

5016



Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AG/LSC/2009/0547
DETERMINATION OF LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A of The Landlord and Tenant Act
1985
47C Gaisford Street, London NW5 2EB**

Applicant: The London Borough of Camden

Represented by: Ms. Patel

Respondent: Mrs Julia Forsythe

In Attendance
On behalf of the Applicant

Mr John Rutter- Final Accounts
Officer (14.12.09)
Ms Jackie Yearwood
Mr Steve Downes-
Mr John Milner- Bailey Garner

In Attendance
On behalf of the Respondent

Ms Violet Owari
Ms Maureen Humphries(14.12.09)
Mr John Slater FRICS

Hearing Date: 7 December 2009 & 1 March 2010

Tribunal:

Ms M W Daley LLB (Hons)
Mrs H Bowers BSC(Econ)MRICS
MSc
Mrs Justice BA JP

The Application

1. This matter concerns a claim brought by the London Borough of Camden in the Central London County Court for unpaid service charges in the sum of £9630.96 and interest for the periods 2004, 2005, and 2006. The sum included £8,537.25 for major works carried out in 2006. On 21 January 2009, Judgement was given for the Applicant (The London Borough of Camden) .
2. The Respondent, Mrs Forsythe applied to have Judgement set aside and her application was granted on the 4 June 2009, by Deputy District Judge Ostroff. The order setting the Judgement aside, stated that the sum of £1,093.17 had been paid by the Respondent. On 14 August 2009 the matter was transferred to the Leasehold Valuation Tribunal.

The issue

3. The sole issue before the Tribunal was the reasonableness and payability of the sum of £8,537.25 for major works. The Respondent in her statement of claim stated that following the major works, her rear bedroom had been subject to ingress of water from the dormer window/roof and that as a result, her internal decoration had been ruined. The Respondent complained that rather than the repair improving the condition of her roof, the problems had got worse. Given this, the cost claimed for the major work was not reasonable or payable.

The Law

Section 27A(1) of the Landlord and Tenant Act 1985 provides that -: *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 at or by which it is payable, and*
- (e) the manner in which it is payable*

Section 18(1) of the Landlord and Tenant Act 1985 ("the Act") provides that, for the purposes of the relevant parts of the Act, "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
- (b) the whole or part of which varies or may vary according to the relevant costs.*

Section 19(1) provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

- (a) only to the extent that they are reasonably incurred, and*
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard:*
- and the amount payable shall be limited accordingly.*

The Inspection

The Tribunal had an opportunity to inspect the subject property on the morning of 7th December 2009. The subject property is a second floor flat situated in a converted, end terrace house that appeared to date from the mid nineteenth century. The house is of brick and flat roof construction to the main part of the building, but with a pitched roof to the rear elevation. The Tribunal made a brief external inspection of the flat roof area via a roof light, and noted that this area had been recently renewed, but there was water pooling on this flat roof section. It was not possible to see the full extent of the roof repairs that had been carried out to the building.

The Tribunal noted that in the rear bedroom there was a sloping ceiling. During the inspection, Mr Milner of Baily Garner produced a protimeter and with the agreement of Mrs Forsythe took several readings of the level of damp in the sloping ceiling area. The readings from the protimeter indicated that there was evidence of high damp levels in this area.

The Hearing

4. At the hearing the Applicant was represented by Ms Patel the Applicant's legal officer. Also present on behalf of the Applicant was Mr John Rutter the Final Accounts Officer Ms Jackie Yearwood and Mr Steven Downes of the Home Ownership unit and Mr John Milner of Baily Garner . The Respondent was represented by Ms Violet Ouwari, solicitor. The Respondent was also attended by her expert witness, Mr John Slater a surveyor.
5. Ms Patel confirmed that the major works had been carried out pursuant to notices served under section 20 of the Landlord and Tenant Act 1985. The Tribunal were invited to consider the notices served. The schedule of work stated that the proposed work was to-:
 - (a) replace the existing crown roof covering with asphalt and solar reflective paint,
 - (b) replace existing dormer roof covering with asphalt and solar reflective paint and
 - (c) replace defective slate covering and repair flashing and pots to chimneys.

