



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

Case Reference : LON/00AG/LSC/2016/0154

Property : Flat 3, 31 Netherhall Gardens,
London NW3 5RL

Applicants : Mr A Bassi and Dr D Bassi

Representative : In person

Respondents : Ms Y Lyons (freeholder and First
Respondent) and Mr A Spanier
(leaseholder of Flat 4 and Second
Respondent)

Representative : Mr J Fraser of Kensington Flats
(managing agents)

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

Tribunal Members : Judge P Korn
Mr KM Cartwright FRICS

**Date and venue of
Hearing** : 8th July 2016 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 10th August 2016

DECISION

Decisions of the Tribunal

- (1) In relation to the 2011 works, the Applicants' contribution towards the managing agents' fees is reduced by £200.00. Otherwise, the cost of these works is payable in full.
- (2) In relation to the 2016 charges, these are payable in full.
- (3) The Tribunal makes no cost orders.

Introduction

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of certain service charges charged by the First Respondent.
2. The application relates to major works and covers two years, 2011 and 2016. In 2011 works were carried out to the Property and the Applicants contributed £5,070.80 towards the cost but allege that the work was not done properly and that the service charges paid for the work have not been properly accounted for. In relation to 2016, the Applicants have been invoiced a further amount of £6,979.82 for major works to the roof. The Applicants allege that the consultation process in relation to the roof works was flawed.
3. The Second Respondent is the leaseholder of Flat 4, the top floor flat. He has asked to be joined to the proceedings as a respondent as he supports the carrying out of the roof works and does not dispute either set of charges.
4. The relevant statutory provisions are set out in the Appendix to this decision. The Applicants' lease is dated 8th August 2007 and was originally made between the First Respondent (1) and Mona Cecilia Flahive (2).

Applicants' case

2011 Works

5. The Applicants accepted that works needed doing but felt that they had been provided with a very vague specification and no proper cost breakdown. The Applicants raised a number of questions during the consultation period but felt that these were either brushed aside completely by Mr Fraser, the managing agent, or not properly addressed. That led in turn to the need to raise further questions. By way of example, one of the Applicants wrote to Mr Fraser saying that he could not recall whether the leading of all of the bays and balcony areas

would be included in the works, and Mr Fraser's reply was simply that he should read the specification. The Applicants also referred the Tribunal to an email from another leaseholder to Mr Fraser sent as late as 1st September 2011 stating that he and Dr Bassi were still a little confused about what repair work would be done to the windows. In addition, there were email complaints about poor quality painting and about windows being painted shut but no proper response to these complaints, nor was there any response from Mr Fraser – other than an acknowledgement – to a long formal letter of complaint dated 8th November 2011.

6. During the course of the works it became apparent that a substantial amount of the planned work was not taking place. In particular, the proposed roof works were abandoned but there was a lack of clarity as to when and why they were abandoned. No cost breakdown was provided to explain how the money had been spent to date, and instead Mr Fraser sought more funds from leaseholders to carry out works which the Applicants felt should have been carried out using the funds already in hand. A breakdown was not provided until May 2015, and that breakdown contained serious omissions. The Applicants have produced their own schedule setting out which cost items they consider to be unreasonable and why.
7. The Applicants state that the two remaining leaseholders, Mr Smith and Mr Schneiderman, are supportive of their application but do not wish to be directly involved in the proceedings.
8. In relation to the specification of works attached to the First Respondent's Section 20 Notice dated 15th June 2011, the Applicants' view was that it was not nearly detailed enough. They were also concerned that the quotations obtained did not contain a breakdown. In relation to the scaffolding, this went up late and was up for longer than estimated.
9. The Applicants also felt that there was insufficient explanation as to why they were being charged extras in early October 2011, and it also seemed to them that the £1,000 contingency had not been properly accounted for.
10. The Applicants were also critical of the Second Respondent for suddenly stating on 20th October 2011 that everything seemed broadly acceptable to him when previously he had joined the Applicants in being strongly critical of the First Respondent's managing agents.
11. The Applicants referred the Tribunal to correspondence regarding problems with the quality of the works, including missing lead and parts of the fascia bowing away from the building.

