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Residential Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**
**LANDLORD & TENANT ACT 1985**
**SECTIONS 27A AND 20C**

**Ref: LON/00AJ/LSC/2009/0473**

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| **Property:** | 29 Chestnut Grove<br>Ealing<br>London<br>W5 4JT |
| **Applicant:** | Ms Helen Moss |
| **Respondent:** | London Borough of Ealing (through its ALMO Ealing Homes Limited) |
| **Appearances:** | The Applicant in person<br>Mr C Fain (of Counsel)<br>Mr A S Rumun BSc (Hons) MRICS<br>For the Applicant<br><br>Mr Kenneth Van Emden (In-House Legal Officer)<br>Mr George Allen (Allen Construction Consultancy Limited)<br>For the Respondent |
| **Date of Hearing:** | 8 and 9 February 2010 |
| **Date of Decision:** | 21 February 2010 |
| **Tribunal Members:** | Mr S Shaw LLB (Hons) MCIArb<br>Ms S Coughlin MCIEH<br>Mr O Miller BSc |

## DECISION

## INTRODUCTION

1. This case involves an application dated 27 July 2009 made by Ms Helen Moss ("the Applicant") in respect of the ground floor flat at 29 Chestnut Grove, Ealing, London W5 4JT ("the Property"). The property is part of a two storey 1930's council building constructed as two flats. The Applicant's flat, which is the property, is on the ground floor. The upper or first floor is occupied by a council tenant. The freehold of the property and of the building is owned by the London Borough of Ealing ("the Respondent") which is also the immediate landlord under the long lease. Ealing Homes Limited has been constituted as the ALMO (Arm's Length Management Organisation) which acts on behalf of the Respondent in respect of maintenance and management matters of the kind arising in this case.

2. A hearing of the application took place before this Tribunal on 8 and 9 February 2010. During the morning of 8 February, the Members of the Tribunal inspected the property, to which reference will be made below. At the inception of the hearing the Tribunal established with the parties the matters upon which a determination was sought. It transpired that the central issue in this case is a dispute concerning appropriate works to be carried out to the roof of the house of which the property forms part, and in respect of which the Applicant has a service charge liability under her lease. In simplified terms, the Respondent's case was that the roof required replacement at an overall cost initially put at not less than £12,738.40, to which sum a further cost of either £567 or approximately £1,356.20 would have to be added, depending upon what works were appropriate to the chimney stacks upon closer consideration. The Applicant's case was that the roof does not require replacement, and that in so far as repairs were necessary, these were limited, and costed at a figure in the order of £1,000. The disparity therefore between the parties both on matters of principle and quantum was significant.

3. There were some subsidiary issues concerning the cost of re-pointing and rendering at the property. However, as the case unravelled it became apparent that there was really no issue to the effect that there was any significant cost to be attributed to the re-pointing; as far as re-rendering was concerned the parties' respective surveyors (to whom reference will be made below) agreed that the position in that regard was uncertain, unless and until some testing was carried out at closer quarters – and as to that the position was at present speculative. However the parties were agreed as between their respective surveyors as to the appropriate unit cost for such rendering (measured per square metre), and the Tribunal was told that no further finding was necessary in this regard at this stage; it was hoped that once the works, which presently were awaiting the outcome of this Decision, got underway, the parties would be able to agree this relatively small sum between themselves. Equally, although there was a dispute about the appropriate cost of preliminaries and professional fees, there was no dispute as to the percentage to be applied (13.9% and 3.7% respectively) and this figure will obviously vary depending on the nature and cost of the works determined to be appropriate.

4. The case therefore really turns upon whether or not, as a matter of principle, on the evidence, the roof in this case should be repaired, or replaced in its entirety, within the terms of the lease and by application of the relevant statutory principles and case-law. It is this issue which effectively engaged the Tribunal during the course of the case, and about which there was conflicting evidence and opinion from the parties respective surveyors. Before dealing with that evidence, it is appropriate to mention that during the morning of 8 February 2010, the Members of the Tribunal inspected the property (and also looked at the roof space from the interior of the flat above) and compared the roof to some of the surrounding properties on the Village Park Estate, a council estate comprising over 400 properties, of which the subject property is one.

