



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

Case Reference : CHI/00HN/LIS/2019/0045

Property : 92 Stanfield Road, Bournemouth BH9 2NR

Applicant : Tyrrel Investments Inc.

Representative : Napier Management Services Limited

Respondents : (1) Ms C E Finnis
(2) Ms H Rowlands & Mr M Collins

Representative : -

Type of Application : Determination of service charges under
section 27 of the Landlord and Tenant Act

Tribunal Member(s) : Judge Tildesley OBE

Date of Decision : 14 November 2019
Determined on the Papers

DECISION

Background

1. The Applicant lessor seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable in 2019 for major works (external redecoration and repairs).
2. The property is a converted Victorian building comprising two flats. The Applicant advises that the building is constructed of brick elevations under a pitched tiled roof.
3. The Applicant supplied a copy of the lease for 92A Stanfield Road, the ground floor flat. The lease is dated 17 June 1986 and made between Philip David Oram and Kevin David Hoff of the one part and Bruno Borzoni and Ann Vivienne King of the other part for a term of 999 years from the 17 June 1986. The Tribunal has assumed that the lease for the first floor flat is identical to that for the ground floor flat
4. On 9 July 2019 the Tribunal directed that the Application would be determined on the papers unless a party objected to the Tribunal within 28 days. No objections were received by the Tribunal.
5. The Tribunal also directed the parties to exchange their cases and for the Applicant to supply the hearing bundle to the Tribunal by 6 September 2019.
6. The leaseholders did not respond to the Application.

Decision

7. The Applicant asked the Tribunal to decide whether the works are the responsibility of the landlord and that the costs of those works are reasonable and payable under the terms of the lease.
8. The Applicant has supplied the following evidence to substantiate its application:
 - A property condition report prepared by Merrileas Property Management (MPM) dated 9 May 2018
 - A specification for external, redecoration and minor repairs prepared by MPM dated July 2018.
 - Section 20 consultation with the leaseholders which included Notice of Intention to Carry Out qualifying Works dated 28 August 2018 and the Statement of Estimates dated 7 February 2019
 - A summarised tender sheet.

9. Under Clause 2(4) of the lease the tenant covenants to pay to the Landlord from time to time within seven days of demand one equal half of the costs and expenses incurred by the landlord in carrying out any works referred to in clause 4.
10. Under clause 4 of the lease, the landlord is required to maintain repair and renew the roof, exterior walls of the building, the boundary walls, and fences of the said property, the drains and water pipes, the foundations of the building, and any other parts of the said property used in common by the tenants. The landlord is also required to paint the exterior of the said property.
11. The Tribunal has examined the schedule of the works proposed at [49-51] of the bundle and considers that the proposed works fall under the landlord's responsibilities under clause 4 of the lease, and that the landlord is entitled to recover the costs of those works once they are incurred subject to the requirement of reasonableness from the leaseholders.
12. The Tribunal finds that the landlord has complied with the consultation procedures under section 20 of the 1985 Act and that the landlord proposes to accept the lowest tender which is £3,859.00 inclusive of fees and VAT.
13. The Tribunal notes that the landlord received no written observations from the leaseholders in connection with the consultation on the proposed works.
14. The Tribunal observes that there is no provision in the lease for the landlord to demand service charges in advance before expenditure is incurred.
15. In this case the service charges only become payable when the costs have been incurred and demanded from the leaseholders. In those circumstances the Tribunal is not in a position to determine whether the charges are payable or reasonable because the costs of the works have not yet been incurred.
16. The leaseholders are entitled to challenge the reasonableness of the incurred costs once the works are completed by bringing an application to the Tribunal under section 27A of the 1985 Act.
17. The Tribunal comments under the circumstances outlined in this application and where there appears to be no opposition from the leaseholders, the landlord would usually proceed with the works without recourse to the Tribunal. The leaseholders would retain the right to challenge the reasonableness of the costs once the service charge is demanded.

RIGHTS OF APPEAL

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.