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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL**

Case Number LON/OOAG/LIS/2006/0041

Landlord and Tenant Act 1985 (as amended) sections 27A and 20C

In the matter of 23a Primrose Gardens, London NW3 4UJ

Parties: Ms L Simovic Applicant

**The Mayor and Burgesses of the London Borough of Camden
Respondent**

**Appearance: Mr J Mr Creadie and Mr J Hope of the College of Law
For the Applicant**

**Mrs E Howells Principle Projects Co-ordinator
and Mr E Hughes Project Manager of the Home Ownership
Service of the London Borough of Camden
Mr R Bellord MRICS from Calfordseaden Contract
administrators**

For the Respondent

**Tribunal: Mr A A Dutton Chair
Mr I Thompson BSc FRICS
Mrs S E Baum JP**

Application Date: 8th March 2006

Hearing Date: 10th October 2006

Decision Date: 30th October 2006

REASONS

A. BACKGROUND

1. This application was made by Ms Lilian Simovic the leaseholder of flat 23a Primrose Gardens, London NW3 for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness for refurbishment costs to her flat and the property in which it is situated by the London Borough of Camden in 2002 and 2003.

2. A section 20 notice was served by the Council on Ms Simovic in April 2002 setting out the works to be carried out to the property at 23 Primrose Gardens, a four storey Victorian property containing 4 flats. There is no dispute as to the notices served. The dispute relates to the following matters which were set out in a hand written attachment to Ms Simovic's application:

- Faulty workmanship
- Poor quality work
- The amount charged was not reasonably incurred
- Charged for work not done
- Workman damaged my property

3. We were supplied with a bundle of documents for the hearing. These included two submissions from Ms Simovic, a letter from the Council dated 25th May 2006 and a statement from Mr Bellord which was dated 27th June 2006. We noted all that was said. In addition the Council had produced a helpful schedule setting out the items in dispute with both parties views and in some cases offers of settlement.

4. The amount that the Council was seeking to recover from Ms Simovic was £5405.56 which incorporated an allowance following Ms Simovic's purchase under the Right to Buy legislation and a reduction as a result of the Council's failure to make demands in accordance with section 20B of the Act. Neither of these matters was disputed by Ms Simovic.

5. On behalf of Ms Simovic Mr Hope confirmed that the following items were in dispute and the costs associated with same were challenged:

- The roof still leaked
- The windows and doors were ill fitting and had been painted shut
- The external paintwork was poor or had not been carried out by the Council's contractor
- The internal decorations to the common parts had been carried out by a resident before the works started
- The guttering was still leaking
- A gate had not be repaired and refitted
- The works were several months late

B. EVIDENCE

6. Ms Simovic gave evidence on the issues. On the question of the works to the common parts she was adamant that these had been carried out by a Mr Davis, the

leaseholder of flat C, who painted the common parts in 2002, after the section 20 notice had been served but before works were commenced. She told us that a radiator had been installed in the hall, without consultation with the residents and was not working. We were told that there was still staining to the brickwork, which should have been cleaned, and that although this was not an issue it indicated that the works that the Council's contractor should have done to the guttering had not been carried out in a satisfactory manner.

7. Ms Simovic told us that there had been no notification from the contractors as to when the windows and doors would be decorated and that as a result the windows had been painted in the closed position requiring the residents to force them open and repaint.

8. Ms Simovic told us that the works started in late 2002 and that the scaffolding was not struck until March 2003. There was a dispute as to the works that were carried out and we were directed to the tender documentation in the bundle and a schedule of omissions and additions. This latter document showed that the final contract price was £231,190.09, of which 23 Primrose Gardens appeared to have a liability amounting to £23,936.84. We will refer to these documents in more detail in the decision element of these Reasons. However, it was asserted by Ms Simovic that a number of items of work were not carried out, for example, the works to the windows doors and joinery to overhaul same and provide draught stripping, works to the drains, replacement of glass and rebuilding of part of a rear wall. In respect of the rear wall Ms Simovic told us that this had been in part rebuilt some two years before these works in dispute and that no building works were carried out under this major works contract.