12. Specifically in relation to the works to the windows, front door and timber fascia, the total charge had been £8,442.00 but the Applicants had recently received independent quotations for £3,850.00 and £2,950.00 respectively. In relation to unidentified work items totalling £5,136.00, they had not been given an explanation for these and therefore none of this amount was payable. In relation to the scaffolding, the total charge had been £4,512.00 but in their view the scaffolding should only have been up for 2-3 weeks instead of 7-8 weeks and therefore they were disputing two-thirds of the cost.
13. In relation to the works to the rear dormer, the charge of £2,250.00 was disputed in full as the rear dormer has been leaking continuously since the works were done. As for the boundary wall works, 64% of the charge of £1,150 was disputed on the basis of two independent quotes. The contingency of £1,000.00 was disputed in full as the expenditure has not been accounted for. The management fees of £2,214.00 were also disputed in full as the managing agents had failed to manage the project.

2016 Roof Work Charges

14. In relation to the proposed 2016 works, Mr Bassi provided two alternative quotations to Mr Fraser. The cheaper of these was from G.S.S. Construction, which priced the work at £28,813.34 as against Slaters' quote of £34,899.12. The project surveyor did not raise any objections to the quote and Mr Fraser wrote to G.S.S. to request additional documentation. Then Mr Fraser suddenly informed all leaseholders that G.S.S. was unacceptable to the First Respondent and that she wished to proceed with Slaters. No explanation was provided.
15. The Applicants' view was that the First Respondent had no reason to object to the G.S.S. quote and that the consultation process was biased in favour of her personal preferences.

Respondents' case

2011 Works

16. In written submissions, Mr Fraser for the First Respondent states that the specification prepared by the First Respondent's surveyor included the roof works. Once the scaffolding had been erected the surveyor had an opportunity to inspect the roof condition more closely and advised that any minor repairs listed should not be carried out on the basis that there were too many defects. The First Respondent therefore decided only to carry out works to the chimney and the replacement of a defective window at that time.

17. The First Respondent received tenders from a number of contractors based on the original specification, and the successful and lowest tender for £18,450.00 was from Castle Residential Properties. The tender did not reflect all of the works set out in the specification and only included the three elevations. The £18,450.00 was paid to Castle in full.
18. Immediately after the site visit by the surveyor Mr Fraser informed all leaseholders about the position and understood them all to be happy. Dr Bassi raised various queries, which were answered, but at no time did he state that he felt that he was due a refund. Furthermore, Dr Bassi did not raise any concerns over snagging issues after the works had been completed, and no issues have been identified by the surveyor or other leaseholders which give rise to any concerns over the quality of the work.
19. At the hearing Mr Fraser said that the First Respondent's surveyor was unable to see all of the roof when first inspecting it because of safety issues. He therefore did the best that he could at the time, on the understanding that a more detailed investigation would need to be undertaken once everything was in place for such an investigation to be conducted safely. Once on the roof properly, the First Respondent's surveyor was able to revise the specification.
20. Mr Fraser accepted that the First Respondent did not obtain a detailed breakdown of each tender but said that this was normal practice at the time. As regards the Applicants' alternative quotations, he noted that these had been obtained recently and said that it was meaningless to obtain quotations now in relation to works which were specified 5 years ago, particularly without the assistance of a surveyor.
21. Regarding the scaffolding, Mr Fraser said that it needed to be up for that long (7-8 weeks) but that there was no extra charge for its being up for longer than originally estimated. The reason for keeping the scaffolding up longer was that a dangerous chimney was discovered.
22. On the issue of whether Mr Fraser answered the Applicants' questions, he said that he did and he referred the Tribunal to relevant correspondence in the hearing bundle.

2016 Roof Work Charges

23. In written submissions, Mr Fraser states that his instructions were to source a roofer with specialised knowledge of this type of roof, rather than a general builder, as the First Respondent insisted that the roof works needed to be done completely professionally. It was not an easy process to identify suitable specialists, but two suitable contractors were eventually found, of which Slaters' quotation was the lower. The

Applicants supplied alternative quotations from Aspect and G.S.S., and the First Respondent agreed to consider them even though they were provided after the statutory deadline. The G.S.S. quotation was significantly lower than that of Slaters, and so Mr Fraser contacted G.S.S. for more information.

