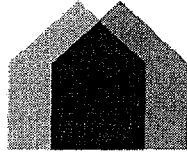


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**Residential
Property**
TRIBUNAL SERVICE

Leasehold Valuation Tribunal

LON/00BE/LSC/2006/0414

London Rent Assessment Panel

Landlord and Tenant Act 1985 section 27A

Address: Flat 1, Breamore House, Friary Estate, London SE15 1SQ

Applicant: London Borough of Southwark

Represented by: Mr P Halpin & Ms L Turff, both of the Home Ownership Unit

Respondent: Mr J N Nwamaraihe

Also Present: Mr J Plante MRICS FCIQB, Brodie Plante Goddard
Mr J Wallis, Manager, Apollo Construction
Mr B Pawsey, Southwark Area Housing Office
Ms A Wallington, Area Programme Manager

Tribunal members:

Mr T J Powell LLB (Hons)
Mr T Johnson FRICS
Mrs G Barrett JP

**Transferred by
Lambeth County Court:** 15th November 2006

Oral pre-trial review: 14th December 2006

Hearing: 22nd February 2007

Decision: 10th March 2007

incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.”

The hearing, evidence and Tribunal's findings

Section 125 Right to Buy Notice

12. In about June 2002, as part of the right to buy process, the Applicant council served the Respondent with a notice under section 125 of the Housing Act 1985. Appendix B of that notice (which in fact was called Appendix 1 by the Applicant) was dated 14th June 2002. This Appendix gave details in schedule form of the anticipated capital repairs and likely costs, which would be incurred over the following 5 years. The provision for estimated costs totalled £527,000.00 and the apportioned provisional estimated total cost for which the Respondent would become liable if he exercised his right to buy was £30,118.89. In addition, capital improvements in the form of external decorations were likely to cost the Respondent some £1,600.
13. The Respondent exercised his right to buy in September 2003. In order to comply with its obligations under the lease the Applicant undertook a borough wide partnering contract to carry out major works to the Friary Estate over a 5 year period. There was evidence, which the Tribunal and the Respondent accepted, that the partnering contract was competitively tendered and the most economically advantageous consultant and contractor were selected to carry out the works.
14. Those works included roof repairs, replacement of windows, door repairs, installation of door entry systems, balcony repairs and renewal, repairs and renewal to walkways, rainwater goods and landlord's electrical supply, decorations and repairs to communal areas, refurbishment of tenanted flats (for which the leaseholders were not charged), rewiring of tenants' electrical supplies and heating systems and general repairs to communal stairways, flooring, intakes and chute areas.
15. The lowest quoting contractor was Apollo London Limited (“Apollo”). The Tribunal accepted the Applicant’s evidence that this company was also the best quality contractor to have quoted for the estate works contract.
16. The Respondent confirmed to the Tribunal that he raised no objection to the section 20 consultation procedures or the tendering process and he withdrew that as an issue before the Tribunal. He confirmed in evidence that overall the quotation by Apollo was the best value for the Council and for leaseholders of all the quotations obtained in the tendering process.

Notice of Intention

17. In a statutory Notice of Intention dated 3rd June 2004 delivered by hand to the Respondent, a breakdown of the Apollo contract was given. The total block cost for Breamore House was £886,935.61 and the rechargeable block cost

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £11,002.10 is a reasonable estimated service charge and, subject to any counterclaim that may be determined by the county court, is payable by the Respondent to the Applicant;
- (2) Upon the Applicant's representative confirming that the Applicant did not seek to recover any of its fees or costs in respect of the proceedings before the Tribunal, the Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 or in relation to fees incurred by the Applicant.

Background

1. The Respondent is the long leaseholder of Flat 1 Breamore House, Friary Estate, London SE15, having acquired the property in September 2003 under the Right to Buy provisions of the Housing Act 1985.
2. In mid-2006 the Applicant issued proceedings against the Respondent in the Lambeth County Court, claim number 6LB04809, claiming payment of some £11,002.10 outstanding service charges in respect of major works to Breamore House. The case was transferred to the Leasehold Valuation Tribunal by order of District Judge Wakeham dated 15th November 2006, for a determination of the service charge payable by the Respondent. At the same time the Respondent's counterclaim (for damages for disrepair) was stayed until the determination of the Tribunal. Costs in the county court were reserved.
3. The Tribunal held an oral pre-trial review on the 14th December 2006, when directions were given and the following issues to be determined by the Tribunal were identified:
 - (1) the reasonableness of the cost of the replacement windows claim at £7,544.03; and
 - (2) the adequacy of the section 20 consultation procedures.

Attendance

4. The Applicant council was represented by Mr Paul Halpin, assisted by Mrs Louise Turff, both of the Applicant's Home Ownership Unit. Four others listed at the head of this Decision also attended in support of the Applicant. The Respondent, who told the Tribunal that he was an accountant, appeared in person.

