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LON/00BD/LSC/2006/0341

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 27A & 20C OF
THE LANDLORD AND TENANT ACT 1985, AS AMENDED.**

Address: Flats 7 & 11 Douglas House, The Avenue, St Margarets,
Twickenham, TW1 1QQ

Applicants: Mrs M Hall Flat 11
Mr & Mrs A Keers Flat 7

Respondents: Richmond Housing Partnership

Hearing Date: 5 March 2007

Date of Decision: 29 March 2007

Appearances

Mrs M Hall	For Applicants
Mr A Keers	
Ms A Soan	For Respondents
Ms L Rolph	
Ms K Simmonds	
Mr R Glew	

Members of the Tribunal: Mrs C Lewis FCI Arb (Chairman)
Mr L Jacobs FRICS
Mrs R Turner JP BA

LON/00BD/LSC/2006/0341

PROPERTY: 7 AND 11, DOUGLAS HOUSE, THE AVENUE, TWICKENHAM, TW1 1QQ

PRELIMINARY

1. This was an application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") by the lessees Mrs M Hall (Flat 7) and Mr and Mrs A Keers (Flat 11).
2. An oral Pre-Trial Review had been held on Wednesday, 13 December 2006, at which Miss Soan, on behalf of the Respondents, stated that they would not be seeking to charge the cost of the proceedings to the service charge account.
3. The Applicants hold their properties under the terms of similar leases granted by the London Borough of Richmond Upon Thames, and copies of these leases were on the Tribunals file.
4. A Section 20 Notice in respect of Major Works was dated 30 October 2003.

THE LAW

5. Section 27A of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, says:-

An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable and, if it is, as to –

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date by which it is payable, and
- (e) the manner in which it is payable.

Subsection (1) applies whether or not any payment has been made.

INSPECTION

6. The Tribunal inspected the property on the morning prior to the hearing. Mr Keers was present during the inspection and also showed the Tribunal the interior of his flat. The property was a 3 storey former Local Authority block of flats built in the 1950s. It is brick faced with a concrete tiled roof, with small areas of felt covered flat roof. The access to the flats is via two entrances to the building on the rear elevation, with concrete staircases with metal balustrading. Externally there is a block of 7 garages accessed by a tarmac covered driveway located at the side of the building, together with a block of storage cupboards and a bin store. All the external structures were roofed with corrugated asbestos. There was also a grassed area with some planting.

THE HEARING AND EVIDENCE

7. At the hearing, Mr. Keers and Mrs Hall were present and gave evidence. The Respondents were represented by Ms A Soan, Leasehold Services Manager, Ms L Rolph, Leasehold Services Officer, Ms K Simmonds, Leasehold Accounts Manager, and Mr R Glew, Consultant Building Surveyor.

THE APPLICANTS' CASE

A number of the items which had been listed by the Lessees at Appendix 1 attached to their application were no longer disputed by the time of the hearing.

8. Mr. Keers dealt with each of these items remaining in dispute as follows:-

(1) **External Decorations**

The painting of the previously unpainted soffits of the pre-cast concrete guttering was unnecessary, the painting of the asbestos downpipes pipes was already blistering and the contractors were frequently not on site.

(2) **Envelope Repair Works**

- (a) Repairs to the soffits and fascias of the concrete guttering had been badly done and was already failing;
- (b) The asbestos roof was covered in old moss, and no work had been done in respect of felt repairs;
- (c) Gutters and gullies had not been cleared;
- (d) Renewal of tarmac drive had been unnecessary, and patch repairs would have been sufficient;
- (e) The replacement of the internal common parts lighting system with PIRs light sensors had been unnecessary and the leaseholders of the block had not been consulted. The previous system had been adequate and preferred by the Lessees. The new system flickered when activated and there had been a number of failures;
- (f) The paving slabs which had been replaced at the side of the tarmac driveway had already been broken again, and the work had been a waste of money;
- (g) Replacement kerb stones did not match the existing;
- (h) The concrete paths at the rear of the property had lifted due to tree roots, and the repair work had been done three times. There had been lack of supervision of the work and poor workmanship;

