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Case reference: LON/00AM/LSC/2013/0022

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

Property:	**71, Hemsworth Court, Hobbs Place Estate, London N1 5LE**
Applicant:	Adrian Jorge Sanchez
Respondent:	The London Borough of Hackney
Date heard:	13 May 2013
Appearances:	Terence Brown for the applicant The applicant Jonathan Newman, counsel, instructed by the respondent's legal department, for the respondent
Tribunal:	Margaret Wilson Luis Jarero BSc FRICS Leslie Packer

Date of the tribunal's decision: 14 May 2013

Background

1. This is an application by Adrian Sanchez, the leaseholder ("the tenant") of Flat 71 Hemsworth Court, under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine his liability to pay service charges to the landlord, the London Borough of Hackney, for the years 2010/2011 and 2011/2012.

2. Hemsworth Court is a four storey purpose-built block of flats on an estate comprising 175 dwellings which is owned by the landlord and occupied by periodic tenants of the landlord and by leaseholders who have purchased their leases under the Right-to-Buy scheme or their successors in title. Flat 71 is a one-bedroomed flat on the third floor of the block. The block, which is known as 50 - 73 Hemsworth Court, comprises 24 flats. The tenant purchased his lease in August 1994 and is one of four long leaseholders in the block.

3. The application was considered at a hearing on 13 May 2013 at which the tenant was represented by Terence Brown and the landlord was represented by Jonathan Newman, counsel, who called Nadia Nortey, a Major Works Officer employed by Hackney Homes, the landlord's agent, and Deborah Dade, a Client Officer employed by Hackney Homes, to give evidence.

4. Mr Brown said that the application had been made largely because of the landlord's failure to supply the tenant with relevant information. He said that in the light of the material which the landlord has supplied for the purpose of the present proceedings the matters which the tenant wished to raise were limited to the following:

i. a charge to him of £952.47 invoiced on 4 February 2011 in respect of the installation of a door entry system to his block which was carried out between July and August 2009 under a qualifying long term agreement ("QLTA"); and

ii. a charge to him of £13,423.40, £13,368.03 of which was invoiced on an interim basis on 20 January 2012 and the balance on 31 January 2013, in respect of external works to the block carried out between December 2011 and May 2012, also under a QLTA.

5. Mr Brown said that, while the tenant no longer challenged any of the routine service charges (ie those for other than major works) he wished to be shown a list of the tasks which the cleaners were supposed to carry out and was concerned because a record of the cleaners' visits was no longer available in the block. Helen Lockhart, Team Leader, Service Charge Accounts, with Hackney Homes, who was present at the hearing, agreed to do her best to see that those requests were met.

The relevant law

6. Section 27A of the Act provides that an application may be made to the tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A "service charge" is defined by section 18(1) of the Act as *"an amount payable by the 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*". Relevant costs are defined by section 18(2) and (3). By 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 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".* By section 19(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 of subsequent charges or otherwise".*

The Issues

The door entry system

7. Until the works which are the subject of this dispute were carried out, the block, and the other blocks on the estate, did not possess a door entry system. The issues which the tenant raised in respect of this charge were whether the cost of providing a door entry system was recoverable under his lease, whether the procurement process was carried out correctly, and whether the landlord was entitled to make an "administration charge" of 10% of the cost of the works.

8. The ninth schedule to the tenant's lease lists the landlord's covenants to be observed at the tenant's expense. The final paragraph, paragraph 6, of the schedule provides:

> *To carry out all such other works in respect of the block or the estate as are in the reasonable opinion of the [landlord] necessary for its proper maintenance and management including works of improvement*

9. In our view this paragraph clearly covers the provision of a door entry system, provided that the provision was reasonable.

10. Notice of intention to carry out the works was given to the tenant on 12 March 2009. It included (see page 118 of the hearing bundle) *In response to resident requests, police reports* [sic] *it has been decided to install a controlled door entry system. This will improve block security and help prevent anti-social behaviour ie drug dealing, rough sleepers and prostitution.* The tenant made no observations on the notice because he was abroad at the time. Mr Brown said on his behalf that it was not accepted that the provision of a door entry system was reasonable. He said that there had been a problem with anti-social behaviour, whether drug dealing, rough sleepers, prostitution or otherwise, that no discussion had taken place with the residents to discover whether a door entry system was necessary, and that he did not

consider that it was necessary. Mr Brown said that it was accepted that the system provided "a modicum of security", but not, he said, a fully effective one because there had recently been a burglary in the block. He said that that anyone could gain entry to the block if he wished by pressing a bell, because a resident would be likely to open the door for him whether or not his entry to the block was intended to be lawful.