- (d) undertake works to the lead flashings to the roof level and parapet walls
 - (e) and to replace the existing defective roof light.
6. The purpose of the works was described as to remedy defects and provide water/ weather proof covering. There were also additional works to the rainwater goods and the parapets walls.
 7. The Tribunal were referred to page 85 of the bundle, which had a copy of the Respondent's written observations, to the 2006 proposed works which stated as follows: "*...No I do not want this work done on 47c Gaisford Street. In future you can consult my solicitor. I have just paid over £12,000 to have my flat decorated and I can produce evidence...In 2002 McGinley destroyed this roof. Water came through the bathroom, front bedroom landing and back bed room ... last July only when I knew that the roof and upstairs were safe I had the decorators in...*"
 8. The Reply to this letter from Rachel Frazier (the Capital Service Charge Manager) dated 20 December 2005, was included in the bundle and was an acknowledgement that the previous work had been defective and reassurance that the work was necessary and appropriate supervision would be put in place to enable the work to be carried out to a satisfactory standard. The penultimate paragraph of the letter stated "*...When the Contractors are on site the works will be closely monitored to ensure they are carried out to a good standard...*"
 9. The notice of estimate of charges was included at page 82 of the bundle and the estimate of cost was in the sum of £8,537.25. This cost was made up of gross work estimated cost, supervision fees and management fees.
 10. Mr John Rutter, informed the Tribunal of the procedure followed in finalising the accounts. The Home Ownership section translated the cost paid to the contractor into a final account, which included the additional service provided, a quantity surveyor then went through the final figures and signed off the account. There were also various other fees that were built into the cost which included the supervision fee at 13.15%, the cost of the section 20 consultation, including hire of the hall for the leaseholders meeting, and the cost of the management provided by the home ownership. A copy of the final account was included in the bundle.

11. Ms Patel stated that practical completion had taken place on 24 October 2007. Ms Patel stated that there were no formal records/ letters to the leaseholders dealing with “making good items” however there was a site meeting and minutes were kept of these meetings. From the record it appears that there was a note to the effect that Mrs Forsyth would not allow Apollo to undertake any remedial works until her own decorator had visited the property to confirm that the works were possible. No explanation of what this meant was provided.
12. Ms Patel sought to deal with the findings from the inspection undertaken by the Tribunal, on 7 December 2009 (before the hearing). It had been noted that there was damp staining in the bedroom and a reading from a damp meter provided by Mr Milner indicated the presence of water penetration. Mr Milner, chartered surveyor with Baily Garner stated that it was not uncommon following effective roof works for there to be a minor amount of ingress.
13. Apollo the roof contractors had also agreed to return to the property and make good the decorations that had been affected by the work. The Tribunal were referred to an email from Lee Anderson from the Apollo Group which was dated 5 August 2009 and stated:- “ ...*Following our visit to the above address and a visual inspection of the roof . I would like to confirm that the roof seems to be sound with no evidence of any leaks and the area in question was dry even though it was raining at the time of the inspection...*”There had been two future damp meter readings which indicated that the level of damp in the bed room was low. However this contrasted with the reading on 7 December 2009, which had indicated high levels of moisture in the bedroom ceiling.
14. In Mr Milner’s view this suggested that there might be a breach near the junction of the dormer which might be as a result of no more than 3 defective tiles. This meant that the majority of the roof was correctly installed and the defect which was described by the Applicant’s witnesses as a latent defect would be covered by the guarantee given by the contractors (the guarantee was for 20 years from 20 June 2006). Ms Patel further assessed the amount of work needed to remedy the defect as being no more than 5% of the total value of the work.
15. The tribunal noted that there was evidence that the work carried out was payable in accordance with lease obligations, (although, the Respondent did not oppose

the cost of the work on this basis). The Applicant also placed reliance upon the fact that a specification had been correctly produced and the tender had been analysed, (there was a report produced by Mr Milner of Baily Garner Surveyors, who had also carried out pre-site visits which confirmed this). Ms Patel also stated that there had been an independent clerk of works who had issued contract instructions.