24. Mr Fraser made two telephone calls to G.S.S. and was informed that they were not specialist roofers. They were general builders and would sub-contract the work to a roofer. The person to whom he spoke was unable to say to whom the work would be sub-contracted.
25. Mr Fraser also looked up G.S.S. on the internet and saw a review which described G.S.S. as *“one of the dogiest Builder in the world please be care full. He gave a very low price and low standard and quality material and after he increases his price and runaway. He did with customers in Southall, Hounslow, Ruislip”*. He telephoned G.S.S. back after reading this review and was informed that there was a dispute with a former customer. In response to other questions he was told by the person to whom he was speaking that she was unaware of what the new CDM legislation was and was unable to give an address of a property at which G.S.S. had carried out works similar to that of the Property. By contrast, Slaters “had full CDM in place” and were members of Fairtrades FSB HA GSCS Trust Mark and several others.

Second Respondent’s comments

26. In relation to the 2011 Works, the Second Respondent accepted that he had expressed certain concerns at the time, but his conclusion now was that the works were carried out well enough. The First Respondent had chosen the cheapest quotation, the original specification had broadly been complied with and the amount paid was a reasonable amount for the work done.
27. He referred the Tribunal to Castle Residential Properties’ letter of 11th May 2015 to Mr Fraser explaining the breakdown of their charges. The scaffolding cost £3,760.00, the external joinery cost £7,035.00, the front wall works cost £1,500.00 and the rear dormer roof works cost £1,875.00. Of the total amount of £18,450.00 charged (excluding VAT) this left £4,280.00 to cover the remaining items as per the original specification plus Castle’s gross profit margin (i.e. also including travelling and parking). Castle also state that all stages of the work undertaken were signed off by the project surveyor.
28. As regards the quality of works to the rear dormer, despite the description of these as preparatory they were in fact actual works. It is true that there were leaks later on but it was not accepted by either of the Respondents that this was due to the initial works being defective. As for the boundary wall works, the work was done and the First Respondent chose the cheapest tender.

29. Regarding the £1,000.00 contingency, the Second Respondent had personally seen individual invoices and the accounts, and he was satisfied that the £1,000.00 had been accounted for properly and would be used to subsidise future service charges. In relation to the management fees, he felt that the quality of management had generally been good.
30. As regards communication, the Second Respondent felt that the Applicants had bombarded Mr Fraser with too many questions.

Further exchange

31. The Applicants said that their rear window external frames were in poor condition and would not close properly. Mr Fraser replied that he had not been informed of this previously.

Tribunal's analysis and determination

2011 Works

32. The evidence indicates that the First Respondent went through a proper consultation process. The selected contractor, Castle Residential Properties, offered the lowest quotation and no evidence has been provided by the Applicants to demonstrate that Castle should not have been selected. Whilst at a much later stage the Applicants sourced alternative quotations, they did not do so at the time as part of the consultation process. We agree with the Respondents that quotations obtained now in relation to works which were specified 5 years ago, particularly without the assistance of a surveyor, are not very persuasive.
33. The Respondents assert that the works to the windows, front door and timber fascias included preparation and proper painting. On the balance of probabilities we accept this assertion, particularly as the evidence seems to indicate that there were no complaints about the quality or level of sophistication of the work at the time. On that basis, the charge in our view is reasonable.
34. In relation to what the Applicants have described as unidentified work items, we are satisfied that these relate to a combination of profit, travel and parking, and the amount seems to us to be reasonable and within industry norms. As regards the scaffolding, there is no evidence before us that the cost was higher because the scaffolding was up for longer, and the stated reason for keeping the scaffolding up – namely that a dangerous chimney was discovered – is a reasonable one.
35. As regards the rear dormer works, the evidence indicates these to have been a temporary fix of the problem. The Applicants have not brought

any compelling evidence to show that carrying out a temporary fix at this stage was unreasonable or a waste of money. In addition, the fact that there are still leaks does not demonstrate that temporary works carried out 5 years ago were ineffective or not cost-effective at the time.

