



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AF/LSC/2020/0181**

**Property** : **29 Thicket Road, Anerley, Bromley SE20  
8DB**

**Applicant** : **SEUNGWON ( GRACE) SHIN**

**Representative** : **NA**

**Respondents** : **RUSSELL COURT PROPERTIES LTD  
(PART OF THE COURT GROUP OF  
COMPANIES)**

**Representative** : **Mr Alistair Court, Director, Russell  
Court Properties Limited  
Mr Nigel Stonard, Property Manager**

**Type of application** : **Liability to pay service charges**

**Tribunal** : **Judge Mullin  
Mr. Holdsworth FRICS MCI Arb  
Mr. Waterhouse**

**Date of Decision** : **8<sup>th</sup> February 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to by the parties are in a bundle of 361 pages. The order made is described at the end of these reasons.

## **Decisions of the tribunal**

- (1) The Tribunal determines that the service charge items 1. and 3. are not payable as they have been conceded by the Respondent.
- (2) Service charge items 2, 4 and 5 are reasonable and payable subject to the Applicant's successful Counterclaim and set-off determined at £1,456.
- (3) The Respondents shall not recover their costs of this application from the Applicant by way of service or administration charges.

## **The hearing**

1. The hearing took place via the Cloud Video Platform on 11<sup>th</sup> December 2020. The Applicant and the Respondents appeared in person. The Tribunal is grateful to the Parties for the helpful and courteous way they conducted the hearing.

## **Background**

- A. This application concerns a small mansion block consisting of three flats. The Applicant holds a leasehold interest in Flat C.
- B. The Applicant challenges various service charge items as detailed below.
- C. The Applicant pursues a Counterclaim and set-off equivalent to £1,456.
- D. The Applicant also seeks an order limiting the Applicant's costs pursuant to section 20C Landlord and Tenant Act 1985 and pursuant to paragraph 5A of Schedule 11, Commonhold and Leasehold Reform Act 2002.

## **The Issues**

1. In her application (see page 11 of the hearing Bundle) the Applicant set out five service charge items she wished to challenge. Her reasons for doing so are set out in the application and expanded upon in her lengthy

statement of case. The individual service charge items are determined below following the same numbering. The Applicant also raises a Counterclaim and set-off.

2. The Respondent set out their response to the Application in their statement of case (see page 243 of the hearing bundle).
3. As can be seen below the Tribunal determines that the service charges are reasonable and would be payable, but for the Applicant's claim for a set-off, which the Tribunal allows for the reasons set out below.

Item 1. – Cleaning (in the 2018/19 service charge year)

4. This item was conceded by the Respondent and has been credited to the Applicant's service charge account.

Items 2 & 5. – External repairs (2018/19 & 2019/20 service charge years)

6. The meat of the Applicant's challenge relates to works which were intended to combat damp in her flat. The Applicant reported to the Respondents, we are told in April 2018, that there was damp in the rear bedroom and also in the lounge. As it transpires these were two distinct issues but that does not appear to have been clear to the parties at the time.
7. In response the report the Respondent organised first a series of works in the loft space, which we are told included the application of waterproof sealant and adhesive gaps found within the roof. An invoice for this work is in the hearing bundle at p258.
8. The Respondents then instructed Betterhomes to raise a scaffold and to carry out various investigations and subsequent repairs to the roof. These included replacing slipped and missing roof tiles and repairing the flashing around the flues. This work was done in March 2019 and the invoice is in the hearing bundle at p261.
9. These works appeared to remedy the situation in the bedroom but not in the lounge. The Applicant reported this to the Respondent again.
10. In response to a s.20 consultation was carried between August – October 2019, three quotations were obtained and Betterhomes were selected as the contractor. These were a more comprehensive scheme of works and were carried out in an effort to diagnose and remedy the cause of the damp once and for all. They included *inter alia* the removal of the fascia boards & guttering and the installation of vents in the chimney breasts. A surveyor was also instructed to ensure any works being carried out were appropriate. An invoice and various photographs are in the hearing bundle from p306 onwards.

