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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AJ/LSC/2012/0481

Premises: 75 Gifford Gardens, Hanwell, London, W7 3AS

Applicant: Mrs Lottie Joshua

Representative: In Person

Respondent: London Borough of Ealing

Representative: Ealing Homes

Date of hearing: 20 September 2012

Appearance for Applicant(s): Did not attend and was not represented

Appearance for Respondent(s): Mr Darryn Harris, solicitor and Mr Ciaran Maguire, Rechargeable works manager

Leasehold Valuation Tribunal: Ms E Samupfonda
Mrs J Davies

Date of decision:

Decisions of the tribunal

- (1) The tribunal determines that the sum of £4,485.82 is payable by the Applicant in respect of replacement windows in the block in which the subject property is located.
- (2) The tribunal does make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge. The Respondent having indicated that it does not intend to seek to recover the costs of these proceedings.
- (3) No application was made in respect of the reimbursement of the tribunal fees paid by the Applicant therefore no order is made.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the service charges is payable by the Applicant in respect of the installation of new windows to properties within the block in which the subject property is located given that her windows were not replaced. The Applicant contends that she applied for and was given permission by the Respondent to replace (at her own cost) her own windows some years ago.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant did not attend the hearing and was not represented. Mr D Harris, solicitor and Mr C Maguire, rechargeable works manager represented the Respondent.
4. The start of the hearing was delayed while the tribunal telephoned the Applicant in order to ascertain why she had failed to attend the hearing. The Applicant indicated that she was aware of the hearing having received notice of it. She added that she did not appreciate that her attendance was required. She said that she would not be attending and she did not request an adjournment.

The background

5. The property, which is the subject of this application, is a 2-bedroom ground floor flat situated in a block of four flats.

6. A pre trial review was held on 24th July 2012 and directions for the future conduct of the case were made. The tribunal considered that an inspection was not necessary and neither party requested it.
7. The Applicant (tenant) holds a long lease of the property, which requires the Respondent (landlord) to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. At the start of the hearing the tribunal identified the single issue for determination as follows:
 - (i) Whether the Applicant is liable to pay for the replacement of windows to the properties in the block in which her property is situated given that her own windows were not replaced.
9. Having heard evidence and submissions from Mr Harris and considered all of the documents provided, the tribunal has determined as follows.

The tribunal's decision

10. The tribunal determines that the amount payable in respect of the service charge is £4,485.82.

Reasons for the tribunal's decision

11. The tribunal first considered the terms of the lease. Clause 3 provides "The lessee hereby further covenants with the lessor that the lessee will at all times during the term hereby granted pay to the lessor a Service Charge (as hereinafter defined) determined in accordance with the following provisions". The lease then goes on to define the meaning of service charges as being "the proportion of the management charges to be paid by the lessee to the lessor being a proportion that the gross value of the demised premises bears to the aggregate gross value of all the flats." The lessor's repairing obligations are set out in the Eighth Schedule which provides that the lessor will "keep the reserved property in good and substantial repair and condition and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts." The Second Schedule defines the Reserved Property as " All those parts of the property not comprising flats."
12. From the application, the tribunal understands that the Applicant challenges her liability to contribute towards the costs incurred on the basis that she was given verbal permission to replace her windows at her own cost sometime in

1990. She argues further that she should not be liable to contribute towards the cost because she has not received any benefit as a result the work. The Respondents say that it is not its practice to grant consent verbally. Mr Harris added that records have been checked and there is no evidence of a request being made or consent being given. The Applicant has not produced any evidence to support her assertions.

13. Mr Harris took the tribunal through the relevant provisions of the lease as fully set out in the Respondent's Statement of Case. He submitted that the Applicant is liable to pay service charges in accordance with clause 3 read together with the Eight Schedule and that windows were not part of the demise but was included in the definition of Reserved Property. He relied on the authorities of **Twyman v Charrington [1994] 1EGLR 243 CA**, **Broomleigh Housing Association Limited v Hughes [1999] EGCS 134 (ChD)** and **Billson and Others v Tristram [2000] L &TR 220, CA** in submitting that it was irrelevant whether the Applicant derived any benefit from the associated works once there was a covenant to contribute proportionally to the service charge.
14. The tribunal is bound to follow the judgement in Broomleigh Housing Association where as in this case the dispute concerned the costs of replacing windows in a block of flats and the question to be decided was whether the Respondent in that case Miss Hughes was liable to contribute to those costs even though her windows were not replaced because she had recently replaced them at her own cost. Permission was granted to do so. It was held that granting permission "did not reduce or vary the obligation upon Miss Hughes to contribute to the total service charges."
15. In the circumstances the tribunal determines that the Respondent is entitled to recover from the Applicant the costs incurred in respect of the replacement of the windows.
16. The tribunal was not fully satisfied at the hearing that the amount charged for this work accurately reflected the number of windows replaced. Neither Mr Harris nor Mr Maguire was able to confirm the number of windows replaced.
17. The hearing was therefore adjourned in order to allow them time to make the necessary enquiries and submit in writing to the tribunal by 27th September evidence of the number of windows replaced and the costs incurred.
18. The additional documentation was received by email dated 21st September from which the tribunal was satisfied that the Applicant had not been charged erroneously.

Application under s.20C and refund of fees

19. In the application form, the Applicant applied for an order under section 20C of the 1985. Although Mr Harris indicated that no costs would be passed through

the service charge, for the avoidance of doubt, the tribunal nonetheless determines] that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Chairman: Evis Samupfonda
9 October 2012

Date:

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a 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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

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 provisions 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.
- (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 or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).