36. In relation to the boundary wall works, the Applicants are not suggesting that these works were not done or were carried out in a substandard manner, and the same point applies in relation to their alternative quotations as is stated in paragraph 32 above.
37. In relation to the £1,000.00 contingency, whilst the point could have been explained better we are not persuaded that this money has simply disappeared. It is a reasonable amount to hold as a contingency and we prefer the evidence of the Respondents on this point, namely that the money has been accounted for properly and will be used to subsidise future service charges.
38. In relation to the management of the project and the work of the surveyor, here we do have some sympathy with the Applicants. Mr Fraser has pointed to certain responses given by him to queries raised by the Applicants, but the overall impression is one of not taking the Applicants' questions or concerns sufficiently seriously and sometimes simply ignoring them. The problem is compounded by the fact that all of the leaseholders had concerns, including the Second Respondent until relatively recently. The Applicants were therefore not simply raising points which were of no interest to other leaseholders, although even if they had been this would not by itself have been a justification for ignoring those points.
39. The Respondents have not rebutted the Applicants' statement that Mr Fraser failed to provide a substantive response to their formal letter of complaint dated 8th November 2011, and in response to a further question it was unhelpful for Mr Fraser simply to have replied that the Applicants should read the specification. There are also other questions or concerns which either did not receive a response or were dealt with inadequately. The position regarding the roof works in particular does not seem to have been explained very well. No doubt Mr Fraser was frustrated to receive so many letters and emails, but Mr Fraser could have minimised the amount of correspondence by – at times – providing more helpful responses or agreeing more readily to hold a meeting to discuss concerns. We also consider that it was a mistake not to obtain a breakdown of the quotations, which would very much have assisted leaseholders in understanding the quotations and comparing them.
40. Whilst at times the Applicants seem to us to have taken a slightly disproportionate approach to the airing of concerns and the raising of long questions, in our view they were let down by poor communication on the part of the managing agent. It has been suggested that they

would not have been satisfied regardless of the responses received, but we are not persuaded that this is the case. Therefore, we consider it appropriate to reduce the amount of their contribution to the management fees. The total management fees for the project were £2,214.00 (inclusive of VAT). We consider that an appropriate reduction would be £1,000.00, of which the Applicants' share is £200.00.

41. Apart from the reduction in the managing agents' fees, for the reasons given above the other charges relating to the 2011 works are payable in full.

2016 Charges

42. The sole issue here is whether the First Respondent was justified in using Slaters rather than G.S.S., and in our view she was. She wanted to use a specialist roofer rather than a general builder, and in principle this is reasonable subject to the cost being reasonable. G.S.S. by its own admission is not a specialist roofer and according to Mr Fraser was unable to tell him which roofer it would use. Mr Fraser quite properly did some investigating of G.S.S. and found an extremely negative review of its work and business practices. G.S.S. did not deny that this was a genuine review but said that there was a dispute with a former customer.
43. In our view it was reasonable for Mr Fraser to conclude on the basis of the information that he had that G.S.S. was not a suitable contractor to use for this work. The First Respondent cannot realistically be expected to take that level of risk simply because G.S.S. provided a cheaper quote. In any event, it is established law that as long as a landlord acts reasonably it is not obliged to go with the cheapest quote. Specifically as regards compliance with the consultation regulations, Mr Fraser has stated that the Applicants were out of time when they supplied G.S.S.'s details. However, even if they had not been out of time, the First Respondent's obligation was merely to "have regard" to their observations. This she clearly did, as through her managing agent she investigated G.S.S. before concluding that they were unsuitable.
44. Therefore, the First Respondent was not in breach of the consultation requirements. This being the only basis of challenge, the 2016 charges are payable in full.

Cost Applications

45. The Applicants have made a section 20C application.
46. The section 20C application is an application for an order that none (or not all) of the costs incurred by the Respondents in connection with

these proceedings may be added to the service charge. Save for the partial reduction in the managing agents' fees, the Respondents have succeeded on all issues. We also consider, to the extent that this is relevant to section 20C, that the Respondents have conducted themselves properly in connection with these proceedings and accordingly we do not consider it appropriate to make a section 20C order.

47. No other cost applications have been made.

Name: Judge P Korn

Date: 10th August 2016

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

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 20

- (1) Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either -
 - (a) complied with in relation to the works ... or
 - (b) dispensed with in relation to the works

- (2) In this section “relevant contribution”, in relation to a tenant and any works ..., 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

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.