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**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | **LON/00BG/LSC/2013/0759** |
| **Property** | : | **235 Jamaica Street, Exmouth Estate, London E1 OPF** |
| **Applicant** | : | **Swan Housing Association Ltd** |
| **Representative** | : | **Ms Hodgeson of Counsel Devonshires Solicitors** |
| **Respondent** | : | **Miss M Bennett** |
| **Representative** | : | **Dr Berry** |
| **Type of Application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal Members** | : | **Judge O'Sullivan**<br>**Lady Davies FRICS** |
| **Date and venue of Hearing** | : | **12 August 2014**<br>**10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **27 September 2014** |

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**DECISION**

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## Decisions of the tribunal

(1) The tribunal determines that the sum of £7,521.21 is payable by the Respondent in respect of the major works invoice dated 3 May 2011.

(2) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.

## The application

1. This is an application brought by Swan Housing Association ("Swan") in respect of a leasehold property known as 235 Jamaica Street, Exmouth Estate London E1 OPF (the "Property"). The Applicant is the freehold owner of the Property and estate upon which it is situated. The Respondent holds a long lease of the Property. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of an invoice dated 3 May 2011 in respect of major works in the total sum of £7,521.21.

2. The relevant legal provisions are set out in the Appendix to this decision.

## The hearing

3. The hearing in this matter took place on 12 August 2014. The Applicant was represented by Ms Hodgeson of Counsel with Mr Pearce, a home ownership property manager, Mrs Thorogood, a leasehold services officer, also in attendance, who are both in the employ of the Applicant. Miss Ganatra of the instructing solicitors also attended together with Mr Black. The Respondent was represented by a family friend, Dr Berry and did not attend.

## The background

4. Directions were made in this matter on 29 April 2014 which provided that an inspection of the property take place at 10am on 12 August 2014. However as Dr Berry had indicated that he intended to seek a postponement of the hearing the inspection was cancelled and the hearing commenced at 10am.

5. Proceedings were first issued in this matter in July 2013 in the county court (claim number 3QT87449) and were subsequently transferred to this tribunal. There had been a substantial lack of compliance with the directions by the Respondent in the County Court.

6. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs.

## Application for a postponement

7. At the commencement of the hearing on 12 August 2014 Dr Berry made an oral application for a postponement of the hearing. Dr Berry had represented the Respondent in the proceedings since 24 June 2014 and had been sent a copy of the directions. The application for a postponement of the hearing was made on the basis that the Respondent was unable to attend the hearing due to depression. Dr Berry was unable to say when he thought the Respondent would be ready to prepare for and attend at a hearing although he thought she might need *"a couple of months"*. He accepted that he had no evidence from her General Practitioner in relation to that estimate. As far as the application for a postponement was concerned he relied on a letter from Dr Emma Ovink of The Jubilee Street Practice dated 7 August 2014. This read as follows;

*"Maralyn is currently undergoing severe stress and anxiety relating to her impending court case. This has caused her to become depressed in mood and she has been having thoughts of suicide as a result. This is mainly because she has not yet had sufficient time to assemble the necessary paperwork. I support her request to have the court date postponed to give her time to prepare and for treatment for her depression and anxiety to have an effect."*

8. It was acknowledged that the Respondent had not filed a witness statement although Dr Berry was under the impression that she had. However it was clear that no statement was on the tribunal file and none had been served on the Applicant. Dr Berry confirmed that he had not seen any witness statement and it seemed after all none had been prepared. The Respondent had however set out her case with the help of Dr Berry in a document entitled *"Respondent's Answer to Applicant's Statement of Case"* which was contained in the bundle. This was signed by Dr Berry and acknowledged to have been prepared with the assistance of the Respondent. This set out 10 challenges to the major works invoice. The tribunal took Dr Berry through each of those challenges and he accepted that evidence from the Respondent would not be helpful in all of those challenges save for two matters; the issue of whether she had been provided with a fob for the neighbouring block to allow access to the lift and the issue of the alleged poor standard of pointing. However he maintained that he could not properly represent the Respondent without her being present.

