FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BR/LSC/2018/0072**
Property	**:**	**Flats 55, 57 and 61, Locket Gardens, Salford M3 6BJ**
Applicant	**:**	**Dr Alice Kneen**
Respondent	**:**	**O M Limited**
Type of Application	**:**	**Reasonableness of Service Charges Section 27A and 20C Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Mr J R Rimmer** **Mrs S Hopkins**
Date of Determination	**:**	**17 May 2019**
Date of order	**:**	**31 May 2019**

DECISION

Order : The service charges that are the subject of this application are reasonably incurred at reasonable cost

A. Application and background

1 The Applicant is a owner of three leasehold flats on the development at Lockett Gardens, Salford. The Respondent is the management company with responsibility for providing services to the development under the terms of the relevant leases. In turn, it has passed direct responsibility for that provision to its agents, Firstport Limited.

2 Copies of the relevant leases for the three flats in question have been provided within the documentation supplied to the Tribunal. They are new leases granted in 2018, but with terms relevant to the provision of services being the same as those in earlier leases dating from 1990, that being the time the development was completed after transfer and refurbishment of what had been local authority housing stock.

3 The earlier lease contains provisions relating to the service charge at several places within its contents:

- Clause 2 of the lease identifies as an "additional rent" the sums payable by the tenant as the appropriate proportion of the maintenance expenses.
- Those expenses are set out in the Sixth Schedule to the lease and, although set out at some length, are the usual obligations of maintenance, repair and insurance that might be anticipated in such a lease. As no point was taken by either party as to whether or not specific services raised before the Tribunal did, or did not, fall within the Schedule those obligations need not be set out at length.
- Depending upon which part of the Sixth Schedule specific services relate to, there are two different proportions of the total costs payable by the leaseholder. Again, no issue before the Tribunal turns upon the proportions involved.
- A combination of cause 3 and the Eighth Schedule provides the covenant by the tenant to pay the maintenance expenses as part of the rent.

4 The catalyst for matters now being raise by the Applicant is her dissatisfaction with two recent sets of major works required to the building in which her three flats are located. One being related to "damp" (being put that way for ease of reference, because there may have been no "damp" issue at all) and the other relating to external decoration and repair works and the reasonable cost thereof.

5 Both those sets of major works required a consultation process to be undertaken in accordance with Section 20 Landlord and Tenant Act 1985 and whilst the Applicant directs the Tribunal's attention to what she saw as defects in that process (not accepted by the Respondent) it appears that she takes no issue as in any event she became aware of the process in due course and any matters as to the works can be adequately considered within these proceedings.

The Law

6 The law relating to jurisdiction in relation to service charges, falling within Section 18 Landlord and Tenant Act 1985, is found in Section 19 of the Act which provides:

(1) relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

(a) only to the extent that they are reasonably incurred, and

(b) where the are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard

7 Further section 27A landlord and Tenant Act 1985 provides:

(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

and the application may cover the costs incurred in providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

Inspection

8 On the morning of 7th May 2019 the Tribunal inspected the property at Lockett Gardens and found it to be a development consisting of 5 buildings within a single substantial area of grounds, now accessed through electronic gates giving separate vehicular and pedestrian access. The Applicant's properties are all located within one block. This is constructed of three storeys, with three independent common access areas of halls landings and stairways which in turn give access to two flats on each floor; there being a

total of 18 flats in the block. The lowest floor is below the level of the front doorways and reached by internal steps to that lower level. There has been significant work to the block, in common with the other blocks which is considered below as part of the Applicant's case. Lockett Gardens is itself situated near to the Cathedral in Salford and therefore closer to the commercial and retail areas of Manchester than Salford itself. The Tribunal was accompanied by the Applicant, representatives of the Respondent and its Counsel, Mr Sweeney.

Submissions and hearing

9 The Tribunal was grateful to receive from the parties a single bundle of documents that contained all that originally considered might be relevant, although it did seek further documentation relating to concrete works being considered.

10 The Applicant, Dr Kneen, raised the two issues mentioned in paragraph four, above, very clearly. The Tribunal, in considering her extensive evidence, backed up by her clarification of a number of issues at the hearing, may condense her case in the paragraphs below.

11 Damp
It became apparent that moisture damage was being caused to the building by problems connected with Flat 51. A report commissioned by the managing agents identified rising damp and ultimately a consultation process to effect repair produced a tender for work of over £70,000.00.

12 Although the Applicant indicated that she had not received her notice relating to the process (the Respondent indicating that notices were sent to both her address and the subject flats), she nevertheless caught up with the process at the tenants meeting called to consider the tender. Her precise role in what followed may not be entirely clear, but largely at her behest, and influence on other tenants, the managing agents were persuaded to obtain a further report from another firm of surveyors (the Byrom Report), which identified a different cause of the problem, that being the use and repair of flat 51, resulting in excessive condensation and a leak under the bath.

13 The Byrom Report set out a number of other issues that had been identified by the author as possible contributory causes to dampness in the block and identifying a number of works that might be undertaken to increase the robustness of the building.

14 The Applicant would have wished the issues within Flat 51 to be addressed first and the Respondent/agents not to have embarked upon the other works identified by the Byrom Report. She considers those costs to have been unnecessarily incurred. The works were not required.

15 The counter view of the Respondent is that the repairs necessary within Flat 51 were within the power of the flat owner and not the management company, or its agents. Any timescale for repair was outside their immediate control. The Byrom Report had, however, identified medium and long-term matters that would require a prudent landlord to take appropriate action. It was accepted that they did not relate directly to the problem that had now been correctly identified in relation to Flat 51, but it was reasonable to undertake the works.