16. The extent of Baily Garners involvement in the major works was set out in three reports which were included in the bundle.
17. The First report dated 10.12.02, stated in the second paragraph of point 1 *“Previous repairs had been undertaken recently during an external repair and redecoration contract to properties in Gaisford Street and Islip Street however, following completion of the works, many residents reported to the London Borough of Camden that the water penetration had not been cured...”* although Baily Garner surveyors had inspected a number of properties at the site, they had not gained access to the Respondent’s property and their findings of the work which needed to be undertaken were largely based on the results of the properties that had been surveyed.
18. He was asked why the work needed to be carried out given that works had been undertaken on the roof in 2002. Mr Milner stated that although work had been undertaken in 2002 the asphalt had not been replaced and was blistered and cracked and there was some evidence of slippage of slates. This was set out in the report dated 10.12.02.
19. The next report was a *Project Definition Report*, this report dated November 2004, dealt with the scope of the work to be undertaken by Baily Garner. It was clear from that report that Baily Garner would be providing a full professional service which would include Building Surveying and Planning supervision at point 3.5 of the report stated *“... All design work will be undertaken by Baily Garner”* and 3.6 stated-: *“...that Baily Garner will be acting in the capacity of Contract Administrator and Baily Garner (Health and Safety) Limited will be acting in the capacity of Planning Supervisor for the Project...”*
20. Mr Milner stated that there had also been weekly inspections from the clerk of works for the site, prior to the work being certified.

21. The final report dated 22 June 2009 was prepared by John Milner, the brief was to inspect the rear bedroom of 47C Gaisford Street for water penetration following roof works completed in July 2006. The findings reported that:-
- “ ...There was significant staining and evidence of water penetration damage to the junction of the ceiling soffit and the right hand side cheek of the roof dormer... Moisture meter readings were taken along this junction and low percentage readings of less than 10% were found. One higher reading over 25% was taken at the apex of the soffit, dormer cheek and ceiling below roof crown. This reading appeared to be associated with a roof timber at this point.”*
22. The Conclusion of the Report was that *“no significant water penetration was taken place...[although]“... there may be some residual moisture from previous penetration within the dormer roof timber.”* However following the inspection that took place on the morning of the hearing, (on 7 December 2009), it was accepted that the higher readings indicated that there was an on-going problem with water penetration in the rear bedroom of the premises.
23. Mr Milner informed the Tribunal, that after the hearing he had spoken with the original contractors and that they had agreed that the roof suffered from a ‘latent defect’. In answer to the query from the Tribunal, he stated that this meant a defect which the contractors were liable for, as it had been discovered within the limitation period (the Contract Guarantee period). He stated that the work had been undertaken without the benefit of the original designs and drawing and that there was a flaw in the way in which the work had been carried out.
24. At the resumed hearing on 1st March 2010. Ms Philippa Atkin (the Applicant’s Renewable Officer) stated that the contractor would return to the site in a week (following the resumed hearing) to carry out repairs on the roof. The Applicant and contractor agreed that the remedial repairs would be carried out by the contractor under the original guarantee.
25. Mr Milner was asked by the Tribunal whether he could explain the current cause of the water penetration. He stated that there were flat planes on the top of the roof and where the sides come down onto the roof, the three planes intersect. There was lead detail on the vertical planes of the dormer. The slate was cut one to two centimetres short so it does not go up to the dormer and as a result the lead

soaker has sagged into the gap in either an 'L' or 'U' shape. This allowed water penetration to take place quite close to the top of the slope causing intermittent but on-going water penetration.

