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

Case Reference : **CHI/00MR/LSC/2015/0082**

Property : **15-17 Tangier Road, Portsmouth,
Hampshire, PO3 6JG**

Applicants : **Mr G Childs (17a)(1)
Mr P Dando & Ms E Wooley (17b)
(2)
Mr F Stanley (17d) (3)**

Applicants' Representative : **Mr G Childs**

Respondents : **CCJ Management
Mr S Slater**

Respondents' representative : **Mr S Slater**

Type of Application : **Section 27A Landlord and Tenant
Act 1985**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mrs H Bowers MRICS
Ms J Dalal**

Date and venue of hearing : **9 June 2016
Chichester Magistrates Court.**

Date of Decision : **9 June 2016**

DECISION

1 The Tribunal declares that:

- 1.1 Except as below the Tribunal approves the Respondent landlord's budget for the service charge years 2015-2016.
- 1.2 The amount allowed in the Respondent's budget for building works is reduced by £300 and this item is assessed at £600 in place of the £900 estimated in the budget.
- 1.3 The Tribunal makes no order under s20C Landlord and Tenant Act 1985.
- 1.4 The Tribunal declines the request made by the Applicants for the reimbursement of their application and hearing fees.

REASONS

- 1 The Respondent, Mr S Slater, is the leasehold owner of 17c Tangier Road forming part of the building known as 15-17 Tangier Road, Portsmouth, Hampshire, PO3 6JG (the property). He is also the landlord and freehold owner of the property and proprietor of the unincorporated management company known as CCJ Management which is named as a Respondent to this application. The Applicants are the leaseholders of the premises respectively known as 17a, 17b, and 17d Tangier Road, which form the remainder of the property.
- 2 The Applicants issued an application in the Tribunal on 01 December 2015, asking the Tribunal to make a declaration under s27A Landlord and Tenant Act 1985 as to the reasonableness or otherwise of the landlord's proposed budget for service charges, for the service charge year 2015-2016.
- 3 Directions were issued by the Tribunal on 16 December 2015 and 26 February 2016.
- 4 The matter came before a Tribunal sitting in Chichester on 09 June 2016 when the Applicants were represented by Mr G Childs, and the Respondent Mr Slater appeared in person representing both himself and his management company.
- 4 The Tribunal carried out an inspection of the property immediately before the hearing. The property comprises an end terrace house, that has been the subject of extension works. The original part of the premises appears to be rendered brick with a pitched, slate/artificial slate roof to the front elevation. The extension is of brick construction with a continuation of the pitched roof at the front of the building. An element of the extension has a flat roof. The Tribunal declined Mr Slater's offer to allow inspection of the roof via a ladder from the first floor balcony area, as no issues relating to it affected the present application. There is a small wrap around porch at the front of the property. The property comprises four self-contained flats (two on the ground floor and two on the first floor), each with its own external entrance door. There is an external staircase leading to a balcony

that gives access to the first floor flats. A very small paved area of garden sits between Flat 17d and the pavement. Similarly, there is a small paved area with some small flower beds at the rear of the property. Each flat appears to have the benefit of an allocated off street parking place adjacent to the rear garden. The exterior, main structure and windows of the property appeared to be in reasonable condition although the need for several minor repairs was noted (eg broken paving slabs in the rear garden). The property is situated in an area of similar residential properties in Portsmouth and is close to all local amenities. It was noted that the main railway line ran in close proximity to the property and was both visible and audible from it. The Tribunal did not inspect the interior of the property because there are no interior common parts and there were no issues affecting the interior which were relevant to the recent application.

- 5 The Applicants' claims are based on s27 Landlord and Tenant Act 1985, relating to the payability and reasonableness of service charges as between landlord and tenant. Such matters falls within the jurisdiction of the tribunal.
- 6 A bundle of documents was placed before the Tribunal for its consideration. Page references in this document are to pages in the bundle.
- 7 The application before the Tribunal related to the reasonableness of the Respondent's proposed budget for the service charge year 2015-2016.
- 8 The Tribunal explained to the Applicants that their application had been made before the expiry of the service charge year in question. Although that period had ended on 25 March 2016, no accounts were yet available and the Tribunal was not in a position to consider the actual expenses even if asked to do so. The Tribunal's role under the present application was limited to a consideration of whether the items proposed by the landlord in his budget for the year (page 24) appeared to be reasonable. The Tribunal would not at this stage be investigating whether specific works had been carried out nor the quality or cost of those works. If, after the end of the accounting period, and after having looked at the accounts, invoices and demands served by the landlord, the Applicants were not satisfied with the standard of works carried out or their costs they would have the right to make a further application to the Tribunal to determine those issues. Similarly, under the present application the Tribunal was not concerned with the mechanics of the various leases eg whether or not the landlord was entitled under the lease to recover a specific sum or required to carry out specific obligations. Those would be matters for another Tribunal if the Applicants chose to pursue a further application at a later date.
- 9 In relation to the budget set out on page 24 of the hearing bundle the Applicants said that they agreed the proposed figures for insurance and window cleaning.

- 10 The items and amounts proposed in the budget under discussion were similar to those allowed by a previous Tribunal in their earlier decision relating to the same property (CHI/00MR/LSC/2015/0012). The Tribunal discussed each of the budget items with both parties as a result of which the Applicants conceded that most of the items were acceptable in terms of a budget or estimate. Having heard from Mr Slater about his proposals for repairs the the Tribunal considered that his budget figure for building repairs was too high and determined that this should be reduced to £600. In all other respects the Tribunal considered that the proposed figures were reasonable and therefore approved them.
- 11 The Tribunal's attention was also drawn to page 23 of the bundle which comprised a copy of a letter from Mr Slater to Mr Childs dated 12 November 2015 and which referred, inter alia, to an estimate for building works totalling £2,850. The Tribunal reminded Mr Slater of his duties under s20 Landlord and Tenant Act 1985 in respect of contracts for major works and that the obligations of that section required strict compliance.
- 12 The Applicants made an application under s20C of the 1985 Act. This was opposed by the Respondents. On the basis that the Applicants' claim has generally not been successful on the grounds on which it was pleaded it would not be appropriate to make an order under s20C and the Tribunal declines to do so.
- 13 Similarly, and for the same reasons the Tribunal declines the Applicants' request to reimburse their application and hearing fees.
- 14 The parties informed the Tribunal that the Respondents had recently appointed professional managing agents to take over the future management of the building. Given the service charge history of this property this appears to the Tribunal to be a sensible step to ensure the efficient management of the property.

The Law

15. The legal provisions relevant to this case are set out below:

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.

- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

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

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -

- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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, residential property 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 or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

Judge F J Silverman as Chairman

Date 09 June 2016

Note:

Appeals

1. 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.
2. 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.
3. 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.
4. 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.