FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/22UF/LIS/2019/0025**
Property	**:**	**20 Beeleigh Link, Chelmsford, CM2 6RG**
Applicant	**:**	**Stephen, James & Simon Brown, as Trustees for Sylvia Brown** **Unrepresented**
Respondent	**:**	**Holding & Management (Solitaire) Ltd.** **Represented by JB Leitch Limited Solictors**
Date of Application	**:**	**11 October 2019**
Type of Application	**:**	**Section 27A Landlord and Tenant Act 1985 Reasonableness and payability of service charges ("the 1985 Act")**
Tribunal	**:**	**Judge J. Oxlade**
Date of Paper hearing	**:**	**4th February 2020**

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DECISION

For the following reasons, the Tribunal finds that the service charges demanded in respect of the window and door replacement (their frames and glass) at the block in which the property is situated, were reasonably incurred and payable by the Applicants.

Further, the application made under section 20C of the 1985 Act is refused.

REASONS

Background

1. The property is a two-bedroom flat, located on the ground floor of a purpose-built block of four flats.

2. The Applicants are the Trustees of Sylvia Brown, who ask for a determination of the liability to pay and the reasonableness of service charges in respect of replacement windows to the property undertaken as part of major works, which commenced on 18th November 2019.

3. In the application, they posed the following questions, which are appropriate to establishing liability to meet the costs of the works:

> Q1. "Who owns the windows ?",
> Q2. "Who should be paying for the work to be carried out ?",
> Q3. "Whether the lessee should be paying for replacement of all of the windows, or just the glass ?", and
> Q4. "Whether or not the lessee should have been permitted to replace the windows herself, at her own cost?".

4. In accordance with Directions made following an oral case management conference ("CMC") held on 11th November 2019, both parties filed evidence, for a determination of the application on the papers, at which CMC the Tribunal identified the issues as they then appeared to be; this included whether (i) the cost of the works was reasonable in relation to the nature of the works, the contract price, and the supervision/management and (ii) the consultation requirements had been complied with under section 20 of the 1985 Act.

The Evidence

The Respondent's case

5. In the Respondent's statement of case dated 12th December 2019, it detailed the parties to the lease, identified the relevant terms of the lease (including maintenance obligations and service charge liability), the nature of the project, and the relevant case law. This was to support the Respondent's argument that the replacement of external timber doors and windows with UPVC units fell within the Respondent's repairing obligation set out in the lease, and the lessee's obligation to pay for the works. The Respondent pointed out that at the CMC the Applicants conceded that major works were necessary; there was no issue but that the windows at the property did in fact need to be replaced.

6. Further, the Respondent set out the consultation process which it had followed, whilst pointing out that (a) consultation was not a point specifically raised in the application and (b) section 20 (3) of the 1985 Act provided that the section applied to

qualifying works only once relevant costs had been *incurred* in carrying out the works exceeding the appropriate amount, and that "incurred" only arose once the contractor had been paid or invoiced (which had not yet occurred). Nevertheless, the Respondent fully engaged with the point, no doubt recognising the expedience in dealing with all issues at the same time and in the same proceedings.

7. Finally the Respondent addressed how the costs were to be met, namely major works were being primarily taken from the reserve fund (as permitted by the terms of the lease) with only balancing demands being made to the leaseholders.

8. The Respondent provided a copy of the lease, the relevant case law, the documents sent out as part of the consultation process - including the notices, the specification of works, a summary and form of tender, and advice regarding the awarding of contracts to carry out works.

The Applicants' case

8. The Applicants set out their case in a letter dated 18th December 2019, and provided correspondence with First Port dated 13th and 17th December 2018, and a copy of a quotation dated 18th November 2019 by CII design Ltd.

9. Having seen the Respondent's statement of case and documents, the Applicants said that there appeared to be consensus that the windows and frames fell "outside the Applicants' personal responsibility", but led to them questioning "why then there was any financial responsibility falling on the Applicants at all", which I mark as Q5. Further, the Applicants - whilst grateful that the Respondent followed the lower quotation received - did not feel that the costs of the works were fairly split when considering the actual work carried out to each property. For example, the property had only five windows replaced (and no doors), which was less than other flats - yet had liability to pay 25% towards the overall cost; had this been properly apportioned the reserves should have been sufficient, meaning that no additional levy was required, which I shall mark as Q6.

