6035

Residential Property
TRIBUNAL SERVICE

Case reference: LON/00AY/LSC/2011/0195

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON MATTERS REFERRED TO THE TRIBUNAL UNDER SECTIONS 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985

Property:	67 Durrington Tower, Westbury Estate, London, SW8 3LF
Applicant:	Mr A Mulrey
Respondent:	London Borough of Lambeth
Appearances:	The applicant in person For the respondent; Miss Nicola Muir of counsel Mrs M Vernon – Ellington & Miss J Hepburn both of L.B. Lambeth
Date heard:	27th June 2011
Tribunal:	D D Banfield FRICS W R Shaw FRICS O N Miller BSc

Decision

Only those costs relating to window replacement in the sum of £4,001.94 are payable.

An order under S. 20C of the Landlord and Tenant Act 1985 to be granted.

Background

1. This is an application by the lessee of the subject property for a determination of liability to pay service charges of £6,911.29 (reduced after he had complained from £10,388.16) in relation to a major works programme. The works charged for relate to Windows, Roof and External Decorations. The quality of the works is not being challenged but the increase from the original estimated liability of £4,000 is questioned.

Evidence

2. A helpful bundle had been prepared by Mr Mulrey which contained all of the documents referred to during the hearing. It was agreed that it was unnecessary to examine the lease as the repairing obligations as set out were not challenged. Miss Muir drew our attention to section 8 of the Fourth Schedule relating to the landlord's costs to be included in the service charge which stated that *The reasonable costs incurred by the Council in the management of the Building .....being not less than 10% of the total service charges.* This she said meant that the percentage charged for management was a contractual obligation between landlord and tenant and not within the jurisdiction of the tribunal.
3. Miss Muir referred to the S.125 notice served at the time of Mr Mulrey's purchase of the property under the right to buy scheme which set out the estimated costs of various works that may be carried out. (page 13 of the bundle). She said that whilst the whole of the anticipated costs did not appear to have been deducted from the purchase price as was usual the sums would certainly have been allowed for when assessing the amount to be paid for the flat.
4. She then referred to a document dated 24 May 2007 referred to as "First Notice-Intention to carry out Qualifying Works under Schedule 4 part 2 of

the Service Charges (Consultation Requirements) (England) Regulations 2003 "the works being described as "Window replacement, concrete repairs and associated works" (page 27) The works were further described in greater detail on page 3 of the document. The scheme referred to in this notice did not appear to proceed.

5. On 13 August 2007 a further notice was served also described as a "First Notice" in which the work was described as "Renewal of Windows, Concrete repairs and external cladding". Further details were provided at page 3 of the document and facilities for inspecting the report/specification were offered. Observations were invited with a closing date of 12 September 2007. Miss Muir accepts that there was no reference to decoration in the detailed description of works and that the discrepancy between the general description of the works and the detail contained later in the notice was confusing. She said however that facilities were available for the documents to be inspected and that she considered that the notice was valid.
6. On 20 August 2007 a letter was sent by the council referring to an error that had occurred at page 3 of the notice in that "the correct works to be carried out to your block are Window replacement, concrete repairs & external cladding only" (page35).
7. On 24 September the council sent a further letter referring to the notice and letter of 20 August stating that "The correct works to be carried out to your block are renewal of windows & concrete repairs only" (page 36).
8. Miss Muir could not explain why either of the letters had been sent which she could only presume had been in error. She said however that they did nothing to affect the validity of the original notice.
9. On 15 February 2008 a "Second Notice "was served entitled "Renewal of Windows, & Concrete repairs, external cladding at 67 Durrington Tower" (page 37) giving details of the tenders received and inviting observations. It states on page 2 "I enclose copy estimates submitted by A and B and have enclosed a breakdown of what this means for you in Appendix A" At Appendix A (page 40) the total estimated costs are set out together with the sum of £10,481.09 described as "Flat Contribution" . The next line reads "Your Contribution – Restricted by S125 £4,000".

10. Miss Muir argues that the reference to £4,000 was made in error but that Appendix A is not part of the notice itself and the error contained therefore is irrelevant to the validity of the notice.
11. Miss Muir referred to the meeting held on 17 March 2008 where the scope of the work was discussed and at which Mr Mulrey was present and said that Mr Mulrey must have been aware that the works proposed included more than just window replacement.(page 84)
12. In a letter dated 29 April 2008 from the council referring to the meeting (page 41) the heading to the letter now reads "Renewal of Windows, Concrete Repairs & Coatings, Flat Roof renewal, & Overhaul of Stair Windows and states that leaseholders will be charged for the items listed in the heading.
13. On 9 August 2010 a covering letter with invoice attached is sent from Lambeth Living (page 42) requesting payment of £10,388.16 in respect of "Renewal of Windows, & Concrete repairs, external cladding." In appendix A details of the amount charged were set out and reference made to a restriction under S.125. No restriction was made however.
14. Mr Mulrey made a formal complaint and in a reply dated 14 October 2010 (page 58) from Lambeth Living, received details of the final account including sums due from him under the headings of Window, Roof and External Decoration. The total due was shown as £6,948.67.
15. On18 October 2010 in a covering letter (page 49) the sum requested was now £6,648.67 although on Appendix A attached the amount was shown as £6,948.67. A further letter also dated 18 October was then sent correcting the amount due to £6,948.67. (page 52)
16. In summarising her case Miss Muir acknowledged that there had been a number of errors in the documentation but that the notices themselves were valid and therefore must stand. She accepted that there had been no reference to the external decoration now charged for in the notices but that "she was minded to" make an application under S.20ZA requesting the tribunal to dispense with the consultation requirements.
17. Mr Mulrey read from his statement of case and said that he particularly relied on the clear statement contained in the appendix to the second notice restricting his liability to £4,000 (page 40) which seemed to him

