

LONDON RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

LON/00AY/LSC/2006/0292

Premises: 1 Birkwood Close, London SW12 OAU

Applicant: Mr. S Forkin

Respondent: London Borough of Lambeth

Represented by: Ms. Muir, counsel.

Hearing : 20th March 2007

Tribunal Members

Ms. L M Tagliavini (Chairman)

Mr. J Reed (FRICS)

Mrs. R Turner (Lay Member)

1 Birkwood Close, London SW12 OAU

1. This is an application by Mr. Stephen Forkin pursuant to section 27A Landlord and Tenant Act 1985 seeking a determination of the reasonableness of the cost and standard of works of window replacement carried out in 2002 and works to the roof in 2003. Mr. Forkin is the long lessee of Flat 1 pursuant to a lease granted with effect from 9th November 1987 for a term of 125 years and assigned to the Applicant on 16th October 1998. The London Borough of Lambeth is the Respondent Freeholder.* The subject premises comprise a ground and first floor maisonette in a purpose built block of 16 flats. Mr. Forkin did not dispute he was liable under the terms of his lease to pay the sums demanded (in principle) nor their manner of calculation.
2. At the hearing of this application Mr. Forkin appeared in person and provided the Tribunal with a bundle of numbered documents. The Respondent was represented by Ms. Muir of counsel. The Respondent had prepared for the Tribunal an indexed and paginated bundle of documents on which they sought to rely. Oral evidence was heard from the Applicant and from Mr. Fish and Ms Vernon-Ellington for the Respondent.

** The Tribunal noted that since these works had been carried out management of this block had been transferred to Clapham Park Housing Trust.*

3. At the hearing Mr. Forkin stated he objected to the window works because the consultation process had not been carried out properly. In particular, Mr. Forkin objected the exclusion of the front and back doors and their frames from the proposed works. He believed the consultation period had been extended in relation to similar works being carried at Fortrose Gardens after objections had been made, which had resulted in doors (front and door frame sections) being included in the specification. Mr. Forkin later accepted that he had not realized the front and back doors were not included in the works until they had started. Mr. Forkin stated that to "complete" these works it would cost him £11,000 although did not produce an estimate to support this assertion. Mr. Forkin stated that he had been told that there were rotting frames, which necessitated these works, but despite this assertion the same frames remained in situ some five years later. Mr. Forkin stated that asbestos had been found once the window replacement works were underway, which incurred further costs as specialist removers had to be brought in. Mr. Forkin also told the Tribunal that he was unhappy with the standard of works due to damage being caused to his rear lounge door and loose screws being left as well as a draft in the kitchen. Mr. Forkin also complained of fans fitted in the kitchen and bathroom being left unwired. Mr. Forkin queried the architects' costs and stated he believed the presence of asbestos should have been noted earlier. When asked further about these matters, Mr. Forkin accepted that in order for the draught to be noticed white goods had to be moved out of the way in the kitchen and did not see why he should be expected to remedy screws left hanging out.

4. Mr. Forkin conceded that the roof had been in need of repair for some time but asserted that as a result of works to the glass roof over the upper walkway, water had from time to time overflowed from the roof and under the balcony causing water penetration. Mr. Forkin stated that the rear balconies had been replaced with oversized railings that overhang and were, he considered unsightly and exposed to the elements. Mr. Forkin complained of cracking to the glazed glass roof of the balcony and damage to the front bedroom from water penetration from the new drainage fitted to the balcony. In addition Mr. Forkin asserted that the down pipe from the balcony meeting the pavement collapsed two days after being fitted causing a danger to pedestrians. Mr. Forkin also told the tribunal that despite his numerous complaints and attempts to discuss with the local authority these problems he had had little success and relied on correspondence going back to 2002 in support of this assertion.

5. The Respondent relied upon the oral evidence of Mr. Fish, Neighbourhood Surveyor for Clapham Park who had previously worked for the London Borough of Lambeth for 14 years working as a building surveyor and consulting engineer. Mr. Fish had not however been involved in the specification for the window works but only the works to the roof. Mr. Fish stated that he had had an overseeing role in the window replacement works and had been satisfied the tender analysis had been conducted properly. Mr. Fish told the Tribunal that there had been numerous complaints about the windows from tenants and although a condition survey would have been carried out this was not now available. Mr. Fish stated that the planned works were for the replacement of windows and not for doorframes whether front or back. The presence of asbestos would not have been known about beforehand and during the course of

the works some asbestos had in fact been left in place. Some asbestos had been taken away as necessary but the removal had not been charged for separately and the provisional sum in the works specification had included such work had been factored in. On cross-examination Mr. Fish accepted that in hindsight it would have been preferable to replace all the timbers and doorframes but this would have increased the project cost by 30%. As it was, all windows had been replaced but not the frames that held the front and back doors and glazing. As much work in respect of the asbestos was added into the first contract (windows) as was possible, but some asbestos had to be done with the roof works.

