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**Residential
Property**
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AC/LSC/2010/0612

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

Applicant/Landlord: London Borough of Barnet

Represented by: Mr A Moore, counsel
Instructed by Judge & Priestley, solicitors

Respondent/Leaseholder: Ms J M Kilkenny

Premises: 70 Prospect Ring, London N2 8BS

Date of Hearing: 11 May 2011

Leasehold Valuation Tribunal: Ms F Dickie, Barrister, Chairman
Mr J Barlow, FRICS
Ms S Wilby

Date of Decision: 21 June 2011

Summary of Decision

Charges of £15,568.93 in respect major works are reasonable and payable in full by the Respondent. The application for an order under s.20C in respect of the landlord's costs of the proceedings is dismissed.

Preliminary

1. The Applicant is the freeholder of the property known as Prospect Ring, London N2 8BS, which consists of 4 blocks of various heights comprising a total of 104 dwellings. The Respondent is the leaseholder of one of those dwellings known as 70 Prospect Ring ("the premises") under a lease dated 27 October 2001 for a term of 125 years from 1 July 1983. The freeholder issued County Court proceedings against the leaseholder for recovery of unpaid

service charges in the sum of £15,568.93 plus interest pursuant to the County Courts Act 1984. The outstanding service charges are in respect of major works to the building. By order of District Judge Karp sitting at the Barnet County Court on 16 August 2010 the case was transferred to the Leasehold Valuation Tribunal. The LVT has no jurisdiction in relation to the interest claimed. An oral pre trial review was held on 12 October 2010 at which the Applicant was represented but the Respondent did not appear.

The Works

2. A Notice of Intention to carry out major works was issued to the leaseholders in the building on 8 December 2004. The works detailed therein were described as follows:

“The works will include renewal of existing windows with double glazed UPVC windows and balcony doors. Concrete repairs to be carried out. Redecoration to communal areas. Relocation of TV and satellite dish. Removal of asbestos and lift renewal to blocks C, D and F”.

3. A Notice of Estimates dated 17 August 2005 in relation to the “lift refurbishment” was sent to the leaseholders detailing their contribution to the cost of the works and supervision/administration fees, estimated at £5244.25. A second Notice of Estimates dated 18 August 2005 was also sent to the leaseholders detailing the estimate of their contribution to the “window renewal and associated works” in the sum of £10,998.38. The work was completed in around June 2006. A further letter from the landlord to the tenant dated 4 June 2007 confirmed the interim contribution in the sum of £15,336.05. A service charge demand dated 9 July 2007 was sent for that amount, plus a previous outstanding balance of £1401.06 that was not in dispute before the Tribunal.

Legislation

4. Sections 18, 19, 20 and 27A of the Landlord and Tenant Act 1985 (“the Act”) – not reproduced.

The Hearing

5. By the time of the hearing the tenant admitted that the landlord was responsible under the terms of her lease for the replacement of the windows. It is not considered necessary in the circumstances to set out those terms in this decision. Having regard to Clauses 2(B), 3(ii) and (vi), Clause 6(3)(8) and the contents of the Third Schedule to the lease, the Tribunal agrees that the landlord is so liable and that the tenant has covenanted to contribute to the cost.
6. Ms Kilkenny said at the hearing said she thought that she had a deed of variation of her lease that altered her liability to contribute to the works. However, she was unable to produce this document and thought that her solicitor would have it. The Council denied that such a deed existed and the tenant did not ask for an adjournment to attempt to locate it. The Tribunal noted that prior to the transfer of the proceedings from the County Court Ms Kilkenny had been represented by solicitors, but they had made no mention of the existence of a deed of variation in her defence. The Tribunal considered that it was highly unlikely in those circumstances that

a deed of variation did indeed exist and did not consider it reasonable to adjourn the hearing for tenant now to investigate whether one existed.

