



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

Case Reference	: LON/00AG/LSC/2020/0272
Property	: 41A Chester Road
Applicant	: Kate Disney
Representative	: In person
Respondent	: London Borough of Camden
Representative	: Cheryl Reid
Type of Application	: Determination as to payability and reasonableness of service charge
Tribunal Members	: Judge Shepherd Sarah Redmond MRICS
Date of Decision	: 2021

1. In this case the applicant Kate Disney is seeking a determination of liability to pay and reasonableness of service charges pursuant to section 27 A of the Landlord and Tenant Act 1985. Ms Disney (“The Applicant”) is a leaseholder of premises at 41 a Chester Rd, London N19 5DF (“The premises”). Her landlord is the London Borough of Camden (“The Respondents”).

2. The premises consists of a four-storey Victorian house that has been converted into two maisonettes. They were originally right to buy properties which had been sold on by occupiers. According to the Applicant the properties were in poor condition when she purchased the premises in 2011. She says that she spent four years improving the condition of the premises and renovating them. The flat above hers was sold because one of the leaseholders died and the other had to move into a home. The flat was sold to a property developer who went on to refurbish the premises and put the property back on the market. According to Ms Disney the flat is not sold and is currently rented out.
3. Ms Disney is challenging service charges for 2016 to 2021 inclusive. The total sum challenged is £18,993.44 . In her application it made clear that the central issue relates to major works carried out on the external fabric of the building including replacement of windows.
4. It is Ms Disney's case that a large proportion of the costs sought by the Respondents relate to works that were not required because she had already carried out extensive renovations to the premises including replacing windows at the rear and repairing the windows at the front. The Respondents maintain that the sums are owed.
5. The Scott schedule completed by the parties confirms that the principal sums at issue are for the major works in 2016 2017 a sum of £18,143.18. Other items are minor in terms of cost although all of them were dealt with during the tribunal hearing. For obvious reasons therefore the majority of this determination deals with the major works.
6. Ms Disney represented herself and the Respondents were represented by Cheryl Reid. Pausing here the tribunal was very impressed by Ms Disney's ability to act on her own behalf at the hearing. Unfortunately, she suffered a serious car accident previously and had a traumatic brain injury. At points

during the hearing she was plainly very distressed yet she maintained her composure with admirable ability and presented a very clear case. It was clear to the Tribunal that she was considerably frustrated about her interaction with the Respondents and it has to be said that the Tribunal formed the impression that the Respondents had not really engaged with the premises in the past to the extent that they had failed to carry out essential works. On Mr Monaghan's own candid admission the premises had been somewhat overlooked in the past.

7. Ms Disney argued that it was unreasonable for the landlords to replace windows which did not need replacing and to replace them with what were in her view inferior modern windows which were incongruous to the era and style of the building. During her renovation works she had replaced her rear windows with double glazed modern windows but significantly these were not on show to the public. The works included £1548 plus VAT plus installation to replace two rear first - floor windows in the common parts and did not seek to recover any costs from the other leaseholder. The ground floor rear windows were partly replaced with a bifold door which was paid for fully by the Applicant. Her works were carried out with the permission of the Respondents who gave a deed of variation on 19 September 2012. The Deed of variation was said to make her responsible for 100% of the future costs of these works. Ms Disney argues, and it would seem to be the case, that the windows to the front of the premises were repairable and following guidance from Historic England she renovated them and added shutters internally for sound and thermal insulation.

The lease

8. Under clause 4.2 of the lease the Respondents covenanted with the Applicant *to maintain repair renew and amend clean repoint paint grain varnish whiten colour as applicable the following... The roof foundations external and internal walls the window frames (but not the interior faces of such parts of the external or internal walls as bound the flat of the rooms therein or glass in the windows).....*

9. The fifth schedule of the lease lists items of expenditure that can be recovered under the service charge as the *expenses of maintaining repairing redecorating and renewing cleaning repointing painting draining varnishing whitening or colouring the estate and all parts thereof including the glass in all windows (other than the interior surface of the windows of the flat) and all the appurtenances apparatus and other things thereto belonging including those items described in clause 4.2 and 4.3.*

10. It was Ms Disney's argument that she had in fact carried out work which was really the responsibility of the Respondents in repairing the front windows and replacing the rear windows including the communal ones.

