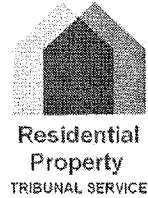




HM Courts
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LONDON LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00BJ/LSC/2012/0593

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

Applicant: Mr Nigel Andrew Taylor
Respondent: London Borough of Wandsworth
Property: 8 Stapleford Close, London, SW19 6TG
Date of Hearing: 4 March 2013
Reconvene: 26 March 2013

Appearances

Applicant

Mr Taylor Leaseholder

Respondent

Mr J Holbrook Counsel
Mr S Kiely Solicitor
Ms V Asafu-Agyei Senior Estate Manager
Ms S Morrison Project controller
Mrs E Parrette Leasehold Services Manager

Leasehold Valuation Tribunal

Mr I Mohabir LLB (Hons)
Mr F Coffey FRICS
Mrs S Justice BSc

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of the reasonableness of actual service charges claimed by the Respondent for the years 2010/11 and 2011/12.
2. The Applicant is the leasehold owner of the subject property pursuant to a lease dated 23 August 1999 granted by the Respondent to (1) Antonio Manuel Gomes Germano and (2) Paula Fracinete Angelin De Lima for a term of 125 years from the same date (“the lease”). The Applicant took an assignment of the lease on 23 November 2007.
3. The service charges in issue are:
 - (a) the block cost of major works completed in 2010 totalling £141,114.45, of which the Applicant contribution is £4,463. These works concerned cyclical repairs and external redecorations. The heads of expenditure challenged by the Applicant are dealt with below by reference to the Scott Schedule that had, helpfully, been prepared by Counsel for the Respondent.
 - (b) annual service charge costs for 2011/12, of which the Applicant’s contribution is £277.57. However, at the hearing, the Applicant withdrew his challenge in relation to these costs.
4. The Applicant did not challenge his contractual liability to pay the service charges in issue. It is, therefore, not necessary to set out the relevant terms of his lease that give rise to his service charge liability. The only challenge made by the Applicant was the reasonableness of the costs.

The Law

5. The substantive law in relation to the determination regarding the service charges can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

"(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."

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges. Where the reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

Decision

6. The hearing in this matter took place on 4 March 2013 following the Tribunal's inspection of the Applicant's premises and the block generally. The Applicant appeared in person. The Respondent was represented by Mr Holbrook of Counsel.

Metal Framed Windows Overhaul

(a) Inadequate Consultation & Need to Replace Windows

7. The Applicant accepted that the Respondent had validly carried out statutory consultation under section 20 of the Act. His complaint was that it had failed to carry out further and continued informal consultation with him, for example, his wish to have his windows replaced, as opposed to having them repaired. The Tribunal ruled that these matters did not fall within its jurisdiction in this matter.

(b) Built-In Vents Not Replaced

8. The Applicant asserted that the 'trickle vents' on the windows in his flat that had been overhauled had not been replaced. Consequently, this had contributed to the condensation problem he has now, which in turn had caused rotting to some of the window sills.

9. It was accepted by the Respondent that the replacement of the window vents had been specified. However, Mr Holbrook submitted that the Applicant had produced no evidence that the lack of the vents had caused the disrepair he complained of. There was no evidence of condensation at the time of the inspection. He further submitted that the disrepair was a recent problem and nothing to do with the original works. This could be dealt with by the Respondent as a responsive repair.
10. Having regard to paragraph 2.06 of the specification of works¹, it was clear that the replacement of the window vents had been specified at an estimated cost of £2,700, for which the Applicant had been charged. It was also clear that the actual cost claimed by the Respondent remained the same². The Tribunal was bound to conclude that this expenditure had not been incurred and was disallowed. Therefore, the Applicant's contribution at a rate of 2.911% of this cost should be credited to his service charge account.
11. The Applicant's arguments about the absence of the window vents leading to condensation and disrepair are not relevant considerations in this matter. In any event, the Applicant had not provided any evidence in support. Furthermore, if his assertion is correct, it may give rise to a potential claim in the County Court in damages for disrepair against the Respondent.

Sealed Units Replaced

12. The Applicant had contended that the sealed glass window units that had been replaced had been done badly with sealant smeared around the glass. This was admitted by the Respondent and it had paid the sum of £300 to the Applicant by way of compensation. This was accepted by the Applicant, but only in satisfaction of the failure to carry out the work to a reasonable standard. He expressly reserved his position to pursue his additional claim for set off dealt with below.

¹ page 60 of the bundle

² page 101 of the bundle

Stairwell Windows

13. In his statement of case, the Applicant had contended that some of stairwell windows had been broken when the scaffolding had been removed and had been repaired in a temporary manner. The Respondent agreed to investigate this matter and carry out any necessary work at no cost to the Applicant.
14. The Applicant also complained that, over the years, broken windows in the stairwell had been replaced with different types of glass that did not match. The Tribunal ruled that it did not have jurisdiction to deal with this matter because it did not form part of the major works and was not, therefore, part of the overall cost claimed from the Applicant.

