

10342



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

Case Reference : **MAN/OOCG/LSC/2014/0033**

Property : **202 Brunswick Road, Sheffield, South
Yorkshire S3 9LR**

Applicant : **Shelah Nasser**

Respondent : **Sheffield City Council**

**Type of
Application** : **Determination of liability to pay and
reasonableness: section 27A LTA 1985**

Tribunal Members : **Sarah Greenan, barrister
Sally Kendall, BSc, MRICS, FNAEA**

Date of Decision : **7.10.14**

DECISION

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The application

1. Mrs Shelah Nasser is the owner of a leasehold maisonette at 202 Brunswick Road, Sheffield S2 9LR. The freehold of the property is vested in Sheffield City Council (“SCC”).
2. On 7th March 2014 Mrs Nasser applied to the Property Chamber pursuant to section 27A of the Landlord and Tenant Act 1985 for a determination of her liability to pay and the reasonableness of service charges due in respect of the property for major works in the year 2012. Her challenge was to the major works bill raised in that year and she does not take issue with the regular service charges which are raised in respect of the property.
3. The works which give rise to the application consist of the replacement of the windows of the maisonette by the substitution of UPVC windows for the original wooden windows. Mrs Nasser was sent an invoice for £7,043.12 on about 1st May 2012.
4. In her application Mrs Nasser stated that the works were compulsory and there was no choice but to have it done. She is on benefits and cannot afford the charges. She is suffering from depression and worry about this problem is making her condition worse.
5. The application came before the Tribunal for directions on 12th May 2014 when SCC was ordered to file a statement of case in response to the application and directions were made for the exchange of evidence. The procedural judge also indicated that this was an appropriate application to be dealt with on the papers, and neither party requested a hearing.
6. SCC filed its statement of case on 9th July 2014. In summary, its case was that the charges raised were in accordance with the provisions of the lease, and were reasonable.

7. SCC filed a detailed witness statement from Nathan Robinson in support of its statement of case.
8. Mrs Nasser did not file a separate witness statement. She supplied with her application a copy of an estimate produced for replacement windows for her property from Sheffield Window Centre, a local company, indicating a cost of £5,566.87 for replacing her windows.

The lease

9. Mrs Nasser holds her property under a lease made on 15th February 2010 between SCC and her.
10. By clause 3(1) of the lease Mrs Nasser covenants:
 - “(b) to pay upon demand being made therefore by the Council the Service charge and the Estate Charge at the times and in the manner hereinafter provided
 - (c) to observe and perform the provisions on the part of the Lessee contained in Part III of the said Schedule hereto (the Service Charge) and Part IV of the said Schedule (the Estate Charge).
11. By clause 3(29) of the lease Mrs Nasser covenants:

“...to pay to the Council from time to time as part of the Service Charge a reasonable part of the costs and expenses which the Council may from time to time incur or estimate to be incurred in carrying out repairs and improvements to the structure and exterior of the demised premises and the Building (including drains gutters and external pipes) and making good any defect affecting that structure and keeping in repair and improving the communal areas and other parts of the Building... in order to maintain the same at a reasonable level and of keeping in repair and improving any installation connected with the provision of those services.”

12. By clause 4(3) of the lease SCC covenants:

“To keep in repair and (if desirable in the opinion of the council) to improve (a) the structure and exterior of the demised premises and of the Building... and to make good any defect affecting that structure...”

13. By clause 5 of the lease:

“It is hereby agreed and declared that: - ...(vi) ... There shall be added to the sum demanded by any account rendered by the Council to the Lessee pursuant to the provisions of this Lease an additional sum to be paid by the Lessee towards the administrative costs and expenses of the Council in the determination of the amount of and collection of such account such additional sum being either TEN PER CENTUM of the amount of the account (before the addition of value added tax...) or the sum of FIVE POUNDS whichever shall be greater.”