Landlord's Case

7. The landlord's case was that the scheme was prepared for fully by a survey of the building, was procured by a formal tender process, and there is no evidence that the costs obtained by that process were not within the market norm. The obligation under section 20 and Schedule 4 of the Service Charges (Consultation Requirements) (England) 2003 is to "...describe, in general terms, the works proposed to be carried out...". Mr Moore, counsel for the landlord, argued that Barnet Homes could quite properly simply have put "replace windows" on the consultation notice, and could not be penalised for adding more information than was strictly necessary.
8. The Tribunal heard oral evidence on behalf of the Council from Mr J Gargan, Leasehold Services Manager and M I McDowell, who was the Project Director managing WSP Building Consultant's contract for the major works with Barnet Homes. Mr McDowell had been involved throughout this major works project. He produced the feasibility report, which had recommended window replacement. There is no dispute that the contract was tendered and the contractor chosen was the cheapest. Estimates were sought on the basis of aluminium windows and were available for inspection.
9. His witness statement dealt in detail with the reasons for choosing aluminium windows over UPVC. Trickle vents are installed to improve ventilation since the new windows increase the thermal temperature. He said there was minimal difference in the condensation properties of UPVC and thermally broken aluminium windows such as those installed and if used properly, with weekly cleaning, the windows should be free from mould. Mr McDowell gave evidence that the windows installed met the building regulation standards at the time and that in his opinion thermal bridging could be discounted as a cause of undue condensation. Mr McDowell provided the date and number of the Fensa certificate.
10. Mr McDowell was subsequently instructed in October 2010 to investigate and report on tenant complaints, which he described as being minor and small in number. He had not visited Ms Kilkenny's flat. He commented in his report about photographs showing trickle vents had been taped shut. It transpired in the hearing that the photographs in question were not of the subject premises. Whilst he acknowledged some arithmetical errors identified by Mr Hunt, the Respondent's expert, he confirmed that the total amount charged to the tenants was correct and emphasised that the final cost came in under the estimated sums. Though the notice of intention had referred to internal redecoration, Mr McDowell said that this was never intended to be more extensive than the redecoration of the internal faces of items included in the external decoration. This had been clear from the specification and this was the scope of the works that had been carried out and billed for. He considered the additional works carried out were legitimate contingency items, and that the only contingency item that might arguably have been separately consulted upon was the work to the door entry system.

Tenant's Case

11. The tenant's dispute was particularised in full at the hearing. She considered that the window replacement had not been carried out in a workmanlike manner, in that the windows are not watertight and weather proof, and damp and mould have accumulated on the inside of the window frames. The tenant denied that this damp was caused by condensation. She claimed that the window frames are not of a specification supplied by the Council, which had failed to provide a sample section of the windows that had been installed. Aluminium powder coated windows had been installed instead of UPVC windows referred to in the Notice of Intention.
12. The tenant said there had been damage to internal plaster around the windows of the subject premises, that balcony doors and windows were not functioning. She claimed the intercom system was not working in many of the flats and the lifts frequently broke down, but produced no evidence of this. She showed the Tribunal a photograph of a crack of significant size in the kitchen wall and mould affecting the walls around the window frames. She said that the council had at one stage offered her £200 to get the crack repaired. The photographs were not of good quality, and the tenant submitted that some showed defective window seals.
13. Ms Kilkenny had made a formal complaint to the Council and received visits in February 2008 from a representative from the Council's Quality Assurance Team* (who had no building qualifications) and on 28 November 2008 from Mr Winston Ben, the Council's surveyor. She found their attitude to her complaints was poor and she was dissatisfied that her concerns were not addressed during the 12 month defects liability period for the works. She requested, but did not receive, a copy of Mr Ben's report. He had suggested to her that she was causing the condensation problem.
14. In Ms Kilkenny's opinion the costs are unreasonable, especially because the cost had almost been as high as the estimate, but some works included in the Notice of Intention were not carried out, in particular redecoration of the common parts. She asserted that other tenants in the building were dissatisfied with the work but produced no evidence of this. Ms Kilkenny gave evidence that she saw a letter of advice dated 2002 saying that the cost of the major works would be £8000, but she no longer had a copy of it. She said she had therefore exercised her Right to Buy and purchased in 2003, making an informed choice that the problems in the building would be addressed. She understood from the wording of the Notice of Intention that there would be new flooring, doors and decorations to the common areas. She acknowledged she had not made any observations in response to this notice and had not inspected the specification. She had attended a consultation meeting at Trinity Hall on 29 September 2005. She was shocked by the final cost of the works. To her mind she thought she should pay the value of the total cap of £13,000 in the notice served under s.125 of the Housing Act 1980 when she purchased her flat, minus the cost of the works, including communal redecoration, which was not carried out. She felt she should pay about £10,000 for the works, but had in fact paid nothing pending resolution of her complaints about the quality of the windows, which were not answered expeditiously.
15. The tenant relied on the expert evidence of Mr Geoffrey Hunt, chartered building surveyor, as set out in his report of May 2010, and he gave oral evidence at the hearing. His instructions had been to evaluate the correlation between the window replacement works intended and those

carried out, and to evaluate if it could be concluded that anomalies might have culminated in reduced performance. The windows were nearly four and a half years old at the time of Mr Hunt's inspection. He made a summary of comparisons between the intended work and that carried out.

