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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/LSC/2015/0427**
Property	:	**616A Fulham Road, SW6 5RP**
Applicants	:	**Asma Nasim Ahmed (1)** **Claire Hart (2)** **Candice Bordeaux (3)** **Talat El-Sherbiny (4)**
Representatives	:	**Mr Nicholas Carter & Mr Talat El-Sherbiny**
Respondent	:	**The Townhouse (Conversions) Limited**
Representative	:	**None**
Type of Application	:	**Service Charges (Section 27A Landlord and Tenant Act 1985)**
Present at hearing		**Mr Carter** **Mr El-Sherbiny** **Mr John Plant (Former Managing Agent)**
Tribunal		**Mr M Martynski** **Mr M Cartwright JP FRICS**
Date of hearing		**4 February 2016**

DECISION

Decision summary

1. Building surveying fees were unreasonably incurred in the Service Charge years 2013 and 2014 in the sum of £1000.

2. Managing agency services were not provided to a reasonable standard for the Service Charge years 2009 to 2014. 5% of the costs of those services (£653.25) are not payable by the Applicants.

3. Insurances premiums charged to residential leaseholders will in the future only be reasonable in amount insofar as they are based on 4/6ths of the premium for the Building in question.

4. The Respondent must pay to the Applicants the sum of £220.00, that being one-half of the fees that the Applicants have paid to the tribunal in order to make and pursue this application.

5. An order is made pursuant to Section 20C Landlord and Tenant Act 1985 in respect of the landlord's costs of these proceedings.

Background

6. 616 Fulham Road is a mid-terraced Victorian building ('the Building'). On the ground and basement floors is a restaurant. There are two original floors at first and second floor level. At some point in the past a further flat has been built at roof level. The upper floors contain four residential flats.

7. The Applicants' leases oblige them to pay a Service Charge of 22% of Total Expenditure and 25% on Common Parts expenditure (the common parts not being accessible by the restaurant).

8. The Applicant's application challenged the reasonableness and payability of the following service charges for the Service Charge years 2009 to 2014:-

   Management Fees
   Costs of Roof works
   Insurance Premiums

9. At the hearing the Applicants were represented by Mr Carter, the step-father of one of the leaseholders and we heard evidence from the following:-

   Mr El Sherbiny (leaseholder)
   Mr Grieve (Landlord's Building Surveyor)
   Mr Plant (former Managing Agent)
   Mr Burrows (Landlord's Insurance Broker)
   Mr Clark (Applicants' witness as to insurance)
   Mr Taunton (Director of the Respondent Company)

The issues and our decisions

Roof works

10. In 2009 the flat roof to Flat 4 was renewed. The contractors who carried out the work gave a guarantee in respect of the work. There was a 12-month defects period with retention from the costs of the work. The defects period expired in October 2010. Mr Grieve, the Landlord's Building Surveyor inspected the roof at the expiry of the defects period and found no issues with the roof. The retention was released to the contractor.

11. According to Mr Grieve, in May 2012, further water ingress was reported to the roof of Flat 4. Mr Grieve reported that defects had arisen with the flashing of the upstand - the pointing to the flashing had failed in some places. By this time the contractors who had originally installed the roof covering had gone out of business. The defects were remedied but according to Mr Grieve, these defects were not the cause of the water ingress.

12. Mr Grieve recommended (as he had originally done in 2009) that coping stones be placed on the parapet wall as he considered that the cause of the water ingress could the soaking of the brickwork on the parapet wall.

13. Mr Grieve reported that in October 2013 a leak was reported by Flat 3. After investigations were carried out, splits were discovered in the asphalt to the balcony of Flat 4 with a poor detail to the abutment of the asphalt upstand and the front elevation wall of Flat 4. The asphalt covering was replaced. At the same time the detailing to the front elevation of Flat 4 was found to be in need of repair and this work was also carried out.

14. The costs of the works were as follows:

    2009 – in the region of £5,000
    2012 - £4,245.00
    2013 - £4,380.00

15. The leaseholders were concerned that the problems with water ingress to Flats 3 and 4 were not addressed properly for some considerable time and their concerns were not taken into account. We deal with these concerns in more detail later in this decision.

16. As to the costs of the works described above, there was no evidence that the works themselves were not done to a reasonable standard (barring the defects to the roof of Flat 4) and at a reasonable cost.

