FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CG/LSC/2019/0025**
Property	**:**	**50 Storthwoood Court, Storth Lane, Ranmoor, Sheffield, S10 3HP**
Applicant	**:**	**Mr Mark Wallis**
Representative	**:**	**In person**
Respondent	**:**	**Storthwood Housing Management Company Limited**
Representative	**:**	**Browne Jacobson Solicitors Mr Cullen-Counsel**
Type of Application	**:**	**Section 27A Landlord and Tenant Act 1985 – Service charges**
Tribunal Members	**:**	**Tribunal Judge J.E.Oliver Tribunal Member S.A.Kendall**
Date of Determination	**:**	**27th January 2020**
Date of Decision	**:**	**4th February 2020**

DECISION

Decision

1. The Tribunal finds the Respondent did comply with the requirements of Section 20 of the Landlord & Tenant Act 1985 when carrying out qualifying works at the development known as Storthwood Court, Sheffield.

2. The Applicant is liable to pay the sum of £7268.66, being the disputed amount for qualifying works.

3. No order is made pursuant to Section 20C of the Landlord & tenant Act 1985.

Background

4. This is an application by Mark Wallis ("the Applicant") for a determination of his liability to pay and the reasonableness of services charges pursuant to Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act").

5. The sum due by the Applicant for the major works is £7,268.66.for the year 2019 in respect of 50 Storthwood Court, Ranmoor, Sheffield ("the Property"). The Applicant does not seek to challenge the reasonableness of the amount charged, but whether the Respondent complied with Section 20 of the 1985 Act in respect of the consultation requirements.

6. The Lease for the Property is dated the 30th June 1982 and made between the Respondent (1) and Rosemary Derby (2) ("the Lease").

7. The Applicant seeks an order pursuant to Section 20C of the 1985 Act to prevent the Respondent from recovering its costs of the proceedings in the service charge.

8. The Respondent to the application is Storthwood Housing Management Co Ltd ("the Respondent"). The managing agents appointment by the Respondent is Omnia estates ("Omnia").

9. The Tribunal issued directions on 17th April 2019, providing for the filing of statements, bundles and directed for the application to be determined without a hearing. The parties filed their respective statements. The Respondent requested a hearing, to which the Applicant objected. A review was carried out by Tribunal Judge Holbrook who determined a hearing would be necessary given it had been requested by the Respondent.

10. The application was listed for a hearing on 27th January 2020. The Applicant did not attend and was not represented. Mr Cullen, Counsel represented the Respondent.

Inspection

11. The Tribunal undertook an external inspection of the Storthwood Court development in the presence of Mr Cullen, Counsel and Mr Harrison of Omnia on behalf of the Respondent. The Tribunal had the opportunity to view the work carried out under the major works scheme. This included new roofs, capping to the buttresses on the three blocks forming the development, the repointing of the gable end of one block and patch pointing elsewhere. Mr Harrison pointed out two buttresses where the capping had not been completed, but this was to be dealt with. A new roof access system had also been installed to prevent unauthorised access to the roofs.

The Law

12. Section 27A(1) of the 1985 Act provides:

"An application may be made to the appropriate 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.

13. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

14. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It means:

… an amount payable by a tenant of a dwelling as part of or in addition to the rent–

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

15. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

16. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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 for which the service charge is payable

17. When considering the reasonableness and payability of any service charge the Tribunal must also consider whether all statutory requirements have been fulfilled. This is in respect of any "qualifying works".

18. Section 20 of the Act provides:

(1) *`Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7)(or both) unless the consultation requirements have been either-*

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount

19. The Service Charge (Consultation Requirements) (England) Regulations 2003 specify the amount applying to Section 20 qualifying works as follows:

6. For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

20. In the event the requirements of Section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented then an application can be made to a tribunal pursuant to section 20ZA of the Act.

21. Section 20ZA of the Act provides

> (1) *Where an application is made to a tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works, or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements*

Submissions

22. In his written representations, the Applicant advised he had been a tenant of the Property until 19th September 2018, when he completed his purchase of the same. His purchase was registered at HM Land Registry on 7th December 2018.

23. The Stage 1 letter for the planned major works at the development was issued on 5th April 2018. This was sent to the then owner of the Property, Sharon Marriott-Lodge. The Applicant stated further information was issued in April and an EGM held by the Storthwood Management Co Ltd on 1st May 2018. He did not receive any of the further information, nor was he invited to the EGM. He presumed this was again sent to Sharon Marriott Lodge.

24. The Applicant stated that, following the completion of his purchase on 19th September 2018, he advised the management company of the exchange of contracts of his purchase on 15th September. He also contacted Omnia, the company appointed to manage the development, of his purchase on 24th September 2018.

25. On 5th December 2018, the Stage 2 letter was issued, but was not received by the Applicant. The Applicant again assumed this was sent to Sharon Marriott-Lodge.

26. The Applicant argued he was not properly consulted regarding the major works. He should have been served with the Stage 2 letter, having completed his purchase on the 19th September 2018. He objected to the cost of the major work, upon the basis it had been wrongly apportioned between the properties within the development. He submitted:

> *"I would strongly have objected to there being a variance of the service charge based on whether the property was a 1 or 2 bedroom. I base my objection on the premise that each property will benefit from the Section 20 works in an identical manner; being a 2 bedroomed property does not mean this type of property benefits more. I think it is also worth noting that in terms of the make-up of Storthwood Court Management Ltd, I understand more Directors are in 1 bedroomed properties."*

27. The Applicant states the Respondent had excused their failure to properly consult him by saying they could not disclose any information until he became the legal owner, since to do otherwise, would breach the GDPR legislation.

