RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 S27A &S20C

IN THE MATTER OF : 37A & B MORNINGTON CRESCENT LONDON NW1 7RB

CASE NUMBER LON/00AG/LSC/2007/0297

Parties

Miss S Gardner Miss S Stevenson	Applicants
London Borough of Camden	Respondents

Appearances:

For the Applicants Miss S Gardner & Miss S Stevenson

For the Respondents	Miss L Bush (Court Officer) Home Ownership Services for the London Borough of Camden Mr K Bhamra (Project Manager) Mr S Harding (Finai Account Officer)
Date of Application	6th August 2007
Date of Hearing	24th October 2007
Tribunal Members	Mr A A Dutton Chair Mr M Cairns MCIEH Mr D J Wills ACIB
Date of Decision	2nd November 2007

DECISION

A. BACKGROUND:

1. On the 6th August 2007 Miss Gardner made application to the Tribunal under s27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") and also sought an order that the costs would not be recoverable by the Respondent Council pursuant to s20C of the Act. Subsequently on the 28th September 2007 Miss Stevenson was added as an applicant to the case.

2. The matter came before us for Hearing on the 24th October 2007 and at that time we had before us a paginated bundle of documentation upon which the parties relied.

3. The issues raised by Miss Gardner were helpfully set out in a Directions Order made by the Tribunal on the 22nd August 2007. That Directions Order required this Tribunal to have regard to the following matters:

   - whether the relevant consultation procedures under s20 of the Act had been complied with in respect of the additional work undertaken to the roof;
   - whether the amount charged to the applicant for roof replacement and other items of work are reasonable;
   - whether the works carried out at the premises are of a reasonable standard.

   The directions went on to slightly elaborate on these points and in effect confirmed the need to consider the validity of the s20 Notices, the recoverability of the charges under the Lease, whether the works were necessary and of a reasonable cost and the standard of those works including the management of same.

4. Within the bundle was a statement of case prepared by Miss Gardner and sent to the Tribunal under cover of a letter of 3rd September 2007. The Respondents had replied to that statement of case with a lengthy reply dated 25th September 2007 which included a number of exhibits. Miss Gardner responded to that reply by letter dated 7th October 2007 which was included within the bundle and the Respondent Council replied to that letter by one dated 18th October 2007 which had additional exhibits referred to numbered LB15 through to LB19 inclusive.

B. HEARING:

5. At the Hearing of the Application Miss Gardner was accompanied by Miss Stevenson. Miss Gardner told us that almost as soon as the work had started complaints were made about the standard of work being undertaken by the contractors. She told us that she had

spoken with the site representative for the contractor Apollo and with the Council and raised numerous complaints during the currency of the contract to be told that she should wait until the contract had been concluded and that the matter would then be dealt with. In particular she complained about the additional costs to the roof, the standard of workmanship, particularly the external decorations, and the manner in which the job was managed.

6. Miss Stevenson confirmed that from day one there had been unhappiness with the residents concerning the works carried out at the property. She confirmed that there had been a history of leaks affecting the top floor flat which had been raised with the Council in the 1990's but nothing had been done at that time. She told us that her costs had been paid by the Department of Social Security, as it was then, notwithstanding her indication to that department that she contested the costs being claimed.

7. At the conclusion of their verbal evidence Miss Gardner confirmed that the main complaint she had was that the works had not been well done and that there had been a lack of consultation. Miss Stevenson supported these complaints and commented that the Council had indicated to her that if the residents did not like the problems they could of course purchase the freehold.

8. We noted in detail the comments that were made by Miss Gardner in her written submissions dated 3rd September 2007 and 7th October 2007 but we hope the parties will not object if we do not set those out in these Reasons as the papers are common to all concerned.

9. For the Council, as we had with Miss Gardner, we noted all that was said in their reply and their subsequent letter of the 18th October 2007.

10. Mr Bhamra, who gave evidence, told us that he had become the Project Manager in 2001 and had familiarised himself with the work programme. He told us that the works were carried out as an attempt to bring the properties up to an acceptable standard based on a repair/renewal requirement in relation to matters that would need attention within a seven year cycle. He confirmed that it had been difficult to gain proper access to the roof at the time of the preparation of the specification and it was only when scaffolding was erected that they discovered the problems with the valley gutter and the need to carry out far more works than were provided for in the specification. He told us that all slates had been

removed but 60% or thereabouts had been salvaged and 40% replaced using natural slate and not man-made tiles.

11. Thereafter Miss Bush took the parties through the enclosures attached to the letter of 18th October 2007 to explain the various costs associated with the contract. Document LB15 a spreadsheet sent set out the tendered costs, the omissions, additions, recharges, non-rechargeable tenant costs, reductions as a result of the dispute and the total sums that had actually been paid by the Council. For 37 Mornington Crescent according to the schedule some £33,558.26 had been charged to the Council for the works. The recharge element between the lessees was £18,486.17. This gave rise on the final accounts that were with the papers of a sum due from Miss Gardner of £7495.33 and an amount due from Miss Stevenson of £6041.01, after adding in supervision and management fees.

