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Residential Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985, SECTION 27A

REF: LON/00BE/2010/0024

PROPERTY:	72, EDNAM HOUSE, FRIARY ESTATE, LONDON SE15 6SF
Applicant	London Borough of Southwark
Respondent	(1) Musa Mosobalaje Olaiwon (2) Adenike Taibatu Olaiwon
Date of Order of Transfer to the County Court:	5th January 2010
Date of oral pre-trial review	10th February 2010
Appearances	Ms. E Sorbjan (Litigation Officer) Mr. Z Nuaman (Director of Brodie Plant Goddard Limited Mr P. Robison (Apollo Contractor) Mr M. Fang (Acting Project Manager) Miss J. Dawn (Final Accounts Manager) Mr M Holland (Lift Inspector) For the Applicant Mr Olaiwon (in person) Mr M. Orey For the Respondent
Date of hearing	10th and 11th May 2010
Date of Decision	8th July 2010
Members of Tribunal	Mr S Shaw LLB (Hons) MCI Arb Mr H. Geddes RIBA MRTPI JP Mrs J. Clark JP

DECISION

Introduction

1. This case involves a claim by the London Borough of Southwark ("the Applicant") against Mr and Mrs Olaiwon ("the Respondents") in respect of 72, Ednam House, Friary Estate, London SE15 6SF ("the Property"). The claim originated in the Lambeth County Court and was transferred to this Tribunal by an Order dated 5 January 2010. The claim is for alleged arrears of service charges. The matter comes before the Tribunal for determination as to the reasonableness and payability of the alleged arrears pursuant to Section 27A of the Landlord & Tenant Act 1985 ("the Act").

2. The Applicant in the case had prepared a hearing bundle running to more than 630 pages and several other separate documents and spreadsheets were put before the Tribunal during the hearing of this case which took place on the 10th and 11th May 2010. The case commenced in the Lambeth County Court and involved a claim for alleged arrears of service charges running to a total of £17,819.99 which sum related to major works carried out on the Estate, of which the property forms part, during 2006 and 2007. However, by the time the matter came before the Tribunal, the accounts in respect of these works had been finalised and, as understood by the Tribunal, the total sum claimed by the Applicant against the Respondent amounted to £24,873.78, of which £1,000 has been paid, leaving a balance of £23,873.78. Initially, the Respondent, together with his assistant in the proceedings, namely Mr. M. Orey, submitted to the Tribunal that the Tribunal should only deal with the figure claimed in the County Court. There is no doubt that the Respondents were correct in formally

making this assertion, as this was the case conferred for the Tribunal to deal with. However it seemed to the Tribunal that there was a degree of artificiality in dealing with the figures mentioned in the County Court, since they were not finalised figures and the final account figures were now available for the Tribunal. Of course the Tribunal could have proceeded to deal with the matter on the basis of the original incomplete figures, which in all probability would have resulted in an application either to the County Court or to this Tribunal. In the event, both the Applicant and the Respondents agreed that it would be sensible to have a comprehensive finding in relation to this dispute and consented to the Tribunal dealing with the matter on the basis of the full figures now before the Tribunal.

3. As mentioned, this dispute arises because during the period 2006/2007 major works were carried out at the Friary Estate, which Estate forms part of the housing stock of the Applicant. The defects completion period ended on 19th October 2008. The final account for these works (the overall cost of which ran to nearly £7 million) was received in March 2010 and finalised accounts for the relevant leaseholders were prepared during April 2010.

4. Directions were given in this matter by the Tribunal on the 10th February 2010. Consequent upon those Directions, both parties prepared Statements of Case and the Respondents' Statement of Case appears at pages 12 and 13 in the bundle. Within that Statement of Case some generalised and some more specific challenges are made of the works and charges made.

5. By the time the matter came before the Tribunal, the Applicant had prepared, amongst other documents, two comprehensive spreadsheets. The first is headed "Final Account – Calculation Sheet" and sets out under a number of column headings the overall charges incurred during these major works. Only some of the works are re-chargeable to the Respondents under the terms of their lease; moreover, in several cases the full charges are not recoverable because the Respondents purchased the property pursuant to the Right to Buy Scheme under the Housing Act 1985. In accordance with the Section 125 Notice served at that time, and in particular in relation to Appendix B to that Notice, certain costs recoverable were capped in the figures set out in that Notice, subject to recoverable inflationary uplift.

