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LON/00BJ/LSC/2006/0041

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A OF THE LANDLORD & TENANT ACT 1985

Applicant:	Mr William Woods
Respondent:	Wandsworth Council Housing Department
Represented by:	Ashfords Solicitors
Re:	24 Wolftenscroft Close, London, SW11 2LD
Hearing date:	8 May 2006
Appearances:	Mr William Woods

For the Applicants

Mr Bhose of Counsel

For the Respondent

Members of the Residential Property Tribunal Service:

Mr S E Carrott LLB
Mr J M Power MSc FRICS FCIArb
Mr D J Wills ACIB

1. **Background**

This is an application under section 27A of the Landlord and Tenant Act 1985 for the determination of reasonableness and liability to pay services charges. The Applicant is Mr William Woods and he is the lessee of 24 Wolfencroft Close, London SW11. The Respondent is the London Borough of Wandsworth.

2. At the hearing of the application on 8 May 2006, Mr Woods appeared in person and Mr Bhose of Counsel represented the Respondent.

3. **Facts**

From the evidence and submissions of the parties and the documentation before the Tribunal, the Tribunal made the following findings of fact -

The Applicant acquired his interest in 24 Wolfencroft Close, London SW11 on 16 February 2001. Prior to that and whilst the previous lessee was in occupation on 5 November 1999 the Respondent ordered remedial repairs to two rotting windows to the flat. These repairs were carried out as a short term measure at an estimated cost of some £350.

4. In 2000 the Respondent devised a programme for the replacement of wooden framed casement windows on the Kambala Estate including the block which the Applicant's flat is situated, with PVC-U windows. The works were due to take place between 2002 and 2005.

5. In the spring of 2000 a fire occurred at the subject property causing damage to the flat itself and to the windows. The Respondent carried out an inspection of the flat and noted that repairs were required to the windows in the kitchen and the living room. The Respondent was unsure at that time whether the fire damage was covered by the block insurance policy and in order to protect its position it served a section 20 notice on all lessees giving notice of its intention to replace the windows in the flat alone at a total cost of £2,309.11. The Applicant's

predecessor in title was informed that his contribution to the works would be 9.92%, £229.06. The works were carried out in the autumn of 2000 and in the event the Council recovered the costs under its insurance policy. Again, this work took place before the Applicant acquired his interest in the property.

6. The consultation for the programme of works which gives rise to this application took place in 2004, by which time the Applicant had acquired his interest in the subject property. A notice of intention was sent to the Applicant as well as the other lessees dated 6 April 2004 putting the Applicant's estimated contribution at £3,910,69. By a letter dated 19 April 2004 the Applicant made representations pointing out that two of the windows in his flat had already been replaced and did not require replacement. The Council replied on 26 April 2004 stating that as long as the two windows complied with current regulations they would not seek to replace them. However they pointed out to the Applicant that under the terms of his lease he was expected to contribute towards the cost of the windows and other works carried out to the block.

7. However it is worth noting that the works to the block consisted of more than the replacement of windows. As well as the provision of work access and erection of scaffolding there were minor repairs to the roof, the replacement and repair of defective gutters and down pipes, external repairs and redecoration to the communal parts.

9. There is no dispute between the parties concerning the tendering process. The Respondent received six tenders and although it intended to accept the lowest tender this was withdrawn. The Respondent then accepted the next lowest tender which was from Repex Ltd. The estimated cost was £28,153.55 plus fees making a total of £30,222.83.

10. Works commenced on 10 January 2005 and were completed on 21 October 2005. Only one window was replaced in the subject property.

As yet there are no final accounts. The Applicant's contribution based on 9.92% is £2,998.11 (rounded to £2,998.00)

11. At one stage Mr Woods asserted that it was his predecessor in title who originally carried out works to the windows in 2000 but during the course of the hearing he accepted he had no direct knowledge as to whether or not his predecessor in title had carried out works to the windows.

12. **The Issues**

The application itself raises two short issues, there being no challenge to either the consultation process or the standard of the works carried out by the Respondent. Those issues are as follows -

(1) whether under the terms of the lease the Applicant is contractually liable to pay the sum of £2,998.00 towards the costs of the works; and

(2) whether the estimated sum of £2,998.00 was reasonably incurred.

13. **The Applicant's Submissions**

The Applicant's case put simply, was that under the terms of his lease he was not liable to pay for the cost of replacement windows. He stated that under the terms of his lease there was no obligation on the Respondent with regard to the windows. He considered the costs to be unreasonable and asserted that a single window replacement would cost in the region of £600 although he accepted that this would not include the cost of labour. He likened the overall effect of the works to improvements to bathrooms and kitchens - a simple upgrade which in the instant case was not being requested by himself.