28. The Applicant provided copies of correspondence with his conveyancing solicitors, showing he had made a formal complaint in respect of their services.

29. The Applicant submitted that since the Section 20 consultation was not correctly carried out, his liability for the cost of the major works should be limited to the sum of £250.

30. At the hearing, Mr Cullen argued the Section 20 consultation had been properly undertaken. The Stage 1 letter was correctly sent to Sharon Marriott-Lodge, given she was the legal owner at that date. The Applicant was aware of the major works since a copy of the letter had been disclosed in the papers and a copy sent to him by his solicitor.

31. The Stage 2 letter had not been sent to the Applicant, since he did not become the legal owner of the Property until his purchase was registered at HM Land Registry on 7th December 2018. Mr Cullen advised Omnia did not receive formal notification of the Applicant's purchase until January 2019.

32. On 11th February 2019 Omnia sent copies of the Stage 2 consultation to the Applicant. Mr Cullen conceded this was a point of dispute with the Applicant who denied having received that letter.

33. The Respondent made the demand for the payment of £7268 on 26th February 2019.

34. On 4th April 2019 Omnia sent a further letter to the Applicant noting his objection to the payment of the service charge and his belief he had not been properly consulted regarding the major works. The letter enclosed referred to the Stage 2 notices that had been enclosed in the letter dated 11th February 2019 and invited the Applicant to make comments in respect of the same, since no contract for the work had been signed and further comments could be considered. The Applicant did not respond to this but issued the current application on 8th April 2019.

35. Mr Cullen submitted the Respondent had no duty to consult the Applicant regarding the major works until he became the legal owner on 7th December 2018. Until that date he had only had a beneficial interest in the property from 19th September 2018. The Stage 1 and 2 letters had been correctly issued to Sharon Marriott-Lodge.

36. With regard to the Applicant's submissions that the service charge had been incorrectly apportioned between the 1 and 2 bedroomed properties, this was incorrect. The Applicant had been charged the proportion of the service charge as set out in his Lease at 1.92 %.

37. Mr Cullen submitted that should the Tribunal find the Applicant had not been consulted as required by Section 20 of the 1985 Act, then he sought an order for the consultation requirements to be dispensed with pursuant to Section 20ZA of the 1985 Act. Such an order would not prejudice the Applicant.

Determination

38. The determining factor in this matter is whether the Applicant should have been consulted regarding the major works, after the completion of his purchase on 19th September 2018. If he should, then the Section 20 consultation was not correctly carried out and his contribution to the cost of the major works is limited to £250. This is subject to any order made pursuant to Section 20ZA.

39. Section 20 requires any consultation to be undertaken with the tenant of a property. The Landlord, or its representatives, cannot know who a tenant is, until formally notified of the same. Here, this was not done until January 2019, The Tribunal notes the Applicant notified the directors of the Respondent once contracts had been exchanged. Further he notified Omnia of his purchase when complaining about a leak in a ceiling at the Property on 24th September 2018.

40. Paragraph 10(f) of the Fourth Schedule of the Lease provides for any assignment to be notified to the Respondent "*in writing*" within 21 days of any assignment "*after the execution or coming into effect thereof*". The notification by the Applicant does not therefore comply with the terms of the Lease as a means of notifying the Respondent of the assignment. The Respondent was therefore not obliged to amend their records to note the Applicant's assignment until January 2019.

41. The Applicant argues he became the owner of the Property on the completion of his purchase on 19th September 2018. Consequently, he should have been served with the Stage 2 documents as required by Section 20. The Respondent states he did not become the legal owner until the completion of the registration of his purchase on 7th December 2018. Therefore, there was no obligation to serve any consultation documents until after that date. In those circumstances, the Stage 2 letters were sent out on 5th December, before the Applicant became the legal owner. The Respondent has therefore complied with the requirements of Section 20. The Tribunal accepts the Respondent's point upon this issue. A purchaser does not become the legal owner of a property until an assignment or transfer is registered. Until that time, the buyer is the beneficial owner and the seller holds the Property upon a bare trust. This principle has been confirmed in ***Baker v Craggs [2018] EWCA Civ 1126.***

42. The Tribunal therefore finds the Respondent did properly carry out the consultation for the major works as required by Section 20 of the 1985 Act. It could not serve the Respondent with the Stage 1 or Stage 2 letters, since at the relevant dates he was not the legal owner of the Property. The Respondent was not been notified of the change in ownership, as required under the terms of the Lease, until January 2019. The Tribunal therefore accepts it could not notify the Applicant of the major works until this point.

43. There is a dispute between the parties whether the Applicant received the further letter of the 11th February 2019, when Omnia sent out a copy of the Stage 2 letter. However, Omnia sent out as further letter regarding the major works on the 4th April 2019, referencing the letter of 11th February. The Applicant could, but did not query this letter and its reference to the letter of 11th February. In any event the later letter invited the Applicant to make comments upon the issue of the major works, since no contract had been awarded. The Applicant chose not to do this, but issued his application to the Tribunal.

44. The Applicant has made reference to GDPR and the services provided by his solicitors. These are not matters within the Tribunal's jurisdiction.

45. The Tribunal notes the Applicant's comments upon his share of the works. Mr Cullen confirmed the share charged was not based upon the number of bedrooms in each property. The Applicant has been charged 1.92%, being the share determined in the Lease.

46. The Tribunal does not make an order pursuant to Section 20C of the 1985 Act given the Applicant has not been successful in his application.

47. The Tribunal does not make any order pursuant to Section 20ZA of the 1985 Act. This is not required, given the Tribunal's determination.

J.E.Oliver
Tribunal Judge
4th February 2020