6. In commenting on the standard of the window works and Mr. Forkin's specific complaints, Mr. Fish stated that a loose screw could easily be driven into the woodwork; a strip of sealant could be put around the draught and the Local Authority was not required to wire the fan units in, although had provided them. Mr. Fish stated that as there were no plans for this building, architects were required in order to be able to plan the works properly.
7. In respect of the roof works, Mr. Fish told the Tribunal that there was no condition report as it had been clear what the problem with roof was – old age. There was a record of patch repairs but it was clear that these were no longer viable or cost effective. Mr. Fish told the Tribunal that the slope of the glass roof to the balcony was reversed so as to slope away from the building instead of towards it making it easier to clean out the guttering. Cracks to the glass covering were to be expected given the temperature changes although there was no danger of glass falling because

of the wiring holding it in place. Mr. Fish stated that the cracking to the asphalt was not caused by the new drainage as alleged by the Applicant but came from water landing on the walkway and running down behind. Mr. Fish stated he did not know why Mr. Forkin's alarm had not been put back in place.

8. Ms. Marcia Vernon-Ellington told the Tribunal that she had been involved in this matter since December 2006 and by reference to the documentation held by the Respondent could see that the proper consultation process in respect of the window replacement works had been followed in accordance with the statutory requirements in place at that time and that the correspondence received from Mr. Forkin demonstrated his knowledge of the proposed works through receipt of the section 20 notice dated 3/3/00 which were completed in September 2001 and invoiced in the sum of £8,601 on 24/7/03. Although Fortrose Gardens had had similar works carried out, the original consultation process had in fact been restarted which gave the impression of an extension of time, and had resulted in a different package of works being completed. However, those works were entirely separate from the subject works.
9. Ms. Vernon-Ellington stated that the Birkwood Close works were not eligible for capping as they did not fall within the Social Landlord's Mandatory Reduction of Service Charges (England) directions 1997 as neither the window or roof replacement works were funded by New Deals for Communities and therefore the lease provisions applied to the computation of the charges raised. A competition certificate for the window works was obtained in July 2003.

10. Ms. Vernon-Ellington did not accept that the works to the roof were carried out were of a poor standard and for which the sum of £4,679 has been raised against the Applicant in September 2002. Ms. Vernon-Ellington stated that at no time did Mr. Forkin seek to challenge the works notified to him by the section 20 notice dated 17/1/02 and completed on 28/6/02. Ms. Vernon-Ellington also told the Tribunal that no other complaints about the roof works had been received and that other leaseholders had paid the sums charged.

The Tribunal's Decision

11. The Tribunal finds that the works to the windows were reasonable both in standard and in cost. The Tribunal accepts the evidence of the Respondent that section 20 notices were sent out and that no objections raised until some time after the works had started. In the absence of any evidence to the contrary, the Tribunal accepts that the cost of these works was reasonable. Although some snagging items may remain the Tribunal views these as minimal and not sufficient to detract from the overall reasonable standard of works passed for completion in July 2003. The Tribunal accepts the Respondent's explanation as to why these works were not eligible for "capping" and in the absence of any challenge to the computation of costs by Mr. Forkin determines these works are both reasonable in standard and cost and the sum demanded by the Respondent is payable in full by the Applicant.

12. Similarly, in view of Mr. Forkin's concession that the roof works were necessary and the absence of any challenge to their cost, the Tribunal finds that the cost of these works is reasonable. The Tribunal does not accept that the standard of works is poor

and does not accept that the replacement of drains has caused the pavement to collapse or that the glazing to the glass balcony is sub-standard. Therefore, in view of Mr. Forkin's acceptance of the calculation of costs and his liability to pay under the terms of the lease, the Tribunal determines that the sums demanded by the Respondent in respect of these works is payable in full by the Applicant.

13. The Tribunal does however find it regrettable that the Respondent was unable to provide Mr. Forkin with full and coherent answers to his genuine enquiries at an earlier date. Instead the Tribunal has seen from the copious documentation produced a lack of clarity on the part of the Respondent when replying to Mr. Forkin's queries. Even at the hearing the proper section 20 notices had not been produced until the last moment leaving the Tribunal unclear as to whether any such notice(s) had in fact been served.

14. In all the circumstances of this case, the Tribunal does not consider it appropriate that the costs of this litigation are added to the service charges in accordance with section 20C Landlord and Tenant Act 1985.

Chairman:

Dated:

W. Toghiani

6th May 2007