



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

Case Reference : **CAM/OOKF/LIS/2022/0007**

Property : **237B Woodgrange Drive, Southend on Sea,**

Applicant : **Rahna Healey and Amanda Fenwick**

Representative : **Gateway Property Management Limited**

Respondent : **Geoffrey Clements and Patricia Gibson**

Representative : **In person**

Type of Application : **Determination as to reasonableness and
payability of service charges.**

Tribunal Members : **Judge Shepherd**

**Date and venue of : :22nd November 2022 at Southend Magistrates Court
Hearing**

Date of Decision : 9th December 2022

DECISION

1. This is case started that life in the County Court in a claim for service charge arrears brought by the Applicants, Rahna Healey and Amanda Fenwick (“The Applicants”), represented by Gateway Property Management Limited against the Respondents, Geoffrey Clements and Patricia Gibson (“ The Respondents”) of 237B Woodgrange Drive, Southend on sea, Essex SS12SG (“The premises”).
2. The claim was brought originally on the 10th of February 2022. The sum sought was £7120.67. The Respondents filed a defence on the 4th of April 2022. In the defence they stated that they disputed the section 20 process.
 - They said that they'd been denied the possibility of doing a survey.
 - They said despite a later review two of the contractors including the winning one still did not assess the internal areas.
 - They thought that their observations were not treated with due regard.
 - They said that the Applicants’ observations such as puddles of water, noise and polish were less than plausible.
 - They said that Gateway had failed to supply an independent survey report to them.
 - They said that Gateway and the surveyor were not independent.
 - They said Gateway had made a false allegation against them which was followed by a threat of retrospective charges directly connected to the section 20 project. They said that they offered Gateway the opportunity to apologise but they failed to do so.
 - They said that the Applicants had pre -empted the outcome of the process by contacting the largest freeholder of the building two months prior to the second 30 day consultation.
 - They said that they had six property managers since the section 20 notice was issued.
 - They said that they didn't receive a hard copy of one estimate until halfway through the second consultation.
 - They said that the winning contractor did not provide their tender until at least the 13th of May beyond the deadline set by Gateway.

- They said that there are significant discrepancies contained within all three estimates in one example a provisional sum had increased from £1000 to £1500 because the surveyor believed this was to be increased.
 - They said that no clear inspection of the higher level areas had taken place.
 - They said that of the three contractors commissioned by Gateway only Smith O Sullivan had access to the internal areas.
3. The Tribunal became involved when the matter was transferred by the County Court to determine the reasonableness of the service charges claimed on the 7th of July 2022. Thereafter directions were issued by the Tribunal on the 23rd of August 2022.
 4. In their statement of case the Applicants stated that the Respondents were the leasehold owners of the premises. The Applicants instructed Gateway Property Management to manage the building on behalf of them from 9th August 2017. They went through the lease provisions. These appeared to be standard provisions and included a requirement for the lessees to pay the cost for expenses of cleaning decorating maintaining repairing renewing lighting and if necessary heating the entrance halls stairways passages and other parts of the building of which the demised premises form part etc as well as the expenses of maintaining, repairing re decorating and renewing the retained parts as well as the cost of decorating the exterior of the block of shops and flats and more frequently than once in every three years.
 5. The Applicants went through the consultation requirements under section 20. They stated that on the 25th January 2018 Gateway wrote to the Respondents with a notice of intention to carry out works. They stated that the notice was in accordance with the 2003 regulations following on from which the notice of intention was served. Gateway sourced estimates and proposals for the works. These included estimates from Classic Deco at £15,300. The other two estimates were substantially more. A notice of estimates was sent to the Respondents on the 31st May 2019 and a second notice on the 12th of March 2021. The second notice was sent on the 12th of March 2021 following observations received from the Respondents to condense some elements of the specification of works. Estimates were made available for inspection. Classic Decor were the chosen contractors. The Applicants suggested that all of the service charges were demanded in accordance with the lease and it was not contended otherwise by the Respondents.
 6. The total cost of the major works is £14,150 pounds. Added to that is the surveyor's fee of £1698 including VAT and the property management fee of £849. The proportion owed by the Respondents was 50% of the internals which is £1500 and 33.33% of the externals which is £4565.67. A total charge of £6065.67 is being made.

7. The Applicants were anxious to have the reasonableness of the service charges determined so that they could get on with the work.
8. In their witness statement dated 9th October 2022 the Respondents repeated the principal arguments made in their defence which are rehearsed at paragraph 2 above.

The hearing

9. The Applicants were represented by Neil Harmsworth and Cydney Owen of Gateway. Mr Clements represented the Respondents. Mr Clements said that the Applicants had not been candid about the s.20 process. He said they hadn't been able to access the survey.
10. Mr Harmsworth took me through the s.20 process and how it had been applied in the present case. He said that originally it had been decided to do the internal work alone but later the externals were added back in. Mr Clements confirmed that he had received all of the notices. Mr Harmsworth agreed that the contractors had not inspected internally but they had seen photos. The site survey had been carried out by Anne Johnston and this had fed into the works. He said that Classic Décor should be able to keep the price quoted if they could instruct them as soon as possible.
11. Mr Clements said the lino did not need to be replaced with carpet within the block as it was not worn at all and there was no fall or trip hazard.

Determination

12. I was satisfied with the evidence given by Mr Harmsworth in relation to the s.20 consultation process. Mr Harmsworth confirmed he had received all of the relevant notices and the Applicants had considered the Respondents' concerns. The decision to replace the lino with carpet was open to the landlord as the freeholder of the building. There was no conflict between Gateway and the surveyor. The fact that the winning contractor did not inspect internally was of no effect as they saw photographs and this was a standard decorating job. The Respondents saw the survey carried out. None of the other alleged discrepancies in the s.20 process constituted valid challenges. The sum claimed by the Applicants is all due.

13. I refuse to exercise my discretion pursuant to s.20C of the Landlord and Tenant Act 1985. This was a misjudged challenge by the Respondents.

Judge Shepherd

9th December 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.