26. Mr Milner stated that the solution was to replace the slate with the correctly dimensioned slate and lead soaker, laid in sections. He stated that he would check the other side of the dormer and also replace the mastic around the junction of the front wall.
27. Mr John Slater gave evidence on behalf of the Respondent, Mrs Forsythe and his expert report was included in the Respondent's supplemental bundle. John Slater is a Senior Partner of Foster Slater Chartered Surveyors. In 1976 he was appointed to the Panel of Arbitrators and Independent Experts.
28. His instructions from the Respondent had been to inspect the premises and report on the condition and costing of any associated work required.
29. His findings in paragraph

5.3 of his report were as follows-: *Rainwater was ponding to the mineral felt roof to the dormer and rainwater was dripping down from fascias.*

5.4 *Some ponding was noted to the main flat roof and the cover is uneven and irregular.*

5.5 *Isolated areas of leadwork to flashings/upstands require to be re-dressed.*

5.6 *Cracking and crazing was noted to the rendered sections of parapets.*

5.7 *Limited areas of brickwork at high level require to be raked out and re-pointed*

5.8 *Cracking was noted to brickwork/ mortar jointing to the party parapet*

5.9 *To the rear second floor bedroom, lining papers are stained and have become detached around the dormer and rear external wall*

Areas of defective/ perished plasterwork were also observed, especially to corners and readings up to 35%/40% were obtained with a damp meter around the dormer.

30. He concluded in his report that he did not consider that the works were carried out satisfactorily and this is borne out by the continuing problems to which he had referred.
31. Mr Slater was asked to comment on the conclusions of Mr Milner. He stated that he had a different view from Mr Milner on the significance of the 'ponding' on the one or two areas over the main roof (in his report Mr Milner stated that he did not consider ponding was indicative of a problem). Mr Slater stated that he did not like 'ponding' as there only needed to be a small defect for water penetration to result. In the summary of opinions in his report at point 8.1 he had stated -:"... *Water is ponding on the dormer flat roof and there is spillage around the sides. I am surprised that the roof cover was not laid to correct falls and that water is ponding...*"
32. Mr Slater stated that he had experience of carrying out large contracts and as a result of his experience he was aware of the potential problems caused by dormer windows, and consequently ensured that he always "put in an appearance" during certain critical points. In his view, a critical point would have been the work on the dormer windows. He stated that the clerk of works should have been alert to the potential problems, and checked the work more thoroughly in these areas.
33. Mr Slater stated that the staining in the rear bedroom was indicative of the fact that either the upstands or the flashings in the corner of the roof had failed and in his view this was the result of substandard workmanship.
34. Mrs Forsythe's evidence was set out in her statement of case, where she provided background information concerning the history of the work at the premises. She stated that sometime in 2002 work was carried out to the roof of her premises and that in total it took about a year to complete. This caused considerable nuisance, and was accompanied by problems such as water leaking into both her bathroom and bedroom. Mrs Forsythe's statement at paragraph 8 stated that the plaster was slowly coming away, and one night part of the ceiling of her bedroom fell in. It

was her observation that prior to the 2002 major works she had not previously had problems with water penetration at the property.

35. Mrs Forsythe stated that some time after the major works contract of 2002, she decided that the time had come to carry out decorations to her flat. Mrs Forsythe wanted to ensure that the roof was in a good condition as she planned to redecorate the areas that had been damaged as a result of the water penetration. Mrs Forsythe had arranged for someone from the Applicant's offices to inspect the premises to confirm that the roof works had been completed. Unfortunately she stated that she could not recall the name of the man or the department he came from, however he had attended with a damp meter and confirmed that the ceiling was dry.
36. Sometime afterwards she had engaged Maxihomes Ltd (decorators) who carried out redecoration to her property, the total amount of the redecorations was in the region of £12,000. Mrs Forsythe stated that she had been unaware of the further roof works until she had responded to the notice of intention. She was adamant that she would not have redecorated had she realised further works were being contemplated.
37. Mrs Forsythe stated that the scaffolding was erected in February 2006, she then had problems with water penetration in early June 2006, and then again on 13 June 2006. There was a further major incident in August 2006 when the rear room was occupied by her son who was spending sometime with her.
38. Mrs Forsythe noted that when the scaffolding was taken down rubbish and rubble was left on the exterior guttering outside the back bedroom. Mrs Forsythe further complained about the attitude of the Applicant to remedying the problems with the water penetration. She reported that the workmen from Apollo had been rude and dismissive when they came to re-inspect the roof following her complaints, and it had been left up to her to liaise with the Applicant's insurance company about compensation for damage.
39. The last letter received from GAB Robins UK stated:- "*... the current Insurers Zurich Insurance cannot consider this claim which should be more appropriately referred to the Building Insurer at the time of the incident.* The letter referred the

