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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AE/LSC/2015/0420**
Property	:	**80 Clarendon Gardens, Wembley, Middlesex HA9 7LF**
Applicant	:	**Ms Maryam Mousavi Khalkhali**
Representative	:	**Mr A Mosawi**
Respondent	:	**London Borough of Brent**
Representative	:	**Ms C Scarborough (Counsel)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Mr Jeremy Donegan (Tribunal Judge)** **Mr Luis Jarero BSc FRICS**
Date and venue of hearing	:	**25 February 2016** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**18 March 2016**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the total sum of £8,610.27 is payable by the Applicant for her contribution to major works at 78-88 Clarendon Gardens, Wembley ('the Building'), as demanded on 30 March 2011.

(2) The application for a refund of tribunal fees paid by the Applicant is refused.

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 for 80 Clarendon Gardens, Wembley, Middlesex HA9 7LF ('the Flat')

2. The application was dated 21 September 2015 and raised two issues, namely major works undertaken at the Building in the 2009/10 service charge year and external drain repairs undertaken in 2010/11.

3. A case management hearing took place on 29 October 2015, when directions were issued. This was attended by Mr Mosawi on behalf of the Applicant and Mr Jamie Carr and Ms Katherine Bond, on behalf of the Respondent.

4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The Respondent is the freeholder of the Building which is a purpose built, three-storey block containing six flats. The Applicant is the former leaseholder of the Flat, which is on the ground floor of the Building. She sold the Flat on 24 March 2015.

6. The Flat is subject to a long lease that requires the Respondent to provide services and the Lessee to contribute towards their costs by way of a variable service charge. The relevant provisions of the lease are referred to overleaf.

7. The Respondent undertook external works at the Building, including roof repairs, in 2009/10, following service of consultation notices under section 20 of the 1985 Act on 20 May and 11 September 2009, respectively. On 30 March 2011 it issued a demand to the Applicant ('the Major Works Demand'), in which it claimed a contribution to the

cost of the works of £8,610.27. This provided a breakdown of the contribution and stated that the works completion date was 29 March 2010. The Applicant settled the Major Works Demand, prior to selling the Flat.

The lease

8. The lease was granted by the Mayor and Burgesses of the London Borough of Brent ('the Council') to Laura Brown and Alberto Stanisci ('the Lessee') on 05 June 2000 for a term of 125 years from 29 March 1999.

9. Detailed service charge provisions are to be found at clause 4 of the lease. These are fairly standard and include provision for an *"Advance Payment"* on 01 July in each year (clauses 4(A)(ii) and 4(B)(i)) with an end of year adjustment (clause 4(A)(iii) and 4(B)(vii)). The service charge year is referred to as "*the Council's Financial Year*" and runs from 01 April to 31 March (clause 4(B)(iv)).

The hearing

10. The full hearing took place on Thursday 25 February 2016. The Applicant was represented by her brother, Mr Mosawi. The Respondent was represented by Ms Scarborough, who was accompanied by Ms Bond and Ms Sama Mushtaq of Brent Housing Partnership ('BHP'), which manages the Building.

11. The tribunal was supplied with a hearing bundle that included copies of the application, directions, the Applicant's statements of case with supporting documents and two witness statements from Ms Bond with supporting documents. Immediately before the hearing, the tribunal was also supplied with a helpful Scott Schedule that had been prepared by Ms Scarborough and which summarised the issues in dispute.

12. Photographs of the Building were also included the bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. The disputed works were undertaken 6-7 years ago, so it would be very difficult for the tribunal to assess the extent or quality of the works from an inspection.

13. At the start of the hearing, Ms Scarborough queried Mr Mosawi's standing to represent the Applicant and pointed out that no witness evidence had been filed on behalf of the Applicant. Mr Mosawi explained that he was the Applicant's brother and used to live at the Flat. The tribunal allowed him to make submissions based on the Applicant's statements of case but explained he would be unable to give oral evidence.

14. On questioning from the tribunal, Mr Mosawi advised that the drain repairs in 2010/11 were now admitted. It follows that the only area of dispute was the Major Works Demand.

