FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference : CAM/38UB/LSC/2023/0020

Property : Flat 7, The Officers Mess, Orchard Lane,Caversfield, Bicester, OX278AH

Applicant : Vincent Ortet

Representative : In person

Respondents : The Garden Quarter (Caversfield) Management Co Ltd

Representative : Kieran Cutler

Type of application :Payability and reasonableness of service charges

Tribunal:

Judge Shepherd

Michael Ayres FRICS

Dates of hearing: 15th February and 10th May 2024

DECISION

1. The Applicant in this case is the leaseholder of premises at 7 The Officers Mess, Orchard Lane, Caversfield Bicester, OX278AH ("The premises"). The

freeholders are Adriatic Land 7 Limited and the manging agents are The Garden Quarter (Caversfield) Management Co Ltd ("The Respondents"). Their representative in this case was Kieran Cutler.

2. In the application the Applicant challenged a demand for major works relating to external decoration which principally involved the painting of window frames. The cost of the work was £3392.16. The work was carried out in 2023 and attempted remedial works were carried out recently. At the first hearing on 15th February 2024 the Tribunal were told that contractors were to carry out works remedying perceived defects. At the hearing on 10th May 2024 the Tribunal received a report about the quality of these works.

3. The Applicant challenged the consultation process and the quality of the major works.

4. A hearing took place on 15th February 2024 after the Tribunal had inspected the works at the premises.

The law

5. The Landlord and Tenant Act 1985,s.19 states the following:

19.— Limitation of service charges: reasonableness.

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.*

   ....

6. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal]2 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to [the appropriate tribunal]2 for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Consultation

7. Part 2 of the Service charge (Consultation Requirements) (England) Regulations (SI2003/1987) states the following:

1.—

(1) The landlord shall give notice in writing of his intention to carry out qualifying works–

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall–

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify–

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

2.—

(1) Where a notice under paragraph 1 specifies a place and hours for inspection–

(a) the place and hours so specified must be reasonable; and

(b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

.....

4.—

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate–

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate–

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) <u>The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)–</u>

<u>(a) obtain estimates for the carrying out of the proposed works;</u>

<u>(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out–</u>

<u>(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and</u>

<u>(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and</u>

<u>(c) make all of the estimates available for inspection.</u>

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord–

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by–

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)–

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify–

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Alleged failure to consult properly

8. In the present case the Applicant argued that the Respondent was compelled to provide to the leaseholders the estimates obtained. This is not the case. The Respondents were required to provide a summary of the estimates. This was done. At the hearing the Applicant expanded his argument to say that although the estimates were made available for inspection this was at the managing agent's office at Hills Road in Cambridge which was not reasonable.

9. The Respondent's representative Mr Cutler said that the Applicant had communicated with the managing agents after the statement of estimates was supplied but had not asked for the estimates to be sent to him. The consultation ended on 17th March 2023 and it was only on 27th March 2023 that the estimates were requested.

10. Having considered the matter we determine that the consultation carried out complied with the regulations. The Applicant could have gone to Cambridge to view the estimates, alternatively he could have asked for the estimates during the consultation period. In the event he did neither.

Quality of the works

11. The Tribunal's impression was that the works were of a poor quality. Sealant had not been replaced, there were drip marks and windows were painted shut. These are all elementary mistakes by a decorating contractor. The Applicant had pointed out the defects but the work was not improved. The hearing was adjourned to give the contractors the opportunity of remedying the poor works. We saw photographs at the adjourned hearing which showed little had changed. Some windows could still not be opened, there were paint smudges evident and there was some red paint on the walls.

12. We remain unimpressed by the works. The Respondents should have got another contractor involved instead of using the original contractor Bagnells who had clearly failed. We allow £1000 for the work.

S20C and fees

13. We exercise our discretion and make an order under s.20C Landlord and Tenant Act 1985. This prevents the Respondents from adding the cost of the hearing to the service charge. We also order the Respondent to pay the Applicant his application and hearing fee – a total of £300.

Judge Shepherd

20th June 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).