Respondent back to the Applicant's home ownership section to obtain the details of the appropriate insurance company.

40. Mrs Forsythe's evidence was largely unchallenged by the Applicant, save that Mrs Forsythe was put to proof of the person who was alleged to have carried out the inspection prior to the decoration being undertaken. Mrs Forsythe was unable to recall. The Applicant also did not accept that Mrs Forsythe had been unaware of the proposal to carry out the work, and referred to the inspections that had taken place from Baily Garner.
41. There was an estimate in the sum of £6,627.00 from Maxihome Ltd. Mrs Forsythe acknowledged that she could not recall all the amounts spent was sure that the final cost including fixtures and fittings that she purchased was in the region of £12,000.
42. Ms Violet Owari, in her closing submissions on behalf of the Respondent indicated that the Respondent's main issues were:- (i) Whether the work was required in the first instance, as the Respondent had not suffered from any problems with water penetration prior to the work being undertaken. (ii) Whether the work had been carried out to a satisfactory standard and (iii) Whether as a result of the work Mrs Forsythe had suffered loss, inconvenience and damage.
43. Ms Owari stated that Mrs Forsythe had no problems with her roof prior to the first major works, and had after the 2002 Major works incurred cost as a result of redecorating. In relation to the cost of the work, the Respondent queried the reasonableness on the basis that she had not been provided with a breakdown and was not satisfied that the cost reflected the true value of the work that had been undertaken to her premises.
44. Ms Patel had produced a dealt written summary, in which she acknowledged the fact that there was a defect in the roof, which was in all probability due to a lead flashing under the roof which had been cut too short or in the alternative an absence of flashing. However the central theme of her submissions was that the defect would be remedied with no additional cost to the Respondent.
45. In the eighth paragraph of her summary Ms Patel stated -: "*The very large majority of the roof has been correctly installed according to John Milner and a reputable contractor carried out the job. According to John Milner, the vast*

majority of works to the roof are of a good quality notwithstanding the defect. With the defect that there is, 47 Gaisford Street still has a sound and satisfactory roof... ”

46. Ms Patel also considered that the supervision fee should be payable in full as it comprised developing the specification, undertaking the tendering process, tender analysis, following the section 20 process issuing an award letter, attending site meetings, progress meetings, issuing contract instructions and the practical completion certificate and negotiating the final account.
47. The Applicant would be carrying out repairs in a few weeks' time and Apollo would also, if the Respondent consented, make good the decorations. Ms Patel criticised the Respondent for not reporting or properly processing the insurance claims in relation to the 2002 works and also in 2006 and stated that as a result the Applicant could not accept responsibility for the cost associated with the damage as a result of the 2002 works; Ms Patel also noted that the Applicant had not charged the Respondent for this work. Ms Patel stated that the Respondent had failed to complete the defects form within the defect period, and as a result the Applicant had been unaware of the defects when signing off the contract, the contractors however would make good and redecorate.
48. In conclusion Ms Patel stated:-“ *...The works are of a reasonable costs and standard and leaseholders have benefited from the work and should pay for them. The roof has been done in its entirety and the defect is not with the cover of the roof itself. The quality of the works are good...*”
49. Ms Patel stated that there were likely to be costs covered by section 20C of the Act as the Applicant would be seeking to claim the cost associated with the Tribunal hearing such as the attendance of Mr Milner to give evidence, as a service charge under the lease provisions.