9. We were shown documents which appeared to refer to service charges for 2004/5 and 2005/6 indicating that works were still required to the drains and guttering. Ms Simovic told us that the contractors had damaged her patio and flower beds, although she did not seek any recompense in respect of same.

10. At the conclusion of her evidence Ms Simovic raised matters which had not been included within her initial application, namely the cost of the preliminaries, shown in the contract at over £70,000 as compared with the costs of the actual works.

11. On the question of costs and her application under section 20C of the Act we were referred to correspondence between the parties but Mrs Howells, on behalf of the Council told us that there would not be a claim for costs save only the fees of Mr Bellord.

12. For the Council Mr Bellord gave evidence utilising the schedule of works that were in dispute. He told us that he had not been involved in the contract and had only come to the dispute this year. The person at Calfordseaden who had the day to day conduct of the contract had left and he was not able to deal with the history of the works. His evidence was therefore confined to the inspections that he had carried out and a review of the paperwork to establish what works had, or had not been done. There was, he accepted, no evidence that anyone had returned to the property to ensure that the defects, set out on a schedule produced by the Council during the course of the hearing, had been completed. He was of the view that the

works had been completed in December 2002, a certificate of making good was dated 17th March 2004 and the final account issued on 18th May 2004.

13. He conceded that he was not in a position to rebut the evidence given by Ms Simovic on the works that were done or when but he was satisfied that the general level of works was satisfactory. He told us that his costs for dealing with the application before the tribunal would be in the region of £1,500.

C. THE LAW

14. Section 27A requires the tribunal to determine whether a service charge is payable and if so, by whom, to whom and the amount. We are also able to determine when and how it is paid.

15. Section 20C enables the tribunal to determine whether the costs incurred by the landlord in these proceedings are recoverable as "relevant costs" to be taken into account when determining the amount of any service charge payable by the tenant. We may make such order as we consider just and equitable.

D. THE DECISION

16. Before we deal with the substantive part of the dispute we will firstly address the issue of the "preliminaries" raised at the end of Ms Simovic's evidence. She did not raise this as an issue during the exchange of statements and thus the Council was not prepared to deal with same. In any event we find that as the preliminaries were a tendered figure, which although seemingly on the high side were not disputed at the time the contract was set up, and that as the only point raised by Ms Simovic was the contrast between the costs of the works and the cost of the preliminaries, the sum should not be adjusted.

17. Turning to the items in dispute we have prepared a schedule which is attached which we hope will clearly identify the items we have reviewed and the sums we have determined are recoverable from Ms Simovic. Our reasons for the findings we have made are set out below.

18. The schedule prepared by the Council, headed "Schedule of Observations Prepared in Response to Applicant's Case for 23a Primrose Gardens - Revised 12th September 2006" has been of assistance in dealing with the matters in dispute and forms the basis of the items we have considered.

19. We find that the offers made by the Council in respect of the staining to the walls numbered 12 on the schedule at £34 and the re-hanging of the front gate at item 17 of the schedule at £90 are reasonable offers to settle and we agree same. These figures are incorporated in brickwork costs and landscaping.

20. We then considered the painting to the windows and doors. There appears to be little doubt that the windows and doors were painted shut. There is no evidence that the contractors made any attempt to contact the residents to gain access, notwithstanding that we were told that both Ms Simovic and the tenant of flat B were frequently at home. We are not satisfied that the contractors completed the external decorations to brick work, as evidenced by the photographs which Ms Simovic said were taken by her in July 2003. In respect of the works to the common

parts we noted that the original specification figure was £1370 for preparation works, including hanging wallpaper, two coats of emulsion and two coats of gloss. The additions and omission sheet indicated that these works were not done and an allowance was made but that, somewhat surprisingly, only one coat of emulsion and one of gloss was allowed at £1590. Mr Bellord was not able to throw any light on this and we preferred the evidence of Ms Simovic who said that the common parts had been decorated by a resident. We heard what Mrs Howells said about the tenants' right to do this but have concluded that if a tenant has carried out the works to a reasonable standard, as appears to be the case, evidenced by the fact that the additions appears to require only half the work to be done, it would be unreasonable for the Council to decorate just for the sake of it. We have concluded that if the Council carried out approximately half of the works originally specified then it is reasonable to allow half the originally specified sum which is £685.

