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LEASEHOLD VALUATION TRIBUNAL for the LONDON RENT ASSESSMENT PANEL

DETERMINATION BY LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 Section 27A

LON/00BE/LIS/2006/0128

Address:	**4 Woodfarrs** **Denmark Hill** **London SE5 8EX**
Applicant:	**London Borough of Southwark**
Represented by:	**Mr Jeffrey Joseph**, Home Ownership Unit
Respondent:	**Ms Tania Godwin**
Tribunal Members:	**Mr NK Nicol** (Chairman) **Mr I Holdsworth BSc MSc FRICS** **Mr D Wills ACIB**

1. In accordance with s.27A of the Landlord and Tenant Act 1985 ("the Act"), the Tribunal has determined, for the reasons set out below, that the sum of £4,446.48 is payable to the Applicant by the Respondent by way of service charges arising from a works programme carried out in 2002. This is subject to the Respondent's counterclaim which is dealt with at paragraphs 13-16 below.

Background

2. On 11th August 2006 the Applicant issued proceedings in the Lambeth County Court for the said amount. By order made on 3rd October 2006 the court transferred the matter to this Tribunal. The Tribunal inspected the property at 4 Woodfarrs, Denmark Hill, London SE5 8EX on the morning of 12th February 2007 and the hearing of the case took place in the afternoon of the same day. Evidence was heard from the Respondent herself and, on behalf of the Applicant, from Ms Alessia Fedeli, a divisional manager at Mouchel Parkman, who was the contract project manager for the works in question. Ms Belemo Alagoa, the area programme officer for the Applicant's Camberwell Area Housing Office, was also in attendance and proffered some additional information.

3. The property is a ground floor flat in a purpose-built two-storey block in the style of a semi-detached house, one of a number of similar properties on the Denmark Hill council estate in south London. The Respondent holds a lease from the Applicant. It is dated 24th June 1991 and is for a term of 125 years from 20th August 1984. It was assigned to the Respondent in November 1997. The relevant clauses are:-

2(3)(a)	The Respondent is obliged to pay the Service Charge referred to in the Third Schedule of the lease.
4(2)	The Applicant is obliged to keep in repair the structure and exterior of the building.
Third Schedule	
Para 6	The service charge payable by the Respondent must be a fair proportion of the relevant costs but the Applicant may adopt "any reasonable method" of ascertaining that proportion.
Para 7(1)	The Respondent must pay for the cost of works done in accordance with clause 4(2).
Para 7(7)	The service charge may include an additional 10% for the employment of managing agents.
Para 7(9)(i)	The Respondent must pay for double-glazed windows installed by way of improvement.

4. The Applicant has a maintenance cycle for its properties of five to seven years. Woodfarrs and neighbouring properties came up for maintenance on that cycle. The Applicant got Mouchel Parkman, who manage contracts for major works for the Applicant in many areas of the borough, to survey a sample (15-20%) of the relevant properties, from which they drew up a specification. The evidence would strongly suggest that the Respondent's property was not part of the original sample.

5. The specification was then put out to competitive tender. Three contractors responded and the Applicant appointed Appollo London Limit who had put in the lowest tender totalling £357,264.02. The Applicant then sent the Respondent a notice in accordance with s.20 of the Act on 11th January 2002 consulting on the proposed works. The Respondent did not reply.

6. Between April and July 2002 Ms Fedeli and the contractor inspected all the properties individually. It would appear that they were not able to inspect the Respondent's property internally but made their decisions entirely from an external inspection. By letter dated 8th April 2002 Ms Fedeli wrote to the Applicant reporting on her inspection as it related to the windows. In respect of the Respondent's property, she noted that some, but not all of the windows had been replaced and omitted to state that the replacement windows complied with BS 5713, implying that they did not comply. She also recommended that, where a lessee had not replaced all their windows, the Respondent should do so themselves as part of these works. Unfortunately, at no time did the Applicant do the Respondent the courtesy of explaining why they were replacing all her windows when, as far as she knew, the existing ones were adequate. Similarly, although Ms Fedeli drew up a list of external decorations and repairs as a result of her inspection, the Applicant did not tell the Respondent about them.

7. Having compiled the full list of works and costed them, the Applicant apportioned the cost by a points system taking into account the number of rooms in each property. The block was said to consist of 24 "units", of which 6 were ascribed to the Respondent's flat so that she paid 6/24, or one quarter, of the total cost. They invoiced her for the estimated cost of just over £5,000. The Respondent queried this amount but did not receive a reply that she regarded as adequate and never actually paid it. By letter dated 23rd September 2003 the Applicant notified the Respondent that the final invoice for the works would be served more than 18

months after the first payment to the contractors. In fact, the final account was eventually sent by letter dated 16th January 2006.

