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

Case Reference: LON/00AZ/LSC/2011/0754

Premises: 90 Courthill Road, London, SE13, 6HA

Applicant: The London Borough of Lewisham

Representative: Miss M Sahota, Leasehold Legal Officer

Respondent(s): Mr D Howell

Representative: In Person

Date of hearing: 8th March 2012

**Leasehold Valuation
Tribunal:** Ms E Samupfonda LLB(Hons)
Mr M Cartwright FRICS
Mrs L Hart Ba (Hons)

Date of decision: 19th March 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £4,110.09 is payable by the Respondent in respect of the annual service charges for the years 2003 to 2011 and £6759.82 is payable in respect of major works carried out in 2005
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal makes 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 application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [as to the amount of service charges payable by the Applicant in respect of the annual service charge for years 2003 to 2011 and major works carried out in 2005. The amount claimed in respect of annual service charge was £4,110.09 and £8,869.82 in respect of the major works.
2. Proceedings were originally issued in the Northampton County Court under claim no. 1QT0987. The claim was transferred to the Woolwich County Court and then in turn transferred to this Tribunal, by order of District Judge Backhouse on 11 August 2012.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. Miss M Sahota represented the Applicant, Leasehold legal Officer at the hearing and the Respondent appeared in person.

The background

5. The property, which is the subject of this application, is a ground and first floor flat comprising four bedrooms and situated in block 80-108 Courthill Road.
6. Neither party requested an inspection and the Tribunal did not consider that one was necessary.
7. The Respondent holds a long lease of the property, which requires the landlord to provide services and the Respondent to contribute towards their costs by way of a variable service charge.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the year 2005 relating to major works which included the replacement of windows, concrete/stonework/ masonry repairs, drainage, rain water/waste goods and decorations.
 - (ii) The Respondent confirmed that he did not challenge the payability of the annual service charge of £4,110.09.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

10. Major works and the amount claimed of £8,869.82

The Tribunal's decision

11. The Tribunal determines that the amount payable in respect of the major works is £6759.82.

Reasons for the Tribunal's decision

12. Although the Respondent challenged the costs incurred in respect of the major works, his primary challenge was in relation to the costs for window replacement and the cost to be incurred in carrying out remedial work required to make good in the bay window area the internal wall damaged by water penetration into his flat.
13. The Tribunal accepted the Respondent's submissions that as a result of the major works, the internal wall to his living room was damaged by water penetration. He produced an estimate from Clayton Brown for £1,810.00 for remedial work. Ms Sahota produced a copy of an email dated 14 February 2012 from Sean Crossman, Works Supervisor. Mr Crossman carried out an inspection at the Respondent's property to identify the cause and extent of damage to the internal wall. He observed cracking on the lower part of the outside wall but stated that no defects in the roof were apparent. His diagnosis pointed to condensation and lack of ventilation as the cause of the dampness. However, he recommended work to the existing external render and to recoat the existing roof. His report acknowledged the extent of damage to the internal wall as described by the Respondent. The Tribunal decided that as the dampness to the wall arose directly following the major works done to the roof,

there must be a latent defect, It was not reasonable, therefore, for the Respondent to be held liable to pay for the remedial work. The Tribunal considered that the estimate provided was reasonable and thus decided to reduce £1,810.00 from the sum claimed.

14. The Tribunal heard that the Respondent's flat contained a total of seven windows. The Respondent explained he replaced the four bedroom windows at a cost of £3,570.00 with a ten-year guarantee. As part of the consultation process, the Applicant had inspected these windows and accepted that the windows did not require replacing as part of the major works. Consequentially only the kitchen, living room and toilet windows were replaced. It was his view that the cost incurred was excessive and therefore unreasonable. The Respondent was liable to contribute £2,203.57. He stated that he had obtained an alternative quote for the same work from a company known as Weathershield Company for £1,500. He provided the Tribunal with a copy of an alternative quote of £980 excluding VAT or £1,176 including VAT from Master Windows.
15. Miss Sahota indicated that the Applicant was willing to reduce the sum claimed by £300 as an acknowledgment for the delay and time taken to resolve this issue. She was not able to clarify the basis of the apportionment for the cost of the windows at the hearing. She agreed to submit written representations within seven days of the hearing and this was received on 15th March 2012. This indicated that the total cost for window replacement on the block was £19,832.11 and that this was divided equally between nine properties.
16. The Tribunal considered that the sum claimed in itself at £2,203.57 for three windows was a reasonable amount when compared to £3,570 paid by the Respondent for four windows. In our view, a fairer apportionment method would have been an allocation of an amount that reflected the work carried out by the Respondent. However, in construing the terms of the lease, the Tribunal is bound conclude that the Applicant has not acted unreasonably in the method adopted, as by clause 4, Part 11 "The Improvements Contribution" to the Tenth Schedule of the lease provides that "the lessee's improvement contribution shall be the summation of the improvement expenditure and shall be assessed in accordance with the following formula; $Ax1/B$ where A is the improvement expenditure and B is the number of flats/maisonettes and other dwellings receiving the benefit of the improvement expenditure."
17. In the circumstances, the Tribunal concluded that the sum claimed for windows was reasonable. Although the Respondent challenged other heads of expenditure, he did not develop his arguments beyond merely asserting that the cost was unreasonable. In the absence of contra evidence, the Tribunal concluded that these sums as claimed were reasonable.
18. Although the Respondent considered the offer to reduce the sum claimed by £300 a paltry sum, never the less, the Tribunal reduced the sum accordingly.

Application under s.20C and refund of fees

19. No application was made for an order under section 20C of the 1985. To the extent that legal costs are recoverable as service charges under the terms of the lease, the Tribunal 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.
20. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Woolwich County Court.

Chairman: Evis Samupfonda

19th March 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 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.