11. Prior to commencing the major works the Respondents arranged a residents' meeting. It was proposed that the windows would be either repaired or replaced. In an email dated 5 May 2015 Mr Monaghan said that he had considered photographs of the building and had discussions with planners about the fact that the building was within the Dartmouth Park conservation area. It was intended to replace the entire box frame and sashes with double glazed wooden units with the same fenestration. There was no plan to replace the double glazed windows at the rear as long as they were in reasonable condition.

12. In an email to Ms Disney from Dominic Clarke of the Respondents he stated that it was intended to replace the windows as opposed to repairing them based on whole life costing of replacement which was more beneficial than repair. There was no apparent distinction between the windows on the lower floors and those in the flat above.

13. It is the Applicant's case that the windows at the front of the premises did not need to be replaced as they were in perfectly good condition due to the works she had carried out. Notwithstanding this the Respondents chose to replace the windows causing her a great deal of inconvenience and cost because she had to remove and replace her shutters. She also stated that the character of the building had been degraded by removing the repaired sash windows. The submissions in writing from Ms Disney included reference to the Historic England website where references made to the repair of traditional windows being more effective and better value for money.

14. A secondary argument made by the Applicant relates to the apportionment of the service charge. The total cost for the major works to the building was £20,921.57 with the Applicant expected to pay £10,159.68. Under the lease the service charge should be apportioned according to the fourth schedule:

4. the annual amount of the service charge payable by the tenant as aforesaid shall be the specified proportion calculated either by

4.1 rateable value method

4.2 in the case of those items for which the landlord's expenses extend to the estate or other estates then a fairer and reasonable proportion of the costs thereof attributable to the premises such proportion to be determined by the landlord's finance officer whose decision shall be final and binding or

4.3 such other method as the landlord shall specify acting fairly and reasonably in the circumstances and from time to time and at any time (including but without prejudice to the generality thereof any combination of methods)

15. Ms Disney had pointed out at the time of the major works notice that she had been authorised to carry out works to the rear of the property and that she had carried out repairs to the front windows before works to the interior and asked the Respondents to use paragraph 4.3 as the means of apportionment in dealing with the cost of the new windows in order to reflect the fact that she had paid for all of her windows to be repaired or replaced. In response to this request Dominic Clarke of the Respondents emailed on 18 December 2015 essentially saying that it had been the Applicant's choice to replace her windows and accordingly the rateable value method would be used.

16. A further complaint by the Applicant related to the failure by the Respondents to make clear whether the works involved would be covered by the Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014.

17. The Applicant also complained about the quality of the works carried out in particular the iron railings at the front were already showing signs of paint peeling and the main roof works had apparently been inadequate because there were roof leaks.

18. The Applicant also questioned whether the costs were recoverable because the predicted major works when she purchased the flat would only amount to £3650. This argument was wisely not pursued by the Applicant at the hearing. The Respondents were not bound by expenditure forecasts which were now out of date.

19. In his witness statement Mr Monaghan stated at paragraph 8 whilst the condition of some of the windows in Flat A were reasonable those of flat B were in poor condition and would have required considerable resin repairs and re-decorations or replacement dependent on the moisture content of the timber. At paragraph 11 he stated the following:

It is the Respondent's case that the windows throughout the entirety of 41 Chester Rd require replacing and I repeat paragraph 7 and 8 above.

20. The two paragraphs of the statement are contradictory as it cannot be the case that some of the windows in flat A were reasonable and yet all of the windows in the building required replacement. Indeed, in his oral evidence to the Tribunal Mr Monaghan was candid in saying that all of the windows in Flat A were reasonable and did not need replacement and if it had been down to him he would not have replaced the windows in Flat A.

21. In a witness statement by Stephen Harding of the Respondents at paragraph 11 he stated that there had been no external re-decorations of 41 Chester Rd since 2001 and no significant works or improvements had taken place. This is given as the reason why due diligence required the Respondents to carry out the works. This is putting a positive gloss on a poor situation in the Tribunal's view. The Respondents had failed to comply with their duties as landlords for a period of 14 or so years. In this scenario it is entirely understandable that the Applicant felt it necessary to carry out the works herself.

