

9073



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

Case Reference : LON/00AJ/LSC/2013/0524

Property : 10 Sedgefield Court, Newmarket
Avenue, Northolt, UB5 4EZ

Applicant : London Borough of Ealing

Representative : Mr Harris, solicitor
Mr Maguire, Rechargeable Works
Manager

Respondent : Mr Darren Connage

Representative : In person

Type of Application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Judge Samupfonda
Mr A Manson FRICS
Mr J Francis QPM

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 8 October 2013

DECISION

Decisions of the tribunal

The tribunal determines that the sum of £2,324.22 is payable by the Respondent in respect of the window replacement works carried out in 2010.

- (1) The tribunal makes the determination as set out in this Decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the costs incurred for window replacement works carried out in 2010 as part of the major works programme.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Mr D Harris, solicitor and Mr C Maguire, Rechargeable Works Manager represented the Applicant at the hearing. The Respondent appeared in person. His friend Ms S Rosha accompanied him.

The background

4. The property that is the subject of this application is a purpose built maisonette situated on the ground and first floors of a four-storey block of 20 similar units built circa 1970s.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary given the nature of the application.
6. The Respondent holds a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability of service charges for the major works relating to the window replacement.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

9. The tribunal determines that the Respondent is liable to contribute towards the costs incurred in respect of the window replacement and the amount payable is £2,324.22

Reasons for the tribunal's decision

10. The tribunal was satisfied that the Applicant had complied with the obligation under section 20 of the Act to serve Notice of the Intent to carry out major works. The Notice was dated 26 May 2009. The proposed works as set out in that Notice included Window replacement. Accompanying that Notice was an explanatory note that included a document "Answers to frequently asked questions." This addressed a number of issues and in particular circumstances where lessees have already replaced their windows. In such circumstance it stated, " You will still be expected to pay your actual proportion of costs. This will include your share of the cost of replacing any windows across the block.
11. The Respondent's obligation to contribute towards the service charge is contained in clause 2(iii) (a) of the Lease. This provides that he is liable to contribute towards the costs incurred by the Landlord in carrying out the obligations or functions contained in or referred to in this clause and clause 4 and in the covenants set out in the Eight schedule. Clause 1 of the Eight schedule specifies that the landlord is to "keep the reserved property in good and substantial repair and condition and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts." Part 1 of the Third schedule sets out what is meant by the reserved property and section (a) states that this includes "the walls, window frames therein or the glass in such frames." Therefore the windows are not part of the premises demised to the Respondent.
12. The Respondent had argued that he was not liable to contribute towards the cost of replacing the windows on the basis that the service charge bill included the cost of replacing the windows to his flat. The

original estimate attached to the s20 Notice that he acknowledged receiving included the cost of replacing the windows to his flat. However, the cost was excluded in the final overall account because it had been deemed unnecessary to replace his windows as he had replaced them himself 6 years previously when he purchased the flat. Although the Respondent had corresponded at length with the Applicant, it appeared to the tribunal that he had not appreciated until the day of the hearing that the amount that he was being asked to pay related to his liability to contribute to the block costs as a service charge payer. He had argued that as he had been given verbal consent to install his own windows, he should not be liable to contribute towards the cost of window replacement given that his windows were not replaced, he had replaced them himself and he had not received any benefit from the window renewal programme.

13. In response Mr Harris on behalf of the Applicant drew the tribunal's attention to a number of authorities; *Twyman v Charrington* [1994] 1 EGLR 243, CA, *Broomleigh Housing Association Limited v Hughes* [1999] EGCS 134 (ChD) and *Billson and others v Tristrem* [2000] L&TR220, CA.
14. Following a short adjournment the tribunal received a copy of the Formal offer of sale notice served by the Applicant to the Respondent as required under section 125 of the Housing Act 1985 dated 9.7.2003. That Notice informed the Respondent of his liability to contribute to the service charge. It also informed that the Applicant anticipated carrying out certain improvements within the reference period, which was said to run from 9th July 2003 to 31 March 2009, and this included windows. It further stated at paragraph 9.5 that " You are not responsible for carrying out any work to the structure including the windows. You must not therefore undertake such work"
15. In the light of those authorities and the wording of the lease as set out above the tribunal determined that the Respondent was liable to contribute to the cost of window replacement irrespective of whether or not he received direct benefit from those works and regardless of whether or not the Applicant had given consent to the Respondent to install his own windows. Furthermore, the section 125 offer Notice expressly stated the Applicant's position with regards to the windows.

Application under s.20C and refund of fees

16. Although the Applicant indicated in the statement of case that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. There was no application for reimbursement of fees.

Name: Judge Samupfonda

Date: 8 October 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" 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.
- (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 for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes 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 or later 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 provisions 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 27A

- (1) 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal 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.

Section 20

- (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) the appropriate 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.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.