14. Schedule 1 Part III of the lease sets out the following service charge provisions:

“1. The Service Charge payable by the Lessee shall be a fair proportion to be determined by the Deputy Director of Corporate Resources or other duly authorised officer of the Council... of all costs expenses and outgoings incurred or estimated to be incurred by the Council in respect of or for the benefit of the Building (such fair proportion representing that part of the said costs expenses and outgoings incurred or to be incurred by the Council in complying with their obligations contained or implied therein for the benefit of the Lessee insofar only as such costs expenses and t may lawfully be recovered from the Lessee.

2. The aforementioned obligations on the part of the Council in respect of which the Service Charge shall be attributable and paid by the Lessee in respect of the demised premises are ... as follows:

A. Keeping in repair and improving the structure and exterior of the demised premises and the Building ... and the making good of any defect affecting that structure...

E. The administrative costs ... of managing the Building including the costs of employing and paying employees of the Council or professional advisors agents or contractors...”

The inspection

15. The Tribunal inspected the property on 7th October 2014. Mrs Nasser and various members of her family were present during the inspection.
16. The property is a three-bedroomed maisonette situated on the ground floor and first floor of a four storey block in the Pitsmoor area of Sheffield.
17. It was noted that replacement windows had been fitted in the following rooms: living room (this was a large opening window/door combination, with the door opening to the rear of the property); kitchen (opening window); downstairs WC; bedroom 1 (this was window/panel combination); bedroom 2 (another window and panel); bedroom 2 (two opening windows with panels below); bathroom (opening window and panel below).
18. The new windows are white UPVC units with double glazing complying with current standards for windows of this type.
19. The front external door had not been replaced as part of the works. It was noted that some condensation could be seen on the windows in bedrooms 1 and 3. The handle of the window in bedroom 1 was slightly stiff to operate. The windows had trickle vents but these were not in use.
20. As indicated above a number of the windows formed part of a larger assembly including a panel forming part of the vertical wall of the property: this reflects the original design of the maisonettes in the era in which they were constructed.

21. The installation of the windows appeared to be of high quality with decorative finishes around the windows either undamaged or made good to the extent that no damage was visible at the time of the inspection.
22. Following the inspection the Tribunal considered and made its decision on the same day.

Findings

23. Mrs Nasser purchased her flat direct from SCC through the Right to Buy scheme on 15th February 2010 for a price of £17,000. The property was then valued at £41,000, and Mrs Nasser received a 62% discount.
24. When Mrs Nasser applied to buy the property, she was sent a notice indicating that during the five year reference period after purchase of the maisonette various repairs were planned. Those included replacement of window frames and doors, at a cost of £15,568, towards which Mrs Nasser, if she purchased the flat, would be expected to contribute £9,730.
25. The contract for carrying works to the properties in this area was put out to tender in 2004. The contract included Decent Homes works and other works of improvement. A full tender process was entered into and the contract awarded to Keepmoat plc. As Mrs Nasser did not purchase her property until 2010 she was not involved in the consultation process leading up to this tender.
26. In July 2010 an inspection took place of the property and it was determined that the windows, which were large, would have to specially made. During that inspection photographs were taken of satellite dishes etc which would require refixing during the works.
27. In August 2012 a report was produced by SCC on the state of the windows. A copy of this was sent to Mrs Nasser with the notice of intention to carry out the works (see below). The report indicated that the existing windows to the

property consisted of single glazed wooden casements, showing signs of deterioration, including failure to close properly, draughts, and heat loss. They were prone to condensation forming on the glass.