22. Simeon Simeonov of the Respondents also prepared a witness statement in which he repeated the Respondents' assertion that the works were necessary and particularly in respect of the windows in Flat B. The Tribunal read with surprise paragraph 10 of that statement where Mr Simeonov stated the following:

I also note that the respondent (sic) has stated that the works had caused her unnecessary stress and disruption. Whilst the respondent accepts that any works carried out would have a certain level of disruption to leaseholders, unfortunately this is ultimately inevitable. The aim at all times is to complete

any works to a minimal standard of disruption to leaseholders. Factors outside of the respondent's control must be considered, for example, the issues the applicant has raised with a neighbouring resident. The Respondent can hardly be blamed for that. Lastly it is the respondent's submission that they strongly deny that the applicant has been subjected to any form of bullying, and the respondent fails to see how any correspondence can be considered as such.

- 23.** This is indicative of the Respondent's attitude towards the Applicant. There is no consideration of the Applicant's case and the fact that she was asserting that the Respondents had ignored her interests and replaced her windows when they did not need replacing. This, in itself could be construed as bullying or overbearing behaviour. The failure to even accept that this was a possibility reflects a robust and inflexible attitude on the part of the Respondents which prevails throughout this case. It was clear however that Mr Monaghan was following a decision or policy to replace all of the windows in the building with double glazed windows whether they needed replacing or not. He was honest enough to inform the Tribunal that he would not have replaced the windows in Flat A. The Tribunal appreciated his honesty in this regard.

Determination

24. Taking each of the costs in issue in turn dealing with the minor items first:

Repairs and maintenance

25. These costs were originally challenged for each of the relevant years. At the hearing the repairs and maintenance charges of £250 per annum were no longer in issue for 2017-2020. The charge for 2020 - 21 was a nil charge.

Switch room maintenance

26. The Tribunal considers these costs to be reasonable and payable for each of the years claimed.

Damp proof repairs

27. These were charged for 2018 - 19 and are considered to be reasonable and payable.

Major works

28. The Tribunal determines that it would not be reasonable for the Respondent to recover any of the costs alleged to be due for the windows constituent of the major works excepting the communal window.

29. The way in which the Respondents conducted themselves over the major works was in the Tribunal's opinion below the standard one would expect from a local authority which has some experience of dealing with leasehold management. The Applicant was allowed by the Respondents to carry out repairs and improvements to her property some of which at least should have been carried out by the local authority itself. Notwithstanding this she was now asked to pay the cost of undoing her own work. The Tribunal finds on the facts that the work carried out by the Applicant were of a good standard and improved the exterior of the premises whilst maintaining the aesthetic look of casement windows at the front of the property. The Applicant fitted her own double-glazed windows at the rear which was a very practical approach to take. Meanwhile the Respondents effectively stood by and allowed the Applicant to carry out these extensive works without objection and without indicating that they may require the casement windows to be removed and replaced with double glazing at some date in the future. Notwithstanding the fact that they

had allowed the Applicant to carry out the works without any qualification the Respondents later decided it was appropriate to remove the windows that the Applicant had repaired at the front of the building and replace them with double glazed windows. The Tribunal was provided with no proper explanation as to why this was done. The windows of the Applicant's premises were in reasonable condition and did not need to be replaced. Mr Monaghan was candid about the fact that the windows could have been left in situ. It is remarkable that they were not. Instead of being flexible on the matter the Respondents dogmatically and robustly ignored protests from the Applicant and in effect forcefully replaced the windows in her home. They are now seeking to recover the costs of that work. They also seeking to recover the cost of replacing other windows in the building.

30. There is no provision in the lease which allows the replacement of windows when they are not in disrepair. The sums claimed for replacement of the windows of Flat A are not therefore recoverable and even if they were the Tribunal would find them entirely unreasonable for the reasons already given.
31. In relation to the replacement of the windows in Flat B it was clear from the evidence from Mr Monaghan that no major works had been carried out to the premises since 2001. It is therefore unsurprising that significant works would be required. The former occupiers of Flat B were not in the same position as the Applicant in being able to carry out their own repairs. Works of the type carried out should have been done by the Respondents at a much earlier date. Instead of doing this they waited until the upper floor was in very poor condition and then carried out works including replacing the windows with double glazed units.
32. The replacement of casement windows with double glazed windows is in the Tribunal's assessment within the remit of the repairing clause in the lease. The tribunal particularly takes into account the cases of *Ninja Properties Ltd v Cousins Property Group plc* [1998] 2 EGLR 52 and *Wandsworth LBC v Griffin* [2002] EGLR 105 the latter being particularly pertinent because it

concerned the replacement of single glazed metal frame windows with UPVC double glazed windows which was held to be within the ambit of the landlord's covenant to repair and maintain the exterior.