## INSPECTION

5. The Tribunal noted that many properties on the estate were surrounded with scaffolding, and it was clear that the installation of new roofs and windows were

in progress or had recently been completed. The property is part of a small two storey terrace comprising a pair of flats at each end and two houses at the centre of the terrace. The property was viewed from garden level, however only the front elevation gave a clear view of the roof. The members of the Tribunal went into the loft space of the property, however access was not possible to the back addition loft space. Some damp staining was noted to some of the roof timbers. The rear of the roof was inspected from scaffolding erected round 35 Chestnut Grove at the opposite end of the terrace to 29. The roof of 29 is a slate covered hipped roof. Ridge and hips are finished with clay tiles the bedding of which has perished. The slates appeared generally sound, though about 50 to 60 have been replaced at some stage with artificial slates held in place by tingles. There are 3 chimney stacks all requiring render repairs and the back addition chimney stack leans inwards. At ground floor level the walls are pointed and at first floor level rendered. The pointing appears sound. The render has been patched in places. The gutters are plastic fixed to the original timber fascias.

## THE EVIDENCE

6. The Applicant's case was supported by evidence from herself, both in the form of a witness statement and evidence given orally before the Tribunal, and evidence from Mr A S Rumun BSc (Hons) MRICS, called as an expert witness. The Applicant's own evidence though not necessarily accepted in its totality, was not challenged on behalf of the Respondent. The main evidence was however of a technical kind and in the form of the evidence given by Mr Rumun. Mr Rumun is a Chartered Surveyor and he had prepared a full report signed on 16 October 2009 appearing at pages 70 – 78 in the bundle together with a number of exhibits. There is an addendum to that report at pages 84a – 84i of the bundle prepared in January 2010 and a further addendum also prepared in January 2010 appearing at pages 84j – 84o of the bundle.

7. Mr Rumun originally was the proprietor of his own building company, but subsequently obtained a degree in building surveying. He worked for 7 years in a local practice and since 2001 has practised as Rumun Consulting, a firm of chartered building surveyors. As sole proprietor of this firm he carries out

property inspections, party wall work, project development for clients and management of building works. In a nutshell, the essence of his evidence was that it is not necessary to replace this roof. The roof is sound and requires some minimal repair work only. He pointed out that it had been agreed that there were only 3 slipped slates which required fixing. So far as he was concerned, having inspected the roof both from the exterior and the interior roof space, the roof is sound and water tight. The Applicant herself had approached a number of roofing companies to enquire as to the cost of such works as were necessary to her roof. She made it plain to the Tribunal, in evidence which was not challenged, that she gave the four contractors from whom she obtained quotations no prepared agenda as to exactly the works for which a quotation was required. She simply told them to look at her roof and tell her what was required and what the cost of the required work was. She stressed to the Tribunal that each one of these contractors (in whose interest it would have been to maximise the works) came back to her and gave her a quotation for repairs rather than replacement of the roof.

8. Mr Rumun had put to him the quotation for the necessary repairs which had been obtained from a firm known as Upright Roofing & Building and which appears at page 204 in the bundle. That quotation, which incorporated the cost of scaffolding and carrying out necessary repairs to the 3 chimneys on the roof was £780. Mr Rumun opined that although this was a low quotation, the market is currently competitive and the quote was not surprising. He had also taken the view that some repair to the ridge tiles was necessary, which had not been incorporated in this quotation but even if that work is carried out he did not think that this extra work would take the quotation beyond £1,000 altogether. As understood by the Tribunal, the effect of this evidence was that 3 or so slipped slates required repair or replacement, the hip and ridge tiles required re-bedding and re-pointing and the chimneys required replacement of the rendered finishes and re-haunching of the pots and the gutters required cleaning out. All of this work as supported by quotations by local roofing companies could be done for £1,000 which quotation he considered to be reasonable (see page 75 of the bundle).

9. In any event, he considered that the suggested cost of full roof replacement (initially estimated on behalf of the Respondent as £16,694.15 plus the cost of scaffold at £2,563.31) as "extraordinarily high". This projected cost was at the hearing however reduced on behalf of the Respondent, and the matter was put to the Tribunal on behalf of the Respondent on the basis that the overall cost of roof replacement would be in the order of £12,284.40 plus professional fees at 3.7% and (as understood by the Tribunal) a further sum of £1,356.20 for removal of some chimney stacks and pots. This last piece of work was provisional depending on whether, on closer inspection, it transpires that the stack or stacks could be properly repaired or would require complete removal. In any event, doing the best possible at this stage to estimate accurately, the Respondent's estimate was in the order of about £13,000 for the cost of these works which also was regarded by and on behalf of the Applicant as excessive. Mr Rumun for example, had gone to contractors he had used for over 20 years and whom he regarded as competitive and reliable, namely Berkley Roofing Contractors, and they had given quotations for replacement of the roof (and also chimney stack work) totalling £8,181.52 (see pages 349 and 352 in the bundle). It was difficult to get a completely accurate comparison of the parties' respective pricings of these works, because some of the work was at present uncertain in its nature and extent (for example to the chimneys), and the quotations obtained had not been calculated on a completely like for like basis. However, it is fair to say that on any view, there was a very significant disparity between the costing by both parties of replacement work. There was however happily, consensus in that if the view was taken that repair work alone was appropriate, this amounted to approximately £1,000 by way of costs.