The Property

5. Breamore House is a block of 23 flats on the Friary Estate comprising several purpose-built 4- and 5-storey blocks of flats originally built for London County Council, probably in the late 1940/50s if not earlier. The profile of the

residents of Breamore House is one of mixed tenure comprising long leaseholders and tenants.

6. A report on initial surveys of blocks on the Friary Estate dated May 2005 recommended a programme of repair and improvement work to address problems which had been identified on the estate. It is stated that the work was needed to bring the blocks and dwellings to a good state of repair, to comply with the requirements of the Decent Homes Standard, to improve security and to improve energy conservation and thermal efficiency. The work was to be carried out under the Peckham Partnering Agreement in which all work and specifications would be kept under constant review to ensure efficiency and best value. That work commenced in September 2005.
7. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

The Lease

8. The Tribunal was provided with a copy of the Respondent's lease relating to Flat 1. The lease was for a term of 125 years commencing on 29th September 2003. By clause 2(3)(a) the Respondent covenanted to pay the service charge contributions set out in the Third Schedule.
9. According to the Third Schedule, the annual service charge period runs from 1st April each year. Before the commencement of each year the Applicant shall make a reasonable estimate of the service charge payable by the Respondent and the Respondent shall then pay that sum in advance by equal quarterly instalments, on account of the eventual service charge liability. Provision is made for balancing of figures at the end of the service charge period.
10. The range of the Applicant's obligations for which the Respondent must pay is set out in the lease and includes the keeping in repair of the structure of the building and common parts, painting, the provision of defined services, the maintenance and management of the building and the estate and, in paragraph 9 of the Third Schedule "the installation (by way of improvement) of (i) double-glazed windows (including associated frames and sills) in replacement of any or all of the existing windows of the flat and of the other flats and premises in the building and in common areas of the building ... should the Council in its absolute discretion ... decide to install the same ..."

The law

11. Service charges and relevant costs are defined in section 18 of the Landlord and Tenant Act 1985. The amount of service charges which can be claimed against the Respondent is limited by a test of reasonableness which is set out in section 19 of the Act. In particular, section 19(2) states that: "where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been

was £436,295.02. In order to calculate the Respondent's contribution towards the works, the Applicant used the number of habitable rooms in Breamore House. The number of habitable rooms was calculated by taking the number of bedrooms in each flat and adding a unit of 4. The Respondent had a 4-bedroom property, so for the calculation the number of habitable rooms in his flat was taken as 8. There were 140 habitable rooms in the block so the Respondent's contribution was calculated as: $8/140 \times £436,295.02 = £24,931.14$. In addition, professional and management fees were added increasing this figure to £28,134.80.

18. However, the Notice of Intention went on to state that the Respondent's contribution to costs has been limited to the works notified and the amounts stated in Appendix B of the section 125 offer notice served in June 2002, plus an amount for inflation. This resulted in only 4 items being chargeable in respect of the current phase of works: repairs to the defective roof, £665.67, replacement of defective windows (i.e. with double-glazed windows), £7,544.03, work to refuse chambers, £479.98 and exterior decorations, £2,312.41. The total of these 4 items was £11,002.09. This latter figure was the limit of the Respondent's contribution to the costs incurred in this phase of work.

Applicant's Invoice

19. An invoice for the estimated charge of £11,002.10 (not £11,002.09) was sent to the Respondent in October 2005, shortly after the commencement of the works.
20. The evidence was that the Respondent had paid nothing on account of the invoice; he wanted a reduction to reflect the fact, in his view, he could have arranged for the replacement of the windows in his flat at a lower cost. As a result of the Respondent's non-payment the Applicant issued proceedings in the Lambeth County Court on the estimated invoice, resulting in the Respondent filing his Defence and Counterclaim and the matter being transferred to this Tribunal for a determination of the reasonableness of the windows' replacement costs.

Level of estimated costs relating to windows replacement

21. Of the total sum of £11,002.10 invoiced by the Applicant, the Respondent objected to £7,544.03, being the element of the estimated charge in respect of the replacement of defective windows. The Respondent considered £7,544.03 to be far too high given, he said, that the cost of replacing windows had come down substantially since 2002 and that bulk buying should have produced further savings.
22. He also complained of a lack of transparency by the Applicant in failing to provide information as to the various cost elements of the total estimated charge, in particular the window replacement costs.

23. The Respondent claimed that he had not received value for money in relation to the cost of window replacement element of the service charge and that he could have done the work himself for a cheaper cost. The Respondent obtained his own quotations for the window replacement work and he provided copies of the quotations to the Tribunal. The highest quotation came from Absolute Glass and was in the sum of £5,760 plus VAT. The lower quotation came from Pearson Glazing in the sum of £4,500.
24. The Respondent accepted that these estimates only referred to the cost of replacing the windows in his own flat and that they made no provision for the cost of replacing windows in the common parts, for scaffolding or for fees. However, the Respondent maintained that these additional costs would not have been great. When pressed by the Tribunal, the Respondent said that he considered an overall cost of £6,000 would have been reasonable for him to pay in respect of the replacement of windows in the block, not £7,544.03.
25. The Respondent raised a number of other related issues in his Defence and Counterclaim, set out in 27 paragraphs, which the Tribunal examined at the hearing. In addition to the level of the estimated costs, the main areas of contention and were as follows:

