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

Case Reference : CHI/00ML/LSC/2014/0062

Property : Flat 2, 12 Charlotte Street, Brighton BN2 1AG

Applicant : Mr Nofel Guy Raouf

Representative : In person

Respondent : Exceptional Investments Ltd

Representative : Mr Erkal Erguven of Paul Andrew Estates as managing agent

Type of Application : Payability of service charges under s.27A and limitation of service charges under s.20C, Landlord and Tenant Act 1985

Tribunal Members : Judge A Johns (Chairman)
Mr N I Robinson FRICS (Surveyor Member)

Date and venue of Hearing : 9 October 2014, Brighton Family Court Hearing Centre, 1 Edward Street, Brighton BN2 0JD

Date of Decision : 20 October 2014

DECISION

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Introduction

1. The main application is by Mr Raouf to determine the payability of interim service charges. He has a lease of flat 2, 12 Charlotte Street, Brighton BN2 1AG from the respondent landlord, Exceptional Investments Limited.
2. The disputed charge is in the sum of £10,000. It represents one-third of the estimated cost of external repairs and redecoration to 12 Charlotte Street. Mr Raouf's case is that the charge is unreasonable because the works ought not to cost that much. He also complains that the statutory consultation procedure has not been followed properly by the landlord.
3. In addition, Mr Raouf asks for an order under s.20C of the Landlord and Tenant Act 1985 that costs incurred in connection with these proceedings are not to form part of any service charge payable by him.

Procedure

4. Directions were given at a case management hearing on 25 July 2014. Those provided that the Tribunal would consider at the final hearing, amongst other things, whether the statutory consultation procedures had been complied with. The directions also provided for a schedule setting out each party's case and for witness statements. They recorded that no expert evidence was required.

Inspection

5. The Tribunal inspected the property immediately before the hearing. The inspection was attended by Mr Raouf and by Mr Erguven of the landlord's managing agents, Paul Andrew Estates.
6. 12 Charlotte Street is a part three and part four storey end terrace/corner property comprising commercial premises on the ground floor and three flats above. There are rendered and painted elevations to both the Charlotte Street and Upper St James' Street frontages under slate roofs. The exterior of the property could be seen to be in need of redecoration and some repair. The rear of the property was inspected from a small first floor balcony accessed from the common parts serving the three flats and from a Velux window in Flat 2. Attention was drawn to various flat and sloping roof areas where repairs and attention was necessary as well as to guttering and timber windows. The common parts were generally in fair order. The works in respect of which interim service charge is sought concern the areas above the commercial units and the communal entrance to the flats.

Jurisdiction and law

7. By s.27A of the Landlord and Tenant Act 1985 (as amended by the Transfer of Tribunal Functions Order 2013) the Tribunal may determine whether service charge is payable and in what amount. Where, as here, a service charge is payable before costs are incurred, s.19(2) of the Act provides that no greater amount than is reasonable is so payable.

8. Further, s.20C of the Act provides that the Tribunal may make such order as it considers just and reasonable on an application that costs incurred by a landlord in connection with proceedings before it 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.

Lease and factual background

9. By the lease, Mr Raouf is liable for service charge including one-third of expenditure on 12 Charlotte Street excepting the shop premises. The lease provides for a payment on account of service charge, being “a fair reasonable interim payment” – see clause 5(9) and the Fifth Schedule.

10. Although the landlord is entitled under the lease to payment of the interim service charge in two equal instalments, namely on the 30 June and 31 December, at the request of Mr Raouf the interim charge of £10,000 sought in respect of the exterior repairs and redecoration was demanded over two years to better spread the cost. Thus the landlord sought four 6-monthly instalments of £2500.

11. Mr Raouf has paid three instalments of £2500 but not the fourth.

12. The charge of £10,000 reflects an estimate of £30,000 by the landlord as the sum needed to fund the works. That figure was fixed by the landlord on the advice of a surveyor.

13. After that figure had been fixed but before the works were postponed in order to spread the interim charge over two years, the landlord obtained a quotation from Cambridge Building Services (Sussex) Ltd dated 1 February 2013 for carrying out the works. Such was in the sum of £28,990 plus VAT.