11. The Applicant makes a large number of representations regarding these charges, set out in her statement of case at paragraphs 8 - 45. They are not repeated here unnecessarily, nor is it necessary for the Tribunal to address each in terms. The question for the Tribunal is ultimately whether it was reasonable for the Respondent to decide to carry out the works they did and whether they were done to a reasonable standard.
12. The law as per *Regent Management v Jones* [2011] UKUT 369 (LC) & *Southall Court (Residents) Ltd v Tiwari* [2011] UKUT 218 (LC) is that there may be a range of reasonable decisions which could be reached as to whether or not a particular cost should be incurred; the decision is for the Landlord rather than the tenants or the tribunal and, so long as the decision falls within a reasonable range, the costs will be reasonably incurred.
13. The Applicant states that the sums challenged in relation to the March 2019 works are not payable at paragraph 16 of her statement of case. She states that:
  - 1) *the work carried out was not of a reasonable standard, was undertaken without appropriate investigation of the damp and without the correct understanding of the nature of the issue; and*
  - 2) *the work carried out did not remedy the damp in the lounge, and further repair work was required.*
14. The Tribunal disagrees. The Respondents employed an appropriately cautious and economical approach to the damp problem. They began with the reasonable assumption that the state of the roof was to blame and initially proceeded with internal repairs and then went on to carry out limited external repairs. It seems to be agreed that these works did remedy the damp in the bedroom but did not remedy the damp in the lounge.
15. If the Respondents had made the assumption without preliminary works that the the entire roof needed to be replaced at a very substantial cost, no doubt they would have been criticised for doing so. However, the Respondents in this matter began with a less invasive and more economical approach. In the Tribunal's opinion the decision to undertake the March works was within the range of reasonable decisions open to the Respondents.
16. In terms of the standard of the works, firstly it is of note that they were at least partially successful in that they solved the problem of damp in the Applicant's bedroom. Secondly, diagnosing and remedying the cause of damp in period properties is notoriously difficult; just because works do not eliminate damp does not mean they were not proficiently undertaken.. For example, the Applicant does not state that perfectly good roof tiles or flashing was replaced that did not need to be, or that the tiles or flashing were installed negligently. The substance of her complaint is that what was done did not remedy all of the damp. That

does not mean that what was done did not need to be done or that it was done to a poor standard.

17. Accordingly, the Tribunal determines that services charges challenged at item 2. are reasonable and payable.

18. In relation to the second set of external works (item 5.). The Applicant sets out her reason for saying those charges are not payable at paragraph 40 and 41:

*40. In objection to the landlord's statement as per Clause (a) in the Fourth schedule referring to 'the expenses of maintain, repair, decorate and renew the main structure, main load bearing walls, chimney stacks, gutters and rainwater piping of the building,' the Section 20 roof work was carried out to repair the damp (with full payment of the demanded cost made by the leaseholders) and not to maintain, renew or decorate the roof. The repair work did not repair the damp.*

*41. Under Section 19(A) of the Landlord and Tenant Act 1985 ("the 1985 Act"), the cost of the Section 20 damp repair roof work totalling £3,037.22 and £1,012.40 for Flat C should not be payable by the leaseholders because it was not carried out to a reasonable standard and the cost was incurred unreasonably as follows: 1) an unreasonably selected contractor who failed the first repair work; 2) repeated investigatory works carried out by the same roofer; 3) repeated and/or incorrect remedial works for the condensation damp that were not even recommended by the surveyor; 4) unnecessary scope and unnecessarily increased cost of the damp repair work such as the extension of scaffolding to the area where there was no issue to remedy; 5) fixing and repairing roof slates not carried out at with reasonable care and skill resulting in a slipped slate; and 6) failure to repair the damp even after sufficient time was given, which resulted in further expense for the leaseholders in repairing the damp correctly.*

19. Firstly, it should be noted that the Applicant does not challenge the legality of the consultation process and thus the Tribunal assumes it to have been a lawful one.

20. In relation to the argument at paragraph 40. the Tribunal finds that argument to be misconceived. The works carried out were clearly with a view to repairing the roof and structure of the building. In those circumstances they fall within the relevant lease covenant and are chargeable contractually.

21. In relation to the arguments at paragraph 41. they are determined as follows:

a) The selection of the contractor was not unreasonable. They were the cheapest who had quoted for the correct scope of work. They also had some existing knowledge of the building. That is a reasonable basis to select a contractor. As set out above the, the work was partially successful.

- b) That there is repeated investigatory work is not a proper criticism to make. As noted above the diagnosis of the source of damp is not a straightforward matter and can often require repeated investigatory work.
- c) The treatment of damp where the cause is uncertain, as at this property often requires the elimination of other possible causes. There is nothing unreasonable about efforts to eliminate condensation dampness.
- d) The Applicant here makes the mistake of assuming that the works were designed solely to remedy the damp in her flat. The reality is that the Respondent was acting to remedy defects within its repairing obligations as it found them. That is not an unreasonable response by the Respondent. It is also not unreasonable for them to carry out repairs that fell within their repairing obligations that were unrelated to the damp in the Applicant's flat.
- e) The Tribunal does not consider that this claim of negligence is made out. The roof of the property is plainly reaching an age where it requires repair and possibly wholesale replacement. It is not sufficiently proved that a slipped slate was caused by the Respondent's contractors.
- f) This is dealt with below in relation to the Applicant's claim for set-off.