10. Finally, on 18th November 2019 a quotation was provided by CII design Ltd showing the costs of supplying windows to the property of £1,041.37, and when coupled with removal and refitting of replacement windows, which could be provided by one of the Applicants, the total costs would amount to £1,741.37 - which was considerably below the predicted costs of £3,982.69 which the Respondent would seek from the Applicants.

The Respondent's reply

11. In a reply dated 27th January 2020 the Respondent said that the quotation provided by CII was not on comparable terms, in that it was not development-wide, nor based upon the works specification or scope of work relevant to the block. Nor did it include anything other than the cost of the windows fitted to the flat. There were no labour fitting costs, no contingency nor surveyor/managerial costs. Finally, it was from one of the Trustees for the lessee, and so could not reasonably be regarded as independent.

Relevant Law

12. The relevant law is set out in appendix A, attached hereto.

Findings

13. Perhaps it would helpful to observe that there was no dispute between the parties that the windows relating to the property are not demised to ("owned by") the Applicants, nor that the windows/doors in the block of flats required replacing, nor that replacing timber with UPVC was a suitable material. Nor was there a dispute between the parties as to the Respondent's compliance with the consultation requirements of the 1985 Act.

14. The issues boil down to (i) understanding and interpreting the lease, and (ii) reasonableness of the costs.

15. The lease governs the relationship between landlord and tenant, which sets out what is demised ("owned") by the lessee or retained by the landlord, who has responsibilities to maintain what, and who has responsibilities to pay for what items.

16. The starting point is the definition of property, called "the flat", which is defined in part one of the First Schedule, and which provides that "the flat comprises all the rooms on the ground/1st floor of the block together with the garden area edged red on the plan" and (clause 2) the flat includes "(i) the internal plasterboard coverings and plasterwork of the walls bounding the flat (but *not the doors and door frames and the windows in the window frames fitted in such walls*)". It specifically excludes from the flat "(c) the windows and window frames (other than the glass therein"). I have highlighted in italics the relevant part of the lease, from which it is clear that neither the windows/window frames/doors/door frames are demised to ("owned by") the Applicants. This answers the first question asked by the Applicants in the application, by making it clear that it is the lessor who owns the windows and doors (and the frames in which they sit) save the glass, which is within the definition of the flat by Part 1 (2)(c) of the First Schedule, and so is owned by the Applicants.

17. As to maintenance obligations, the Respondent company, covenanted by clause 4.1 to carry out repairs and provide the services specified in the fifth schedule, which includes by clause 1 (b) an obligation "*to keep the* interior exterior walls and ceilings and floors of the block and *the whole of the structure* roof foundations and main drains boundary walls and fences of the block (but excluding such parts thereof as are included in the flat by virtue of the definition contained in part one of the first schedule and the current corresponding parts or other flats in the block") *in good repair and condition*. I have highlighted the relevant parts of the lease in italics and by underlining. The lease reserves the maintenance obligations of the windows/doors/ frames to the lessor – but not the glass in them. However, the lessee is (by Clause 4 (a) Third Schedule) not allowed to do anything ("*interfere*") with the outside surfaces of the window; this means that the lessee is prohibited from replacing the glass. On the face of it, there is a lacuna in the lease: by including the glass as within the definition of the flat, but prohibiting the lessee from touching/replacing/otherwise dealing with it, whilst at the same time excluding from the lessor's maintenance obligations the obligation to replace the glass whilst requiring it to replace the windows/frames/ doors. The only way of making any sense of this aspect of the lease is to construe it by

interpreting it as follows: the lessor has an obligation to maintain and keep in repair the structure – including windows/doors and their frames – and when doing so, this will include glass in the windows and doors. Otherwise, it falls to the lessee to simply now damage them. This answers Q 3 and 4.

