



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

Case Reference : CHI/00MR/LIS/2019/0011

Property : Courtlands, 29C Clarence Parade,
Southsea, Hampshire PO5 2ET

Applicants : Christie Estates Southern Limited

Representative : Dack Property Management Limited,
(Managing Agent)

Respondents : Mr CA and Mrs A Wright
Mr S Quantick and Miss CM Steelsmith
Mr DF Tonkin
Mrs LJ Jenner
Mr and Mrs R Davis
Mr M Weyl
Ms KR Newlands
Mr S Quantick and Mr JF Wheeler

Representative :

Type of Application : Service charges

Tribunal Member(s) : Judge D. Agnew
Mr D Banfield FRICS

Date of Decision : 1st July 2019

DETERMINATION

Background

1. On By an application dated 22nd January 2019 the Respondent landlord's managing agent applied to the Tribunal under section 27A(3) of the Landlord and Tenant Act 1985 ("the Act") for a determination as to the payability and reasonableness of a service charge proposed to be levied in respect of fitting a pump to boost the water supply particularly to flats 7 and 9 at the Property.
2. Directions were issued on 15th February 2019 providing that the matter be determined by way of a paper determination rather than an oral hearing unless any party objected. No party did object.
3. The directions also provided for the exchange of statements of case.
4. The Tribunal received a response from the lessees of Flats 1,2,8, and 10 all who opposed having to pay for the proposed works and in the papers supplied by the Applicant the owner of Flat 7 wanted the work to proceed and there was a complaint about water pressure from the owner of flat 9 in 2013 but as their name was omitted from the email stream it is not possible to identify whether the complainant at that time was the same as the current owner, Ms Newlands. Ms Newlands has not responded to the current application.
5. In view of the opposition from a number of lessees to paying for the proposed works the Respondent's managing agent seeks a determination from the Tribunal as to whether, if they went ahead, the cost would be recoverable from the lessees by way of service charge.

Inspection

6. The Tribunal Inspected Flat 7 at the invitation of the lessee on 25th June 2019. The Tribunal saw for itself the poor flow of both hot and cold water to the sinks in the kitchen and bathroom and to the bath.

The Applicant's evidence

7. The problem at the Property that the proposed works is intended to address is the lack of water pressure to the two topmost flats at the front of the building. There are ten flats in all: five at the front of the building one on top of the other and five at the rear. There seems to be no problem with the flats at the rear of the building. This may indicate that there are two mains supplies or separate risers for the front and rear of the building but this has not been established. There appears to be no problem with the water pressure to the flats on the lower floors, either at the front or the rear of the building.
8. The complaint is principally from Flat 7, which is on the second floor at the front of the building. The lessee complains that the water pressure to the kitchen sink and the wash basin and bath in the bathroom is even worse at certain times of the day. He is unable to fill his bath to m

an adequate depth. In 2013 the owner of Flat 9 was complaining that at certain times of day and at other irregular periods they receive no water supply at all from the mains. The water company say that they are only obliged to provide 1 bar of pressure to properties which is adequate only to supply to a height of 9 metres above the point of the main entering the building.

9. There is a preliminary report from Gary L Jones BSc(Hons) CENG FCIBSE of Gary Jones Associates Limited, Building Services Design Engineers carried out for the managing agents in April 2015 which confirms the pressure problem pointing out that “some old pipework may have reduced the diameter due to scale build up” and possibly the pipes are undersized. The report is not very detailed but does suggest remedial action of installing a break tank and pump, replacing the cold water main from the inlet to the building throughout the common parts. It also indicates a possible cost for this work of approximately £40,000. The hot water is addressed separately but is even vaguer in its findings and recommendation.
10. Before this, however, the managing agents had commenced the consultation procedure under section 20 of the Act. They served a Notice of Intent and obtained estimates and issued a Statement of Estimates in December 2014. Two estimates were received. There was a large difference between the estimates: one being for £18,021 and the other for £55,400. The consultation process went no further and no works were put in hand.

The opposition case

11. Quite simply, the lessees who do not suffer from water pressure problems and who would not directly benefit from the works do not see why they should have to contribute towards paying for the works to be done.

The lease

12. Clause 1 of the lease contains the charging clause whereby the lessee is to pay “by way of additional rent in respect of the expenses set out in the Fourth schedule ...the amounts (hereinafter called the maintenance and supply charges) calculated in accordance with the provisions of the Fifth schedule and at the times and in the manner therein specified”
13. In Part A of the Fourth Schedule under the heading “ Expenses and matters in respect of which the Lessee is to contribute there are the following provisions:-
 1. The expense of maintaining repairing making up cleansing decorating and renewing:
 - (b) the hot water system the gas and water pipes cylinders and tanks main drains and sewersand apparatus available for general or communal in under or upon Courtlands”