6. The second spreadsheet is headed "Capital Works Recharged to Leaseholders – Draft Final Account". In that spreadsheet, all the rechargeable costs to these Respondents are drawn together and are itemised in such a way as to demonstrate how the sum of £22,943.84 is the total figure claimed against the Respondents. There is a separate item of £1,929.94 in respect of lift renewal and refurbishment, the invoice for which appears at page 379 in the bundle. It is the addition of these two sums (less the £1,000 paid) which results in the £23,873.78 claimed by the Applicant.

7. Accordingly, the manner in which the hearing proceeded, with the agreement of both parties, was that the Tribunal considered each of the constituent parts of these charges and heard evidence from both parties in respect of the challenged issues. It is proposed therefore to deal with the respective positions in relation

to the challenged charges and in each individual case to give the Tribunal's finding.

Inspection

8. During the morning of 10th May 2010, the members of the Tribunal visited the Estate and the property in order to carry out an inspection. Ednam House is a typical post-war 6 storey concrete framed, brick panel block which has recently been subject to some external envelope improvement works including to front entrance areas, access balcony security and lifts. The property is on the top floor at the west end of the building. The Tribunal was told that insulation of the roof and external walls remain as when the building was constructed.

The challenged works and costs

Windows

9. As part of the major works, new PCVu windows were installed at the property. The Respondents' position was that the windows at that time in this property were perfectly adequate. This view he said was endorsed by a Mrs Wallington, Investment Assetts Manager of the Respondent, who had inspected the property. However, the Respondents were advised that the omission of installation of replacement windows at his property would have only a minimal impact upon the overall cost, a percentage of which he would have to pay in any event under the terms of his lease. On this basis he agreed to the installation of the windows, although he told the Tribunal that he felt that his "arm was twisted".

10. It transpires that the account given by the Respondent is broadly correct, because the Applicant produced an email exchange involving Mrs Wallington and some other personnel. This shows that the Respondent did indeed in due course contact the Applicant's office and requested that his windows be replaced as part of the scheme. It was unclear whether at the time he gave this notification, it remained possible to proceed with the replacement, because it was at a late stage in the scheme. In the event, the replacement windows were installed.

11. The overall cost of the replacement windows came to £217,534.10. It is indeed correct on the arithmetic, that any savings which would have been made by failing to install new windows in the Respondent's property, would have been very minimal indeed. His proportion of the overall costs was $^{8}/_{420}$. Thus the replacement cost of his windows was just over £4,000. As calculated by the Tribunal, given the overall cost, the saving to the Respondent had his windows not been replaced would have been less than £100. On the basis of the evidence before the Tribunal, the decision to replace which came about with the consent of the Respondent in any event, seems perfectly reasonable.

12. The Respondent also had some complaints about the quality of the windows. He said that the old windows had good ventilation but that the newly installed windows did not have proper provision for ventilation, which brought about mould and condensation within the flat. The evidence from the Applicant in this case was that the windows were of standard design and specification and provided perfectly adequate ventilation. If there was mould growth or

condensation, then this was "a lifestyle issue". If this really were a problem with the design of the windows, the Applicant would have expected wide scale complaints throughout the Estate of a similar kind and this had not materialised.

13. As mentioned above, the Tribunal inspected the property, and also during the course of this Inspection could find nothing unusual or reprehensible in the state or design of the windows.

14. For the reasons indicated above, the Tribunal concluded that the charge made in respect of the windows was reasonable and that the quality of the windows was likewise of a reasonable standard. It is right to point out that the property is on the top floor and at one end of the building and consequently has four external surfaces (three walls and the roof). The insulation in the roof may not be of the highest quality and the age and nature of construction of the block is such as to suggest that there are poorly insulated external walls. These are liable to cause condensation which is in the nature of a defect in the design of the building rather than referable to these windows. No deduction is therefore made under this head of the service charges.

Lift

15. An argument was raised by or on behalf of the Respondent that the cost of the lift works was capped by the original Section 125 Notice and Appendix B. The figure given in that Notice for a repair/renewal of the lift is £1,600. In fact, as mentioned, the Respondent has been charged £1,929.94. This was the first head of challenge. The second complaint was that although the Respondent did

not dispute that the old lift was beyond its useful life, and therefore appropriate for replacement, nonetheless the new lift breaks down as often as the old lift. Effectively the Respondent argues that he is no better off with the new lift than he had been with the old one.

