merit in the particular circumstances of this case. The reverse logic of this could allow a lessee who plans to sell in the near future to say that they are not going to pay into the reserve because they will derive no benefit from future major works. In such a scenario the management of the property and more importantly the discharge of the obligations under the lease become impossible.

25. The Tribunal is satisfied that the work needed to be done and such an obligation is within the contemplation of the lease. In respect of the subject works the lowest tender for the work was accepted and three tenders were in fact considered. The Applicant argues that the amount of the reserve charge was based on a much higher estimate than the actual cost of the work. There may be a moral argument that the excess should not stay in the reserve fund but be paid back to the tenants but that does not make the sums demanded unreasonable in law nor inconsistent with building a prudent level of reserve fund for the subject premises as required by the lease. Some tenants have already paid the full amount due and no doubt a healthy reserve fund could be in everyone's interest if major or unexpected works become due in the future.

26. The Tribunal is satisfied that a timber-clad building may well require such work. The Tribunal also noted the mixture of rental properties in Phase 1, which may incur greater costs such as the replacement of internal carpets. It may entail fewer monies demanded in the future. In any event the Tribunal could ascertain no legal obligation under the

lease to re-credit the tenants and indeed a healthy reserve could be in everyone's interest as a "prudent" response to anticipated future expenditure. The Tribunal therefore does not accede to the Application.

27. Having regard to the guidance given by the **Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000**, the Tribunal considers it just and equitable to make no order under s.20C of the Landlord and Tenant Act 1985. This would be consistent with its findings above.

28. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

29. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

30. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S.Lal.....