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HM Courts & Tribunals Service

Residential Property Tribunal Service

LONDON RENT ASSESSMENT PANEL

# DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

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| **Case Reference:** | LON/00AP/LSC/2011/0815 |
| **Premises:** | 67 Arundel Court, Lansdowne Road, London N17 0LR |
| **Applicant:** | London Borough of Haringey |
| **Representative:** | Ms C Awoloto, Senior Legal Assistant |
| **Respondent:** | Miss ME Tapping |
| **Date of hearing:** | 22nd June 2012 |
| **Appearance for Applicant:** | Ms C Awoloto<br>Mr M Bester, Major Works Lead Officer<br>Mr G Clarke, Project Manager, Homes for Haringey |
| **Appearance for Respondent:** | In person |
| **Leasehold Valuation Tribunal:** | Mr NK Nicol<br>Mr P Roberts DipArch RIBA<br>Mr A Ring |
| **Date of decision:** | 22nd June 2012 |

## Decisions of the Tribunal

(1) The Tribunal determines that the sum of £3,266.74 is payable by the Respondent in respect of the service charges for the relevant major works.

(2) The Respondent must reimburse the Applicant for the hearing fee of £150 in accordance with Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.

(3) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Edmonton County Court.

## The application

1. The Applicant seeks a determination under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of major works completed in 2010. The relevant legal provisions are set out in the Appendix to this decision.

2. Proceedings were originally issued in the Northampton County Court under claim no. 1QT 73830. The claim was transferred to the Edmonton County Court and then in turn transferred to this Tribunal by order of District Judge Silverman on 18th November 2011.

3. On 20th December 2011 both parties attended the pre-trial review at which the usual directions were made for an exchange of statements of case. The subsequent directions order notified the parties that the hearing would take place on 26th April 2012. That was adjourned to 22nd June 2012 due to the Respondent being ill and she was given further time to serve her statement of case.

4. Unfortunately, the Respondent did not file or serve any statement of case, despite the extra time she had been given. She told the Tribunal that she had been sick some of the time and otherwise could not find affordable legal advice. However, she made no attempt to contact either the Applicant or the Tribunal to inform them of her difficulties and perhaps find out what she should do. In the event, the Applicant did not object to her raising the issues considered below.

## The works

5. At the hearing on 22nd June 2012 the Tribunal heard evidence from Mr Graham Clarke, Project Manager for Homes for Haringey, and Mr M Bester, Major Works Lead Officer, on behalf of the Applicant and from the Respondent herself. The following narrative is taken from that evidence and the bundle of documents compiled by the Applicant.

6. The Applicant is the freeholder and the Respondent is the lessee of a first-floor flat in a three-storey purpose-built block which is one of five very similar blocks on an estate. The Respondent's lease contains the usual covenants requiring the Applicant to maintain the property and the Respondent to pay a service charge in respect of such maintenance and other services. The Fourth Schedule specifies how the costs are to be apportioned and effectively requires the Respondent to pay one-sixth of the costs incurred in relation to her block.

7. In or about 2010 John Rowan & Partners surveyed the estate on behalf of the Applicant. They recommended various maintenance works including replacing fascia, soffits, cladding and rainwater goods, repairing various pram sheds which were part of the estate and re-decorating the internal communal areas using fire-rated paint. Mr Clarke followed that up by examining more closely some of the fascias and soffits with the use of a cherry-picker and found areas of rot to gutter-boards and some roof trusses.

8. By letter dated 20th July 2010 the Applicant sought to notify all lessees of their intention to carry out the works in accordance with the consultation requirements under s.20 of the 1985 Act. The Respondent did not respond but also does not recall having received this letter, although she believes it coincided with an extensive period of illness.

9. The letter stated that the Applicant would be using Lovells as a contractor, with whom they already had a long-term agreement, at a total estate cost, including fees, of £210,010.12.

10. In the event, works started on 20th September 2010 and were completed on 17th December 2010. The Final Account Statement was issued on 15th April 2011 for a final account value of £211,518.18.