unequivocal. He accepted that he had been at the meeting held on 17 March 2008 but said that he had presumed that his liability remained at £4,000 as referred to in the council's letter of 15 February 2008 subject to minor alterations depending upon the final account figure.

Decision

18, There seems to be little dispute in this case as to the sequence of events and the various errors made in the documents. It is accepted by Miss Muir that reference to External decorations has been omitted from the notices but would wish to remedy this by way of a S.20ZA application. Mr Mulrey says, and we believe him, that throughout the whole process he relied upon the clear and unambiguous statement at Appendix A of the Second Notice limiting his liability to £4,000.

19. We have first of all looked at whether the letters of 20 August and 24 September 2007 are able to amend the Notice of Intent dated 13 August 2007. In determining their affect it is useful to remind ourselves that the purpose of the detailed procedures set out in the regulations is to provide lessees with the opportunity of being consulted as to proposed works for which they will have to contribute by way of service charge.

20. The notice of the 13 August 2007 is not helpful in that the generalised heading on page 1 does not include a number of items later referred to on page 3. A few days after receipt of this somewhat confusing notice Mr Mulrey received what he believed to be helpful clarification from the council who explained that an error had been made and that the description of the works on page 3 should be amended to Window replacement, concrete repairs & external cladding only. The second letter which provided no further information than the first was then received after the period for consultation had expired. In essence therefore throughout the whole of the consultation period Mr Mulrey believed that the works under consideration were exactly as described in the council's letter of 20 August and as such his contribution was limited to the S125 amount of £4,000 relating to windows.

21. Believing that he knew the extent of both the works and his own liability there was no need for him to take up the council's offer of inspecting the report/specification.
22. His understanding was confirmed on receipt of the Second Notice when Appendix A clearly sets out his contribution as £4,000.
23. We find that Mr Mulrey was deprived of his rights to be consulted on a significant part of these proposals and therefore limit his liability to expenditure relating to those items referred to in the letter of 13 August 2007 namely Window replacement, concrete repairs & external cladding only. The notice served under S 125 restricts his liability further and therefore only those costs relating to window replacement in the sum of £4,001.94 are payable.
24. In view of our decision above there is no need to consider any application under S.20ZA. For the avoidance of doubt however we do not consider that permission to dispense with the lessees right to be consulted should be granted lightly and should usually be reserved for matters of an urgent nature which arise during the course of works. In this case where such an application would be made to rectify an omission in the initial notice no such permission would be granted.

The costs of the present proceedings

25. The tenant asked for an order under section 20C of the Act that all the costs incurred by the landlord in connection with the proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the tenants.

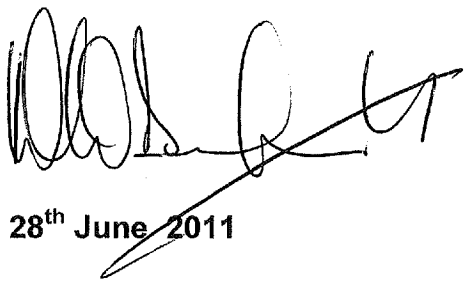
26. Miss Muir has confirmed that she does not intend to place any costs relating to the present proceedings on the service charge account which we are pleased to note. Nevertheless an application has been made and we are bound to make a determination.

27. Section 20C (3) of the Act provides that on such an application the tribunal *may make such order ... as it considers just and equitable in the circumstances.* The principles upon which we should exercise our discretion

under that subsection have been considered by Judge Rich QC in *The Tenants of Langford Court v Doren* (LRX/37/2000) and *Schilling v Canary Riverside Developments PTE Limited* (LRX/26, 31, 47 and 65/2005). At paragraph 28 of his decision in *Doren* he said that the only principle is to be found in the words of section 20C itself. He also said (*Doren* at paragraph 31) that the relevant circumstances include the conduct and circumstances of the parties as well as the outcome of the proceedings, and that "the primary consideration that the LVT should keep in mind is that the power to make an order under s20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances which make its use unjust", and that "Section 20C is a power to deprive a landlord of a property right" and that "those entrusted with the discretion given by s20C should be cautious to ensure that it is itself not turned into an instrument of oppression". We have borne these words in mind.

28. Whilst a successful outcome is not the deciding factor in whether to make such an order, in this case the Applicant has succeeded on all points. If the matters had been dealt with at an earlier stage during the council's own complaints procedure it may well be that agreement could have been reached and a reference to this tribunal avoided. For these reasons we make an order under section 20C of the Act prohibiting any costs relating to this application to be placed on the service charge accounts.

CHAIRMAN



DATE **28th June 2011**