15. The Applicant did not challenge the manner in which the major works contribution had been demanded. Rather the sole issue was whether the contribution had been reasonably incurred. The Applicant disputed 9 specific items in the Major Works Demand.

16. The tribunal heard submissions from Mr Mosawi and Ms Scarborough. It also heard oral evidence from Ms Bond, who is a leasehold manager, employed by BHP and has held this role since 2014. She verified the contents of her two statements and answered various questions from Mr Mosawi and the tribunal.

17. Having heard the submissions and evidence and considered all of the documents provided, the tribunal has determined the disputed items as follows.

Access charge - £894.33

18. The Applicant's original objection was that no works had been undertaken to the access (entrance) to the Building. In her first statement, dated 08 December 2015, Ms Bond explained that this item referred to the cost of scaffolding rather than works to the entrance. This was required to access the Building, including the roof.

19. A copy of the final account for the works was exhibited to Ms Bond's second statement, dated 10 February 2016. This showed that scaffold was erected to all four elevations at the Building at a total cost of £5,369. This cost was then split equally between the six flats, as were all of the other disputed items (save for the replacement windows in the Flat).

20. At the hearing, Mr Mosawi objected to this item on the basis that there was no invoice from the contractor.

The tribunal's decision

21. The tribunal determines that the amount payable by the Applicant for the access charge is £894.33.

Reasons for the tribunal's decision

22. Clearly scaffolding was required to undertake the external works, given the height of the Building and given that these works included roof repairs. There was no challenge to the amount of the scaffold costs.

The Applicant's original challenge arose from a misunderstanding as to the nature of this item. The tribunal is satisfied that this item was reasonably incurred. Further the absence of the contractor's invoice does not preclude the Respondent from recovering this item. It was entitled to rely on the final account, which provided a detailed breakdown of the cost of the major works.

Communal windows - £585.46

23. The Applicant originally disputed this item on the basis there are no communal windows at the Building. In her first statement, Ms Bond explained that a single window was replaced on each communal landing. Photographs of these windows were exhibited to her second statement.

24. The final account showed that the total cost of replacing the windows was £3,512.75. At the hearing Mr Mosawi accepted that there are communal windows but stated that the replacement cost was too much. However, he did not put forward any alternative figure.

The tribunal's decision

25. The tribunal determines that the amount payable by the Applicant for the communal windows is £585.46.

Reasons for the tribunal's decision

26. The photographs in the hearing bundle showed the windows on the communal landings. The tribunal is satisfied that the windows were replaced and this item was reasonably incurred. In the absence of any contrary evidence, the Respondent was entitled to rely on the figure final account.

Communal decoration - £343.77

27. The Applicant disputed this item on the basis there had been no communal decorations. There are brick walls that have not been decorated, as show in the photographs. Mr Mosawi also relied on the absence of an invoice from the contractor.

28. In her first statement, Ms Bond explained that Torrex Flameshield Ultimate coating had been applied to the walls, which is designed to stop graffiti and the rapid spread of fire. This was detailed in the final account, which also referred to preparation of surfaces and the painting of all metalwork and woodwork. The total cost of the communal decorations was £2,062.60.

The tribunal's decision

29. The tribunal determines that the amount payable by the Applicant for the communal decorations is £343.77.

Reasons for the tribunal's decision

30. The tribunal is satisfied that the internal common-ways were decorated and this item was reasonably incurred. The Applicant did not dispute the cost of this work. Rather she contended the work had not been done. Again, the Respondent was entitled to rely on the final account.

Lightning protection - £867.33

31. Again the Applicant contended this work had not been done. A two-page breakdown of the work was exhibited to Ms Bond's first statement and details were also included in the final account. The total cost of the work was £5,203.97

32. The Applicant described the breakdown of the work as "*ambiguous*" but did not say why. At the hearing Mr Mossawi said he had a "*rough idea*" what the lightning protection looks like.

The tribunal's decision

33. The tribunal determines that the amount payable by the Applicant for lightning protection is £867.33

Reasons for the tribunal's decision

34. The breakdown set out the work in some detail and was far from "*ambiguous*". The lightning protection would not be highly visible, with some components on the roof and some in inspection pits. The down conductors are only 25mm x 3mm and run down the side of the Building.