6. All other expenses normally incurred in the management of a block of flats”.
14. By the Fifth Schedule subparagraph 1(6) “the maintenance charge” means twelve per cent of the total costs certified by the Accountant and incurred by the landlord in respect of the matters set out in Part A of the Fourth schedule in the year to which the certificate relates and payable to the Landlord by the Lessee.
15. By Clause 4(2) of the lease the Landlord covenants (subject to contribution and payment as hereinbefore provided) the landlord will
- (i) keep and maintain in good and tenantable repair make up clean redecorate and renew...
 - (b) the gas and water pipes the communal gas fired boiler supplying the domestic hot water(hereinafter called “the hot water system”)(or other system for the time being installed)all cylinders andand apparatus available for general or communal use in under and upon Courtlands.
16. In paragraph 3 of the Second Schedule to the lease one of the easements rights and privileges granted to the Lessee is “ the free and uninterrupted passage and running of waterthrough the sewers drains gutters and watercourses cables pipes and wires which now are or may within eighty years be in under or passing through Courtlands or any part thereof”. (The lease is dated 28th November 1985).

The law

17. By section 19 of the Act:-
18. “ Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is payable, and, after the relevant costs have been incurred, any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
- 19..By Section 27A of the 1985 Act it is provided that:-
- (1) An application may be made to a Leasehold Valuation 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 a Leasehold Valuation Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvement, 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 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.

Discussion and determination

- 20. Unfortunately in this case there is a dearth of detailed technical analysis of the water supply system at Courtlands, the current deficiencies that exist to the system, the cause of that deficiency and the solution to the problems that exist and the cost thereof. Without this evidence it is not possible for the Tribunal to provide a definitive answer to the application in this case. The best that the Tribunal can do is to construe the lease and determine whether the lease provides for the recovery of the cost of any necessary works in certain circumstances that might be found by expert analysis.
- 21. The section 20 consultation and the estimates obtained are now so old that a new section 20 consultation would have to be undertaken and up to date estimates obtained. The Tribunal cannot possibly say, on the current evidence, whether any particular amount of expenditure would be reasonable for the landlord to incur and recover from the lessees by way of service charge.
- 22. The report from Gary Jones is now five years old. There is no evidence of a problem in Flat 9 since 2013. What has been happening there in the meantime?
- 23. What the Tribunal can say, in construing the lease, is that if the cause of the problem of the lack of water pressure, or a significant contributory cause of the problem, is inadequate size of pipe or a constriction of the bore of the pipework due to furring or a build up of sediment, then replacement of the pipework or descaling of the pipework would be a service charge item under paragraph 1(6) of the Fifth Schedule and paragraph 1(b) of part A of the Fourth Schedule.
- 24. If that is not the problem but it is simply that the pressure coming from the main is not sufficient to supply water at an adequate rate to the top floors then unless this would come under paragraph 6 of Part A of the Fourth Schedule (“all other expenses normally incurred in the management of a block of flats) then this would not be covered under any other part of the Fourth Schedule.
- 25. The question, then, is can paragraph 6 of the Fourth Schedule be construed to cover that situation? In the Tribunal’s view, although the paragraph as worded is very vague and general, it does encompass expenditure that would be incurred by a landlord or its managing agent in ensuring an adequate pressure of water for the normal expectations for everyday living. This would be part and parcel of the management of a block of flats.
- 26. The Tribunal did consider whether “management” in paragraph 6 is restricted to the actual act of management rather than carrying out repairs or maintenance but managing agents’ and accountants’ fees are

specifically covered by paragraph 7, so the tribunal does not consider that paragraph 6 is restricted in this way.

27. This means that the reasonable cost of works reasonably required to remedy the water pressure problem would be recoverable from all the lessees as a service charge in the proportions set out in their individual leases.
28. It very often happens, as here, that lessees who do not directly benefit from repairs or maintenance feel that they should not be required to contribute to the costs as they do not directly benefit. One sees this, for example, where ground floor tenants object to paying for lift repairs or where only top floor flats are affected by a leaking roof. The Tribunal understands this. However, if the lease says that all lessees must contribute then it does not matter that a particular lessee does not benefit from the necessary works. That is the case here.
29. The Tribunal is concerned that there has not been a proper report to identify the problem and its extent or for there to be a proper specification for the recommended works drawn up and for up to date tenders to be acquired. The Tribunal is also concerned that there is such a disparity in the two estimates that were obtained in 2014. At least one of them must be wrong, or unreasonable.
30. Mr Weyl has been extremely tolerant of this situation for many years and who knows what the lessees of Flat 9 have had to endure since 2013. One would have thought that if the situation has continued to be as it was seemingly in 2013 that they would have been clamouring for the situation to be rectified.
31. Hopefully, the limited amount that the Tribunal has been able to do under the current application in construing the lease as we have will enable the managing agents now to press ahead as quickly as possible to obtain a proper expert's report and proceed with a proper section 20 consultation. Once this has been done the Applicant may, if it so wishes, make a fresh application to the Tribunal under section 27A(3) of the Act for a determination as to whether the newly proposed costs would be reasonably incurred and be reasonable in amount.

Dated the 1st July 2019

Judge D. Agnew (Chairman)

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
- Appeals