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Residential  
Property  
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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
LANDLORD AND TENANT ACT 1985**

**LON/00AM/LSC/2010/0285 & LON/00AM/LSC/2010/0368**

**Premises:** 63 & 65 Barnabas Road  
London E9 5SD

**Applicant:** London Borough of Hackney

**Represented by:** Mr T Hammond of counsel

**Respondent:** Mr TE Osadolor

**Tribunal:** Mr NK Nicol  
Mrs A Flynn MA MRICS  
Mr A Ring

**Date of Hearing:** 26/08/10

**Date of Decision:** 27/08/10

## **REASONS FOR DETERMINATION**

1. The Applicant issued proceedings in the county court for non-payment of service charges allegedly owing by the Respondent as the lessee of each of the properties at 63 and 65 Barnabas Road, London E9 5SD. Separate proceedings were issued for the two properties but they were consolidated following both being referred to this Tribunal. Therefore, this decision determines the issues in dispute relating to both properties.
2. The Tribunal heard the case on 26<sup>th</sup> August 2010 – the Respondent was late following a journey from Glasgow but he was given time to collect himself and to read the Applicant's Skeleton Argument which had only just been filed and served. The Tribunal also inspected the exterior of the block in which the properties are located on 27<sup>th</sup> August 2010.

### **The sums in dispute**

3. The Applicant notified the Respondent on 13<sup>th</sup> November 2006 that they intended to carry out a major works programme which included the building in which the two flats are located. The sums claimed at the time of the issue of the county court proceedings were set out in interim invoices issued on 9<sup>th</sup> November 2007:-
  - (a) No.63            £11,572.66
  - (b) No.65            £10,415.39
4. The works were completed in 2007. On 9<sup>th</sup> February 2009, the Applicant notified the Respondent in accordance with s.20B of the Landlord and Tenant Act 1985 that the final invoice would be provided in due course. Following the conclusion of the final account, the Applicant initially asserted that the amounts owing by the Respondent were £13,686.99 and £12,318.29 respectively. However, Ms Harsha Amin, a project manager for the works programme, reviewed the Respondent's charges and the Applicant now asserts that he owes the following amounts:-
  - (a) No.63            £11,229.38
  - (b) No.65            £10,115.12
5. The Respondent has raised a number of objections to the reasonableness of these charges under s.19 of the Landlord and Tenant Act 1985. In summary, the

Tribunal has decided to reject them for the reasons set out further below and to confirm the reasonableness and payability of the final service charges set out in paragraph 4(a) and (b) above.

### **The subject properties**

6. The two properties are neighbouring maisonettes on the ground and first floors in a four-storey block on the Gascoyne Estate in east London. The estate is managed by an ALMO, Hackney Homes Ltd, on behalf of the Applicant. Each of the two properties is subject to a lease in similar terms which include the following:-
  - (a) Each lease is for a term expiring on 29<sup>th</sup> October 2114;
  - (b) By clause 3, the lessee is obliged to pay a proportion of the lessor's costs incurred or to be incurred in carrying out their obligations under certain provisions in the lease, including those referred to below – this is the service charge;
  - (c) By clause 6, the lessor is obliged to comply with the covenants in the Ninth Schedule which include the maintenance and management of the block in which the flats are located and the estate on which the block is located; and
  - (d) By clause 8(A), the lessor covenanted to manage the estate and the block in a proper and reasonable manner, for which managing agents and other professionals may be employed.
7. There is one other leasehold property in the block. The Respondent apportions the service charge payable in respect of each leasehold property by a “living space factor” based on the number of bedrooms. Number 63 is a four-bedroom property and has a factor of 5, while number 65 is a three-bedroom property with a factor of 4.5, relative to the total factor for the whole block of 46.5.

### **Roof repair and replacement**

8. In 2003 the Applicant carried out a Stock Condition Survey across their housing stock, including the subject block. The aim was to devise a programme of works to bring the stock up to the Government's Decent Homes standards. Being such a

large project, the process took place over a lengthy period of time. The Applicant devised a procurement process designed to bring costs down by dealing directly with suppliers and sub-contractors and setting prices in accordance with fixed schedules. That process took their standard period of 24 months. The Applicant then prioritised the works across their housing stock – the subject block came near the top of such priorities but not at the top and so it was not until 2006/7, 3-4 years after the Stock Condition Survey, that works began there.