35. The tribunal is satisfied that this work was undertaken and was reasonably incurred. Again the Applicant did not dispute the cost of the work, as opposed to the principle and the Respondent was entitled to rely on the final account.

Satellite dish removal - £95.20

36. The Applicant disputed this item on the basis that her satellite dish had not been removed, as she able to watch television throughout the major works with no loss of reception. In her second statement, Ms Bond explained that the dish was removed from the wall of the Building and

then attached to the scaffolding for the duration of the works. Upon completion of the works the dish was reaffixed to the wall. The same work was undertaken for other satellite dishes at the Building and the total cost of this work was £571.20.

37. At the hearing, Mr Mosawi said he was unsure whether the Applicant's dish had been moved. He also stated that there were no satellite dishes on the upper parts of the Building.

The tribunal's decision

38. The tribunal determines that the amount payable by the Applicant for moving and fixing the satellite dishes is £95.20.

Reasons for the tribunal's decision

39. The erection of scaffolding around the Building would have interfered with the reception from the satellite dishes and it was reasonable to move the dishes and attach them to the scaffolding, given that the major works took several months. The tribunal is satisfied that this work was undertaken and was reasonably incurred. Again the Applicant did not dispute the costs of the work, as opposed to the principle and the Respondent is entitled to rely on the final account.

Preliminary costs - £1,510.03

40. The Applicant originally disputed this item, as she was unclear of the purpose of the charge. In her first statement, Ms Bond explained that preliminaries were costs incurred in the preparation and management of the major works and included site preparation costs, contingency sums, work management costs, site security costs and facility costs. The total cost of the preliminaries was £1,510.03.

41. In her second statement of case, dated 25 January 2016, the Applicant contended that this item was unreasonable as there was no breakdown of the costs. She also stated that she had not witnessed any security personnel during the works. At the hearing, Mr Mosawi suggested that the sum charged was too high and there was some duplication with the consultancy and management fees claimed by the Applicant. However he did not put forward any alternative figure.

42. Ms Scarborough explained that the consultancy and management fees were for separate services. The former covered site surveys and the latter covered project management.

The tribunal's decision

43. The tribunal determines that the amount payable by the Applicant for preliminary costs is £1,510.13.

Reasons for the tribunal's decision

44. Preliminaries are a standard part of a major works contract. They enable the contractor to undertake the works safely, securely and in a timely manner. They normally cover the cost of administering a project and providing general plant, facilities and site based services. In this case the security measures would have included fencing at the site. The tribunal accepts there was no duplication between the preliminaries and the consultancy and management fees.

45. The Applicant did not provide any evidence, such as alternative quotes, to suggest that the preliminaries were too high. In the absence of such evidence, the tribunal is satisfied that this item was reasonably incurred.

Windows and gas tests - £2,290.66

46. This relates to the replacement of three windows in the Flat; two in the second bedroom and one in the living room. In her original statement of case, the Applicant contended that the charge was too much and proposed a lower figure of £1,560. However she did not explain how this lower figure was arrived at. At the hearing Mr Mosawi stated that £1,560 was the amount of an alternative quote obtained by the Applicant. However the tribunal was not supplied with a copy of this quote

47. The Applicant contends that the new windows were not fitted properly and relies on a letter from Acton Glass Limited to her dated 27 August 2010, reading:

"As you are aware we carried out an inspection on your windows and door and we found that your French door is letting in a strong draught (sic).

If you need this to be rectified please inform us and we will do so.

If you need further information please do not hesitate to contact us."

48. Mr Mosawi queried why the window replacement and gas tests had been billed together.

49. The Respondent relies on a "*Window Inspection Report*" from Capital Property & Construction Consultants ('CPCC'), dated 23 October 2015. A copy of the report was exhibited to Ms Bond's first statement. It ran to 7 pages, including photographs and concluded that:

"Generally the windows and patio doors were found to be in good to fair condition and are perfectly operational for everyday use. Whilst localised defects including trapped gaskets, condensation and burglary damage to the second bedroom window were noted, it is however unclear as to when these defects have occurred and we cannot state whether they (sic) present at the installation in circa 2009/10."

