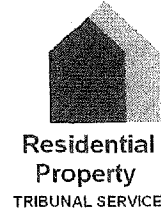


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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference: LON/00AM/LSC/2010/0327

Premises: 301 Lordship Road, London N16 5HG

Applicant(s): London Borough of Hackney

Representative: Ms Amanda Gourlay of counsel, instructed by Lorna Eukora, solicitor

Respondent(s): Ms Maria Castro

Representative: In person

Date of decision: 23rd February 2012

Leasehold Valuation Tribunal: Mr Adrian Jack, Mr W Richard Shaw FRICS, Mr Paul Clabburn

Procedural and inspection

1. By a claim form issued in the Clerkenwell and Shoreditch County Court on about 1st July 2010 under action number 0UA51690 the landlord sought to recover £9,559.81 in respect of major works, plus interest and costs.
2. By order of District Judge Sterlini dated 10th May 2011 the matter was transferred to the Tribunal. Directions were given by the Tribunal on 8th June 2011 and these were substantially complied with.
3. The Tribunal inspected the property on 28th November 2011. It is a brick-built purpose built block of flats with a ground floor and six floors above with a lift and staircase, giving access to walkways from which individual flats' front doors could be accessed. The railings and metal struts on the walkways are showing paint peeling. The brickwork of the block is crumbling in parts and there is a white substance coming through the bricks, the nature of which is not immediately apparent.
4. On the staircase some of the tiles decorating the walls have slipped. The paintwork is peeling on the walls. The banisters have not been painted. The windows in the communal part have been replaced with new double-glazed pvc windows. The staircase is unheated.
5. There is a newly installed flat roof to the block with a new system of railings around it. At the back of the block the flats have small balconies which give attractive views over the West Reservoir and over London.
6. The instant property is a fourth floor flat. We were shown the balcony. This had a newly installed asphalt flooring, covered in the most part by tiles. The parts not covered by tiles were painted white, but were still quite soft, so that flower pots or the like placed on the asphalt left an indentation.
7. Following the inspection the Tribunal held a hearing. The landlord was represented by Ms Gourlay of counsel. The tenant represented herself.
8. The works in question had started on 5th May 2008 and finished on 27th February 2009. The final accounts were, however, still in the process of being agreed with the contractor. The amounts in respect of which the County Court proceedings had been issued represented only interim sums sought. It was anticipated that the final accounts would be agreed in the near future. (These had been delayed because Connaught, the contractors, had become insolvent.)

9. In these circumstances the Tribunal considered that it was more sensible for the matter to be adjourned in order that the Tribunal could determine what final sums were due. The matter was accordingly adjourned to 26th January 2012.
10. On 26th January 2012 the final accounts were available. The parties' representation was as before, but the tenant had in addition brought Ms Browne, who was the chair of the residents' association. The revised figure now being claimed by the landlord was £9,244.98, which is slightly less than the sum sought in the particulars of claim.

Individual items

11. The amounts claimed by the landlord against the tenant were as follows:

Brickwork	nil
Concrete works	£1,076.80
External decorations of common parts	nil
Asbestos removal	nil
Works to guttering	33.57
Roof works	4,774.93
Replacement of communal windows	165.75
Overhead and preliminaries	1,699.65
Risk assessment items	165.76
Martin Associates external survey	12.34

12. In view of the unsatisfactory nature of the work to the brickwork, the landlord did not seek to recharge any of the costs of these works to the tenant. The tenant said that she was concerned that there might be some future damage caused to the block by the condition of the bricks and in particular the strange white substance. In our judgment, however, that is a matter which will arise as and when any damage is actually caused by the condition of the brickwork. It does not give rise to a claim for damages at present. Since the landlord is seeking to recover nothing in respect of the brickwork, there is nothing for the Tribunal to allow or disallow.
13. The concrete works were the works to the balcony and included the asphalt about which the tenant complained. In our judgment, there is no defect in the asphalt. Painting the asphalt white is standard practice in areas exposed to the sun, so as to prevent the asphalt overheating and running. The fact that the asphalt had not yet set solid did not indicate any defect. Moreover, Mr Colyer, the project manager, explained that the landlord had employed specialist sub-contractors for this work. In these circumstances the Tribunal disallows nothing in respect of the concrete works.
14. The tenant raised no issues with the guttering.

15. As to the roofworks, the tenant suggested that the railings were an improvement. The Tribunal disagrees. There were existing railings. The new railings are merely a modern version of the previous railings. There were no criticisms of the standard of work.
16. On the replacement of the communal windows, the tenant criticised the landlord for putting in double-glazed pvc windows rather than single-glazed windows. The position is that the windows went in the communal staircase, which was unheated. The double-glazing did not assist in the retention of warmth. However, we accept the evidence of the landlord that it was more sensible to use the same type of windows as were being installed in the individual flats. Single-glazed pvc windows are now a rarity and would have required special beading. We disallow nothing.
17. The tenant raised no issues on the overheads and preliminaries.
18. The tenant raised no issues on the risk assessment, but she complained that there had been excessive dust when the works were carried out. In our judgment dust is simply a natural result of the works. No harm has been caused; at most there was modest inconvenience. We disallow nothing.
19. The tenant did not challenge the amount charged for the external survey, nor the professional and management fees.
20. The tenant accepted that there had been a consultation which complied with the legislation. She called Ms Browne, who confirmed her witness statement in which she made a number of complaints about the effect of the works on her own flat. This was not in our judgment relevant to Ms Castro's complaint about No 301.
21. The Tribunal accordingly disallows nothing.

Consequential

22. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal. Because this is a transfer from the County Court, credit is given for the County Court issue fee. The only fees payable to the Tribunal are the hearing fee of £150. Since the tenant has lost, we order that she reimburse the landlord for this fee.
23. The tenant sought an order under section 20C of the Landlord and Tenant 1985. This allows the Tribunal to make an order preventing the landlord recovering the cost of the proceedings from the tenant through the service charge. In our judgment, the tenant has lost comprehensively and it would be inappropriate to make an order under section 20C. This application is accordingly refused.

24. The other costs are a matter for the County Court to which this matter must be transferred.

DETERMINATION

The Tribunal accordingly determines:

- (a) that the tenant owes the landlord £9,244.98 in respect of the major works the subject of the action;
- (b) that the tenant shall reimburse the landlord £150 in respect of the hearing fee payable to the Tribunal;
- (c) that the tenant's application for an order under section 20C of the Landlord and Tenant Act 1985 be refused;
- (d) that the matter be transferred back to the Clerkenwell and Shoreditch County Court.

Adrian Jack

Adrian Jack, Chairman

23rd February 2012

ANNEX: The law

Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

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, improvement 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 of 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 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 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.
- (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 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.