12. We were told that the difference between the sums expended by the Council and the amounts that were being reclaimed from the Tenants was largely as a result of the Council failing to file the final account until 2006 thus invoking the provisions of s20B of the Act and preventing them from recovering costs which had not been sought within 18 months. This therefore limited their claim to the original interim invoices that had been sent out to the parties in October 2001. The Council also confirmed that they would not be making any claim for costs in connection with these proceedings.

C. THE LAW

13. Section 20 of the Act sets out the requirements for notice to be given to the lessees of works that were going to exceed the specified amount. These works were carried out before the amendments to the Act by the Commonhold and Leasehold Reform Act 2002. Within the papers before us was a copy of the notice served on the lessees dated 20th December 2000. There is no challenge that the notice was not served. It provides for roof repairs/renewal and invites the lessees to inspect the fully priced specification at the Council's offices. On the face of the documentation it appears to accord with the requirement of the Act.

14. Section 20B prevents a person seeking payment of service charges to do so if the demand for payment is more than 18 months after the service charges were incurred.

15. Section 20C enables a tribunal to order that the costs of proceedings before it shall not be recoverable by the landlord through the service charge regime.

D. DECISION

16. We did not feel it was necessary to inspect the subject premises as the works were now six years or more old.

17. We have some sympathy with the Applicants in their difficulties in appreciating the various changes to the figures that have been put to them by the Council in connection with this matter. We are however also mindful of the various concessions that had been made by the Council with a view to attempting to settle the matter. Indeed at the hearing Miss Bush confirmed that an offer of £6,000 which had previously been made to Miss Gardner was still open to her.

18. It seems to us that the real issue in this case centres around the alteration in the roofing works. The specification provides for a limited amount of work to be done to the roof, although the section 20 notice just refers to repairs/renewals. Indeed this is reflected in the schedule at LB15 which shows the tendered block costs for the roof at £2,430 but the actual costs of £15,216.72. In fact as a result of the complaints raised by Miss Gardner this sum had been reduced by £5072.24. We are aware that there is a line of authority that deals with the question of additional works once the contract has been prepared. In this case we accept the evidence of Mr Bhamra that it was not until scaffolding had been erected and a full inspection of the roof could be undertaken in safety that the difficulties with regard to the lead flashing became apparent. The question is whether or not a reasonable landlord would have continued with the works or would have stopped and consulted with the lessees. We understand that there was contact made by the local authority albeit verbally with Miss Gardner at or about the time the roofing works were undertaken and certainly a letter was written in October 2001 by the Council to the lessees explaining what had been done and why. That did however appear to be after the works had been concluded.

19. We find that having erected scaffolding and commenced proper investigations to the roof it became apparent that more work was required than had originally been anticipated. It is in our view reasonable for the Landlord to continue with those works to ensure that the lessees have what would appear to be a watertight roof, with according to Mr Bhamra, a lifespan in excess of 30 years. The scaffolding was in place and the cost to the lessees of holding up the contract would have been disproportionate when one considers the final costs to the lessees. The costs associated with the roofing work seemed to us to wholly reasonable. The final cost to Miss Gardner taking into account the offer to settle by the

Council at the sum of £6000 means that on the final account summary some £5355.43 has been utilised to contribute towards the roofing works and the balance dealing with timber drainage decoration and repairs including also supervision fees and management fees. We find that notwithstanding the accepted poor standard of works in connection with a number of items this sum must still represent good value for money from the lessee's point of view. Further more the final actual cost to Miss Gardner and Miss Stevenson is no more, and in Miss Gardner's case less than the original total estimated contribution set out in the section 20 notice. Perhaps more by luck than otherwise the lessees do not face a greater demand for payment than was originally stipulated in the section 20 notice and in those circumstances we find that there has been no breach of the section 20 requirements.

20. We conclude therefore that notwithstanding the undoubted shortcomings of some of the works carried out at the property, the final cost to Miss Stevenson and Miss Gardner is not unreasonable and the standard of works for that cost are likewise not unreasonable and should be paid. We therefore support the final figure of £6,041.01 which is payable by Miss Stevenson and which we understand has been paid and the sum of £6,000 which the local authority agreed to accept from Miss Gardner in respect of her contribution towards the works.

21. As the Council have confirmed they are not intending to seek costs in connection with these proceedings we will make an order pursuant to s20C that any costs incurred by the Landlord should not be recoverable from the Lessees through the service charge regime.

22. We hope that in going through the figures as we did with Miss Gardner and Miss Stevenson that they will have understood the calculations. We order that in the case of Miss Gardner the sum payable should be settled with the local authority as soon as possible and in any event within three months unless other terms are agreed between the parties resulting in alternative arrangements for settlement.

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Chairman

Dated.....2nd.....November.....2007