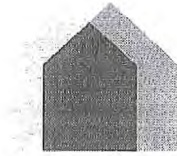


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LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BE/LSC/2011/0628

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT
ACT 1985**

Applicant: Mr J L Smith
Respondent: London Borough of Southwark
Property: 241A Barry Road, London, SE22 0JU
Date of application: 9 September 2011
Date of Hearing: 19-20 January 2012

Leasehold Valuation Tribunal

Mr I Mohabir LLB (Hons)

Mr K Cartwright FRICS

Mrs S Justice BSc

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of his liability to pay and/or the reasonableness of the service charge contribution claimed by the Respondent for cost of repairs and redecoration carried out to the property known as 241A Barry Road, London, SE22 0JU (“the property”).
2. The sum in issue is £5,570.98 demanded from the Applicant on 25 July 2011. However, at the hearing this figure was amended to £5,372.09. It should be noted that the initial estimated sum demanded by the Respondent was £11,010.49. However, this was altered to £5,570.98 as a result of the scope of the proposed works being reduced.
3. The Applicant is the present lessee of the property by virtue of a lease dated 16 August 1999 granted to him by the Respondent for a term of 125 years from the same date (“the lease”). As will become apparent, it is not necessary to set out the relevant contractual terms of the lease that give rise to the Applicant’s service charge liability.
4. The repairs and redecorations to the property were commenced on 20 April 2009 and practical completion took place on 20 October 2009. The works formed part of a greater contract to carry out similar works to a number of other properties owned by the Respondent.
5. Upon completion of the works, the Applicant subsequently complained to the Respondent that the cost, particularly in relation to the scaffolding, was excessive. The Applicant also complained that the external decorations were not of a reasonable standard. The Respondent’s somewhat unhelpful response was to advise the Applicant to make an application to the Tribunal rather than engage constructively with him in an attempt to resolve this matter.

6. By an application dated 9 September 2011 the Applicant made this application seeking a determination of his liability to pay and/or the reasonableness of the service charge costs in issue.

Hearing and Decision

7. The hearing in this matter commenced in the afternoon on 19 January 2012 following an inspection of the property that morning. The Applicant appeared in person. The Respondent was represented by Miss E Bennett, a Litigation Officer.
8. The Tribunal heard evidence from a number of witnesses called by the Respondent. In particular, evidence given by Mr Balfour, a Project Manager employed by the Respondent. He conceded that the redecorations carried out to the property were "unsatisfactory" and, in principle, the Applicant should not be liable to pay the full amount demanded by the Respondent. When asked by the Tribunal, he said that the Applicant's liability should not be greater than 60% of the entire costs claimed by the Respondent.
9. In the light of the evidence given by Mr Balfour, the Tribunal invited the Respondent to consider its position and offered the parties an opportunity to have discussions in an attempt to reach a compromise. Having availed themselves of this opportunity, the parties agreed the Applicant's service charge contribution for the works carried out in 2009 at £3,223.25. The Tribunal was told by the Respondent that the redecorations would be carried out again entirely by the same contractor in the near future.

Costs & Fees

10. The Respondent told the Tribunal that it would not be seeking to recover any costs it had incurred in these proceedings through the service charge account or otherwise. Accordingly, it was not necessary for the Tribunal to make any order under section 20C of the Act.

11. The Applicant applied for an order for the reimbursement of the fees of £350 he had paid to have this application issued and heard.

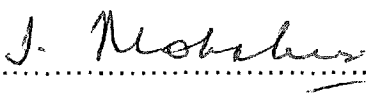
12. The Respondent submitted that each party should bear their own costs having regard to the agreement reached. The Tribunal rejected that submission for the following reasons:
 - (a) It was satisfied that the application could have been avoided had the Respondent attempted to constructively engage with the Applicant when he initially complained and they had wholly failed to do so, even when, on its own case, the redecorations were deemed to be “unsatisfactory”.

 - (b) That the Applicant had succeeded in the application. Therefore, costs should “follow the event”. Not to make an order, would in effect penalise the Applicant in costs.

 - (c) The Respondent had failed to accept an earlier pre-litigation offer made by the Applicant for an amount that was very similar to the sum agreed at the hearing. Had the Respondent done so, this application, and therefore the cost, could have been avoided altogether.

13. Accordingly, the Tribunal makes an order that the Respondent reimburse the Applicant the total fees of £350 paid by him to the Tribunal.

Dated the 20 day of January 2012

CHAIRMAN.....
Mr I Mohabir LLB (Hons)