16. So far as the first complaint is concerned, Ms. Bourne of the Applicant referred the Tribunal to the rider at the foot of Appendix B indicating that inflation has been excluded from the figures given and that an inflationary uplift is recoverable under the Act and in accordance with the statutory instrument, the Housing (Right to Buy) (Service Charges) Order 1986. She showed the Tribunal the formula contained within that statutory instrument and the Tribunal is satisfied that the inflationary uplift is indeed recoverable under the legislation.

17. So far as the second complaint is concerned, the Tribunal heard evidence from Mr Mick Holland, who is the lift inspector for the property employed by the Applicant. He told the Tribunal that he had not received any major complaints from tenants or leaseholders with respect to the quality of the works. He said he had only had occasion to visit the property about three times this year and he cited a particular occasion when the lift had malfunctioned for a short while but that that was the result of an obstruction left by a cleaner, rather than any problem inherent in the lift. He opined that there had been fewer breakdowns since the new lifts were installed.

18. The Respondent called no supporting evidence in relation to his complaint about the lift. Miss Sorbjan obtained on the second day of the hearing some call out

records held by the Applicant in relation to the property and there appears to be no report from the Respondent with a complaint in relation to the lift since the works were carried out.

19. On the balance of the evidence before the Tribunal, the charge made appeared reasonable and there was insufficient evidence to suggest that the lift was not functioning anything other than normally. No deduction is made under this head.

The issue of damp

20. Some roof works were carried out at the property and these are identified at page 339 in the bundle on the relevant page of the final account. The Respondent's case was that whilst he did not challenge that the work required to be carried out (indeed there was evidence of historical water staining on the ceiling and some of the walls of his property), the work would not have been necessary had there been cyclical maintenance of a proper kind previously. To some extent this position had to be accepted by the Applicant because they had very properly disclosed a letter appearing at page 343 in the bundle dated 22nd November 2007 from Mr John Plant to Apollo (the main contractor carrying out the works). That letter contains the following passage:

> *"The existing roofs were specified for patch repairs following earlier recovering in 1995-97 but the extent of poor workmanship was not revealed until preparation for repairs in June 2006. At that time LBS discovered that Permanite had issued a 15-year guarantee for these roofs and we were instructed to contact them with regard to the work needed.*
>
> *Following inspections by Permanite and protracted correspondence, it was decided that the lack of proper maintenance by LBS since 1997 would prevent a successful claim under the guarantee.*

Permanite agreed that they would honour the remaining 5 years of the guarantees if necessary repairs were carried out by Apollo."

21. It therefore seems to the Tribunal, on the evidence before it, that the overall repair of the asphalt to the main roof as agreed with Permanite for the purposes of the guarantee, was work that could have been avoided had there been proper maintenance during the period preceding these works. The Tribunal therefore accedes to the Respondent's criticism in this regard and takes the view that this cost was not reasonable for the purposes of the Act and that the sum referable to it, which appears to be £12,142.80 (see page 339) should be omitted from the overall account. The Applicant should carry out the appropriate calculations in order to determine such reduction in the service charge as may result to the Respondent in this regard.

External Decorations

22. The main part of these costs amounted to £31,493.42 which the Respondent told the Tribunal he did not essentially challenge. However he did challenge what appeared to him to be excessive costs of the artwork which had been commissioned by the Applicant in order to decorate the exterior of the building. The Tribunal saw this decoration on its inspection and it comprised the mounting of certain historic photographs, suitably enhanced, of Old Peckham. The particular costs attributable to this artwork are set out on the 5th page of the supplementary document produced by the Applicant at the hearing and headed "Specialist Sub-Contract Accounts – Final Account". The part of the costs referable and charged to the Respondent is £15,973.95 (or his contribution thereto). The Tribunal has considered the manner in which that sum has been

calculated in the final account and while it may be at the upper end of the scale of reasonableness, the Tribunal does not consider it be excessive. It is not unreasonable to try to beautify the building in an appropriate way and if the cost is considered (particularly as part of it relates to coloured STO render), it is really not unreasonable. Even if the Tribunal had been inclined to make an adjustment of this sum (which it is not inclined to do), the impact once the figure is deducted upon the overall proportion payable by the Respondent would have been minimal. This complaint is rejected.

Structural Work

23. The particular challenge under this head was not entirely clearly articulated on behalf of the Respondent as it appeared to be firstly that this being structural work, it was the landlord's obligation and not a liability of the Respondent leaseholder. Secondly, it was said in somewhat generalised way, that the costs were too high.

