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

Case reference : LON/00BA/LSC/2015/0482

Property : Flat 3, 17 Sheridan Road, London SW19 3HW

Applicant : Mr Fortune Barnard Anyovi

Representative : In person

Respondent : Circle Housing Group

Representative : Mr Nicholas Grundy (Counsel)

Type of application : For the determination of the reasonableness of and the liability to pay a service charge

Tribunal members : Judge Robert Latham
Mr Peter Roberts DipArch RIBA

Venue and date of Hearing : 22 June 2016 at
10 Alfred Place, London WC1E 7LR

Date of decision : 28 June 2016

DECISION

Decisions of the Tribunal

- (1) The Tribunal confirms that the sum of £25,000 is payable as an advance service charge in respect of the major works. This figure has been agreed between the parties.

- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The Tribunal does not make any order in respect of the refund of Tribunal fees.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). On 16 November 2015, the Applicant applied to challenge the reasonableness of a demand for an advance payment of £63,935 which was demanded on 27 March 2015. The sums of £31,967.50 were to be payable on 1 April and 1 October 2015. It would seem that no subsequent demand has been made for the second payment. A number of payment options were offered, including 24 monthly payments of £2,663.96.
2. On 22 June, this application was issued before us for hearing. Mr Anyovi appeared in person. The Respondent was represented by Mr Nicholas Grundy, Counsel, instructed by Clarke Willmott LLP. He was accompanied by Mr Neil Brand, his instructing solicitor. Mr Anyovi was not proposing to call Mr Tarling, a surveyor, whom he had engaged to prepare a report. My Grundy had no witness available to give any factual evidence.
3. The Applicant is the lessee of Flat 3, 17 Sheridan Road, SW19 3HW ("the flat"). He does not occupy his flat, but sublets it. The flat is on the top floor of a substantial early 1900's Arts and Crafts style building located in a conservation area. There are four self-contained flats. The Applicant is obliged to pay 25% of any service charge.
4. On 25 September 2014, the landlord served a Notice of Intention to carry our works under a Qualifying Long Term Agreement ("QLTA"). This estimated the total cost of the proposed works at £255,500. The Notice listed the works that were proposed. The external works included the replacement of the roof and the windows. Further works were required to remove asbestos and upgrade the loft insulation, electrics and fire safety.
5. In March 2015, the Applicant obtained a report, dated March 2015, from Arnold Tarling, a Surveyor. He considered the schedule of works which had been served on the tenant. He concluded that many of the works were not required. Thus he concluded that the roof did not require replacing. He further noted that the erection of a scaffold and temporary roof over the main roof had led to substantial damage to the roof tiles as the scaffold contractors had walked over the roof. He could see nothing wrong with the electrical installations in the common parts.

He estimated the cost of any necessary repairs at £16,800 including VAT. Mr Tarling did not specifically consider all the works specified in the notice. For example, he makes no specific reference to renewal of windows, asbestos, loft insulation, or fire safety.

6. On 16 November, Mr Anyovi issued this application. He attached Mr Tarling's report to the application. He paid an application fee of £440. He subsequently paid, somewhat tardily, a hearing fee of £190.
7. On 26 November, Judge Martynski gave Directions. He noted the importance of the evidence provided by Mr Tarling. He required the landlord to file a Statement of Case and set the matter down for a Case Management Hearing ("CMH") on 12 January 2016. On 23 December, the landlord filed their Statement of Case, annexing a number of relevant documents.
8. On 12 January 2016, Judge Andrew gave further Directions at the CMH. The Applicant appeared in person; the Respondent was represented by Mr Brand. The Tribunal noted that the works had been completed "or at least substantially completed". The Tribunal was told that the final accounts and demands based on the actual cost of the work should be issued by or shortly after the end of the financial year. The parties agreed that it would be preferable to stay the proceedings until the final account was available and the Tribunal could consider the actual cost of the works. The Tribunal therefore stayed the application until the final account was issued. Mr Anyovi agreed to pay "without delay" the sum of £4,200 towards the advance service charge.
9. The Applicant did not promptly pay the agreed sum. He made a number of payments by instalments. At the hearing, there was still an issue as to whether this sum had been paid. Mr Grundy was willing to accept that the last instalment of £700 had been made on 13 June and had yet to be credited to Mr Anyovi's account.
10. On 16 May, Judge Andrew gave further Directions at the instigation of the Respondent. He noted that Mr Anyovi had failed to pay the agreed sum of £4,200. It was now apparent that the final account would not now be available until "at least September". The Judge had little confidence that this deadline would be met given the inaccuracy of the information provided at the CMH. He therefore lifted the stay. He noted that if the Applicant wanted to raise any concerns about the quality or cost of the works actually completed, he would need to issue a further application after the final account had been issued and his contribution to the final cost had crystallised. He directed the Applicant to file a Statement in Reply. Mr Anyovi failed to comply with this Direction. The Judge directed that no party could call expert evidence without the written permission of the tribunal.

11. When the case was listed before us for a two hour hearing, we were mindful that we were only dealing with a challenge to the advance service charge, rather the final account. As Mr Grundy reminded us, the application challenged the landlord's estimate of the cost of the proposed works, rather than the quality of the works actually executed or the reasonableness of the sums incurred in respect of those works. Mr Anyovi complained that the works had still to be completed. Mr Grundy responded that he was not in a position to deal with this because he had no one present from the landlord.
12. The Tribunal indicated that it was surprised by the size of the bill given the nature of the works that had been proposed. The views of Mr Roberts, an architect and experienced professional member of this expert tribunal, are of particular relevance. However, we also recognised that we were considering works which were to be executed under a QLTA, a modern means of procurement followed by social landlords which is intended to ensure best value. We indicated that it would be difficult for us to determine the reasonableness of the advance service charge demand in the absence of expert evidence and/or an inspection.
13. The parties very sensibly agreed that the Applicant should make a single advance service charge of £25,000, rather than the two advance service charges of £31,967.50 which had been demanded on 27 March 2015. The Applicant has already paid £4,200. He is to pay further sums of £1,000 by 29 August, September, October and November, and the residue of £16,800 by 30 November. The Tribunal approves this advance service charge of £25,000 as being both payable and reasonable. If Mr Anyovi does not pay it, it will be open to the Respondent to take appropriate enforcement action.
14. We are not making any finding in respect of the quality of the works that have been executed or of the reasonableness of the sums expended. It will be open to Mr Anyovi to challenge any service charge based on the actual cost of the works when the final account is available. We indicated to Mr Anyovi that it would be desirable for any such challenge to be supported by independent expert evidence.
15. In his application form, the Applicant applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
16. At the end of the hearing, the Applicant made an application for a refund of the fees of £630 that he had paid in respect of the application

and hearing pursuant to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. We decline to make such an order. On 12 January, the parties recognised that that it would be preferable for the proceedings to be stayed until the final account was available so the Tribunal could consider the actual cost of the works. The only reason that the stay was lifted, was that Mr Anyovi failed to pay “without delay” the agreed sum of £4,200. We note that he was also tardy in making his payment to this Tribunal of the hearing fee of £190. This hearing would not have been listed had Mr Anyovi paid the agreed sum. Rather, it would have been open him to amend his current application to challenge the final bill within the existing proceedings.

Judge Robert Latham
28 June 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.