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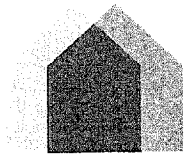

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

Landlord and Tenant Act 1985 – Section 27A

LON/00AU/LSC/2010/0287

Property	:	**62 Morgan Mansions London N7 8NA**
Applicant	:	**Mrs O Byrne Tenant**
Represented by	:	**Ms R Chan Counsel**
Respondent	:	**London Borough of Islington Landlord**
Represented by	:	**Mr R Frederick, Homes for Islington**
Date of Application:		**4 February 2010**
Date of Hearing	:	**2 September 2010**
Date of Decision	:	**12 October 2010**
Tribunal	:	**Mrs Evelyn Flint DMS FRICS Chairman**
		Mrs J Davies FRICS
		Mrs R Turner JP

1. Decision

1.1 The decision of the Tribunal is that the costs incurred in respect of the works of improvement are not relevant costs as defined in S18 of the 1985 Act and accordingly the consultation procedure under S20 was not applicable.

2. The Lease

2.1 The Council granted Mr M Byrne and Mrs O Byrne a lease for a term of 125 years from 25 March 1992 dated 26 October 1992.

2.2 Under clause 3(1) of the lease the lessees covenant "to pay the yearly rent and service charge and the insurance rent referred to in clause 5 and 1(3)."

2.3 Clause 5 states that "The service charge referred to in Clause 1 and 3(1) shall consist of .....

(1) Expenses which relate solely to the demised premises and referred to in Clause 5(3)(e)(ii) hereof; and

(2) A proportion of the expenses and outgoings incurred or to be incurred by the Council on those items set out in the Third Schedule hereto and which comprise –

(1) the repair maintenance renewal and improvement of the building and any facilities and amenities appertaining to the Building and the Estate"

2.4 Clause 10(1) states that "any demand for payment or notice requiring to be made upon or given to the Tenant shall be well and sufficiently made or given if made by an authorised officer of the Council sent by post addressed to the Tenant at the demised premises or left for the Tenant at the demised premises."

3 Background

3.1 Morgan Mansions is a mansion block of 62 flats which is divided into smaller blocks each with their own front entrance door. The block in which the subject premises is situated comprises 9 flats.

3.2 On 30 September 2002 a notice under section 20 Landlord and Tenant Act 1985 for external repairs and painting, renewal of door

entry system, renewal of windows and doors was sent to the applicant's husband.

3.3 On 23 March 2007 the Respondent requested payment of the outstanding balance on the account of £10,862.85.

3.4 On 9 July 2007 the amount demanded was amended to £10,691.72.

3.5 A further demand for payment sought an initial payment of £5,691.72 with the balance of £5,000 to be paid before 31 March 2008.

3.6 On 26 July 2007 a payment of £5,691.72 was made to Homes for Islington.

4. Matters in Dispute

4.1 Whether section 20 Landlord and Tenant Act 1985 applied to all or some of the major works;

4.2 Whether the consultation process satisfied the requirements of section 20 of the Landlord and Tenant Act 1985;

4.3 The payability of the service charges amounting to £10,691.72 in respect of the major works.

5. Matters Agreed

5.1 The parties agreed that the matter before the tribunal was limited to whether the consultation process undertaken by the Council had complied with S20 Landlord and Tenant Act 1985.

5.2 The "old rules" of S20 apply as the works commenced prior to 30 October 2003.

5.3 During the course of the hearing the Respondent conceded that the consultation process was flawed and that S20 had not been complied with in respect of the works of repair. The works of repair were: general repairs, painting and decorating and roof repairs.

6. The Hearing

6.1 Ms Chan, for the applicant, contended that the works referred to in the section 20 notice were repairs and not improvements; if the works were improvements, since the lease included improvements within the

definition of services the lease definition should be used to extend the provision of the original S18 definition of service charge.

6.2 Ms Chan referred the tribunal to the Lands Tribunal decision in London Borough of Islington v Abdel-Malek LRX/90/2006 where a similar consultation process had been followed and held to be flawed because, as in this case, detailed estimates of the costs of the works had not been supplied to the Lessees.

6.3 The Respondent's statement that the works to the doors, windows and entry phone were improvements was incorrect. There was already an entry phone system in place, the replacement windows were not well fitted and therefore could not be an improvement. Moreover, the fact that the windows were renewed implies that they were below a reasonable standard and therefore needed repair.

6.4 The Respondent had considered the works to be repairs since they had included the works in the S20 notice and that is how the works were represented to the Applicant. The notice stated that the work "mainly comprises the removal of windows and doors which are beyond economical repair; prepare openings where necessary and replace with new." The respondent had advised, by a letter dated 28 November 2002, that if the Applicant's own replacement windows were of a reasonable standard they would not be replaced thus reducing the overall cost of window replacement to Morgan Mansions. It was accepted that all the windows had been replaced.

6.5 Ms Chan concluded that as the consultation process was flawed the Applicant was not liable to pay the service charge demanded and that the Respondent should return the sums already paid by the Applicant in good faith.

6.6 Mr Frederick, for the Respondent, contended that the works were improvements and consequently there was no requirement on the Respondent to consult under the "old rules." He referred to a LVT decision Mr S and Mrs K Newsom v London Borough of Islington LVTP/SC/006/050/03 and LVTP/SCC/006/023/03 in respect of 59 Morgan Mansions and the same works, which although not binding was, he said, persuasive. In relation to the windows, doors and entry

phone the Tribunal in its decision dated 8 October 2003 stated that in its opinion "the subject works are improvements and not relevant costs as defined in section 18 of the 1985 Act and accordingly there is no jurisdiction under section 19(2)(b) of the Act to determine whether those costs were reasonably incurred."