14. **The Respondent's Submissions**

Mr Bhose on behalf of the Appellant took the Tribunal through the terms of the lease. He pointed in particular to the definition of the Flat including for the purposes of obligation as well as grant the interior of

the window frames and the glass in the windows of the Flat and being subject to the Council's duty to maintain the same as provided in paragraphs 2 and 3 of the fourth schedule. Mr Bhose then referred the Tribunal to clause 4(b) of the lease, which referred to the lessor's covenant to carry out and effect its obligations under the fourth and fifth schedules of the lease. As to the fourth schedule Mr Bhose referred to paragraphs 2, 3 and 4, which provide as follows -

'2. Subject to the terms of paragraph 6 of the Third Schedule hereto at all times during the term well and substantially to repair cleanse uphold, support and maintain the exterior of the block and the ... main walls party walls roof foundations and all structural parts thereof respectively ...
3. To repair and maintain the exterior of the windows window frames and window sashes to the Flat and as often as may be necessary to replace the whole or part of the window frame window sashes and window furniture (as appropriate) ...
4. As often as may be reasonably be required to paint with two coats of good quality paint suitable for outside use and to decorate all the outside wood iron and other parts of the block which are usually or ought to be painted or decorated and also to decorate those parts of the interior of the block which are used in common with the lessees or occupiers of the other flats together with the front door of the Flat in a workmanlike manner'.

15. He submitted that on a proper construction of the lease that only the interior parts of the window frames and glass formed part of the demise and that therefore all other parts were retained in the Respondent's possession and control. He submitted that the exterior of the block naturally included the window frames whether of the subject property or communal windows and that where the window frames fell into disrepair it was the Respondent's obligation to repair, renew or replace them.

12. Mr Bhose referred the Tribunal to the decision of Irvine v Moran 24 HLR 1, where the Court decided under section 32 of the Housing Act 1961 (now section 11 of the Landlord and Tenant Act 1985) windows, window frames, sash cords and essential furniture were part of the structure of a dwelling house, which he submitted was similar to the covenant implied by paragraph 12 of Part III of Schedule 6 to the

Housing Act 1985 (implied covenants in right to buy leases) and which applied to in the instant case.

13. Finally Mr Bhose referred the Tribunal to the decision in Broomleigh Housing Association v Hughes 11 November 1999, where in a similar case, Mr David A J Vaughan QC sitting as a deputy High Court Judge in giving judgement observed -

"In any such situation the position will often happen that a tenant is being called upon to contribute to costs which are attributable to the landlord's work being done to other flats and in such a situation all have to contribute. The same would happen if in fact in a few years or so Miss Hughes' windows were the only windows requiring replacement. This is a consequence of the standard service charge provision which relates to a block of flats."

14. **Determination**

The Tribunal preferred the submissions of Mr Bhose. Windows have long been considered part of the parcel or fabric of a dwelling (see Herlakenden's Case (1589) 4 Co Rep 62a). The decision of the court in Irvine v Moran aptly demonstrates the modern proposition that windows are to be regarded as part of the structure of a dwelling house. The terms of the lease, if leaving any room for ambiguity, were clarified by the provisions of paragraph 12 of Part III of Schedule 6 to the Housing Act 1985 which implied in all such 'right to buy' leases a covenant to repair, amongst other things, the structure of the dwelling.

15. Moreover the works in the present case were not confined to the replacement of windows but also included other works to the block, which the Appellant under the terms of his lease was obliged to contribute to. There was no dispute that the consultation process had been carried out fairly and there was no criticism of the standard of the work carried out. The Applicant's complaint, although understandable, was that simply one window had been replaced in his flat. This was done at his specific request and the Respondent nevertheless warned

him that this would not affect his liability to contribute to the works in respect of the block as a whole. His position was similar to that of the Defendant in Broomleigh Housing Association v Hughes in that the service charge provisions in the lease required him to contribute to the works to the block. As the learned Deputy High Court Judge noted in that case, the same consequence would follow if in few years time, the Applicant's windows were the only windows to be replaced. There was nothing unusual or indeed unreasonable about the terms of the lease. These were standard provisions by which on whole and in time all of the lessees stood to benefit from.

15. Neither could it be said that the cost of the windows was unreasonable. The Applicant's submission that the same windows could be purchased for £600, as the Applicant himself recognised, did not include the cost of labour and neither did it include the cost of the other major works which were undertaken by the Respondent. Indeed in the Tribunal's general knowledge and experience, looking at the contract as a whole, the cost of the works was reasonable.

16. Accordingly the contribution which the Applicant was asked to pay, namely £2,998.00 was reasonable and he was contractually obliged to pay that sum under the terms of his lease.

17. There was no application by the Respondent to add its costs of the application to the service charge. Had there been such an application the Tribunal would have rejected it taking into account all of the circumstances of the case and the considerable confusion that Applicant was under concerning the history of the repairs to the windows which was only clarified during the course of this application.

18. Likewise however, the Applicant not having succeeded and there being no criticism of the conduct of the Respondent in this case, the Applicant was not entitled to the reimbursement of his fees.

19. **Decision**

(1) The sum of £2,998 is reasonable and payable by the Applicant to the Respondent (credit to be given to the Applicant for any sums that he has paid to date).

(2) The application under section 20C of the Landlord and Tenant Act 1985 is allowed and the Respondent is not to add its costs of this application to the service charge.

(3) The application for reimbursement of fees is refused.

Chairman S E Calmott

Dated 12/7/06