



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

Case Reference : CHI/00MR/LIS/2019/0075

Property : 54D Arundel Street, Portsmouth PO1 1NL

Applicant : Grey GR Ltd Partnership

Representative : J B Leitch Ltd

Respondents : Mr Reeder

Representatives :

Type of Application : Service Charge section 27A Landlord and
Tenant Act 1985

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of hearing : On the papers

Date of Decision : 5 August 2020

DECISION and FURTHER DIRECTIONS

The Tribunal determines that the sum of £2,000 shall be set off against the Respondent's service charge liability for 2018.

The Tribunal declines to make an Order under Section 20C of the Landlord and Tenant Act 1985

Note: Further Directions have been made at paragraphs 70&71

Background

1. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges for 2018 in the sum of £678,993.85 are payable.
2. Mr Reeder of Flat 54D raised separate issues from the leaseholder group which involved questions of set off in respect of alleged disrepair by the freeholder. In this regard the Tribunal has disconnected Mr Reeder's case from the principal application and issued directions under a separate case number.
3. On 18 November 2019 the Tribunal directed Mr Reeder to provide the Applicant and the Tribunal with precise details of the claim for set off in respect of the service charges for 2018 and 2019 based on the alleged breach of repairing covenant by the landlord. Mr Reeder was required to quantify the amount claimed which was to be supported by expert evidence. On receipt of the Claim for Set Off the Tribunal indicated it would issue further directions which may include an offer of mediation.
4. The Tribunal did not receive Mr Reeder's Claim for set off by the said date of 20 December 2019. The Applicant's solicitors supplied a hard copy of Mr Reeder's submissions which were apparently sent to the Tribunal by email on 29 November 2019.
5. Judge Tildesley reviewed the documents sent, and in his view, they did not comply with the requirements as set out in paragraph 3 above.
6. On 29 January 2020 the Tribunal notified the parties that it was minded to bar Mr Reeder from presenting a case for set off in respect of the service charge application made by the Applicant. The Tribunal advised that if it made such an Order it did not prevent Mr Reeder from pursuing a claim through the Courts which potentially is the more appropriate forum for dealing with alleged breaches of repairing covenant by the landlord.
7. The Tribunal received representations from the Applicant dated 12 February 2020 and from Mr Reeder dated 13 February 2020 on the basis of which Judge Tildesley decided not to bar Mr Reeder from taking a further part in the proceedings but pointed out that the Tribunal could only consider a claim for set off in respect of the service charge for the year ended 31 December 2018 which is the subject of the application. The Tribunal has no jurisdiction to deal with a set off for future service charges which are not before it. The Tribunal also has no power to order specific performance to put matters right which appears to be another part of Mr Reeder's claim when he states that he wishes for the remedial work to be carried out on the leak source.

8. On 18 March 2020 the Tribunal issued directions for the dispute to be dealt with on the papers unless an objection was received and on 29 April 2020 further directions were issued setting out a timetable for the exchange of cases leading to the preparation of a hearing bundle. The Applicant was to respond to Mr Reeder's statement of 13 February 2020 following which Mr Reeder could respond.
9. No objection to hearing the application on the papers has been received and it is therefore determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013.
10. An electronic bundle consisting of 608 pages has now been received and it is upon this that the following determination is made.
11. Given the limited scope of Mr Reeder's objection to the application a substantial part of the bundle is not relevant to the application and, whilst they have been read will not be referred to in this determination. Page numbers of documents referred to in the decision will be shown as [x]

Mr Reeder's submissions of 13 February 2020

12. In Mr Reeder's response to the barring application [206] he set out the chronology in respect of the roof leak affecting his flat together with supporting attachments.
13. Mr Reeder's statement of 13 February [233] said that;
 - He was unable to afford an Expert in the absence of the ability to recover costs from the other side
 - He referred to the Earl Kendrick Condition report as expert evidence
 - A quotation for £7,500 had been provided in respect of the costs of repair [318 & 431]
 - That paras 14 to 16 of his statement (below) detailed his set off claim
 - His claim for set off was the £2,601.95 paid in full for 2018 and 71.5% of the 2019 service charge yet to be issued
14. In his statement of case [234] Mr Reeder explains that he first reported the roof leak to Residents Quarter on 29 December 2017. An inspection was carried out by Inspired Property Management and Earl Kendrick Associates to whom he explained that the problem was a hole cut in the wall when constructing the fourth floor development. This was not filled in and instead a temporary

flat roof was installed with defective flashing leaving a water ingress route.