The Respondent's objections

8. By letter dated 11th January 2007 to the Tribunal, the Respondent set out a number of complaints:-
   a. She did not give her written consent to the work being done. Instead, she was "brow-beaten" into giving verbal consent by a site manager when he visited.
   b. The windows were not of superior quality to those she already had but were no different.
   c. She did not have any repairs or redecorations done to her property.
   d. The locks to the new windows had not been properly installed and some had to be repaired within a year of installation.
   e. The Applicant had failed to respond adequately to her queries about the work.

9. The problem with the Respondent's first complaint is that the Applicant does not require her consent. The Applicant's obligation is to maintain the building and, when doing so, to consult the affected lessees in accordance with the statutory procedure laid down by s.20 of the Act. The Applicant complied with the statutory requirements.

10. It is probably correct that, to the naked eye, the windows installed by the Applicant were no different to those they replaced. However, the more pertinent question is whether the Applicant acted reasonably in deciding to replace the windows. The Tribunal is satisfied that the locks used on the windows are not of good quality and would appear to be liable to more frequent repair problems than ought to be the case. However, the new windows were of a higher specification, in compliance with the most recent BS standards. They also appear to have been installed to a good standard, the locks aside. As noted above, the Applicant took account of the fact that the Respondent had not replaced all of her windows herself and the Tribunal is satisfied that they were entitled to do so.

11. The Tribunal is satisfied that the Respondent is simply wrong in claiming that no repairs or redecorations were done to the exterior of her flat. The window cills, front doorstep, rear door, coal shed door and downpipes were repainted. Moreover, the Respondent's liability is not limited to works done directly to her property. She is liable for a proportion of the cost of the works to the entire block. This included repair and redecoration of the soffits and guttering to the roof, replacement of a few roof tiles and works similar to those done to her flat which were carried out to the other three flats in the same block.

12. The Respondent made particular complaint of the lack of transparency in the Applicant's demand for the service charge. She found the figures provided confusing and difficult to follow and many of her questions were only answered during the Tribunal hearing. The Tribunal has some sympathy with her complaint that the information provided by the Applicant could have been made easier to understand but she could also have been more specific about what it was that she did not understand. In any event, this issue would only be relevant to whether the Applicant should be able to recover costs. Under s.20C of the Act the Tribunal may determine that a landlord may not recover all or part of the costs of the proceedings by way of service charge. However, although the Applicant intends to

ask the court for a costs order, they are not intending to put any costs of the Tribunal proceedings onto the service charge and so there is nothing for the Tribunal to determine under s.20C.

Counterclaim

13. Although she did not originally put it this way, the Respondent had a counterclaim in respect of the faulty window locks. Arguably, the Applicant breached the implied term that the works should be done in a workmanlike manner and with proper materials. The Respondent's loss was that she had to live with unopenable kitchen windows from January 2006 until they were repaired in January 2007. She says she complained frequently to the Applicant by telephone, although not via their Repairs Line. She says she was still able to open the back door to provide ventilation when cooking but the heat was stifling during the summer.

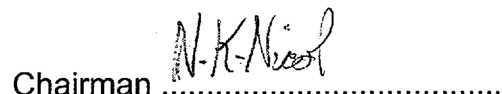
14. In fact, the Tribunal noted that the kitchen is well-shaded and north-east facing, and so unlikely to heat up much due to window problems. While the Tribunal is satisfied that the locks are faulty and the Applicant may well be liable for failing to deal with them for so long, it is also satisfied that damages would amount to no more than £50. This amount may be set off against the service charges, reducing the amount payable.

15. Mr Joseph, on behalf of the Applicant, pointed out that he did not come prepared to deal with this counterclaim and set off and submitted that he would want to put in written submissions on the subject. The Tribunal agrees that he has that right. If the Applicant does not wish to pursue this issue, they must inform the Tribunal within seven days of receipt of this decision and the set off will stand.

16. If the Applicant does wish to pursue this issue, then they must serve written submissions on the Respondent and file them with the Tribunal within fourteen days. The Respondent in turn will have fourteen days to make written submissions in response and the Tribunal will issue its determination on this issue thereafter.

Conclusion

17. Therefore, subject to the steps referred to in paragraph 16 above, the Tribunal has determined that the Respondent is liable to pay the Applicant the total sum of £4,396.48.



Chairman ....

Date: 12th February 2007