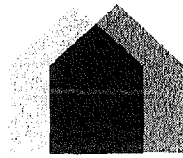


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**Residential
Property**
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICES

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, SECTION 27A

REF: LON/00AY/LSC/2011/0117

PROPERTY: **97 WILLIAM BONNEY ESTATE
LONDON
SW4 7JF**

Applicant: LONDON BOROUGH OF LAMBETH

Respondent (1) MRS C WHITING
(2) MR D WHITING

Appearances Mr A Redpath-Stevens (of Counsel)
Mr Ade Rinu (Electrical Engineer, Lambeth Council)
For the Applicant

The Second-named Respondent appeared in person on behalf of himself and the First Respondent, his wife.
For the Respondent

Date of County Court Transfer Order: 2nd February 2011

Date of Pre-Trial Review and Directions: 13th April 2011

Dates of Hearing: 27th June 2011

Date of Decision: 7th July 2011

Members of Tribunal: Mr S Shaw LLB (Hons) MCI Arb
Mr A Lewicki BSc (Hons), MRICS MBEng
Mr J Francis

DECISION

Introduction

1. This case has been transferred to the Tribunal by order of the Lambeth County Court dated 2nd February 2011. The Court Order provides that the matter is transferred to this Tribunal *“for determination of the reasonableness of the charges and whether they were in all the circumstances reasonably incurred.”* For present purposes, the Applicant is the London Borough of Lambeth (“the Applicant”). The Applicant is the owner and landlord of 97 William Bonney Estate, London SW4 7JF (“the Property”). The Respondents to the application are Mr and Mrs D Whiting. They are the joint leasehold owners of the property, the leasehold interest having been originally purchased by Mrs Whiting’s late mother, and the lease thereafter (in 1995) having been assigned to Mr and Mrs Whiting, who in this Decision will be referred to as “the Respondents”.

The Nature of the Dispute

2. During the period February 2008 to approximately June 2009 major works were carried out on the estate of which the property forms part. The Respondents dispute a demand for service charges arising out of those works in the sum of £7,501.30p. That sum is, so the Tribunal was informed, referable to the replacement of the lift or lifts servicing the building in which the property is situate, which replacement took place during the period of about fourteen weeks after the commencement date of September 2008. The reasons for the dispute will become apparent as set out below, and they were articulated in a hearing before

the Tribunal by Mr Whiting, who will in this Decision be referred to as “the Respondent”. At the hearing, which took place on 27th June 2011, the Applicant was represented by Mr Redpath-Stevens, of Counsel and he also relied upon the evidence of Mr Ade Rinu, who is an electrical engineer employed by the Applicant.

3. It is proposed to deal with the various points in contention raised by the Respondent by summarising both the Applicant’s case and his own case, and in turn giving the Tribunal’s determination in each such case.

Analysis

4. Both parties in this case prepared Statements of Case pursuant to the Directions given, and those Statements of Case were expanded upon, respectively, at the hearing before the Tribunal. In opening the matter on behalf of the Applicant, Mr Redpath-Stevens took the Tribunal through the relevant provisions of the lease dated 7th October 1991, which governs the contractual position between the parties. The Tribunal was directed to both the repairing and service charge provisions giving rise, on the Applicant’s case, to the liability to pay for works of both replacement and repair relating to the lifts. It is unnecessary to consider those provisions in detail because the Respondent had no issue with the Applicant concerning these provisions. He accepted that the relevant provisions give rise to an entitlement to raise the claim, and indeed had he not done so, the Tribunal would have been satisfied that those provisions do in fact exist. Effectively, Mr Redpath-Stevens had nothing really further to add in the context of his opening and the Tribunal took the opportunity of clarifying with the Respondent

the precise points being taken by him in opposition to the payment of these alleged service charges arrears.

5. So far as the Respondent was concerned, his points are set out in the Respondent's Statement of Case appearing at the second divider of the hearing bundle prepared by the Applicant. In that Statement, and before the Tribunal, he made a number of points which, without any intended disrespect to him, the Tribunal considers it can deal with relatively shortly. First, he made the point that (see paragraph 11 of his Statement of Case) the funds which financed the lift replacements came from Central Government sources and "*... were never in the mind of the draftsman to the lease.*" Again, without any intended disrespect to the Respondent, the Tribunal was unable to ascertain what bearing the source of the money has had upon the liability to pay. Put at its highest, the argument would appear to be (although it was not in terms so put by the Respondent) that since the funding came from an outside source, no costs had been "*incurred*" for the purposes of the Act. In the event, there was evidence from the Applicant, which the Tribunal accepts, that in fact the funds for this work came from the Applicant's own capital resources, and were not funded by the "Decent Homes" scheme or any other scheme financed by Central Government. It therefore does not fall for the Tribunal to make a determination on the issue of whether or not there was a true "*incurring*" of such costs.