10. The Respondent's case was support by evidence from Mr George Allen, who is the director of Allen Construction Consultancy Limited. That consultancy took part in a tender which took place in 2006 to oversee and otherwise participate in a Decent Homes Programme to be embarked upon by the Respondent. The Decent Homes Programme contains various criteria which Local Authority Housing is required by Central Government to meet. His company was successful in being appointed to provide project management and building surveying and various other services in respect of a sector of the Respondent's

housing stock. It was his consultancy which had responsibility for that part of the Respondent's stock into which this subject property falls. The Decent Homes Programme is designed to deal with the accommodation of Council tenants. It was put to Mr Allen, and he accepted, that it was not of application to properties owned on long leases. Of the 448 properties within the Village Park Estate, 128 are held on long leases.

11. Mr Allen told the Tribunal that his instructions from Ealing Homes Limited were to the effect that the part of the housing stock for which he had responsibility should be part of a programme designed to bring that stock up to the Decent Homes required criteria. He said that he did not know how a roof was assessed as "decent" under the criteria and had not been provided with a copy of the standard. He told the Tribunal that he had compiled a guidance document headed "Roof Assessment Criteria" which appeared at pages 228 to 232 of the bundle. Under the heading "Replacement or Repair" he lists as being factors to be considered:

- Evidence of previous repairs by way of tingles (lead or copper straps)
- Evidence of slipped or broken slates (nail sickness or similar)
- Condition of hips and ridge tiles, flashings and cement fillets
- Estimated age of roof covering (on the assumption that natural slates have a useful life between 60 and 100 years)
- Evidence internally of roof leaks (where properties are able to be inspected internally)
- Desired further useful life without need for major repairs – 10 years as advised by Ealing Homes
- Effect of necessary repairs to chimney stacks

12. All these criteria were matters which he and his consultancy took into account, but he told the Tribunal that his brief essentially was to the effect that repairs should be carried out so far as roofs were concerned so as to ensure they were wind and weathertight and achieve a result that no further major repairs were likely to be necessary within the next 10 years. He told the Tribunal that he accepted that there were only 2 or 3 slipped tiles at this property but there were in excess of 20 tiles which had been replaced. Whereas Mr Rumun was fortified by the fact that the tiles had been replaced in that they were unlikely to cause any further problem, Mr Allan took the view that this may be indicative of the need for further repairs in the foreseeable future. He considered that the tingles may only last for about 5 years. He accepted that inspection from ground level alone had been made initially (and no internal inspection) but that when the matter had been contested by the Applicant, he had gone along to check the position and carry out an internal inspection. He accepted that there was no evidence of water penetration on any of the ceilings within the upper flat, but he felt that there was some evidence of some water penetration into the roof areas as identified at paragraph 6.02.11 in his report at page 89 in the bundle. In this respect the view of Mr Rumun as understood by the Tribunal was that such staining as appeared on the roof timbers, appeared to be of an historic nature and was not causing any current problem. Mr Allen told the Tribunal that he had touched part of the timbers and had felt some damp. There is no note of this specifically in his report or his notes following his attendance at the property – nor was this pointed out to the Tribunal on inspection. However, although there is a difference in the evidence in this regard, it may be that it is not of the greatest significance in that the location of this dampness was under one of the ridge or hip tiles and around the chimney stack in respect of which it was common ground that a repair was necessary.

13. He deals with why he does not consider repairs to be the appropriate course to take at paragraph 6.02.15 in his report. First he says that the use of "tingles" (lead or copper fixings of slipped slates) is only a short term repair solution. As against this Mr Rumun said that this is a perfectly standard form of repair which is entirely acceptable. The presence of fixed slates suggests more fixing will be

needed in the future. Removal of some of the slates requires removal of many others because of the way that slates are fitted (again Mr Rumun explained to the Tribunal that it was possible to fix tingles so as not to cause great disturbance (– as understood by the Tribunal Mr Allen eventually accepted this). Mr Allen also considered that repair of the chimneys was likely to cause consequential damage to the slates.