Previously Painted Timber, Metalwork & Stained Timber

15. These works were carried out to the communal areas of the block. The Applicant said that his complaint only related to the painting to the metalwork, which had not been carried out to a reasonable standard because it was already peeling and flaking. In reply, the Respondent submitted that the work had been carried out nearly 3 years previously and a certain amount of “wear and tear” was to be expected.
16. Having had the benefit of an inspection, the Tribunal accepted that the criticisms made by the Applicant about the standard of the painting of the metalwork generally were valid. It was clear that any loose or flaking paint or previous layers of paint had not been removed prior to the work commencing. This had in turn led to the obvious deterioration of the paintwork in the relatively short intervening period of time since the work had been completed.
17. The Tribunal, therefore, found that the painting of the metalwork had not been completed to a reasonable standard. It appears that the cost of this work was £3314 and to reflect the Tribunal’s finding, this entire amount was disallowed. Consequently, a credit of £96.47 should be applied to the Applicant’s service charge account.

Entry Panels & Water Penetration to Stairwell

18. The Applicant had complained that the surface of the entry panels were scratched and covered in graffiti and that the stairwell floods when it rains. The Tribunal ruled that it did not have jurisdiction to deal with these matters because it did not form part of the major works and was not, therefore, part of the overall cost claimed from the Applicant.

Pigeon Deterrent

19. The majority of this work concerned the installation of netting to the rear of the block to prevent pigeons from roosting on various parts of the building. The Applicant's main complaint was that the design of the netting was flawed because it ended on the second floor of the block and had been secured with silicon to the fabric of the building. This had resulted in domestic rubbish collecting in the netting, which proved difficult to clear.
20. However, at the time of the hearing, it seems that the layout of the netting had been amended to lower it to a level that permitted and any debris to be more easily cleared. The Applicant's remaining concern was the insecure method used to attach the netting to the building.
21. On inspection, the Tribunal noted that the netting had in fact been secured to the fabric of the building using silicon³. The Tribunal found this was an inappropriate way of doing so. Screws or some other similar means should have been used to secure the netting. The Tribunal also noted that, in places, the netting had become detached from the building. In its judgement, this problem was progressive and would only worsen over time. For this reason, it found the standard of the work to be unreasonable and disallowed the entire cost of £1,200 for the installation of the netting. A credit of £34.93 should be applied to the Applicant's service charge account for this item.
22. The Applicant had also complained that recent scaffolding had caused an increase in pigeon guano. In addition, defective pigeon wires had not been

³ see page 74 at para 12.03

replaced with new ones. The Tribunal ruled that it did not have jurisdiction to deal with these matters because it did not form part of the major works and was not, therefore, part of the overall cost claimed from the Applicant.

Government Work, Cavity Wall Insulation

23. The Applicant contended that cavity wall insulation should have been carried out using the scaffolding used for the major works. The Respondent confirmed that the Applicant did not have to pay for the additional scaffolding and on this basis he, therefore, withdrew this challenge.

Set Off

24. The Applicant had sought to include a claim for set off, being the cost to him of having to take time off work and other incidental costs he had incurred in having to deal with the deficiencies he found in the major works. However, the Tribunal ruled that it did not have jurisdiction to deal with this claim and, if necessary, it should be pursued in the County Court.

Section 20C & Fees

25. The Tribunal then considered the application made by the Applicant under section 20C of the Act. The Respondent conceded that any costs it may have incurred in responding to this application were not recoverable because the lease did not permit this. Accordingly, it was not necessary for the Tribunal to make any order in relation to the section 20C application.
26. The Tribunal then turned to consider whether the Respondent should be required to reimburse all or part of the fees paid by the Applicant to have this application issued and heard.
27. The Applicant had achieved success on a number of the issues raised in the substantive application. It was satisfied that the number of issues on which a finding was made against the Respondent and the concessions and admissions it had made would not have come to light unless this application had been brought. The Tribunal was satisfied that the Applicant had made numerous attempts to resolve some of those issues in correspondence with the

Respondent that had proved to be unsuccessful. Consequently, he had been obliged to make this application in relation to those matters. However, balanced against this was the fact that the Applicant had raised several issues that could not be addressed because they either did not fall within the jurisdiction of the Tribunal or did not form part of the major works.

27. For the reasons above, the Tribunal considered that it was just and equitable to make an order that the Respondent reimburse the Applicant within 28 days the sum of £125 being one half of the fees paid by him to have this application issued and heard.

Dated the 10 day of May 2013

CHAIRMAN.....

Mr I Mohabir LLB (Hons)