21. We turn now to the works allegedly done to the windows. In the specification some £2110 is allowed at items 6.10.1 and 6.10.2. There appeared to be no evidence that this work had been done, certainly Ms Simovic denied the works had been carried out to her flat, and we therefore disallow this sum. The total sum claimed, after omissions and additions, for work to the windows under 6.10 and 6.14 is £2,572. After deducting £2110 this leaves £462 are rechargeable to the lessees.

22. The next matter we must address is the balance of the external and internal decorating. Having found that £685 is recoverable for the common parts we have considered what other elements of the total cost of £4,928 are reasonable. There have been substantial omissions and additions in respect of this matter. Included within this total is the cost of supplying and installing a radiator in the communal hallway which was not requested by the residents and does not appear to work. We disallow that sum as there appears to have been no consultation with the residents and its worth is disputed by Ms Simovic and others. In addition we do not allow the claim of £570 for renewing the mastic, see 6.15.7 of the specification, as again there is no evidence that this has been done. In so far as the general standard of the external painting works are concerned we have considered the offers made by the Council on the schedule. We conclude that it would be appropriate to reduce the external decorating costs by £400. This means that as against the total recharge figure of £4,868 we reduce this by the following:

- The sum of £570 for the mastic
- £610 in respect of the radiator
- £400 for the general external decorations and
- £905 for the common parts, being half the original cost of £1370, namely £685 we allowed and deducting that from the substituted amount claimed of £1590.

This leaves the sum of £2383 as recoverable.

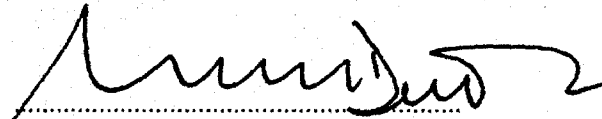
23. We accepted the evidence of Ms Simovic on the question of the rebuilding of the rear garden wall and disallow the sum of £850 from the landscaping element which totalled £900.

24. We accept the Council's claim of £602 for the roofing works as the leaks complained of appear to centre around a dormer window and there does not appear to be any allegations of other leaks. The rainwater repairs we allow at £1316.67. We accept that a drainage inspection took place and a figure of £916.67 although high is not in our knowledge and experience so unreasonable as to be interfered

with. Likewise there was no challenge to the nominal sum of £270 in respect of brickwork and will allow that sum. The entryphone, although not in operation for a period is functioning satisfactorily and we allow the sum claimed of £1536. Although mention was made that the scaffolding had been in place for a long time no real challenge was made and we allow the sum of £2690 as claimed.

25. As can be seen from the schedule we have reduced the rechargeable costs to the lessees by some £5,445.00 which will need to be apportioned. Payment of any sums outstanding should be agreed as soon as possible

25. On the question of the section 20C application we find in favour of Ms Simovic. The evidence that Mr Bellord could give was limited although we make no complaint of his efforts to assist the tribunal. He was not involved in the contract and was not able to give any contemporaneous input into the circumstances surrounding same. In our finding it is just and equitable to order that his costs are not relevant costs for the purposes of the recoverability as a service charge. We do not therefore need to consider whether the lease allows for the costs of these proceedings to be recovered in any event. In addition we record Mrs Howells statement that the costs of the Council, as distinct from Mr Bellord's costs, will not be claimed as a service charge from the lessees.



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Chairman

30 October 2006
.....
Date

Schedule of costs claimed and costs allowed (see page F of the schedule of observations referred to in the Reasons)

<u>Works description</u>	<u>Amount claimed</u>	<u>Amount allowed</u>
	£	£
Roof	602.00	602.00
Rainwater repairs	1,316.67	1,316.67
Brickwork	270.00	270.00
Windows	2,572.00	462.00
External/Internal decorations And additions	4,868.00	2,383.00
Landscaping	900.00	50.00
Entryphone	1,536.00	1,536.00
Access etc	2,690.00	2,690.00
Preliminaries	7,485.11	7,485.11
Totals	<u>22,239.78</u>	<u>16,794.78</u>

Reduction in charge £5,445.00