The Decision of the Tribunal

50. The Tribunal having considered the evidence and submission of the parties, find that the cost of the major works in the sum of £8,537.25 are not reasonable or payable by the Respondent.

51. The reason for this decision is as follows- The Tribunal note that the Applicant in their statement of claim, at paragraph 62, stated their case on reasonableness and payability in the following term, -: *If the leaseholders have benefited from the works and the works were necessary and have been done to a reasonable standard, the leaseholders should pay their contribution to the cost of these works.*
52. There was considerable evidence presented to the Tribunal and gathered from our inspection that the quality of the repair was not to the required standard. It is not, in the Tribunal's view good enough to say that a repair to the roof has been partially or mostly successful. The nature of a roof is that it is required for the security, integrity, and comfort of the building, in short to keep the premises free from the elements. The repair in 2006 was defective, in that because of substandard workmanship water was allowed to ingress the building.
53. Ms Forsythe stated that she had indicated her concerns to the contractors, and she had found their attitude to be patronising and unhelpful. We find Mrs Forsythe to be a truthful and reliable witness, and this in our view, sums up the attitude of the contractors to the complaints that were made following the work.
54. Section 19 (1) b of the Act states that relevant cost are payable as service charges only to the extent that the works are of a reasonable standard. In the Tribunal's view the works that were the subject of the hearing, before the Tribunal and submitted as being the subject of '*relevant cost*', failed to meet the required standard, and accordingly are not reasonable and payable service charge items.
55. In coming to this decision the Tribunal asked itself whether the Tribunal would have taken this view, if the remedial works had been undertaken prior to the hearing or during the adjournment . Whilst not fully answering this question, the Tribunal noted that the Applicant had issued the proceedings despite the Respondent's protest that the repairs had caused water penetration. At the first hearing of the matter, there was clear evidence that a problem existed, the Applicant still asserted that the full cost were payable.
56. In the intervening period between the first hearing on 7 December and the reconvene on 1st March 2010 there was sufficient time for the repair to have been carried out. It was only towards the end of that period that the necessary

investigations were undertaken, and the remedial work was timed for after the hearing, at the convenience of the contractor, who would be working in an adjoining street rather than the convenience of the Respondent. The result is that the condition of the premises has continued to deteriorate.

57. The Tribunal have considered the reasonableness of the cost of the work, have assessed the work on the basis of the standard that now exists, and have not, as invited by the Applicant assessed the work on the added value it will have once the repairs are carried out. The Tribunal cannot until such repairs are undertaken and a reasonable time period past, be satisfied that the problem that exists has been remedied, given this the Tribunal have determined the matter on the condition of the property at the time of the last hearing on 1 March 2010. This in our view is the correct approach.
58. The Tribunal have considered the invoice and accept that the breakdown of the work is inadequate, and does not enable the Tribunal to separate the elements that make up the major repairs (although management and supervision are separated).
59. Ms Patel asserted that *If the leaseholders have benefited from the works and the works were necessary and have been done to a reasonable standard, the leaseholders should pay their contribution to the cost of these works.*
60. It is our view that rather than benefiting from the work, the leaseholder occasioned loss and damage, and for that reason we find the cost of the work is not reasonable and payable. We do not consider it appropriate to take a 'wait and see approach' and the claim before us was for work undertaken to a reasonable standard, which we find on a balance of probabilities was not the case.

The Section 20 C Application

61. The Tribunal have granted a section 20 C application to the Respondent on the basis of our findings as we consider it just and equitable to do so. The costs occasioned by the Tribunal hearing, are not recoverable as a service charge.

Signed *M. O'Sullivan*

Dated 27 April 2010 .