9. Counsel for the Applicant opposed the application for the postponement. She submitted that the letter from the GP did not say anything about whether the Respondent was in fact unable to attend

the hearing due to health problems but rather focussed on her desire to have more time to prepare. She also pointed out that it failed to identify what medical treatment the Respondent was being given. She relied on two previous decisions, *Teinaz v Wandsworth London Borough Council [2002] EWCA Civ 1040* and *Albon (trading as NA Carriange Co) v Naza Motor Trading Sdn Bhd and another (No 5).* Referring to these decisions Counsel submitted that although we did not have a witness statement we did have a full statement of case upon which we could refer which sets out the case in detail.

10. Pursuant to rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and having regard to the overriding objective contained in rule 3, we refused the application to postpone the hearing for each of the following reasons:

(i) The request was made only shortly before the hearing;

(ii) The Applicant objects to a postponement;

(iii) The GP letter relied on by the Respondent does not state that the Respondent is unable to attend a hearing but rather that she would like more time to prepare and it appears to the tribunal that she has chosen not to do so;

(iv) There has been substantial non compliance with the directions by the Respondent which have resulted in a strike out warning at one point. The Respondent has had in our view ample time to prepare for the hearing;

(v) The proceedings were initiated in the county court more than a year ago and the tribunal is under a duty to progress the proceedings;

(vi) The Respondent has a representative who prepared the statement of case with her assistance. He has therefore had the opportunity to take full instructions from the Respondent;

(vii) None of the matters raised by the Respondent in fact require any evidence to be given by the Respondent save for 2 minor matters. First in relation to the issue of the lift there is a conflict of evidence as to whether the Respondent requested a key fob to the neighbouring block to allow access to the lift. However given that the Applicant relies principally on the construction of the lease in relation to that issue this is a minor point. Secondly the Respondent alleges the pointing was of a poor quality. Again this is considered to be of minor importance given that

no evidence in support is provided of the condition of the pointing at the completion of the works.

(viii) In considering this decision the tribunal must balance prejudice to both parties. We were satisfied given the matters raised in the statement of case that no prejudice would be caused to the Respondent by the refusal.

(ix) A tribunal has been booked to hear this case and a postponement at this late stage would result in an unjustifiable waste of the tribunal's limited resources that deprives others of their proper entitlement.

11. Having refused the postponement we went on to consider the substantive issues. A summary of the evidence heard and our decision in relation to each matter follows.

12. The tribunal did not inspect the Property given that the major works took place some time ago and we considered that an inspection was likely to be of very limited assistance.

## The issues

13. As referred to above the Respondent's challenges were outlined in a document entitled "the Respondent's Answer to Applicant's Statement of Case". The challenge made, the Applicant's response and the tribunal's decision are set out below.

### Audited accounts

14. The Respondent referred to the certification made by Grant Thornton which certified the final accounts for the major works. She questioned why her particular invoice had not been certified. In response the Applicant submitted that the overall costs had been certified and that there was no requirement or expectation that the individual service charges be independently verified. The individual invoices were a matter for apportionment as per the individual leases.

### Audited accounts – the tribunal's decision

15. The tribunal is satisfied that the major works final accounts were properly certified and that there is no requirement for individual leaseholder apportionments to be independently verified. It is noted that the Respondent does not suggest that her invoice is in any way incorrect.

## Itemised breakdown

**16.** The Respondent says that she has never been able to understand the invoices and documentation provided in respect of the final accounts and puts the Applicant to strict proof. In response the Applicant referred the tribunal to a breakdown of the invoices at pages 71-74 of the bundle.

## Itemised breakdown – the tribunal's decision

17. The tribunal had seen a full copy of the invoice and note it was accompanied by an explanation of the deferred payment options available, a summary of tenants rights and obligations, a list of frequently asked questions, a document described as a service charge invoice calculation which showed administration fees, management fees and chargeable works and a copy of a spreadsheet. The spreadsheet was the final account for the whole of the estate, one column represented Jamaica Street and the works were divided by 16 different sections which were subdivided into different elements.