6.7 He was of the opinion that the definition of relevant service charges in the Act could not be expanded by reference to the lease. The statute was paramount; the statutory provisions were amended to include improvements carried out after 30 September 2003.

6.8 He called Mr Gooden, the Complaints Manager for Major Works, who confirmed that all the works were included in the S20 notice because at that time the Respondent had considered all the works to be works of repair. He did not consider that the Council should be prejudiced for having consulted in respect of those works which were, following the LVT decision in respect of 59 Morgan Mansions, considered to be improvements. He confirmed that the consultation procedure had been flawed insofar as it related to repairs as the procedure was identical to that followed in the Abdel-Malek case.

6.9 Mr Gooden, during cross examination, agreed that the Preliminaries included all the scaffolding costs; this was incorrect as scaffolding was not required for the installation of the entry phone.

6.10 Mr Frederick contended that the part payment of the service charge account made in July 2008 was evidence of an agreement reached between the parties regarding this matter and consequently the tribunal had no jurisdiction.

6.11 This meeting in July 2007 was said to have been between Mr Byrne and a member of the Respondent's staff. The applicant stated that she had had a meeting but had agreed to pay a proportion of the costs whilst the respondent investigated her complaints. Her husband had not attended any meeting with the Council or its agents.

7. The Law

7.1 The following extracts of the relevant law were handed in during the course of the hearing.

7.2 S18 Meaning of "service charge" and "relevant costs".

(1)In the following provisions of this 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 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.

(2)The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

7.3 S20. Limitation of service charges: consultation requirements

(1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3), the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either—

(a)complied with, or

(b)dispensed with by the court in accordance with subsection (9);

and the amount payable shall be limited accordingly.

(2) In subsection (1) "qualifying works", in relation to a service charge, means works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.

(3) The limit is whichever is the greater of—

(a)£25, or such other amount as may be prescribed by order of the Secretary of State, multiplied by the number of dwellings let to the tenants concerned; or

(b)£500, or such other amount as may be so prescribed.

(4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants' association are—

(a)At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.

(b)A notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.

(c)The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and the address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.

(d)The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).

(e)The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.

(5) The relevant requirements in relation to such of the tenants concerned as are represented by a recognised tenants' association are—

(a)The landlord shall give to the secretary of the association a notice containing a detailed specification of the works in question and specifying a reasonable period within which the association may propose to the landlord the names of one or more persons from whom estimates for the works should in its view be obtained by the landlord.

(b)At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.

(c)A copy of each of the estimates shall be given to the secretary of the association.

(d)A notice shall be given to each of the tenants concerned represented by the association, which shall—

(i) describe briefly the works to be carried out,

(ii) summarise the estimates,

(iii) inform the tenant that he has a right to inspect and take copies of a detailed specification of the works to be carried out and of the estimates,

(iv) invite observations on those works and on the estimates, and

(v) specify the name and the address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.

(e)The date stated in the notice shall not be earlier than one month after the date on which the noice is given as required by paragraph (d).

(f)If any tenant to whom the notice is given so requests, the landlord shall afford him reasonable facilities for inspecting a detailed specification of the works to be carried out and the estimates, free of charge, and for taking copies of them on payment of such reasonable charge as the landlord may determine.

(g)The landlord shall have regard to any observations received in pursuance of the notice and, unless the works are urgently required, they shall not be begun earlier than the date specified in the notice.

(6) Paragraphs (d)(ii) and (iii) and (f) of subsection (5) shall not apply to any estimate of which a copy is enclosed with the notice given in pursuance of paragraph (d).

(7) The requirement imposed on the landlord by subsection (5)(f) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

(8) In this section "the tenants concerned" means all the landlord's tenants who may be required under the terms of their leases to contribute to the costs of the works in question by the payment of service charges.

(9) In proceedings relating to a service charge the court may, if satisfied that the landlord acted reasonably, dispense with all or any of the relevant requirements.

(10) An order under this section—

(a)may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and

(b)shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

8. Findings and Reasons

8.1 The Applicant did not intend part payment of the sum demanded to be construed as admitting or accepting liability for the service charges demanded. The dispute remains within the jurisdiction of the tribunal.

8.2 The definition of "service charge" is as stated in the Act and cannot be expanded by reference to the wording in the lease.

8.3 The tribunal follows the decision in respect of 59 Morgan Mansions and determines that the works to the windows, doors and entry phone, taken together, were improvements to the block. In reaching its decision this tribunal is mindful that the previous tribunal inspected the block in July 2003 before all the major works had been completed.

8.4 As the improvements were commenced prior to 1 October 2003 the costs are not relevant costs as defined in S18 of the 1985 Act and accordingly the consultation procedure under S20 was not applicable.

9. The section 20C Application – limitation of landlord's costs of the proceedings

9.1 An application has been made under s20C of the Act with regard to the landlord's costs incurred or to be incurred in connection with these proceedings and an order sought that those costs ought not be regarded as relevant costs in determining the amount of any service charge payable by the Applicant.

9.2 The application was withdrawn as Mr Frederick advised that there are no provisions in the lease which would allow the Respondent to add the costs to the service charge account.

The Schedule

Landlord and Tenant Act 1985

Section 20C(1) of the Act provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Section 20C(3) of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

Section 27A of the Act 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 27A(3) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance, or management of any specified description, a service charge would be payable for the costs and, if it would, as to

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable.
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

.....

Evelyn Flint

Chairman

October 2010