14. At paragraph 6.02.16 he emphasises as already mentioned, that in order to achieve the situation in which no major repairs will be required within 10 years, he recommends full replacement.

15. As to the disparity in cost he did not greatly challenge the level of costing obtained for roof replacement on behalf of the Applicant, but told the Tribunal that the Respondent did not have the privilege of going to local contractors in this way and that they are required to tender in accordance with European Regulations and that various other statutory requirements, costs and overheads have to be added to the overall costing which in fact increases the price. The Tribunal noted that ironically, whereas one would have expected economies of scale to produce overall unit cost savings, certainly in this case, the opposite appears to be the case.

16. In respect of the rainwater gutters and fascias he agreed that they were sound and would not require any major repairs in the next ten years; however if the roof was being renewed he would want to renew the gutters and provide PVCu fascias and soffits as well.

## THE LAW

17. In closing submissions on behalf of both parties, the Tribunal was taken both to the terms of the lease applying in this case, and various other guidance from statute and case-law. So far as the lease is concerned, at page 141 in the bundle can be found the Eighth Schedule to the lease, which contains covenants to be observed by the lessor. Effectively the cost of complying with those covenants

is the cost which can be recouped from the lessee by way of service charge. The first of those covenants is:

*"To keep the reserved property in good and substantial repair and condition and whenever necessary re-build and reinstate and re-new and replace all worn or damaged parts..."*

18. It was common ground therefore between the parties that the Tribunal was required to consider whether or not it was *"necessary"* on a proper construction of the lease to replace this roof, as part of the overall considerations.

19. In addition to the contractual position, the Tribunal had to consider the statutory provisions as contained within Section 19 of the Landlord and Tenant Act 1985 (as to whether the proposed costs would be reasonably incurred) and also under Section 27A, the reasonable sum payable in relation to those costs.

20. The Tribunal was also directed to some case-law. On behalf of the Respondent, the Tribunal was directed to the decision of the Lands Tribunal in the case of ***London Borough of Wandsworth -v- Griffin & Cunningham [2000] EW LANDS LRX 40 1999***. In that case at paragraph 33 it was said on behalf of the Appellant that:

*"The duty to repair became a duty to replace when it was unreasonable to waste money on repairs" – see* ***Greetings Oxford etc -v- Oxford Square Investments (1989) 18 NSWLR 33*** *and* ***Minja Properties -v- Cousins Property Group [1998] 2 EGLR 52.***

21. Also in that case when deciding the matter, the Tribunal relied upon the decision in ***Holding & Management Limited -v- Property Holding and Investment Trust Plc [1990] 1EGLR 65*** in which the Court of Appeal, per Nicholls L J, held that when deciding whether particular works could fairly be regarded as constituting repair;

*"... the exercise involves considering the context in which the word "repair" appears in a particular lease and also the defect and remedial works proposed. Accordingly, the circumstances to be taken into account in a particular case under one or other of these heads will include some or all of the following; the nature of the building, the terms of the lease, the state of the building and the date of the lease, the nature and extent of the defect sought to be remedied, the nature, extent, and cost of the proposed remedial works, at whose expense the remedial or proposed remedial works are to be done, the value of the building and its expected life span, the effect of the works on such value and life span, current building practice, the likelihood of a recurrence if one remedy rather than another is adopted, the comparative cost of alternative remedial works and their impact on the use and enjoyment of the building by the occupants. The weight to be attached to these circumstances all vary from case to case".*

22. On behalf of the Applicant, the Tribunal was also referred to the decision of the Leasehold Valuation Tribunal in ***Lessees of Kennett House -v- City of Westminster LVT LON/00BK/2005/0103*** and the decision of the Lands Tribunal in ***Hyde Housing Association Limited -v- Williams LRX/53/1999***. In this latter decision the Tribunal's attention was particularly drawn to a test appearing at the end of paragraph 28 of that decision to the effect that where the works carried out by a landlord are to be reimbursed by the tenant as being reasonable, the issue may turn on whether the landlord would himself have chosen that method of repair if he had had to bear the cost himself.