11. Ms Nortey gave evidence that meetings had been held by the Mayor of Hackney for the residents of social housing in the borough to explain their housing needs, and improved security had been identified as one of their requirements. She said that, while there was not a particular problem of anti-social behaviour in the block, the decision to install the door entry system would have been taken to prevent such problems arising. Mr Newman referred us to the report relating to the block provided to the landlord by an independent surveyor, Andrew Martin, dated 4 April 2008, (at page 188 of the hearing bundle) which included *We recommend that a security door and door entry system be installed to the stairwell serving the upper floor units.* Mr Newman submitted that the provision was an improvement, and a reasonable one, and that it fell within paragraph 6 of the ninth schedule to the lease.

12. We are quite satisfied that the landlord's decision to install a door entry system was a reasonable one and that the work fell within paragraph 6 of the ninth schedule. None of the leaseholders had questioned the proposal to install the system when the statutory consultation was carried out. Clearly the system will never prevent all unauthorised entry, but it should assist in reducing it. There is no suggestion that the cost and standard of the work was unreasonable, and we accept that the cost of the work was reasonably incurred.

13. The cost included a 10% charge, described as an "administration charge", which the tenant challenged on the basis that it was arbitrary in amount and could not be demonstrated to be related to the landlord's, or its agent's, actual costs of administering the works. He accepted that the landlord was entitled under the lease to charge a reasonable amount for such

work but considered that it should be related to the actual work involved and should in any event be no more than 5% of the cost of the works.

14. In its statement of case (at page 43 of the bundle) the landlord said that the charge was an administration charge within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. That is clearly incorrect. The charge, though referred to as an administration charge, was in fact a service charge within the meaning of section 18 of the Act.

15. In her witness statement (at page 167 of the hearing bundle) Ms Nortey listed some of the items of work which were covered by the charge, and expanded on the list in her oral evidence. She said that other social landlords charged 10% or more for administering major works projects, and that 10% was a reasonable estimate of the cost of all the work, including supporting services such as accountancy and computer services, which was required. She said that, in reality, the costs of administration probably exceeded 10% of the cost of the works.

16. We are satisfied that 10% of the cost of the works is a reasonable amount to charge for administration. It is, to our knowledge, a fairly standard, and not excessive, amount for the work involved in consultation, answering questions from leaseholders, and submitting invoices, as well as the myriad of other tasks which administration requires. It would simply not be practicable for a landlord, particularly a large social landlord, to demonstrate precisely how much was spent on each of the relevant tasks for each individual project.

17. The tenant did not in the end pursue any challenge to the procurement process for the works. It was perhaps unfortunate and confusing that an earlier notice of proposal to carry out similar works (described, inaccurately, as "renewal of existing door entry systems") had been sent to the tenant in June 2004 (at page 101 of the hearing bundle), but that notice was later withdrawn, and we can find no flaw in the consultation or procurement processes relating to the works which subsequently took place.

18. Accordingly we are satisfied that this charge was reasonably incurred by the landlord and is payable by the tenant.

The refurbishment works

19. The background is that in July 2006 the landlord gave notice of its intention to enter into a QLTA for the purpose of carrying out maintenance to the estate (notice of intention at page 110 of the hearing bundle) and subsequently entered into such an agreement, in pursuance of which it obtained the independent survey from Mr Martin to which reference has been made, and a roof survey (at page 191 of the hearing bundle). On 21 January 2010 it gave notice of its intention to carry out works to the block at an estimated total cost of £156,860.06, excluding fees, and an estimated cost to the tenant of £7506.18 including fees (see page 127 of the hearing bundle), the landlord's intention at that time being to instruct Lovell, one of the contractors which were parties to the QLTA. Subsequently it was found that there were insufficient funds to carry out the works, and the notice was withdrawn. The period of the QLTA with Lovell was at that time due shortly to expire.

20. On 7 May 2010 the landlord gave notice of its intention to enter into a further QLTA, and on about 30 July 2010 it entered into such an agreement with Lakehouse Contracts Ltd and two other contractors (contract award notice at page 150 of the hearing bundle).

21. On 10 November 2011 the landlord gave another notice of its intention to carry out major works to the block (notice at page 136 of the hearing bundle) under the QLTA with, among others, Lakehouse. The estimated cost of the works to the block was, according to the notice, now £285,346.92 plus professional fees of 6% and an administration charge of 10% (see page 138). The works (listed on page 138) were carried out by Lakehouse. They began on 12 December 2011 and were completed on 30 May 2012. An interim invoice for the estimated final cost in the sum of £13,368.03, including fees,

was sent to the tenant on 25 January 2012 (at page 52 of the hearing bundle), and a final invoice for an additional £55.37 (at page 58 of the hearing bundle) was sent to him on 31 January 2013.