18. The lease also provides who has to pay to discharge these maintenance obligations. By clause 3.2 the lessee has to pay in each maintenance year a service charge amounting to two equal instalments, in advance on the half yearly days. By clause 1.7 of the lease this shall be a proportion of 1/4 of the aggregate annual maintenance for the *whole block* for that maintenance year. This provision is important, because it makes clear that although the lessee does not own ("is demised to") the windows/doors/frames, there is an obligation to pay to maintain them. Further, I have highlighted *"the whole block"* to emphasise that it is not a question of the lessee paying for only that part of the block in which their own property sits. In the same way that every lessee in a block benefits from a wind/watertight roof, irrespective of how far away from the roof the property sits, the same is good for windows and doors, the frames in which they sit, and the glass making it water-tight. This answers the second question asked in the application, as to who has to pay for the replacement of the windows/frames/glass/doors. This answers Q 2, 5 and 6.

19. The final point raised by the Applicants - not in the application form, but in the letter dated 18th December 2019 - is whether or not the service charges which will be incurred as a result of these works, were reasonably incurred and so payable.

20.The first point to make is that the Applicants have provided only one quote, from CII Design Ltd, dated 18 November 2019, which provides a supply-only cost for 5 windows and their frames. It does not provide a quotation for supply *and fit* windows and doors (and frames). Significantly the quote does not cover supply and fit of *the whole block*, together with associated surveying and managing costs, nor disposal costs. It is not clear whether or not scaffolding costs or other costs were incurred for working at heights, but these are clearly not included within the applicants quotation. Further it is not clear what guarantees are offered by the manufacturers who provided quote to CII design and for how long. Further, the cost model advanced by the Applicants was dependent on fitting in-house, within the family, and so not likely to be charged at a commercial rate.

21. It is apparent from the consultation documents disclosed, that the spread of quotes was from £44,000 down to £29,000, and the Applicants had fairly acknowledged in their correspondence dated 18th December 2019, that the Respondent had elected to proceed with the company giving the lowest quote. It is not apparent from the consultation documents that the Applicants' family elected at that stage to provide a quotation to compete with that which was offered by independent contractors, and there is no like-for-like quotation provided by the Applicants. Most significantly of all is the point already observed, namely that the quote by CII design relates to 5 windows and not the block. That being so it does not materially assist or inform the tribunal as to the reasonableness of costs which will be incurred.

22. Having considered the terms of the lease, the totality of the evidence filed and arguments made by both parties, I find that the Respondent was liable under the terms of the lease to undertake maintenance of this type to the block, and that whilst the Applicants do not own ("demised") the windows/doors/frames relating to the property,

the Applicants have an obligation to contribute to the service charges incurred in maintaining the block. Further, that the Respondents have complied with the consultation requirements, and that the costs which will be incurred in the work were reasonably incurred and so are payable as a service charge. That being so, I find that the Applicants are liable to discharge service charges incurred on these works and in the sum predicted.

23. As to payment of the fees associated with this application and incurred by the Applicants, they naturally fall to the Applicants to meet them, having been unsuccessful on this application.

24. Further, as to costs incurred by the Respondent in responding to this application, and which might be added to the service charge account, I refuse to make an order under section 20 C of the 1985 act. This is because not only was the application misguided and unsuccessful, but as the Respondent had taken a reasonable stance in their case summary - of setting out fully the terms of the lease and the case law, provided all documentation - and inviting (at paragraph 41) the Applicants to withdraw the application. That being so it would not be just and equitable to deny the Respondent its costs caused by or occasioned by responding to this application.

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Judge J. Oxlade

4th February 2020

Appendix A

The 1985 Act (as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002) provides as follows:

Section 18

"(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling house as part of or in addition to the rent –

(a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or in the landlord's cost of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.

(3) For this purpose

(a) costs include overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period.

Section 19

(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 they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before a court or LVT or first tier Tribunal…are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person….

(2)….

(3))The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether it costs were incurred for service, repairs, maintenance, improvements, insurance, or management of any specified description, a service charges 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.