18. In this tribunal's view the spreadsheet was an unnecessarily complex way of advising tenants of the cost of the works to their block. It did not include the 15 items which were not charged to leaseholders and as a consequence it was difficult for the leaseholders to follow the figures and their relation to their actual invoice. In an attempt to clarify matters the landlord had subsequently provided further documentation to explain the figures. Although the documentation initially provided was in our view unnecessarily complex it had been provided in an attempt to provide as much information as possible. We note that the accounts had been fully certified and as such find there is no issue in relation to the itemised breakdown.

## Scaffolding costs

19. The Respondent says that the amounts claimed for scaffolding are unreasonable and puts the Applicant to strict proof. The concerns relate to the fact that scaffolding was erected principally on the south facing block and after that erection further scaffolding was erected on the western elevation to protect contractors working at roof level. In reply the Applicant says that the scaffolding was a fixed cost and the time it spent erected made no difference at all to the final cost. The Applicant also relied on the final account which showed many items requiring scaffolding.

## Scaffolding costs – the tribunal's decision

20. The tribunal finds that the scaffolding costs are allowed in full. It accepts the Applicant's evidence that the costs of the scaffolding was

fixed and that the timings of the erections and the length of time spent made no difference to the final cost.

**Roof repairs and guarantee**

21. The Respondent challenged the cost of the roof repair on the basis that it should still be under guarantee. The Applicant explained that this item was not a roof repair but rather a section which was made good following an installation of the ventilation units. Having heard this explanation Dr Berry confirmed that he had no further challenge.

**Lift charges**

22. The cost of the lift charges is challenged on the basis that the Respondent has no lift in her block. In response the Applicant says that the Respondent's block is linked by a walkway to a neighbouring block and that the residents have access to that block. The Respondent says that she never requested a fob for that neighbouring block to allow her to use the lift but it is accepted that she did receive a fob. The Applicant also relied on the lease provisions at clause 1(10) which defines the definition of common parts to which the Respondent is obliged to contribute and includes "passenger lifts".

**Lift charges – the tribunal's decision**

23. The tribunal allowed the lift charges in full. In reaching this decision it had regard to the provisions of the Lease and concluded that it was clearly envisaged that the Respondent would contribute to the cost of the lift. It was not material whether the Respondent had requested a fob or whether she in fact used the lift.

**Pointing**

24. The Respondent challenged the pointing on the basis that it was only partly carried out and/or was of poor quality. In response the Applicant said that it was carried out to prevent water penetration, was at the top of the building and so was difficult to see, that no other complaints had been received and that the works were checked off and approved on completion.

**Pointing - the tribunal's decision**

25. The tribunal allowed the cost in full. We noted that the Respondent had not produced any evidence of poor standard of workmanship. We also noted that the works had been signed off on completion. Any poor workmanship would be difficult to now verify given that time which has passed since the major works took place.

**Balcony screens**

26. The Respondent had complained that she had a crack in her balcony screen. However it was accepted that this had been replaced and that this was no longer an issue.

**Communal mechanical services**

27. The Respondent challenged this item as she did not understand what work had been carried out. The Applicant explained that this represented the replacement of the mechanical ventilation systems and Dr Berry confirmed that he now accepted this item.

**Regulatory judgement**

28. The Respondent referred to a judgement made by the Homes and Communities Agency against Swan in relation to another matter. The Applicant submitted that this was not relevant to the matter before the tribunal and we agreed.

**Application under s.20C**

29. The Respondent applied for an order under section 20C of the 1985 Act. Taking into account the decisions made above the tribunal therefore determines for the avoidance of doubt that it is just and equitable in the circumstances for no order to be made under section 20C of the 1985 Act and so declines to do so.

**Name:** S O'Sullivan **Date:** 27 September 2014

## Appendix of relevant legislation

### Landlord and Tenant Act 1985

### 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.

### Section 20C

(1) 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 court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.