15. Further leaks were reported and as no one had stopped them, in August 2018 he went on to the roof to fix the blocked guttering himself. On 25 October 2018 a further leak was reported, the result of damage caused by building work for the fire alarm. Whilst this was fixed nothing has been done about the flat roof leaking into his flat through the hole in his wall which remains.
16. In January 2019 he had the cavity wall filled with expanding foam to provide a temporary fix.
17. IPM reported his flat to Portsmouth City Council (PCC) who served a prohibition order on 22 March 2019, but which was quashed on 19 September 2019. He has been unable to live in his flat in 2018 and 2019 and as such should not be liable for any charges.
18. In paragraphs 14 to 16 of his statement in respect of set off Mr Reeder states that;
 - He filed an appeal with the VTS which was registered on 18 November 2019
 - PCC have applied a 40% discount for a property under repair and full exemption for the prohibition period. The VTS appeal is still active as it is unfair to be liable for any charges when the property is uninhabitable
 - the same exemptions should apply to the service charge, He has paid £2,601.95 in 2018 and 2019 has not been issued
19. In support of his statement Mr Reeder appends a number of photographs showing water damage to the interior of his flat and damaged areas of roof some of which show standing water.
20. Earl Kendrick Associates Report refers to the leak in Flat 54D. [300 & 303]

The Applicant's Response

21. In the Applicant's response to the Respondent's submissions [319] reference is made to the omission of any reference to covenants contained in the lease or superior lease, no expert report and no email communications between the Respondent and the Applicant after 25 October 2018.
22. The Tribunal's directions of 18 November 2019 required precise details of the set off claim based on alleged breaches of repairing covenant to be provided and supported by expert evidence.

23. In this case the complicated layers of leasehold interest together with the roof development being carried on by a third party make establishing a breach of covenant and entitlement to damages difficult without legal representation and a surveyor.
24. The guidance provided by the case of *Daejan v Griffin [2014] UKUT 0206 (LC)* is that;
 - any claim for set off cannot exceed the landlord's claim for service charge and any excess must be brought before the Court not the Tribunal
 - damages will comprise any increase in the cost of remedial work due to the landlord's delay in carrying out the work and:
 - any sum which the tenant is entitled to receive in general damages for inconvenience or discomfort.....
25. The tenant must prove his claim by proving a breach of the landlord's repairing obligations and identifying and providing evidence for any loss.
26. Mr Reeder makes a number of comments regarding the roof leaks but does not refer to any clauses in the lease and does not explain how the landlord's repair obligations have been engaged.
27. He has not provided his own expert evidence which could have been obtained for about £800 + VAT.
28. Neither Earl Kendrick's Condition report dated 21 June 2018 or an invoice dated 12 February 2020 from BWC Developments Southern Ltd satisfy the requirements of expert evidence and cannot be relied upon.
29. With regard to quantum Mr Reeder refers to Points 14 through 16 of his statement (see para 18 above)
30. The Tribunal have ruled that the claim cannot include 2019 which leaves general damages for the flat being uninhabitable from 1 January 2018 to 19 September 2019 and special damages in respect of remedial work of £7,500.
31. Given that the Tribunal cannot set off an amount greater than the Respondent's liability for 2018 of £2,601.95 the issue for the Tribunal is whether that amount is extinguished by the claim for general and special damages.
32. The required evidence for proving general damages has not been provided with no indication of any loss of actual or potential rental income.

33. The Applicant cannot challenge the BWC quotation but the set off may only extinguish the service charge debt, not exceed it.
34. A witness statement dated 28 April 2020 from Christopher Peters of Inspire Property Management is included [333]. Mr Peters explains that although he has only been employed since 6 January 2020 he does have access to the relevant documents. Photographs are provided identifying the roof concerned together with a copy of the lease, the superior lease, 2018 service charge demand [414] and email correspondence.
35. He understands that Mr Reeder's case is not a challenge under Section 19 that the charges are unreasonable but that he has a set off that extinguishes his debt.
36. In the email exchange between Mr Gray and Mr Reeder Mr Reeder refers to having fixed the ongoing leak [336]. As such there was no basis for a claim of £7,500 set out in the BWC invoice or need for alternative quotations to be obtained.