- (i) The Aquapol waterproofing treatment of the guttering was not as expensive as claimed, and the work was failing;
- (j) The felt roof works to the flat roofs of the main building had been poorly supervised and the work not carried out to a professional standard. He had obtained his own report on the roof from a roofing contractor and this report was produced as part of his evidence. He also provided photographs in support of his contention that the roof falls had been inadequate and water had failed to drain away. The work needed re-doing to be effective;
- (k) The windows to the flats had originally been "Crittall" type and metal windows and the UPVC replacements had not been carried out on a like for like basis. They had been poorly fitted with a plastic strip around the junction with the internal plasterwork. Also Mr Keers pointed out that one of his windows was now fixed rather than opening as before;
- (l) Mr Keers considered that the work to the bin store had been a waste of money, and he referred to the ill fitting doors and catches which meant that the doors swung in the wind.

THE RESPONDENT'S CASE

9. Mr Glew, for the Respondent Lessor, said that the Lessees had all been invited to a meeting of all the residents affected by a proposed major works contract for a package of works to a portfolio of the Respondent's properties on 2 October 2003, prior to the service of the Section 20 Notice. Additional works had been added to the proposed contract at the request of Lessors in an email dated 28 October 2003, including work to be done to the drive and internal lighting works.
10. The contract for the works had been placed with the lowest tenderer, Mears Building Contractors, who had subcontracted the work to a subsidiary company, Mears Decorating. He accepted that the quality of the work had been unsatisfactory at times, and midway through the contract had issued instructions that the subcontractor should be replaced.
11. Mr Glew said that he had been appointed as Contract Administrator for the package of works to a total of 99 blocks, which included the redecoration and repair works at Douglas House. He referred to his written submissions as well as giving oral evidence and dealt with the points raised by the Applicants as follows:-

- (1) **External Decorations**

The contract price for the redecorations was not time based, and the additional costs which arose when the subcontractor and eventually the main contractor had to be replaced were not passed on to the occupiers, who were only charged the originally tendered sums.

(2) Envelope Works

- (a) The repairs to concrete guttering had been carried out about 3 years ago and would have weathered. The cost of the work had been reduced as a gesture of good will;
- (b) Certain felt repairs had been carried out to the asbestos roof to the stores, and again the cost had been reduced as not all the repairs were easily identifiable;
- (c) Following a visit to the property in July 2004 he had instructed the contractor to clean the gully grids, as they had not been done following the clearing of the down pipes;
- (d) The estate road had been repaired and resurfaced with tarmac, and in his opinion patch repairs would have required ongoing maintenance, whereas renewing the surface should mean little or no maintenance for 15 years. The cost had been reduced as a gesture of goodwill;
- (e) He had not received any reports of failure of the replacement PIR activated lighting. The lighting cost was for the replacement of 8 lights and included surface re-wiring run in conduits;
- (f) A total of 20 paving slabs were replaced, and he was not surprised that a number had cracked as vehicles parked on the footpath;
- (g) The kerb stones that had been replaced were as near a match as possible given that the block had been constructed in 1959;
- (h) The repairs to the concrete paving had been re-done, and no further costs had been incurred by the residents. It was accepted that tree roots had lifted the concrete, and there was a 5 year plan in place to deal with the trees;
- (i) He was unable to confirm the correct price per litre for Aquapol, but he understood 90 linear litres had been necessary;
- (j) The work to the flat roofs had been re-done at no further cost to the Lessees. He acknowledged that the falls to the roof had not been adjusted. He was concerned now to learn that water was collecting on the roof as shown in photographs produced for the hearing. Aquapol had not been used on these areas;
- (k) Had the replacement windows not been fitted with the particular trim referred to by the Lessees, it would have been necessary to carry out redecoration works at extra cost. Flat 1 in the block had already had replacement windows including one fixed unit;
- (l) The timber doors to the bin store would have moved due to water absorption, and could be eased and adjusted. He did not

consider that the ironmongery was of poor quality, but accepted that the wall had been rebuilt.

THE TRIBUNAL'S DETERMINATION

12. In coming to their decision, the Tribunal have considered all the evidence before them and were assisted by their inspection of the premises which had been carried out before the hearing.