22. The tenant's main complaint was that the cost of the works regarded as necessary in January 2010 and the subject of the notice dated 21 January 2010 had so greatly and, in his view, inexplicably, increased by the time of the second notice of intention to carry out the works dated 10 November 2011. Mr Brown submitted that the reason for the significant increase was likely to have been lack of monitoring and control by the landlord, and he referred us to a letter (at page 254 of the hearing bundle) dated 28 December 2012 from Gareth Lewis, Major Works Team Leader, to the tenant, in response to a letter from the tenant enquiring precisely what work was carried out, which included (at page 255) " We will be able to confirm the details of the roof renewal once the final account is received. There is little reason to believe the roof was not worked on to the degree listed in the estimate and bill you received. ... Until the final account is received, this department cannot confirm individual works as being completed". Mr Brown said that that letter was unhelpful.

23. Jeffrey Collyer, the landlord's project manager, had provided a witness statement but was unfortunately not available to give evidence. In his stead Deborah Dade, the landlord's Client Officer, gave evidence. She works in the same department as Mr Collyer, the function of which includes the overseeing of major works programmes. She said that the works carried out to the block were closely monitored by a clerk of works who was on the site every day and signed off each element of the works as it was completed and reported to her department. She said that her department also had a presence on or near the site and liaised with residents and with the contractor, and that Lakehouse also had a dedicated team at the site. She said that Bauder inspected the roof when to works to it were complete and issued its guarantee because it was satisfied with the standard. She said that she was confident that only works which were necessary were carried out.

24. Asked to explain why the estimated cost of the works had risen so substantially between January 2010 and November 2011, Ms Dade said that the works carried out by Lakehouse were significantly more extensive than those which were the subject of the notice of intention given in January 2010. They included much more extensive brickwork repairs (£653.09 in January 2010 and £8742.24 in November 2011), concrete repairs (nil in January 2010 and £20,845.78 in November 2011), external decorations (nil, save for £411.70 for clearing pigeon-infested areas in January 2010 and £11,384.41 in November 2011), metalwork repairs (nil in January 2010 and £34,144.10 in November 2011), and a personal charge to the tenant for works referable to his flat (£405.28 in January 2010 and £2798.76 in November 2011). In addition, the notice given in January 2010 provided £4385.27 for works to tenanted properties, not chargeable to leaseholders, and the equivalent sum in the notice dated November 2011 was £66,693.65, together with £7868.06 for window repairs and other items to tenanted properties, not charged to leaseholders. She demonstrated that the works to the roof were in fact slightly cheaper in the second estimate than in the first notice.

25. We accept Ms Dade's evidence and are satisfied, on balance, that the additional works were carried out and were necessary and properly supervised. The works to tenanted properties, for which the tenant was, of course, not charged, in themselves go a long way to explain the difference between the cost of the earlier proposed works and that of the later works. While it is, we accept, always possible that works were charged for but not done, that has not been established. Again, we observe that none of the leaseholders made any observations in respect of the proposed works. In the circumstances we are satisfied that the cost of the works was reasonably incurred. For the reasons given above we are also satisfied that the administration charges were reasonably incurred. No challenge was made to the professional fees.

Costs

26. Mr Newman said that the landlord proposed to place its reasonable costs of these proceedings on the service charges of the leaseholders of flats in the block, so that each of the four leaseholders will be asked to pay one twenty-fourth of the landlord's reasonable costs as a service charge. We are satisfied that the lease permits it to do so. Mr Brown asked us to make an order under section 20C of the Act to prevent the landlord from placing any of its costs of the proceedings on any service charge. We are entitled to make such order as is just and equitable in the circumstances, only one of which is the outcome of the case.

27. We have come to the conclusion that it is just and equitable to order under section 20C that the landlord may treat no more than half its reasonable costs as relevant costs for the purpose of the service charges. While the tenant's challenges have not been successful, we accept Mr Brown's submission that the tenant made great, and for a considerable time, unsuccessful attempts to obtain relevant information from the landlord, and we also take the view that it was unwise for the landlord to have raised the hopes of the tenant, and, no doubt, of other leaseholders, by serving a notice of intention in January 2010 which appears not to have been comprehensive. For these reasons we make the order we have indicated.

CHAIRMAN.....

DATE: 14 May 2013