The use of the 2002 estimated figure

26. The Respondent claimed that the use of an estimated 2002 figure as the basis for charging him in 2005 was inappropriate when the actual contract price was already known. Mrs Turff for the Applicant gave evidence, which the Tribunal accepted, that the 2002 figure was a "best estimate" available (based on the cost of window renewals on similar blocks at that time) and that because the works were not yet complete, the final cost figure was not yet known precisely. However, she had recently looked at the current costs for window replacement and she confirmed that these were very close to the 2002 estimated charge, plus inflation. She also pointed out that if the final cost was lower than the 2002 estimate (as limited by the section 125 figures), the Applicant would only charge the Respondent that actual cost.
27. The Tribunal therefore determined that it was reasonable for the Applicant to make use of the 2002 estimated figure as the basis for raising the 2005 invoice in respect of estimated service charges.

Addition of compound interest

28. The Respondent challenged the method of calculating compound interest, claiming that it was not fair to use a compounded inflation rate. However, after receiving evidence from Mrs Turff, the Tribunal accepted that the Applicant had followed the statutory procedure for calculating and applying interest and that this had only been used as a method of updating an estimated charge, in advance of the completion of the works, when the final cost would be known.

Apportionment of costs

29. The Respondent also challenged the blanket apportionment of cost, which he said was an "unacceptable cost principle". This was a complaint about the method of using the number of habitable rooms as the basis of determining the Respondent's proportion of the cost of replacing the windows. He complained that the blanket apportionment did not show fairness and transparency because it over-charged the window replacement cost element; he proposed that the contract price for the windows should be "de-pooled and apportioned with the number of units in the block".
30. With regard to this point, the Tribunal noted that paragraph 6(1) of the Third Schedule to the lease requires the Respondent to pay "a fair proportion" of the costs and expenses incurred in any one year. The Tribunal accepted that other methods of apportionment were available, but determined that the method which had been adopted by the Applicant in the current case was perfectly normal, reasonable and fair.

Cross-subsidy

31. In addition to the above, the Respondent complained about the way the Applicant had calculated the overall estimated service charge, so that he had been charged for the cost of replacing doors to tenanted flats. The Respondent was unable to provide any evidence to support this complaint, but the Tribunal accepted the Applicant's evidence that in respect of the estimated invoice for £11,002.10 the Respondent had only been charged for his share of the 4 items specified in the statutory Notice of Intention dated 3rd June 2004, which did not include the cost of replacing doors to tenanted flats. This was because they were not specified in the schedule of anticipated capital repairs in Appendix B of the 2002 section 125 notice - and therefore could not be charged to the Respondent. The applicant's representative went on to confirm that the Respondent would not be charged for these costs in any event.

The Tribunal's Decision

32. The recurring theme in this case is the Respondent's contention that he has not received value for money with regard to the element of the invoice relating to window replacement costs. However, the Respondent agreed with the Applicant and with the Tribunal that by accepting the quotation from Apollo London Limited, the Applicant council had achieved overall value for money for the major works contract; his only concern was that the element of cost relating to the window replacement works within the overall contract awarded to Apollo London Limited was too high.
33. Having heard detailed evidence from both parties and having considered the documents provided, the Tribunal is satisfied with the methodology followed by the Applicant and is satisfied that the Applicant has complied with all necessary procedures in calculating the cost of replacing the defective windows, the calculation of interest following a statutory process and the


limitation of the service charge costs in accordance with the amounts stated in Appendix B of the section 125 offer notice.

34. Having considered the Respondent's points thoroughly the Tribunal takes the view that, by following all appropriate consultation and tendering procedures and by accepting the lowest-priced quotation, the Applicant had acted reasonably. In the context of a large contract for major works where the cheapest quotation had already been selected, it was not reasonable to challenge individual elements within that contract.
35. In any event, the Tribunal determined that the Respondent's own quotations for the cost of window replacement to his flat were not like-for-like and when additional costs for the common parts windows, scaffolding and fees were added, there would be little difference between his quotes and the Apollo figure.
36. The Tribunal could find no fault with the Applicant's approach to the major works, which in its opinion is fair and reasonable. It follows that the whole of the estimated charge of £11,002.10 is reasonable and, subject to any counterclaim yet to be determined by the County Court, payable by the Respondent.

Costs

37. As a result of this matter being transferred to the Tribunal for determination, the Applicant had incurred an additional hearing fee and significant costs. The Applicant's representative confirmed to the Tribunal that the Applicant was not looking to recover any of its fees or costs for coming to the Tribunal, either against the Respondent or through the service charge, over and above the costs of the proceedings before the Lambeth County Court. Therefore, there was no need for the Tribunal to consider any application under section 20C of the Landlord and Tenant Act 1985 and accordingly the Tribunal made no order.

Chairman:


Timothy Powell

Date:

10th March 2007