The Respondent's Supplementary Reply

37. In Mr Reeder's reply dated 7 May 2020 [319] he refers to the following paragraphs in the Applicant's statement;
- (para 2) the Applicant's reference that the burden of proof is on them
 - (para 6) Clause 1.6 of the lease says, "the Service Charge" means a fair proportion of sums as the Landlord shall determine acting responsibly as shall be necessary to repair and maintain the Common Areas
 - (para 7) exhibit CP5 shows the issue still being reported on 19 September 2019
 - (paras 8-12) exhibit CR2 shows the cause of the water leak, the water ingress route was clear and documented by myself
 - (para 15) the Daejan v Griffin case is not identical
 - (para 17-19) I trust the Tribunal will use its discretion as it was set up for ordinary people and not to rely on Solicitors
 - (paras 20&21) (regarding the cost of an Expert report) "Equality of Arms" £1,000 is a lot of money when you do not have it
 - (paras 22-24 &26) the quotation is resubmitted as Bradley Willis-Chambers witness statement

- (para 27) (regarding the need for an expert report) Hilton Grey and Zoe Walheim were instructed to inspect the location but failed to do so.
- (para 34) (regarding the lack of evidence on rents) I purchased as my only home and lived in it until it became uninhabitable due to the water leak as corroborated by Portsmouth City Council
- (para 35) exhibit CR12 indicates the rental value of an equivalent flat at £450 pcm
- (para 36) he asks for the Service Charge to be extinguished due to the failure to deal with the leak

In referring to the witness statement of Christopher Peters [333]

- (1) Mr Peters hasn't contacted him.
- (3) the main roof of my flat is not the subject of this case.
- (6) I do not agree with the charges
- (8-10) this refers to a temporary fix and is irrelevant as it was in 2019.

38. At [428] is an offer letter in respect of 54E Arundel Street indicating a rent of £450 per month from 6 April 2020.

39. At [429] is a Witness Statement dated 2 May 2020 from Bradley Willis-Chambers of BWC Developments Southern Ltd giving a statement of truth and referring to exhibit BW1 [431] the quotation referred to in paragraph 13 above.

Applications under Section 20C and Para 5A Schedule 11

40. In his applications under Section 20C and Para 5A of Sch. 11 Mr Reeder states that he has paid his service charge and the landlord has not therefore incurred costs. He has repeatedly reported the leak; the landlord is using the Tribunal to avoid its contractual obligations and if this had been dealt with in the County Court no costs could have been recovered as the Pre-Action Protocol Practice Direction had not been complied with.

41. The Applicant sets out its response to Mr Reeder's applications from page 432. It is stated that the Tribunal must first satisfy itself that the lease permits the recovery of such costs [433] and refers to the various clauses under which legal fees may be included in the service charge.

42. It is said that it was reasonable to pursue an application to determine the reasonableness of the service charge given that it was likely that the costs would be disputed, and it was also reasonable to respond to the separate challenge raised by Mr Reeder.