50. In her second statement, Ms Bond made various criticisms of the letter from Acton Glass Limited and pointed out that no evidence of any remedial works had been provided and no report of disrepair was ever made to BHP.

51. Details of the window replacement were included in the final account, which spelt out that a gas safety engineer was to inspect all flats in the Building before and after the windows were replaced to check ventilation and any corrective work to gas installations. The total cost of the inspections was £710.38, which was split between all six flats. The total cost of replacing the windows in the Flat, which was charged solely to the Applicant, was £2,172.26

The tribunal's decision

52. The tribunal determines that the amount payable by the Applicant for windows and gas tests is £2,290.66.

Reasons for the tribunal's decision

53. The windows were replaced 6-7 years ago. The only evidence relied upon by the Applicant was the letter from Acton Glass Limited, which said very little. It does not identify the cause of the "*draught*" or any specific defects in the windows/doors. The tribunal much prefers the report from CPCC and accepts their conclusion that the windows/doors were generally in "*good to fair condition*". Inevitably there would have been some deterioration in their condition between installation and the date of the report.

54. It was reasonable for the Respondent to bill the gas tests with the windows, as they were a necessary part of the replacement work. The Applicant has not provided any evidence to support her alternative figure of £1,560. Further there was no evidence that the Applicant arranged any remedial work to the windows/doors. In the absence of

such evidence, the tribunal is satisfied that the figures in the final account were reasonably incurred.

Consultant fees - £481.90

Management fees - £96.95

55. It is convenient to deal with these two items together. Originally the Applicant queried what the consultancy fees were for and contended that the management fees duplicated the management charge in the annual service charge accounts. During the course of the hearing, Mr Mosawi agreed the management fees. However he continued to challenge the consultancy fees, arguing that there was duplication with the preliminaries. He also pointed out that no invoice had been disclosed for these fees and no details provided for the consultants.

56. In her first statement, Ms Bond explained that the consultancy fees covered surveys, agreeing costings, administration and monitoring the project generally. She was questioned about these fees at the hearing but was unable to provide any more information, as she was not involved in the major works. In particular, she could not identify the consultants in question. The consultancy fees were not included in the final account and Ms Bond had not seen the consultants' invoice.

The tribunal's decision

57. The tribunal determines that the amount payable by the Applicant for consultancy fees is £481.90. No determination is required in relation to the management fees, as these were agreed by Mr Mosawi on behalf of the Applicant.

Reasons for the tribunal's decision

58. The tribunal has already accepted there was no duplication between the preliminaries and the consultancy and management fees. The issue then is whether the amount of the consultancy fees was reasonable. There was very little information about these fees. At the very least the Respondent should have provided the consultants' name and details of how the charges were calculated. However the Applicant did not dispute the amount of the fees or provide any evidence to suggest the fees were too high. Rather she relied solely on the duplication argument. In the absence of any challenge on quantum, the tribunal is satisfied that the fees were reasonably incurred.

Summary

59. The tribunal has allowed the disputed items in full. It follows that the Applicant is liable to pay the sum claimed in the Major Works Demand (£8,179.76) in full.

Section 20C and refund of fees

60. There was no application for an order under section 20C of the 1985 Act.

61. At the end of the hearing, Mr Mosawi made an application for a refund of the fees paid by the Applicant for the application and hearing[1]. This was opposed by Ms Scarborough, who stated that the Respondent was minded to seek its costs from the Applicant under Rule 13(1) of the 2013 Rules. She accepted the tribunal's suggestion that any Rule 13 application should be deferred until this decision was issued.

62. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any tribunal fees paid by the Applicant. The Respondent has been wholly successful, as the disputed service charges have been allowed in full. It was entirely justified in contesting the application, which largely stemmed from the Applicant's misunderstanding of various items in the Major Works Demand. It is unfortunate that these misunderstandings were not resolved earlier. In the circumstances it would not be just or equitable for the Respondent to pay any part of the tribunal fees.

Name: Tribunal Judge Donegan **Date:** 18 March 2016

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 3

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes –

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it –

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

Rule 13 (1)

The Tribunal may make an order in respect of costs only –

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
  (i) an agricultural and land drainage case,
  (ii) a residential property case, or
  (iii) a leasehold case; or

(c) in a land registration case.