17. As for the works to the roof of Flat 4 that were not carried out to a reasonable standard, by the time that those defects were discovered, the company that had carried out the work had gone out of business and so of course their guarantee was of no use. According to Mr Grieve, on a relatively small domestic roof it would be normal and reasonable practice to rely upon the contractor's guarantee rather than pay an extra cost for an insurance backed guarantee. We accept this evidence as there was nothing to counter it.

18. Given that the contractors had gone out of business, there was no alternative but to pay for the remedial work.

19. According to the leaseholders, they had reported problems with water ingress to Flat 4 prior to the ending of the defects period, they therefore argued that had their concerns been listened to, the defects to the roof may have been spotted before the ending of the defects period and the extra costs incurred in 2012 would have been avoided.

20. Mr El Sherbiny complained that his roof had not been covered when the roof was being replaced and water got into his flat.

21. In our view, the problem with the leaseholders' complaints regarding the roof works are that Mr Grieve inspected the roof at the expiry of the defects period and found the work carried out to be satisfactory. Mr Grieve stated that the subsequent problems that he found with the roof in 2012 were not the cause of the water ingress into Flat 4. The issue with the roof being uncovered whilst works were ongoing was not put to Mr Grieve for his comment. We have no evidence as to what damage that water may have caused.

22. We went on to consider the fees charged by Mr Grieve regarding the roof works. The leaseholders complained that Mr Grieve's fees amounted to an unduly large percentage of the costs of actually carrying out works to the roof over the years.

23. We had sight of two invoices from Mr Grieve. Those invoices gave a brief description of the work carried out. The first was for the amount of £1,155.30 and is dated 5 March 2013. The second is for the sum of £5,714.34 and is dated 26 August 2014.

24. Despite the leaseholders raising Mr Grieve's fees as an issue, beyond the two invoices referred to, there was no breakdown of that work by way of timesheets. According to the landlords, Mr Grieve had to carry out a great deal of investigative work in order to find the cause of the various ingresses of water before the work to deal with those problems could be specified. Mr Grieve was unable to give any further information on this as he was only available at the beginning of the hearing and had to leave early.

25. We conclude that the leaseholders had raised a legitimate issue as to Mr Grieve's fees on the basis that those fees amounted to an unusually high percentage of the fees for the works actually carried out. The burden of

proof was then on the landlord to justify those fees by more than just producing the invoices. The landlord failed to discharge this burden.

26. Accordingly we conclude that some of Mr Grieve's fees were unreasonably incurred. In deciding the amount unreasonably incurred we have accepted that the work that he carried out was more than just specification and overseeing, it included investigative work. On the very limited information available to us, we conclude that of the total amount of Mr Grieve's fees, £1,000 was unreasonably incurred.

Managing Agent's fees

27. The fees in question over the years are:

2009: £2,041.24
2010: £2,144.36
2011: £2,220.00
2012: £2,220.00
2013: £2,220.00
2014: £2,220.00

These fees equate to approximately £488 (inc VAT) per year per flat. These fees are within a normal range of fees charged by managing agents for a building of this kind.

28. The leaseholders' issue was that communications with the managing agents were poor over a number of years. In particular their complaints regarding water ingress in 2010 were not taken up and communicated to Mr Grieve or the landlord. Their request that some of the problems with the roof be the subject of an insurance claim were not dealt with properly (with the result that the insurance claim that was made; was made too late, and so was not successful); and that on several occasions, communications from leaseholders were ignored.

29. In the parties' schedule of complaints and responses prepared for the hearing, it was accepted by the managing agent that for 2011 their communication was 'not as good as it might have been'.

30. The leaseholders gave numerous examples of communications sent to the managing agents that had received no or a tardy response or where the communication was otherwise unsatisfactory. For example;

- A letter dated 17 April 2009 received no response
- An email dated 17 November 2009 refers to having 'waited weeks' to get a quote for works that were required
- A letter from the managing agents dated 28 October 2010 only gives two or three days notice of the end of the defects period for the roof works carried out in 2009

- An email from Mr El Sherbiny dated 29 June 2011 states; 'yet again I have been unable to get in touch with you'

- An email from the landlord dated 13 November 2011 hopes that 'the work to the roof that was carried out was entirely satisfactory' – clearly the tenant's concerns were not passed on to the landlord

- A letter dated 14 January 2013 was not replied to

- An email from Mr El Sherbiny dated 19 January 2014 states; 'you still have not got back to me on a number of areas....'