6. The Respondent also took the point that on a previous occasion, all the kitchens on the estate (without any prompting or request so far as he was concerned), were replaced and, in the event, there was no "*recourse to recovery such as is here*

sought.” As understood by the Tribunal the contention in this respect was that the precedent set by that course in respect of certain other works may preclude the Applicant from recovering in this case. Upon further enquiry, the Respondent was unable further to develop the point other than to say that so far as he was concerned this was another example of, in effect, profligate spending on the part of the Applicant, which was indicative of a general policy and should in some way militate against the Applicant making full recovery in this case.

7. Suffice to say, that what may or may not have been the position in relation to the installation of new kitchens seemed to the Tribunal to have no real bearing on whether or not these particular costs are reasonably recoverable.
8. The Respondent took a further point about whether or not the correct Applicant is indeed the London Borough of Lambeth or the arms length management organisation (“ALMO”) appointed in this case, namely Lambeth Living Limited. It seems to the Tribunal, and, as understood by the Tribunal the Respondent accepted this, that this is a matter better dealt with in the event that the case reverts to the County Court and it was not really pursued by the Respondent before the Tribunal.
9. This being the case, the central point of most substance taken by the Respondent at the hearing was that it was entirely unnecessary for the Applicant to replace the lift or lifts at all. There appeared to be some issue between the parties as to whether there was only one lift (the Respondent’s position) or two lifts (the Applicant’s position). However, as will be observed below, there was no real

issue about the quantum of the claim and the hearing proceeded before the Tribunal on the basis of the point of principle as to whether or not it was reasonable for the Applicant to do these works at all.

10. The Tribunal heard evidence from Mr Rinu who is a principal electrical engineer employed by the Applicant. Mr Rinu gave personal evidence to the Tribunal and also referred to a report dated 24th January 2006 prepared by his manager, namely Mr G Statham (appearing at divider 12 of the bundle).

11. Mr Rinu told the Tribunal that he holds an HND in mechanical engineering and that he had extensive experience of dealing with the servicing and commissioning of lifts. He confirmed, as is set out in the report to which reference is made, that the company responsible for the supply and installation of these lifts was called Bennie Lifts Limited, and the installation took place in approximately 1981. The company referred to was taken over by Kone PLC, Bennie Lifts Limited having ceased to trade about 15 to 16 years ago. Both he and the report confirm that since the time that the original company ceased trading it has become increasingly difficult to obtain spare parts for servicing purposes and *“various parts are now totally unavailable.”*

12. He gave evidence to the Tribunal that he began working for the Applicant in 2005 and in the period from 2005 to 2008 when the new lifts were commissioned he was called out on regular occasions to deal with problems with the lifts. Often the problem would be that the lift would stop at the wrong level (either slightly above or below floor level). Also he told the Tribunal that the control panel wiring was

becoming brittle because of its age and this led to malfunctioning. He said that users of the lift were experiencing periods of time without an operative lift because of the difficulty in obtaining spare parts. He pointed out that the lifts were installed in 1981 and that according to the report referred to, such lifts generally have an expected life of about 10 to 15 years. The lifts concerned were 25 years old at the time of the report in January 2006 and thus, on this basis, well beyond their expected economic life.

13. He further informed the Tribunal that the written report which again will be referred to below, was itself spurred by the commission of an external consultant in 2005 who had carried out independent inspections and set out various options for consideration. One of those options was, in effect, to carry out certain health and safety works so as to render the lifts compliant with the current requirements and to defer replacement for 5 years (i.e. until 2011).

14. Mr Rinu told the Tribunal that he carried out inspections once every 8 months but that throughout the year either he or another member of his department would have to attend the property approximately fortnightly to attend to problems with the lifts. On such occasions he was often approached by tenants complaining about breakdowns in the lift and, when he explained that the lifts were old, they urged him to have the lift or lifts replaced. Unfortunately, he had brought to the hearing neither the log of attendances nor any of the reports made in respect of breakdowns of the lift service. He told the Tribunal that he concurred with the decision to replace the lifts entirely, effectively because they were obsolete,

malfunctioning frequently, spare parts were difficult to obtain, and they had exceeded their natural lifespan.

15. The written report referred to is made, as it were, “in-house” by Mr Statham of the Housing Property Services Department of the Applicant. It does make reference to the report prepared by an external consultant, but that report was not before the Tribunal. It sets out three possible options the first of which is total replacement, the second is to “patch up” the existing lifts and the third is to carry out some health and safety works and then to replace in 5 years time. It is the first of these options which is recommended by Mr Statham and appears to be recommended principally because the new lifts would be compliant with all current regulations and *“the design life of a new lift is around 15 years, although it would be expected that the plant would not need replacing again for 25 years”*. He then makes an analogy of trading in an old car for a new one. Replacement would give the benefit of a guarantee on all the parts of the new lift, produce greater ease of obtaining spare parts and would be generally more economical to maintain. The other options were each of them short term and did not address the central issue.