16 The redecoration and repair works

A further consultation exercise was conducted in 2016 relating to external works required to the balconies and exteriors of the several blocks within the development, including that which contained the Applicant's flats. The nature of the works is clearly set out at paragraph 21 of the Respondent's statement of case. The contract for the work was eventually placed with Haven Building and Maintenance Limited, the provider of the quotation approximately £20,000.00 below the next lowest quotation.

17 The Applicant clearly identifies issues that she has in respect of both the quality and price of the works. In paragraphs 22 onwards of her statement she sets these out in some detail and provides a calculation as to the amounts she considers unreasonable, together with what she is prepared to pay.

18 At the time of the inspection by the Tribunal corrective works were underway which were acknowledged by the Respondent as being remedial work required as the standard of the completed work, was, in places, below that set out in the contract for painting work. The Applicant also pointed out what she felt were deficiencies in the quality of the work carried out to the exposed concrete on the balconies.

19 For its part the Respondent, through Mr Sweeney, submitted the works were reasonably incurred ant reasonable cost. Although some remedial work was required, it was at the contractor's expense. Otherwise it was to specification and at the lowest quoted cost. Original planned work had been scaled back so as not the present too great an additional cost to the leaseholders after exhausting the fund for cyclical work and replenishing it for the future.

20 Both parties made submissions, also, in respect of Section 20C Landlord and Tenant Act 1985 and whether professional costs incurred by the Respondent in these proceedings should be included in future service charge calculations. Those costs may be included in the service charge by virtue of Clause 16 in part C of the Sixth schedule to the lease. The Respondent accepted that what was just in the circumstances might well depend largely upon the Tribunal's findings in respect of the substantive issues raised by the Applicant, but if the findings were largely in favour of the Respondent then it would be unjust to make an order.

Determination

21 In the course of its deliberations the Tribunal took into account all that it had read in the submissions and heard at the hearing and accepted that a number of initial conclusions, from the evidence presented and the final views of the parties, assist with its determination:

(1) It was clear that a fundamental error had occurred in the first finding of rising damp being attributable to the activities within Flat 51.

(2) Whatever may have been the situation in relation to the consultation process in respect of the planned works and the notification to the Applicant, she suffered no prejudice and, indeed, was able to play an active role in securing a second and more accurate report on the matter.

(3) Although that report has been provided upon instructions from the Respondent, it was the tenant body that created the process.

(4) Although that report correctly identified the problem in Flat 51, it went further and identified other issues in relation to the building.

(5) The Respondent was required to make a decision on the basis of that report as to whether or not to carry out the work suggested or not.

(6) Having made a decision to proceed, the work done was that outlined in the report and upon which a basic cost had been indicated.

(7) Cyclical repair and redecoration were envisaged by both the parties and within the terms of the lease, but had not, at least in relation to the decoration been carried out at the intervals provided for in the lease

(8) Necessary repair and redecoration were therefore necessary.

(9) The lowest quotation had been accepted by the Respondent and significant investigation in respect of concrete works for the balcony were undertaken. This is evidenced within the extensive report that the tribunal requested from the Respondent at the hearing.

(10) Some of the redecorating work has not been of a standard that would be acceptable and is being re-done at the contractor's expense

22 Have the costs of those two sets of work been reasonably incurred at reasonable cost? The Applicant makes two points that are clearly valid in relation to the damp issue.

(1) Without her intervention alternative works would have proceeded upon an entirely false basis.

(2) It is for the Respondent to justify the reasonableness of the decision to proceed with the works identified in the Byrom Report.

23 The first of those points does the Applicant considerable credit, but has not, to any significant extent, resulted in any apparent cost as the Byrom Report put a stop to the original plan. The second of those points is best answered by the events that followed the report, whereby the leaseholders, as a body, engaged in the process of approving the need for the repairs and adopting the proposals in the report which they themselves requested. To the Tribunal's mind this supports a view that those works were reasonably undertaken as a

prudent landlord/management company would undertake them and the costs, when compared with those set out in the report, were not outside the bounds of reasonableness.

24 The Applicant also makes valid points in relation to the redecoration and concrete works in that the redecoration schedule set in the leases have not been complied with and some of the workmanship associated with these recent works has not been satisfactory.

25 What does appear to have been accepted is that work was required by 2016 and what has been done came about after an appropriate consultation and tendering processes. Substandard work is being corrected. The Applicant suggests that scheme could have been carried out more cheaply and had suggested that she herself completed her own external decorations to the same overall colour scheme. The obligation is however placed upon the landlord/management company and the Tribunal accepts that the responsibility is placed upon one party for good reason; to avoid the potential for unknown numbers of controlling and participating hands.

26 In the Tribunal's view the Applicant does bring some, but not sufficient, evidence to highlight concerns as to what may or may not be reasonable and certainly does not bring sufficient other evidence to suggest that acting upon the Byrom Report and incurring the ensuing costs, or accepting the lowest estimate for the repair and redecoration work, was unreasonable.

27 In relation to Section 20C Landlord and Tenant Act 1985, the Tribunal takes what might be considered an unusual step in making an order in the Applicant's favour notwithstanding she has not established her substantive case to the Tribunal's satisfaction.

28 The Tribunal is of the view that it is just to make the order as there is sufficient information to suggest that there may be genuine concerns as to the reasonableness of the Respondent's actions to warrant some independent oversight. They are particularly identified in paragraphs 22 and 24 above. More robust management might have avoided them.

Judge J R Rimmer
31 May 2019