Determination

43. The property of which this flat forms part has been the subject of a number of applications before the Tribunal. As the Applicant states, it has complicated layers of leasehold interests and a roof development carried out by another company.
44. In very simple terms Mr Reeder considers that his flat suffers water damage due to a hole in an external wall of the building, that it is the landlord's obligation to keep the wall in repair and that due to this he does not see why he should pay service charges when he has suffered a loss/inconvenience
45. The conduct of this application has not been assisted by Mr Reeder's failure to provide the independent expert evidence directed and to properly particularise his claim. I am mindful however that he is a litigant in person for which some allowance must be made. Following the guidance given by the Upper Tribunal decisions in *Birmingham City Council v Keddie*, *Regent Management Limited v Jones* and *Admiralty Park Management v Ojo* I will make my determination of the issues raised solely on the evidence submitted but in whatever manner that may be.
46. I also propose to follow the guidance given in the Upper Tribunal case of *Daejan v Griffin [2014] UKUT 0206 (LC)* although not necessarily in the same order as referred to at para 24 above. I propose first of all to see what evidence there is of any disrepair causing the water damage to Flat 54D, determine who has responsibility for making good any disrepair and then determine whether any losses have been suffered.
47. The many photographs appended to Mr Reeder's Witness Statement do show damage apparently caused by water ingress to the interior of a flat. Photographs at 248 to 251 show lying water next to a poorly fixed felt upstand identified as being to the temporary flat roof, the original roof beneath also with lying water and finally a hole in what is said to be the external wall with a section of internal blockwork and part of an RSJ in view. At [264] is a photo of a blocked hopper contained in an email dated 18 August 2018 referring to Mr Reeder's visit to clear the gutter above his flat. Further photos at [266] and [268] show a missing section of coping.
48. Mr Reeder relies on two reports which he refers to as "expert" that of Earl Kendrick Associates dated 21 June 2018 and Bradley Chambers of BWC Developments Southern Ltd dated 2 May 2020.

49. Whilst I accept the Applicant's contention that neither report satisfies the requirements of an expert report that of Earl Kendrick is at least independent. The report was commissioned by Inspired Property Management on behalf of the Applicant following their recent purchase and is described as a Condition Report.
50. The report follows inspections on 12 January and 26 February 2018. The report was not flattering, and a large number of recommendations were made to bring the property into repair and compliant with regulations.
51. Paragraph 5.3 [300] states *it has been reported that the roof is leaking to the projecting Flat 54D and that this is a second occurrence. The detailing for rainwater run-off from this area of the roof was seen from ground level to be poor and is resulting in staining and saturation of the exposed masonry.*
52. Paragraph 5.4.1 states *There are holes in the render and deterioration at the juncture with the Fire Escape stairs. Confirmation should be sought as to whether this is a snagging issue following damage by the Penthouse development.*
53. And at 5.7.2 in referring to 54's common parts; *To the tope(sic) landing an area of plaster has been hacked off the wall to allow rainwater release from the cavity following recent ingress.*
54. Mr Chambers witness statement dated 2 May 2020 contains no information other than that he is not acting under a conditional fee arrangement and refers to a quotation his company provided dated 12 February 2020. The quotation of £7,500 is said to include all materials and labour but is silent in respect of the VAT position. The works are described as "Flat roof incorrectly flashed, leaking on to the existing roof and rsj that goes through the hole that's been cut in the external wall of the stairwell. Giving a direct water ingress route into the cavity of 54d.: New lead flashing required; Making good around steel beams required; Weather sealing of stairwell wall required; Internal works to flat 54d to rectify.
55. **I am satisfied from the evidence presented that the interior of flat 54D has suffered water damage and the cause of that damage has been an ingress of water through the external fabric of the building.**
56. Turning now to the repairing obligations of the parties.
57. Mr Reeder holds his flat on a lease dated 16 September 2016 between himself and Prinset Limited for a term of 125 years from 1 January 2015 [345] containing the following;

- Superior Lease Means the Lease dated 23 December 2013 and made between Campoverde Limited (1) and Prinset Limited (2) [349]
- 1.2 “the Lessee” and “the Landlord” shall in the case of the Landlord where the contract admits also means the Superior Landlord and in the case of both the Landlord and Tenant. Where context admits their respective successors in title”
- 1.6 “the service charge” means a fair proportion of the total cost of the aggregate Annual Maintenance Provision for the Estate of each Maintenance Year which is payable by the Landlord to the Superior Landlord pursuant to the terms of the Superior Lease together with such additional sums as the Landlord shall determine acting responsibly as shall be necessary to repair and maintain the Common Areas falling within its demise under the Superior Lease.

58. The Superior Lease [380] is dated 23 December 2013, is between Campoverde Limited and Prinset Limited, comprises the third floor of Arundel House and contains the following;

1.1 “Building” The land at Arundel House

“Common Parts” the Building other than the Property and the Lettable Units

“Property” shall mean that part of the third floor of the Building known as Arundel House, 32-54 (evens)excluding (i) any of the main timbers or joists of the Building or any of the walls or partitions therein (whether internal or external)

6.1 The “Services” are:
cleaning, maintaining and repairing the exterior, structure, roof and foundations of the Building

6.2 The Landlord shall not be liable or responsible for any damage suffered by the Lesseethrough any defect in any fixture conduit lift staircase machinery or thing in or upon the Block or the Estate or any part thereof (including the Flat) or through the neglect fault or misconduct of any servant employed by the Landlord in connection with the Estate.