16. This evidence, both in person and in writing, was fundamentally challenged by the Respondent who gave evidence himself in stark contrast to that of the Applicant. He told the Tribunal that his late mother-in-law had originally owned and occupied the flat but that for several years after she had died, his children or their friends had used the property. For about the past 5 years the property has been let (not at a profit). Until relatively recently he and his wife lived locally to the property and he told the Tribunal *“I have never seen the lift out of action.”* He or

his wife were responsible for management of the property and he told the Tribunal that he had never received complaints from his tenants nor had anyone else at the building ever mentioned to him that they were dissatisfied with the lifts. If he had received complaints from his tenants, he assured the Tribunal that in effect he is not “*slow in coming forward*” and he would have drawn the attention of the Applicant to such matters in writing. He rejected the evidence of the Applicant as to the life expectancy of such lifts, and he told the Tribunal that so far as he was concerned, such lifts “*go on and on.*” He told the Tribunal that the lifts were perfectly serviceable, and the replacement lifts which have been installed give no better and no worse service than their predecessors – and indeed cosmetically look much the same. He said in terms that these works were only ever carried out by the Applicant because they had had, as he put it, “*money thrown at them*” by Central Government, which they had then utilised. He produced no other evidence, either from his wife or other occupiers of flats at the building. He also produced no alternative or other technical evidence for the Tribunal.

Findings of the Tribunal

17. There were a number of shortcomings in the Applicant’s evidence. First, the log confirming the number of attendances at the property to carry out works on the lift, which log undoubtedly exists, was not put before the Tribunal. The Tribunal therefore has to rely for present purposes on the personal evidence of Mr Rinu, which is necessarily of an imprecise nature, as to the frequency of such attendances. Secondly, the lifts are the subject of a maintenance or service agreement and there will have been documents generated in the context of the services carried out prior to their replacement. Again, these documents were not

put before the Tribunal. Thirdly, the report of Mr Statham, Mr Rinu's superior, is unsigned and makes reference to an independently commissioned report which unhappily was also not put before the Tribunal. Accordingly, much, though not all, of the Applicant's evidence was of a secondary nature and the primary evidence which could easily have been obtained was absent at the hearing.

18. Notwithstanding these shortcomings, there was clear and firm direct evidence from Mr Rinu as to the frequency of his attendances, the fact that these lifts were about 27 years old at the time they were replaced and that the original suppliers had ceased to trade. Spare parts were hard and in many cases impossible to obtain, and the alternative course of carrying out periodic or health and safety repairs or work, were in danger of proving uneconomic in the long term. The advantage of total replacement was, and is, that subsequent maintenance would be easier and less demanding.

19. The Respondent, who presented his case with great cogency and force, accepted that the fact that no complaints had been reported to him by his tenants, did not of itself mean that the lifts were running satisfactorily. Although he appeared to have some non-expert experience in carrying out electrical repairs, this was by no means his main skill. He put no technical evidence before the Tribunal supportive of the contention that replacement was unnecessary. Moreover, the building contains some 16 flats and the Respondent put before the Tribunal no other evidence, either in writing or in person from any other occupiers, to support his contention that the lifts were running effectively and required no replacement.

20. The evidence in the circumstances is finely balanced in this case, but on balance the Tribunal is satisfied that the Applicant has made out its case that the replacement of these lifts was reasonable within the provisions of the Act. In this regard the Tribunal places some emphasis on the fact that the decision to replace rather than repair does not have to be demonstrated to have been the correct decision, so much as reasonable for the purposes of the Act. The Tribunal is satisfied that these lifts were indeed old, malfunctioning, and presented significant difficulties in respect of obtaining of spare parts. The decision whether to repair or replace is often a difficult one, but the Tribunal does not consider that the decision to replace in this case can be said to be unreasonable. The Respondent's case was unsupported by any technical or lay evidence of the kind referred to above.

Conclusion

21. For the reasons indicated above, the Tribunal is satisfied on the balance of the evidence before it, that the costs incurred in replacing the lift or lifts were reasonably incurred, and that it was reasonable to commission these works. The Respondent confirmed at the hearing that there was no issue concerning the quantum of the claim and accordingly no findings are made in this regard. If there are other matters to be argued by or on behalf of the Respondent, these matters may be taken up if this case reverts to the County Court.

Legal Chairman: S. Shaw

Dated: 7th July 2011