11. By letter dated 22nd October 2010 the Applicant invoiced the Respondent for her estimated contribution of £3,633.63. They also sent a Final Reminder on 7th December 2010. She did not pay any part of the charge and the county court proceedings were issued on 14th July 2011.

12. As a result of queries raised by the judge at the county court, the Applicant realised they had wrongly calculated the Respondent's service charge. On applying the correct apportionment, they notified the Respondent by e-mail dated 12th December 2011 that the correct sum was £3,266.74. They also invited her to pay the sum off at a rate of £75 per month which she had mentioned at court she could pay. She now says she cannot afford this and so this offer was not taken up.

## The issues

13. The Respondent's principal objection to the service charge is that she cannot afford it. Unfortunately, as the Tribunal explained to her, this is not something the Tribunal can consider. Otherwise, she sought to raise the following points:-

a) She queried whether the charges had been apportioned properly. In particular, the formula required for apportionment under the lease included using a multiplier made up of the number of bedrooms plus one. She had misunderstood that to mean that the Applicant thought she had three bedrooms. The Applicant admitted that, as well as the error referred to in paragraph 12 above, they had wrongly apportioned the cost of the works to the pram sheds as if they were a block cost rather than an estate cost. However, this had resulted in an under-charge for the Respondent on those costs and the Applicant conceded that they would not chase her for the balance. The Tribunal is satisfied that, otherwise, the final charge of £3,266.74 has been correctly apportioned in accordance with the lease.

b) As far as the Respondent could see, the cost of the works could not be justified. In particular, she thought that the interior areas had had a coat of paint and the flat doors had been re-decorated but that was it. Mr Clarke explained that the painting was special fire-resistant paint applied by a trained operative and detailed the works done to the fascia, soffits and cladding around the main roof and the flat staircase roof and to the pram sheds. Despite not challenging this evidence, the Respondent maintained that, because she could not see this work, she could not be sure it had been done. The Tribunal could not accept this approach. On any sensible view, the evidence established conclusively that substantial work had been done despite the Respondent's inability to see it from her vantage point inside her flat or from ground level outside.

c) The Respondent demanded evidence that the contractor had actually been paid. The Applicant duly produced the aforementioned Final Account Statement and pointed to the rest of the evidence establishing the facts set out above which indicated that such payment had been made.

d) Mr Clarke said that the fascia, soffits and cladding were accessed mostly by cherry-pickers with scaffolding being used in a minority of areas which were more difficult to access. The Respondent challenged this, saying that scaffolding was erected on both sides of her flat and remained for lengthy periods when no work was going on. According to the breakdown of the block costs for the final account, the charge for access provided by the cherry-pickers and the scaffolding was a total of £544.51. This is a modest sum which the Tribunal considers reasonable even if the Respondent is correct.

14. The Respondent had raised what she termed a Counterclaim in the county court but the Tribunal's directions had remitted that to the county court. Therefore, it has not been considered in this determination.

15. The Tribunal is satisfied that the Respondent has no justifiable objection to the service charge sought by the Applicant in respect of the major works described above.

**Refund of fees**

16. The Applicant's bundle included an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the hearing fee of £150. The Tribunal is satisfied that the Respondent could and should have properly engaged with these proceedings and with the Applicant but instead kept entirely quiet while failing to comply with the directions. The Respondent had no proper objection to the service charge and the hearing could have been avoided if she had made admissions instead of allowing it to proceed. Her queries about the service charge were understandable in the light of her lack of means but she could and should have raised them far earlier, even before the county court proceedings were issued but she did not. Difficulties in obtaining advice excuse some delay but not the degree of lack of action involved here. In the circumstances, the Tribunal is satisfied that the Respondent should reimburse the Applicant for the hearing fee of £150.

**The next steps**

17. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Edmonton County Court.

Chairman: N.K. Nicol

NK Nicol

Date: 22nd June 2012

# Appendix of relevant legislation

## Landlord and Tenant Act 1985

### Section 18

(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, 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.

(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.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

### Section 19

(1) 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 provisions 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.

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

### Section 27A

(1) 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also 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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the Tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

**Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

**Regulation 9**

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).