9. In the meantime, the roof at the subject block leaked. The Applicant carried out patch repairs from time to time and levied service charges accordingly. The Respondent objected to paying these charges, in particular because he asserted that the water leaking through the roof had penetrated into his properties causing damage, compensation for which should be set off against his liability. This dispute ended up in the Shoreditch County Court. The Tribunal was not shown the final judgment or order but it is known that the Respondent was not successful.
10. The Respondent came away from those proceedings under the impression that the Applicant had successfully asserted that the roof was in satisfactory repair and would not need major work in the foreseeable future. He now knows differently and protests vigorously that the Applicant failed to inform the county court of relevant circumstances which could have affected the outcome of the case or which, at the very least, misled him.
11. The Stock Condition Survey had identified that the roof of the subject block was past any reasonable calculation of its likely life, being around 43 years old rather than the normal life of 30 years and the maximum life of 50 years, and that it was beyond reasonable repair. On the basis of this, the works programme included the replacement of the whole roof costed in the final account at £31,019.02. The Respondent asserted that the state of the roof could have been found out, at the latest, when it started leaking in around 2000, about the time he bought his two properties. Further, he asserted that it should not have taken as long as 3-4 years from survey to works. The result of this delay, he said, was that he had had to contribute to the cost of numerous patch repairs which could have been avoided if the replacement roof had been provided sooner.

12. Unfortunately, the Respondent's argument has been developed from the perfect view of hindsight. From what is now known, it is arguable that the roof could have been replaced sooner but that is not the relevant test. The Respondent's only objection to the payability of his service charge is that it is not reasonable in accordance with s.19 of the Landlord and Tenant Act 1985. The Applicant's decision to replace the roof when it did, and to carry out patch repairs in the meantime, must therefore be judged on the basis of whether it was reasonable.
13. The Tribunal has no doubt that the Applicant's decision was reasonable. The Applicant had to comply with their repairing obligations by managing the roof. The options were to carry out patch repairs or replace. So long as the roof was in a reasonable state, patch repairs clearly constituted the most efficient and cost-effective option. However, eventually the time and expense of replacement became instead the most efficient and cost-effective option. The Applicant did not carry out a life-cycle cost comparison but their officers used their professional judgement to determine when that point had been reached. The procurement process was lengthy but they also judged that the savings derived from such a careful and detailed process would outweigh the cost of continued patch repairs in the meantime. The timings of the works to the roof may not have been perfect but the Applicant's actions were within a range which the Tribunal would consider reasonable.
14. The Respondent also objected to the standard of work to the roof in that the patch repairs could not have been up to a reasonable standard if the roof needed replacement. This is to misunderstand the Applicant's position. It was not suggested that the roof was actually leaking or even in significant disrepair at the time it was replaced. The patch repairs had been successful but the Applicant reasonably judged that there would be so many such repairs in future, with attendant risks to the residents from the existence of the disrepair, that it was more economic and expedient to replace the roof. There was no need and no point in waiting for further significant disrepair to arise before doing that.
15. The Respondent further argued that the amount spent was unreasonable. It was questioned whether scaffolding was required for some of the patch repairs but the Applicant explained that this was necessary for perimeter protection for those working at or near the edge of the roof. Otherwise, the Tribunal found no reason

to question the cost of the roof works. The replacement of the roof was subject, along with the rest of the works programme, to an extensive and comprehensive tendering process aimed precisely at achieving a reasonable price.

### **Cost of works of no benefit to the Respondent**

16. The Respondent objected to works done to parts of the block from which he said his properties derived no benefit. In particular, he had replaced his own windows and doors and so objected to contributing to window and door replacement in the block. He had also painted himself the soffits and walls outside the front doors of his properties. Further, he objected to works to balconies and central heating. He appeared at various times to suggest that it would also be unfair to ask him to contribute to the roof on the same basis but he asserted at the hearing that this was not correct.
17. In fact, the Applicant had taken out from the charges any costs relating to window and door replacement and the balconies exclusive to each flat. The works also did not include any central heating works in any event. The Respondent was only required to contribute to works to communal areas, as the lease obliged him to.
18. The Respondent suggested at the hearing that he had signed the lease presented to him, that it was in standard terms which he had no opportunity to negotiate. He further suggested that it would be unfair for him to be obliged to pay service charges in strict accordance with the lease when he derived little, if any, direct benefit. The Tribunal queried whether he intended to rely on the law relating to unfair contract terms but he did not pursue that.
19. The Tribunal cannot accept the Respondent's submission that it would somehow be unfair for him to pay his contribution to the works to the communal areas. It has no basis in law and is incorrect in any event. The Respondent clearly benefits from the works to the communal areas, not least in the resulting increase in the capital value of his properties. The costs arising from such works are reasonable and the resulting service charge is payable.