(1) External Decorations

The Respondents had reduced the amount claimed to £10,005.12 (a reduction of £846), and Mr Glew further agreed that, in view of the criticisms made of the quality of the work, all the down pipes would be redecorated during the works defect period.

The Tribunal noted that the works had been procured competitively, and found the amount now claimed reasonable and payable.

(2) Envelope Repair Works

- (a) The cost of concrete works to soffits and fascias had been reduced by 50% to £1,395.31 and the Tribunal finds that the reduction reflected the work undertaken and the quality of the work, and that the amount is both reasonable and payable;
- (b) The cost of felt repairs had been reduced by 50%, but from their inspection the Tribunal observed that the whole roof area of the storage unit was heavily covered in moss which appeared to have been there for a long time, and that no work appeared to have been carried out. They therefore find that the amount claimed is not reasonable and payable;
- (c) Mr Glew's evidence was that the gutters and gullies had been cleared. On inspection the Tribunal saw that some gullies were obstructed, but having borne in mind the passage of time, they consider that it is likely that further blockage has occurred since the work was carried out. They therefore find the sum of £88.13 both reasonable and payable;
- (d) Inspection showed that the repairs and tarmac work had been done to a good standard, and the Tribunal considered that merely filling in potholes would not have been a satisfactory or lasting way to deal with the condition of the driveway which was for the general use by of all the "Estate" under the terms of the lease. They find the amount claimed, which had been reduced to £6,168.75, both reasonable and payable;
- (e) The replacement of internal lighting was considered to be an ill judged decision by the Tribunal in view of the number of problems which had arisen since the installation, and the lack of adequate consultation with the leaseholders of the block prior to

the works. The installation clearly needs some modification to make it satisfactory. The Tribunal considers that the change to a PIR activated installation from the existing installation includes some element of improvement. They find the sum of £1,200, that is 50% of the amount claimed, to be reasonable and payable;

- (f) The Tribunal find the amount claimed for the relaying of five paving slabs under the original contract reasonable and payable;
- (g) Mr Glew had acknowledged an arithmetical error in respect of concrete paving repair work, and the figure had already been reduced. The Tribunal finds the sum of £660.94 for the repairs both reasonable and payable;
- (h) Having inspected the work to the kerb area, the Tribunal finds the amount claimed both reasonable and payable;
- (i) Mr Glew had told the Tribunal that 90 linear metres of Aquapol had been assessed as necessary for the waterproofing of the guttering system. The Tribunal considers the amount claimed was too high, have therefore reduce that amount by one third and find the sum of £500 reasonable and payable;
- (j) The original asphalt to the flat roofs had been stripped and recovered with three layer felt roofing. The Tribunal considers that the roof will deteriorate quicker due to the lack of adequate falls required for felt roofing and the consequential collection of water and find the reduced sum of £2,700 is reasonable and payable;
- (k) The Tribunal is satisfied with the quality of the replacement windows and that the amount claimed was reasonable and payable;
- (l) The replacement work to the bin store was acknowledged by Mr Glew to not be entirely satisfactory. The Tribunal have therefore reduced the amount claimed by 50% to reflect that some adjustment is required and find that the sum of £219 is both reasonable and payable.

PRELIMINARIES

13. The costs of all elements of the works are subject to charging to each of the Leaseholders an additional amount for the contractor's preliminaries. Mears, the original successful contractor, allowed 30% for preliminaries. In the opinion of the Tribunal this appears too high, however the works were procured by competitive tender and Mears were considerably lower overall than the other two companies who tendered. The Tribunal consider that

although the percentage for preliminaries may be higher than expected, it is more than offset by savings achieved on the individual item rates.

14. The Tribunal concludes that the Respondent can apply 30% for preliminaries as well as 4% for the Clerk of Works and an 8% administration fee to all the charges to be made consequential to this decision.

Reimbursement of Fees of the Application and Hearing

In the light of their overall findings the Tribunal finds it appropriate that the Respondent Leaseholder should reimburse the Applicant Lessees with 50% of the costs of the Application and Hearing Fees (i.e. £125) and they so Order.

CHAIRMAN C.A Lewis

DATE 29 March 2007

(JG)