14. The landlord has subsequently obtained two more recent tenders from contractors for the works. Those two tenders are as follows:

14.1 From HPM Property Services Ltd in the sum of £27,905 plus VAT.

14.2 From 1774 Ltd in the sum of £22,553.

15. As to the consultation procedure required by s.20 of the Act in relation to the carrying out of the works, the managing agent sent out a notice of intention dated 6 March 2014.

16. Mr Raouf nominated a contractor from whom a quotation for the works should be obtained, namely RML Properties. But no quotation was obtained from that contractor. It declined to tender following an interview with Mr Erguven.

17. Mr Raouf also made some observations in writing on 18 March 2014 but they were not referred to in the landlord’s paragraph (b) notice dated 23 May 2014. Rather, that notice included the following: “We did not receive within the consultation period any written observations in relation to the notice of proposals given on 6 March 2014”.

Hearing

18. The hearing followed the inspection. Mr Raouf represented himself. Mr Erguven appeared for the landlord.

19. There was no witness statement from either Mr Raouf or Mr Erguven. But in circumstances where they had set out their respective cases in the schedule directed at the case management hearing, the Tribunal allowed the schedule to stand as their evidence.

20. Mr Raouf did seek to rely on a witness statement from his father, Dr Raouf. This was concerned with Dr Raouf's opinion, from his experience in property management, as to what exterior works should cost. On it being very fairly accepted by Mr Raouf that the statement contained no matters of fact, the Tribunal did not have regard to it.

21. Both sides stated their case before the Tribunal with economy and clarity.

22. Mr Raouf made four points in support of his case that the interim charge of £10,000 was unreasonable:

22.1 That the cost of scaffolding should be in the region of £2500 - £3000 and Mr Erguven, in response to queries from the lessees, had referred to figures of £6000 - £9000 for scaffolding.

22.2 That, overall, this is not a major job, so that £30,000 seems too much.

22.3 That the tenders obtained by the landlord must be the product of the contractors knowing that £30,000 was available for the job and tailoring their tenders to that high figure.

22.4 That he had been able to obtain quotes ranging from £7800 to £10,900 for the works. The papers before the Tribunal included copies of those quotes.

23. Mr Raouf alleged a failure to comply with the consultation procedure in two respects. First, he said that the reason his nominated contractor, RML Properties, had not provided a quotation was that it was put off from doing so by the interview with Mr Erguven. Second, he said that he had no response or acknowledgement in the landlord's notice to his written observations dated 18 March 2014.

24. Mr Raouf's written application under s.27A had also sought a change of managing agent. The Tribunal informed him at the hearing that no such relief was available on this application. There was a statutory procedure for the appointment of a manager but such required particular grounds to be established and Mr Raouf should carefully consider such grounds, ideally with the benefit of some legal advice, before making any such application.

25. Mr Erguven for the landlord contended that the figure of £30,000, and therefore the interim demand for £10,000, was reasonable. In support of that he pointed to the fact that it was fixed on the advice of a surveyor, and that the works had since been the subject of three quotations which showed the figure was about right. He denied strongly that the tendering contractors knew £30,000 was available; saying that it would be very silly of him to give them that figure.

26. As to the consultation procedure:

26.1 He said that he considered it part of his job to make sure of contractors and so he did "check out" the nominated contractor at interview. But he said the reason that RML Properties did not submit a tender was that it was let down by its scaffolder.

26.2 He accepted that he ought to have but did not deal with Mr Raouf's letter of 18 March 2014 in the landlord's notice.

27. As to the s.20C application, both parties relied only on the points they had already made and outlined above. In addition, Mr Raouf asked for reimbursement of his fees paid for the application.

Discussion

28. In the judgment of the Tribunal, the interim charge of £10,000 is reasonable.

29. The charge of £10,000 reflects an estimate of £30,000 by the landlord as the sum needed to fund the works. The Tribunal is satisfied, having inspected the property and heard the evidence of each side, that such estimate is a reasonable one.

30. First, the works have since been the subject of detailed quotations ranging from £22,553 to £28,990 plus VAT. Those show that an estimate of £30,000 was, if anything, conservative.