22. Accordingly, the Tribunal determines that the service charges challenged under item 5. are payable and reasonable.

### Item 3. - Cleaning

23. This item was conceded by the Respondent and will be credited to the Applicant's service charge account. Nothing more need be said about it.

### Item 4. – Pest Control

24. The Applicant had been under the impression that this charge was for a different treatment. In her statement of case (para. 50 p53) she acknowledges it was for a treatment in June 2019 and that it related to the treatment of the communal areas.

25. The Applicant nonetheless believes the charge to be unreasonable because:

- a) the leaseholders were not informed at the time,
- b) Pest control should have been the responsibility of the individual leaseholders.

- c) That the treatment was not coordinated with the three flats as the Respondent contends.
  - d) That she had never witnessed any of the treatments taking place or evidence of them having taken place.
  - e) That the work did not remedy the defects until September 2019.
26. Having heard evidence from the Respondents and the Applicant and having noted the invoice at page 284 of the hearing bundle, the Tribunal determines that this charge was payable and reasonable. The Tribunal is satisfied that the works did take place and that they were done to a reasonable standard. This would appear to be borne out by the Applicant's own statement of case which indicates the mouse problem to have ceased to be a problem some three months after the treatment. It is right of course that treatments take a period of time to take effect. The charge itself would appear to be a reasonable one given it covered two treatments.

#### The Applicant's Claim for set-off

27. In addition to challenging the service charges as set out above, the Applicant also seeks to raise a set-off of £1456. The basis of her claim is set out in paragraph 54 of her statement of case. It is essentially that the Respondents have been far too slow to address the damp problem and that thus it has become worse than it need have become and now the walls require replastering and redecorating. The Applicant has also had to chase repeatedly and spend a substantial amount of time on this matter.
28. The Respondents do not address the Counterclaim substantively in their statement of case; despite it being made clear at the directions hearing that one was being pursued. During the hearing, the Respondents were asked to justify what, on the face of it, is a substantial delay in remedying the problem. No real explanation was given beyond the difficulties in diagnosing the source of the damp. It also appears that the Respondent had not taken it upon itself to confirm that the second set of works had been effective by way of an inspection, which it should have done. Whilst the course of action chosen by the Respondents was reasonable, as determined above, it has simply taken far too long.
29. The evidence indicates that the damp was first reported in April 2018 and still persists in the lounge to date.
30. The Respondents are obliged to repair the structure and roof of the building by virtue of clause 6(d) of the lease. It seems to be accepted that the problem lies with the roof and or chimney breasts, that is certainly the Applicant's case and surveyors report obtained by the Respondent in the bundle (p202) confirms the same. It must therefore be a defect which

falls within the Respondent's repairing obligation which is causing the damp.

31. The Tribunal determines that the Respondents have failed to diagnose and repair the defect which is the cause of the damp within a reasonable time. That is a breach of lease. The Applicant would therefore be entitled to damages that would put her in the position she would have been in had there been no breach of lease, this would include damages for inconvenience and loss of amenity.
32. The Applicant seeks £1456 in damages. The Tribunal determines that the Applicant would at least be entitled to an amount to cover the cost of replastering and redecorating. The quotes provided by the Applicant (which add up to the sum sought) were not challenged and seem to be reasonable in amount, bearing in mind the Tribunal's expert knowledge of such matters. Accordingly, the Tribunal determines that the Applicant's liability for the service charges shall be reduced by £1456 by way of a set-off.

#### S.20C

33. The Applicant has been successful in challenging two of the five service charge items, one of which was only conceded during the course of the hearing, and has also been successful on her Counterclaim. It would not be just for her to be penalised for a largely successful application by way of administration charges or service charges. The Applicant's s.20C application for an order limiting the Applicant's costs pursuant to section 20C Landlord and Tenant Act 1985 and pursuant to paragraph 5A of Schedule 11, Commonhold and Leasehold Reform Act 2002 is therefore allowed. The Respondents shall not seek to recover its costs of this application against the Applicant by way of service or administration charges.

#### Postscript

34. After this decision had been drafted, but before it was circulated to the parties, it came to the Tribunal's attention that the Applicant had made additional submissions and put forward additional evidence by way of a letter dated 27<sup>th</sup> January 2021.
35. The Tribunal declines permission to rely on that evidence or to make further submissions. They are presented far too late in the day. In any event, having read that information the Tribunal is satisfied it would have made no difference to its decision.

**Name: Tribunal Judge Mullin  
Mr. Holdsworth  
Mr. Waterhouse**

**Date: 10<sup>th</sup> February 2021**



## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber). **9(7) and (8) of the 2013 Rules.**