## Concrete repairs

20. The Respondent objected to the redecoration of the communal areas on the basis that what had been done did not justify the expense. When the Tribunal pointed out that this element had only cost £5,416.71 according to the final account, he switched his criticism to the concrete repairs costed at £23,242.13. He first asserted that there were no concrete areas but conceded this when the Tribunal directed his attention to a photo of the façade showing that the main structure and the soffits were clearly concrete. He then asserted that the only work which had been done was to paint these areas.
21. Because the Respondent had only raised this issue at the hearing, the Applicant had not come prepared to meet it so there were no documents providing a breakdown of the concrete repairs. However, Mr Geard, a project management consultant on the works programme, explained that they would have involved jet-washing the concrete areas, exposing any cracked or spalled areas of concrete or rusting or damaged reinforcement bars, which would then be surveyed with the assistance of the Concrete Corrosion Consultancy Practice and repaired. He also said that work to the brickwork would have been included under the heading of concrete repairs.
22. In response, the Respondent asserted that no jet-washing had taken place. His evidence on this was self-contradictory. He said he lived at one of the properties and saw no jet-washing taking place. He then said that there would have been written notice of jet-washing in order to avoid water and dirt going through residents' opened windows and those who lived in his properties would have passed such notice to him.
23. The Applicant answered that the jet-washing had taken place but there would have been no written notice – instead a tenant liaison officer would have contacted residents directly on a daily basis on any necessary arrangements to facilitate it.
24. The Respondent asserted that the Tribunal should see for itself on inspection that he was right that nothing had been done except painting. The Applicant doubted the value of an inspection on the basis that the paint would have covered up any repairs. The Tribunal confirmed the Applicant's view on inspection and could

not see anything which would cast doubt on their evidence. The Respondent pointed to two small indents in two concrete corners which had been painted over but it is unremarkable that these small areas were not made good. There was some impact damage and scuffing but that is also unremarkable given that the work was carried out three years ago. There was also some cracking to the first floor brickwork on the front façade but there was no evidence before the Tribunal that it was present around the time of the works. The fact is that it is not possible to see what repairs were actually done in 2007 from the building's current state.

25. In the circumstances, the Tribunal has determined that the charges for concrete repairs were entirely reasonable and so the resulting service charges are payable.

### **Funding of works**

26. The Respondent alleged that the works programme was assisted by central government funding, the benefit of which the Applicant failed to offset against the cost. In fact, although the programme took place in the context of the Government's Decent Homes initiative, there was no such funding here and so the issue of giving credit for it does not arise.

### **Alleged double-charging**

27. The Respondent objected to the administration charge of 10% added to the cost of the works. In particular, he asserted that he was being double-charged. He asserted that the administration costs should be apportioned per leaseholder rather than per leasehold property. In support of this, he further asserted that letters in respect of each of his two properties could have been combined into one and sent to him once, producing a costs saving.
28. The Respondent's submission misunderstands both the nature of the administration charges and the basis for their apportionment. Sending notices and letters would be only a small part of such costs which included:-
- Obtaining/inspecting/interpreting leases;
  - Calculating estimated and actual recharges;
  - Charge collection;



- Staff and training costs;
  - IT costs and support;
  - Legal fees;
  - Overheads such as rent, rates, telephones, fuel bills, etc.;
  - Responding to and advising lessees and their representatives; and
  - Arranging meetings with lessees.
29. In the Respondent's case, there would have needed to be separate notices in relation to each of his properties because different charges arose from the application of the different apportionment factors (see paragraph 7 above). It is difficult to see what material costs savings there could possibly be in these circumstances from combining correspondence to him into one.
30. Service charges are often apportioned according to the size of the properties involved, whether according to floor area, the number of bedrooms, or otherwise. This is fair and reasonable given that the service charges will normally be proportionate to the size of the property taking into account the likely number of residents and the area which needs to be maintained. The Respondent's properties are, taken together, around twice the size of that of the only other leaseholder in the block and it is fair and reasonable that his proportion of the costs should reflect this.
31. The Applicant offered a 5% discount to lessees who paid their service charges promptly in relation to the works programme. The Respondent alleged that this demonstrated that their administration fees were inflated and included large profit elements. The Tribunal is satisfied that the Respondent is wrong. The discount is a rational response to the potential for late or non-payment of the sums which they need to recover.

### **Costs of the proceedings**

32. The Respondent applied for an order that the Applicant may not add any part of their costs incurred in these proceedings to the service charges in accordance with s.20C of the Landlord and Tenant Act 1985. The Tribunal may only deny a landlord their right, if it exists under their lease, to recover such costs if they deem it to be just and equitable in all the circumstances. However, the

Respondent has not succeeded in any part of his case. He alleged that the Applicant had failed to provide documentation and information he sought in relation to the service charges but the Tribunal does not believe that, to the extent his allegation is correct, such provision would have made any difference to his approach. When challenged on his weaker points, such as the cost of redecorating the communal areas, he simply shifted his ground – this suggested that if any information had undermined his original objection, he would have moved onto other grounds instead.

33. Therefore, the Tribunal can see no basis for a s.20C order. This does not, of course, preclude the Respondent from challenging the reasonableness or payability of any service charge arising from the costs of these proceedings but that is a matter which will not arise unless and until the Applicant actually attempts to levy such a charge.

### **Conclusion**

34. It is not difficult to see why the Respondent baulked at paying the sums demanded from him by the Applicant because they are relatively large. However, on examination, he could not come up with any reasonable justification for his allegation that the service charges were exorbitant or excessive. Therefore, the Tribunal has determined that the service charges referred to in paragraph 4(a) and (b) above are reasonable and payable.

Chairman.....

*N.K. Nicol*

Date 27<sup>th</sup> August 2010