24. As pointed out by the Applicant, the Applicant has an obligation under clause 4(2) – 4(4) of the lease "to keep in repair the structure and exterior of the flat and of the building ..." The costs incurred in so doing are recuperable by way of service charge under paragraph 7 of the Third Schedule to the lease. The Tribunal is satisfied in this regard. As for the more generalised complaint about the high level of the costs of the structural work, the allegation was relatively unspecific and was not supported by any alternative evidence. Moreover, upon scrutiny by the Tribunal, these costs although high, are not

outside the scale one would have expected, given the scope of the works as described in the specification. No deduction is made under this head.

25. There were in addition some queries about the cost of work under the heading "General Works" The Respondent's main points under this head appear to be that he was charged for some external paving whereas in fact the area concerned had been tarmaced rather than paved. It appeared that this was not in dispute and that the term had been used in relation to the tarmac work which had been carried out rather than any other alleged external paving. Having examined the matter, the Tribunal is satisfied that the charge raised and included in the overall costing refers to the tarmac work carried out and that there has been no double counting for paving work which did not in fact take place.

26. In concluding the case for the Respondent Mr Orey (who himself had been involved in earlier proceedings brought by this Applicant) produced his own schedule to demonstrate that the costs now charged exceeded that permissible in the light of Appendix B to the original section 125 Notice. However, it appeared to the Tribunal that Mr Orey had not applied the permissible inflationary uplift to the figures prepared and the Tribunal was satisfied that Miss Dawn on behalf of the Applicant had correctly made the calculation of the appropriate rechargeable cost. It should be pointed out that although the sum remaining is on any view high, it nonetheless has resulted in a saving for the Respondent of the true cost which shows on the second of the two spreadsheets which are referred to above and resulted in a loss overall to the Applicant of £9,738.22. A further point made by Mr Orey was that there had been a delay in

producing the final account which offended against Section 152 of the Commonhold & Leasehold Reform Act 2002. Miss Sorjban on behalf of the Applicant informed the Tribunal that that provision is not yet in force and in any event given that the final account was only received in March 2010, the presentation of the sum due to the leaseholders in the following months had been achieved very quickly. She also pointed out that time is not of the essence under the lease and that the account had to be produced *"as soon as practicable after the end of each year ..."* (See clause 4(1) of the lease at page 65). This had been achieved. She also drew the attention of the Tribunal to the warning contained in the Section 125 Notice concerning the permissible inflationary uplift and submitted that given that solicitors were acting for the Respondents at the time she would have expected them to have been advised in this regard. She duly pointed out that when the Respondents had exercised their right to buy they had entered into the transaction notionally with eyes open, forewarned of the fact that there were defects in the property which were liable to bring about in the future a service charge cost as stipulated in the notice of £22,775.49 plus inflation. Therefore, she submitted, that the bill which had now been presented could not reasonably be suggested to have come as a great surprise and should have been factored into the price paid for the property by the Respondents.

27. The Tribunal was satisfied that the points made by the Applicant in relation to the Section 125 Notice sound, for the reasons advanced on its behalf as above.

Conclusions

28. For the reasons set out above, the Tribunal is satisfied that the claim made by the Applicant in this case is reasonable subject to the deduction of the costs of the works referable to the overhaul of the roof amounting to £12,142.80. The sum due from the Respondents should be recalculated after deduction of that sum from the overall cost. The remaining sum due from the Respondents will remain very substantial. In these circumstances, although the Tribunal has no powers in this regard, the Applicant may consider it appropriate to reinstate the offer of interest free instalment payments in relation to this sum, or some other payment plan or strategy to enable the Respondents to discharge such a high indebtedness.

29. The Applicant applied for a refund of the hearing fee of £150 incurred in this case. Part of the complaint of the Respondent that there had been a lack of "transparency" in this case on the part of the Applicant. Whilst the Tribunal is not satisfied that this is the case, some of the billing arrangements are it seems to the Tribunal, indeed confusing and not always explained in an itemised way so as to be intelligible to leaseholders. It is recognised that on a major project of this kind the calculation of the costs is complicated. The two spreadsheets prepared by Miss Dawn clarified the issues considerably for the benefit of the Tribunal, but these documents would not have been available to the Respondents. Given all the circumstances and the fact that at least, albeit a modest reduction of the charge has been made as a result of the reference to the Tribunal, the Tribunal does not think that any further order for costs is appropriate in this case and no such order is made.

Legal Chairman: S. Shaw

Dated: 8th July 2010