33. Notwithstanding the fact that the sums may be payable by the Applicant under the lease the Tribunal considers that it was not reasonable in all the circumstances for the Respondents to seek a contribution from the Applicant for the windows to Flat B. However, a communal window was replaced and Ms Disney should contribute to that cost, which she accepted.

34. It is difficult to underestimate the stress that must have been caused to the Applicant as a result of the conduct of the Respondents. She hit a wall of bureaucracy which was deaf to her protests. She has now been left with a flat which she considers to be inferior to the one that she had created for herself. In most cases where the landlord conducts itself reasonably the Tribunal would not challenge decisions made with the aim of preserving the life of the building. In the present case there was no reasonable basis for the Respondents taking the action they did. Why replace windows with other windows when the original windows are in reasonable condition and the leaseholder does not want that replacement?.

35. Although it could be said that the Applicant should be required to contribute to repair works to the other parts of the building the Tribunal is entitled to take into account the circumstances of the case in deciding that they are not entitled to recover for the window replacement. The Applicant had already incurred significant costs in carrying out the works to her flat including installing double glazing at the rear. By doing this she had already made a contribution to extending the life of the building. The Respondents were aware of this when they carried out the major works yet they failed to properly reflect it when deciding how to apportion the cost of replacing the windows to Flat B. It was open to them to apportion the cost in a fair way under clause 4.3 of the lease. It is the view of the Tribunal that it was not reasonable to simply apportion the cost via the rateable value method effectively ignoring the fact that the Applicant had already contributed to the overall cost by carrying out her own

improvements which were of benefit to the building as a whole. The cost should have been apportioned on the basis that the Applicant was not required to contribute to the window works although she was still required to contribute to other works in the building. The Respondent's counsel submitted that this case was analogous with the situation of a ground floor flat contributing to lift repairs even though they don't use the lift. The difference here is the added ingredient of the works carried out by the Applicant. They were part of the factual matrix which the Respondents should have considered when deciding on the fairest means of apportionment.

36. The Court of Appeal decision in *Williams and others v Aviva Investors Ground Rent Ltd and another* [2021]1WLR 2061 was not cited to the Tribunal by the Respondent's counsel. This is surprising as it was patently relevant to the decision at hand. In that case the Court of Appeal decided that when faced with alternative apportionment formulations including a formulation allowing the landlord to depart from a fixed apportionment and use instead a different apportionment (acting fairly and reasonably) the FTT steps into the shoes of the landlord in making the decision. This is in order to give effect to s 27A(6) Landlord and Tenant Act 1085. Accordingly in the present case the Tribunal, acting fairly and reasonably is entitled to apportion the costs as indicated in the previous paragraph.

37. The FTT therefore adjusts Ms Disney's Total Final Contribution of £18,092.57 by a reduction of £7,591.29 (total share of window works £8,059.13 net of £467.84 for her share of the communal window). Accordingly, having amended her apportionment the Applicant is liable for **£10,501.28** for the Major Works.

38. The Tribunal hopes that the Respondents will reflect on this determination and consider carefully the way in which they manage their leasehold properties, particularly those like the premises which are street properties and not on estates. It is important that such properties are managed with the same care and attention as other parts of the Respondents' portfolio. It is not acceptable for these individual properties to be left outlying. They may be regarded as

something of a hindrance for the Respondents but the leaseholders occupying them are entitled to a level of service which is equivalent to other leaseholders on larger estates. Moreover, it is important that the Respondents recognise that they as social landlords have responsibilities towards their leaseholders as well as their tenants. Some flexibility may be required. Policies that may work for larger estates for instance in relation to the replacement of single glazed windows with double glazed windows may not be suitable for individual properties.

Judge Shepherd

16th November 2021

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.