- A letter dated 23 February 204 was not replied to

- A letter dated 9 March 2014 was not replied to

- An email dated 9 June 2014 states; 'As you know the Leaseholders have asked for a meeting with you on several occasions over the past 18 months but unfortunately you have not been able to suggest any times or dates'

- An email dated 13 August 2014 states; 'the silence is deafening! I have left numerous messages for you which are never returned....'

31. As to an insurance claim in respect of the water ingress, it is clear that the leaseholders had requested that such a claim be made.

32. An email dated 28.1.14 from Ms Carter, one of the leaseholders, asks if the insurers have been notified of a claim for water damage.

33. It is clear that in February 2014 Mr Plant considers that the damage caused by the water ingress is not an insured risk after being chased on the issue. However, Mr Plant then says later in February that a claim would be made anyway to see what the insurers say.

34. Mr Plant is chased again regarding the insurance by letter of 23 February 2014.

35. On 26 February 2014, Mr Carter records that he has been told that Mr Plant has signed the letter of claim.

36. On 28 February 2014, Mr Carter records that he asks for loss adjusters to visit before the works start on the following Monday.

37. On 11 April 2014, in an email to Mr El Sherbiny, Mr Carter records that no insurance claim has yet been made.

38. Eventually a claim is made but this is after the works to the roof have been completed. The insurance company reject the claim. In an email from brokers dated 22 August 2014 it is said that the insurers view is

that; 'They have advised that damage has occurred as a result of a gradual operating cause over a period of two years and as the work had all been completed prior to notification of a claim they are unable to validate or quantify the repair and as such their position would have been prejudiced.'

39. We heard evidence as to what the insurance company may or may not have done if informed sooner of the claim and/or if pressed on the cause of the damage. Whilst we are grateful for that evidence, there is no real way of knowing one way or the other what the situation would have been had the insurance company been notified sooner or pressed as to the cause of the damage.

40. Overall, we conclude that there had been numerous failings in communication between the managing agents and leaseholders and that Mr Plant took the initial decision not to make a claim on insurance and then not to notify in time in circumstances where the proper course of action would have been to follow instructions and make a timely claim.

41. We do not accept that the failings regarding the roof can be explained by the fact that the original roof works were commissioned directly by the landlord without the involvement of the managing agents.

42. Whilst we accept that the management fees charged are within a reasonable range and that, for the most part a basic management service was provided, some of that service was not of a reasonable standard. Accordingly we conclude that the management fees should be reduced by 5% for the years in question to reflect that failing.

Insurance

43. There was no complaint (by the time of the hearing) that the insurance premiums for the Building were in themselves unreasonable. The complaint concerned the apportionment of those premiums.

44. Normally the residential leaseholders would be bound by the provisions of the lease regarding these premiums - that is they would be bound to pay 22% per flat.

45. However, we were told that under the lease with the commercial part of the Building, the amount of the insurance premium charged was variable and at the landlord's reasonable discretion.

46. Following discussions between the parties, the landlord had agreed to increase the percentage payable by the commercial tenant from 12 to 20 per cent.

47. The evidence from Mr Burrows at the hearing was that normally a restaurant occupying commercial premises would incur a higher premium as it was a higher risk. However, the landlord insured the Building as part of a larger portfolio. Accordingly the insurers had not

increased the premium to account for the fact of the commercial premises.

48. However, the leaseholders maintained their objection to the 20% apportioned to the commercial premises on the basis that the footprint of the commercial part of the Building is approximately 2/6ths of the Building. The proportion of the premium payable by the residential leaseholders should therefore be 22% of 2/6ths of the total premium. The leaseholders asked for a declaration that this should be the way in which the premium was apportioned in the future.

49. We are of the view that, given the much larger footprint of the commercial premises, any premium paid by the residential leaseholders would only be reasonable to the extent that was based on 4/6ths of the premium for the Building.

Costs and fees

50. Whilst the leaseholders have only been partially successful, the extent of their success is significant, if not as to the amounts concerned then certainly as to principle. To reflect this we make the following orders.

Section 20C Landlord and Tenant Act 1985

51. None of the costs incurred, or to be incurred, by the landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the residential leaseholders.

Fees

52. The landlord must pay to the leaseholders one-half of the fees that they have paid to the tribunal to make this application. The total sum of £220 to be paid within 28 days of the date of this decision.

Name: **Mark Martynski, Tribunal Judge** **Date:** **12 February 2016**

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.