31. Second, though Mr Erguven did refer to scaffolding costs of £6000 - £9000, the Tribunal finds those were not in fact the basis of the figure of £30,000. They represented nothing more than the guesses of Mr Erguven in seeking to explain the global figure which had been arrived at not by Mr Erguven but by the surveyor. Further, the breakdown of the tender for £22,533 in the Tribunal's bundle includes only £4250 for scaffolding.

32. Third, the quotes relied upon by Mr Raouf appear to be for the external painting, or external painting plus scaffolding, only; not the other works comprised in the specification. On that basis, they are not out of step with the detailed tender in the Tribunal's bundle. The price for external painting plus scaffolding in the tender totalled £8750 plus VAT.

33. Fourth, the Tribunal is satisfied that the figure of £30,000 was not known to the contractors tendering. There was absolutely no evidence that Mr Erguven had disclosed that figure to them, and such is inherently unlikely. As Mr Erguven said, it would be "very silly" as it may very well influence the tender. It is particularly unlikely in this situation where the landlord has a very clear interest in the cost of works not being excessive; the landlord or related individuals owning one of the three flats which will ultimately bear the cost.

34. Fifth, the Tribunal had the benefit of seeing the property, and a sum of £30,000 did not strike the Tribunal as excessive for the amount of work involved.

35. As the cost of the works is yet to be incurred, the recoverability of the interim charge does not depend on compliance with the consultation procedure. It therefore follows from the Tribunal's finding that the charge of £10,000 is reasonable, that it is payable by Mr Raouf. He must therefore pay the remaining instalment of £2500.

36. Compliance with the consultation procedure will, however and subject to any dispensation, affect what is due by way of actual service charge once the works are completed. Given that the parties were told that such issue would be considered by the Tribunal and that both sides made their case on the issue at the hearing, it is right that the Tribunal gives a decision on it.

37. In the Tribunal's judgment, the consultation procedure has not been complied with.

38. The applicable requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003 at Schedule 4, Part 2 include:

38.1 "Where, within the relevant period, a nomination is made by only one of the tenants ... the landlord shall try to obtain an estimate from the nominated person" (para.11(2) of Schedule 4).

38.2 That the paragraph (b) statement shall set out "where the landlord has received observations to which ... he is required to have regard, a summary of the observations and his response to them" (para.11(5)(b)(ii) of Schedule 4).

39. Neither of these requirements have been met.

40. While it is understandable that a managing agent may want to vet contractors before awarding a contract, the legislation requires that the landlord at least try to obtain a quote from them. Here, rather than obtain a quote and then make any checks before awarding a contract, the Tribunal finds that the nominated contractor was put off submitting a quote by an interview with Mr Erguven. That is consistent with the email dated 6 May 2014 from the contractor appearing at pg.62 of the Tribunal's bundle. In those circumstances, in the Tribunal's judgment the landlord cannot be said to have tried to obtain a quote from RML Properties.

41. Further, it follows from Mr Erguven's acceptance that he ought to have but did not deal with Mr Raouf's letter of 18 March 2014 in the landlord's paragraph (b) notice, that such was a further failure to comply with the statutory consultation procedure.

42. The effect of the Tribunal's decision on this question is that the actual service charge once the cost of works has been incurred will be limited to £250 unless the landlord either applies for and obtains a dispensation under s.20ZA of the Act or embarks on a fresh consultation process which does comply in full with the statutory requirements. The Tribunal notes that the works are not now expected to be undertaken until next March at the earliest so that there would be time for a fresh consultation process. But which course to adopt is a matter for the landlord.

43. As to the application under s.20C of the Act, given the Tribunal's conclusion that the interim service charge was reasonable and therefore payable, the Tribunal does not consider it just and equitable to prevent recovery by way of service charge of the landlord's costs of these proceedings insofar as the landlord may be entitled to them under the lease. That application is therefore dismissed. For the same reason, Mr Raouf's application for an order for reimbursement of his fees is dismissed.

Summary of decision

44. From the above, the Tribunal decides that:

44.1 The interim service charge of £10,000 is reasonable and payable.

44.2 The consultation requirements have not yet been met.

44.3 The application under s.20C of the Landlord and Tenant Act 1985 is dismissed.

44.4 The application for an order for reimbursement of fees is also dismissed.

Appeal

45. 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.

46. 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.

47. 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.

48. 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 A Johns (Chairman)

Dated 20 October 2014