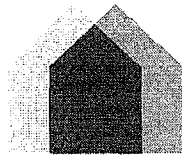


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Residential
Property
TRIBUNAL SERVICE

Case reference: LON/00BE/LSC/2010/0688

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND
TENANT ACT 1985**

Property: 71 New Place Square, Drummond Road, London SE 16 2HP

Applicant: Osman Hussein

Respondent: The London Borough of Southwark

Date heard: 16 December 2010

Appearance: Orlando Strauss, legal officer, for the respondent

No appearance for the applicant

Tribunal: Margaret Wilson
Jenna Davies FRICS

Date of the tribunal's decision: 16 December 2010

Introduction

1. This is an application by the leaseholder ("the tenant") of 71 New Place Square, Drummond Road, London SE 16 under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine his liability to pay service charges for major works carried out by the landlord to the block of flats and estate in which his flat is situated.
2. On 3 November 2010 directions were made for the hearing of the application, which was by the directions fixed to be heard on 16 December 2010 at 10 am. On or about 14 December 2010 the tenant submitted a brief written statement of his case, but he did not lodge hearing bundles as directed and he did not attend the hearing on 16 December. We waited for him until 10.45 am and then decided to hear the matter. At the conclusion of the hearing at about noon the tenant had still not appeared and had offered no explanation for his non-appearance. We were satisfied that he had been sent a copy of the pre-hearing directions, which were addressed to him at the address he had given (which is not the flat in respect of which he is liable to pay service charges). We were informed by the tribunal clerk that she had recently spoken to the tenant on the telephone and that it was clear from the telephone conversation that he was aware of the date and time of the hearing. We were therefore satisfied for the purpose of regulation 9(8) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 that notice of the hearing had been given to the tenant and we considered that it was appropriate to proceed with the hearing in his absence.
3. Orlando Strauss, the landlord's legal officer, represented the landlord and we heard evidence from Kevin Orford BSc (Bdg Surv), the landlord's project programming manager, and from Jenny Dawn, the landlord's final accounts manager. Because the tenant had not complied with the tribunal's direction to lodge bundles of the

documents required for the hearing the landlord had lodged bundles which contained all the necessary documents.

Background

4. New Place Square is a seven storey block, built in the 1970s, containing 146 flats. It is on an estate known as the New Place Estate in Rotherhithe which comprises a number of interlinked blocks of flats. It is understood that about a fifth of the flats are owned on long leases acquired under the Right to Buy Scheme and the other flats are occupied by periodic tenants of the landlord, which is a registered social landlord.
5. By clause 4 of the tenant's lease the landlord covenants to provide services and to keep the structure and exterior of the flat and the block in repair and to make good any defects affecting the structure, and by clause 2(3)(a) the tenant covenants to pay a service charge as provided in the third schedule. Paragraph 7 of the third schedule provides that the services in respect of which he must pay a service charge include the maintenance and management of the building and the estate and the installation, by way of improvement, of an entry-phone system. By paragraph 6(1) of the third schedule the service charge payable by the tenant is to be a "fair proportion" of the costs and expenses set out in paragraph 7 of the schedule.
6. The tenant's lease was granted to him on 27 January 2003. By virtue of the relevant legislation the offer notice given to him by the landlord allowed him a reference period commencing on 27 January 2003 and ending on 31 March 2008 during which his liability to contribute to works carried out by the landlord was limited by the terms of the notice.

7. On 16 November 2005 the tenant was given notice by the landlord under section 20 of the Act of its intention to carry out extensive works to the block and to the estate. The works included the provision of a new entry-phone system, secure doors, closed circuit television and other works intended to improve the security of the block and the Estate, anti-social behaviour being a particular problem on the Estate. The contractor, Apollo Limited, had been selected to carry out the works after a competitive tendering process and the tender report was put before us.
8. The section 20 notice given to the tenant stated that his estimated contribution to the cost of the works, including professional fees and management fees, was £11,895.90. In a subsequent letter dated 21 March 2006 he was informed that his estimated contribution had been slightly reduced to £11,439.77.
9. It was then appreciated that the tenant had the benefit of an offer notice, and accordingly on 25 October 2006 he was invoiced for £1159.94, that amount comprising an estimated charge of £1029.68 for the works, described as "entryphone and security fencing", plus a supervision fee of £89.07 and a management fee of £41.19.
10. The works which were the subject of the contract commenced on 2 May 2006, with a contractual date for the completion of those works of mid 2007. The works were supervised by a project manager who is a chartered building surveyor and programmed by Mr Orford. During the course of the works the communal heating and hot water system serving the New Place Estate together with three other estates (Arica House, Roule Road and Keetons) failed completely, and Apollo Limited was instructed to repair it. Although the anticipated cost of the further works required to repair the system were below the amount at which statutory consultation with the leaseholders was required, the landlord in fact consulted on them.

11. As a result of the additional works required and of difficulties in carrying out the works specified under the original contract the certificate of practical completion was not issued until 29 January 2009.
12. The final account for the works was prepared by Peter Lawrence Stallworthy Limited, an independent firm of quantity surveyors. It was put before us and it shows that the total final contract cost was £2,429,476.50. Of the costs rechargeable to the leaseholders, the tenant's proportion, after allowance is made for the benefit of his offer notice, is said to be £10,049.03.

The tenant's case

13. In his statement of case the tenant said that the charge was unreasonable, given that he had been previously invoiced for an estimated charge of £1159.94. He also enclosed an extract from an article about the works in a local newsletter. He did not assert that the landlord had failed to consult him, or that the works were unnecessary, or that they did not fall within the service charge provisions in his lease, or that the costs were themselves excessive, or that the standard of the works was inadequate.

The law

14. By section 27A of the Act an application may be made to the tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A "service charge" is defined by section 18(1) of the Act as *"an amount payable by the 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". Relevant costs are defined by section 18(2) and (3). By 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 provision 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". By section 19(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 of subsequent charges or otherwise".

Decision

15. Ms Dawn, who is part of the team responsible for allocating service charges, explained to us in detail how the total charge had been allocated to the tenant. She said that the tenant had been given the benefit of reduced charges in strict accordance with the terms of his offer notice, and that without the offer notice his contribution would have been £13,119.92. She explained how the different elements of the work had been divided, so that each element in respect of which the tenant was entitled by virtue of his offer notice to a discount had been properly discounted. She illustrated the landlord's approach by reference to the cost of replacing the entry-phones, and we were satisfied that they had been correctly apportioned to the tenant.

16. Mr Orford described the progress of the contract. He said that he was satisfied that the tendered prices were genuinely competitive, that the work had been properly performed and supervised, and that the delays were inevitable and not the fault of the landlord. We were told that the professional fees were based on 8.65% of the cost of the works and

that the landlord's charge for managing the contract was based on 4% of the cost, which we considered to be reasonable.

17. We were satisfied on the evidence we were given that the costs charged to the tenant were reasonably incurred, reasonable in amount, and payable by him. We were satisfied that they were correctly calculated, that the proportion attributed to him was fair as his lease requires and that it took proper account of the terms of his offer notice. Accordingly we are satisfied that he is liable to pay the sum of £10,049.03 in respect of the works.

CHAIRMAN.....

DATE..... 12 December 2010