16. Mr Hunt did not admit that the costs charged were less than those specified in the s.125 Notice. That notice made it clear that the estimated contribution of £8463.00 would be payable for the window works and £4881 for the lift replacement, plus an inflation allowance in each case calculated according to the formula set out in the relevant Statutory Instrument 86/2195. However, he produced no calculations to suggest that those of Mr McDowell were wrong.
17. Mr Hunt considered that some items or work methods found on site did not appear to comply with the specification. These items included seals in under cut grooves, making good to walls, key operated restrictors, a Union locking system and all glass to be laminated. He was not a glazing safety expert, but he considered that the super toughened glass fitted meets the requirement of the building regulations. It was not apparent to him on a visual inspection that the requirement for thermal breaks in the aluminium frames had been met, and he said their absence could cause the frames to become very cold and cause condensation to form. The specified junction sealant is a high quality product more suited to glass curtain walling and is unlikely to have been used. He also observed minor issues with workmanship. Sealant had been applied in a triangular fillet, which he considered could imply that the gap between the frame and building is too narrow. Screwheads are not countersunk in the frames. The internal gasket was not cut into the corners on all of the windows viewed, which might affect the ability of the frame to shed water and lead to water penetration. Some windows in the stairways were stiff to operate and some inner gaskets loose, but he considered this could do with ongoing maintenance requirements.
18. Mr Hunt did not dispute the reasonableness of the costs except those set out on a schedule comparing the works claims and those proposed in the consultation notices. Mr Hunt found no evidence of a specific item of work that was "so distant from the specification to render the window as a whole non compliant". He considered the tender exercise appeared to have provided competitive prices and that in spite of his questions regarding workmanship the actual cost of individual items appears to be in order.
19. There was no evidence from Mr Hunt to support the tenant's initial contention that UPVC double glazed windows would have caused less condensation had they been installed. There was no dispute that the tenant's contribution to service charges was 2.283% plus professional and administration fees.

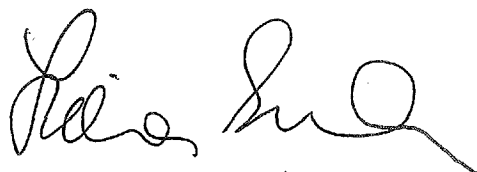
Determination

20. The evidence of the tenant, taken at its highest, does not demonstrate on the balance of probabilities that the cost of the work is not payable or reasonable. The evidence of Mr Hunt does not indicate that the type of windows installed was wrong and has caused condensation. His comment that "... there is insufficient evidence to suggest that the actual design of the

windows is capable of coping with such foreseeable conditions" (i.e. moisture and condensation) is not evidence of this. There was no convincing evidence that could persuade the Tribunal, on the balance of probabilities, that the windows were not thermally broken. Building Regulation approval had been given and a Fensa certificate obtained.

21. Mr Hunt's conclusion that maintenance was required to windows in the common parts was not contentious. This is not evidence, however, that the quality of installation was substandard. In particular, the Tribunal bears in mind that installation took place approximately 4 years before Mr Hunt's inspection and that he concluded "from an initial inspection I could not find evidence of a specific item that was so distant from the specification to render the window as a whole as non compliant". There was no evidence at all that the cost of the contract had been unreasonable for the specification or that the costs are above the cap specified in the s.125 notice. On the evidence available the Tribunal has no difficulty in concluding that the cost of the works was reasonable and reasonably incurred.
22. Since the tenant is responsible for a percentage of the block costs, assessing the value of the defects to workmanship within her premises (in the absence of any evidence that these defects were more widespread) will have an entirely negligible effect on the cost of the works to her (since she will benefit from only a reduction of 2.283% of any discount in respect of the cost of works to her flat). It may be that the tenant will take legal advice about whether she has grounds to claim compensation from Barnet Homes for breach of covenant. The Tribunal was not asked to determine a set off for damages for any such breach, no evidence was produced of loss, and it declines to exercise its discretion to do so. The Council may still wish to try to address the quality concerns the tenant has raised concerning the installation in her home, and which have been the root of the dissatisfaction which has festered for so long and resulted in the present proceedings.
23. The other cause of the tenant's dissatisfaction arises from an impression that works had not been done to the common areas of the building that ought to have been done. However, the Tribunal finds this impression was not justified, since the tenant did not participate in statutory consultation on the scope of the works or view the specification made available. The Tribunal is satisfied that the statutory consultation requirements were fully complied with. In particular, the landlord sufficiently complied with the obligation to "...describe, in general terms, the works proposed to be carried out...". It is not material that UPVC windows were referred to but aluminium windows installed. The difference in cost, properties, suitability and scope of the works is not such as to place the works outside of the scope of the statutory consultation documents served on the tenant. That further associated works were carried out as part of the contingency provided for in the specification is entirely unexceptional. The Tribunal finds none of the works falls foul of the statutory consultation requirements.
24. The tenant made an application under s.20C of the Act for an order limiting the landlord's ability to recover the costs of these proceedings through the service charge account. The evidence relied on by the tenant did not demonstrate that the charges were not payable or reasonable and the landlord has been wholly successful in these proceedings. In the circumstances the Tribunal declines to make the order requested.

Chairman:

A handwritten signature in black ink, appearing to read 'MS F DICKIE', written in a cursive style.

MS F DICKIE, Barrister

Date:

21 June 2011