## THE TRIBUNAL'S CONCLUSION

23. The Tribunal has considered carefully the evidence as summarised above, the provisions of the lease, the statutory requirements and the guidance given in the case-law referred to. On the evidence before the Tribunal in this case the Tribunal has concluded that the complete replacement of this roof is neither *"necessary"* within the terms of the lease nor *"reasonable"* for the purposes of the statute. The reasons for coming to this conclusion are essentially as listed at paragraph 13 of the Applicant's skeleton argument, and these are:

(i) although the slates are weathered, so far as the Tribunal could judge from the inspection and the evidence, they are firm and there are only 3 presently slipped slates. These can easily be repaired at modest cost.

(ii) overall, about 6% of the slates on the roof have been re-fixed or renewed. This is not a level which would suggest the roof was coming to the end of its natural life, nor that comprehensive and costly further repairs are foreseeable in the near future.

(iii) there is no real justification on the evidence to suggest that the whole roof should be replaced on a somewhat speculative basis in case further failures should take place.

(iv) although the roof would undoubtedly benefit from some maintenance in the form of the re-fixing of the slipped slates, the re-bedding and re-pointing of the hip and ridge tiles, the replacing of the rendered finishes to the chimneys, the re-haunching of the pots and cleaning out of the gutters – the roof in other respects does not require replacement.

(v) the structure of the rafters, the purlins and struts are generally in sound condition.

(vi) there are some signs of water ingress and staining but none of these signs are of a nature or degree to cause structural concern – and moreover, the Tribunal would add, the evidence was not compelling that such staining was of a recent kind. In so far as Mr Allen felt that part of the roof timber was damp, this was explicable (if it was the case) on the basis that it was beneath part of the hip and ridge tiles and these would be repaired as part of the repair programme in any event.

24. Another important factor from the point of the Tribunal in deciding whether or not replacement or repair was appropriate or necessary, was the guidance given in the ***London Borough of Wandsworth v Griffin*** case referred to above. Obviously, had there been a history of repeated problems with this roof, such as

to suggest that it would be an unreasonable waste of money to repair it any further, this would have been a compelling argument for replacement of the roof. However, on the evidence before the Tribunal, there is no such history. There is no suggestion that contractors were having repeatedly to be called out to carry out patching repairs to this roof, and it was in sound condition and sufficiently water tight at the time of the inspection in the manner referred to above.

25. Moreover, this was not a case in which there was a relatively small margin between the cost of the repairs and the cost of replacement. Obviously again had this been the case, there would have been a much more compelling reason for carrying out overall replacement, since the additional cost would not in the scheme of things have been significant, and would have provided long term security. However there was a very big margin of difference in this case, not justified on the evidence for the reasons given above and which, on the evidence before the Tribunal, was a relevant factor in terms of the debate between repair and replacement and reasonableness. Mr Allen candidly told the Tribunal that costing was not an especially relevant factor bearing on his mind when recommending the appropriate course of action to take. His brief from his principal, was to do those works that were necessary to bring the housing stock up to the required level to meet the criteria within the Decent Homes Programme and minimise major repair costs in the next ten years. The matters he had to take into account were not the same as those generated by the lease provisions (which he had never read, and had never been provided to him).

26. For the reasons indicated above therefore the Tribunal has concluded that within the terms of the Act and the lease provisions, the costs reasonably to be incurred and paid in this case are limited to the sum of £1,000 which was the agreed figure between the parties referable to repair as opposed to replacement. This is the finding of the Tribunal. So far as costs in relation to re-pointing and re-rendering is concerned, as indicated above, the parties were agreed on the unit cost to be adopted, and this matter will be finalised by the parties themselves once there has been closer examination of the works required.

## COSTS

27. There was an application on the part of the Applicant for refund of her costs of the application and the hearing fee in the sums of £200 and £150 respectively. The basis of this application was that it was only when this application was made, that the figures in the "mini bill" presented to the Applicant began dropping, and that, if she is successful in this application (as she has been) costs should follow the event. On the part of the Respondent it was argued that the figures in the mini bill were only ever estimates and, once the works were under way the finalised account was inevitably going to be smaller. However the view of the Tribunal is that the main issue in this case has been determined in favour of the Applicant, and that this would not have been the outcome had she not been required to bring this application. She has invested many hours in the preparation of this case and no doubt incurred the costs of her expert and perhaps other costs. The Tribunal is of the view that the cost of the hearing and the application fee (in the total sum of £350) should indeed be credited to her by the Respondent.

28. There was no need for the Tribunal to make a Section 20C direction because the Respondent indicated that it had no intention of seeking to recover any part of the cost of these proceeding within the scope of any future service charge demand. No other applications for costs were advanced, and no further orders are made in this regard.

Legal Chairman: S. Shaw.

Dated: 21 February 2010