6.3 Subject to the Tenant paying the Service Charge, the Landlord shall:

6.3.1 To repair (and if necessary replace) the structural parts and maintain and decorate the exterior of the Building and the roof and foundations of the Building.

- 6.3.2 To maintain and decorate where necessary the Common Parts.
14. The Annual Rent and all other money due under this lease are to be paid by the Tenant or any guarantor (as the case may be) without deduction, counterclaim or set-off.
59. In construing the leases, it is clear that clause 6.3.1 of the superior lease places the obligation to repair the structure on the landlord a due proportion of the cost of which shall be borne by the lessee by way of service charge in accordance with clause 1.6 of the occupational lease.
60. I have then considered whether clauses 6.2 and 14 of the superior lease have any relevance and consider that they do not. 6.2 is clearly unenforceable and clause 14 is of no effect being subject to the Unfair Terms in Consumer Contracts Regulations 1999
61. Mr Peters refers to Mr Reeder indicating that he had “fixed the cause of the ongoing leak” [336] and as such could not see a basis for the claim. First of all, I am satisfied that Mr Reeder’s comments were in relation to the clearing of a blockage to the drainage to the temporary flat roof to which Earl Kendrick’s report refers and not the hole in the external brickwork.
62. I would not expect a responsible landlord to rely on the report of one of its lessees when determining whether the disrepair referred to in a professional condition report it had commissioned, and which had been the subject of much correspondence, had been dealt with.
- 63. I am satisfied therefore that the Applicant has breached its repairing obligations with regard to Flat 54D.**
64. Turning now to evidence of loss I am once again hindered by the paucity of the Respondent’s evidence. There appear to be two elements of the claim. A loss of potential rental value and the cost of repairs.
65. To support the first element there is an offer letter on a similar flat for a rental from 2020 at £450 per month. Even if it was accepted that the same rent applied to 54D in 2018 there will be costs such as management fees, voids and depreciation to deduct from the gross income to calculate the amount of lost profit that should be compensated.
66. In considering the claim for the cost of repairs it must be appreciated that this must relate to the cost of repairing the damage to Mr Reeder’s flat only. It cannot include the cost of repairs that are the responsibility of the landlord. The majority of the items in BWC’s quote of £7,500 are not in respect of repairs to Mr Reeder’s demise and, as it is not itemised there is no indication of the amount attributable to the flat.

67. Given that the maximum sum that I can determine as set off is the Respondent's liability for 2018 service charges of £2,601.95 it would be disproportionate for me to attempt a sophisticated calculation in assessing the amount of any loss from the evidence provided.
68. In respect of the loss of potential rental income I determine the loss at £1,500 and in respect of the repairs to the interior of Flat 54D £500 giving a **total set off of £2,000.00.**

Costs

Section 20C

69. Mr Reeder's submissions on this application are set out in paragraph 40 above. Contrary to his assertion however, the landlord will have incurred litigation costs in responding to his specific challenge and it is not accepted that the application to the Tribunal was to avoid its contractual obligations. I accept that, given the history of this building and the likelihood of challenges from lessees that it was reasonable for the landlord to seek to obtain the Tribunal's determination in respect of service charges. **I therefore refuse the application.**

Para 5A Schedule 11

The Applicant has not given an indication of any costs that it proposes to levy by way of an administration charge. I therefore reserve this part of my determination until I have received an itemised statement of costs and given the Respondent the opportunity to make submissions.

Further Directions

70. **Within 14 days of receipt** of this determination **the Applicant** will send to the Tribunal and to the Respondent an itemised statement of any costs that it proposes to levy as an administration charge.
71. **Within 14 days of receipt** of such a statement **Mr Reeder** may send a response to the Tribunal with a copy to the Applicant.

D Banfield FRICS
5 August 2020

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. 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.

2. 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.

3. 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.