28. In September 2010 SCC produced a document entitled "Window Replacement Scheme – Brunswick Road Maisonettes" which set out how after consideration of the structural requirements of the building a design for the replacement windows had been determined. It was necessary to install structural corner posts where the windows enclosed a balcony, because replacement UPVC windows do not have the stiffness of the traditional wooden frames which they replaced.
29. On 26th November 2010 the council served a notice on Mrs Nasser indicating that it intended to replace the windows at the property, together with some other works (concrete repairs to isolated areas of the block). The estimated cost for the works was £8,106.91.
30. The work was carried out in around August of 2011 and Mrs Nasser signed a form indicating that the work had been completed on 11th August.
31. An invoice was sent to Mrs Nasser on 1st May 2012. The total sum invoiced was £7,043.12, of which the cost of work to the property was £6,743.12. There was an additional sum charged of £100 for Mrs Nasser's share of the cost of work to communal areas: this was for the concrete repairs. An administration fee of £200 was charged which was described as "10% administration fee up to £200 maximum".
32. The cost of the work to the windows was further broken down in a document attached to the invoice which indicated that the windows themselves had cost £4,030 and the contractor's work costs were £2,713.12, a total of £6,743.12. This figure included removing and refixing satellite dishes and alarms, removing the existing windows and installing the new ones, a window survey, scaffolding, a ventilation test, and installation of smoke detector.

33. The total sum invoiced was significantly less than the original estimate.
34. SCC submitted information showing the cost of the same works to maisonettes adjacent to and of the same design as Mrs Nasser's property. In the case of six out of seven comparable properties the cost was the same. In the case of one property there was no satellite dish to refix and no smoke alarm was fitted, reducing the cost by £336.63.
35. The Tribunal compared the quotation obtained by Mrs Nasser from Sheffield Window Centre with the invoice raised by SCC.
36. The following charges are not included in the Sheffield Window Centre quotation:
- a. £326.23 for removal and refixing of satellite dish;
 - b. £63.10 for gas safety inspection to the boiler to ensure that the ventilation was sufficient;
 - c. £10 for a smoke detector;
 - d. £60.08 for a window survey;
 - e. £200 administration fee.
37. In addition it was noted that the Sheffield Window Centre quotation was based on supply of scaffolding to the rear of the property only, rather than to front and rear. No specific provision was made for removal and disposal of the existing windows: it might be assumed that Sheffield Window Centre would remove them, but not that it would dispose of them without further charge.
38. The Sheffield Window Centre quotation does not include provision of a door to the balcony accessed from the living room. Without a door, the balcony would not be accessible.

39. In addition, the Sheffield Window Centre did not provide for the structural strengthening required as a result of the removal of the traditional timber windows. Nor did the Sheffield Window Centre design include trickle vents.

The law

40. Section 19 of the Landlord and Tenant Act 1985 provides:

(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.

(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.

41. Section 27 of the Act provides:

42. The Tribunal had regard to the observations of the Tribunal in *Forcelux Ltd v Sweetman* [2001] 2 EGLR 173:

“The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

“But to answer that question, there are, in my judgment, two distinctly separate matters I have to consider. First, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence”

43. The Tribunal also noted that in *Veena SA v Cheong* [2003] 1 EGLR 175, the Lands Tribunal consisting Mr P H Clarke FRICS) said at paragraph 103:

"... The question is not solely whether costs are 'reasonable' but whether they were 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable."

44. The Tribunal found that the works carried out by SCC to the windows were necessary and reasonable. SCC replaced existing single glazed windows which were becoming outworn with modern double glazed windows providing a higher standard of insulation and warmth to the occupier. Appropriate surveys had been carried out before the decision to do the works was taken, and proper detailed consideration had been given to the nature of the works required and a specification drawn up which was appropriate for this property.
45. The quotation from Sheffield Window Centre did not include all the works which were necessary in order to replace the windows successfully, and is therefore not a proper like for like comparison. The Tribunal found that the additional works carried out by SCC and listed in paragraph 36 (a) to (d) above were reasonable.
46. In addition, the Sheffield Window Centre quotation was not one which would have produced a satisfactory installation to the property as it did not include a balcony door, structural strengthening, or trickle vents.
47. An additional £100 was charged by SCC for works to the concrete of the block itself: the Tribunal was satisfied that these works were carried out and were reasonable.
48. The Tribunal specifically considered the £200 administration charge raised by SCC. This charge was described by SCC as capped at £200 but this appeared to be a cap voluntarily imposed by SCC as pursuant to the lease it could have charged 10% of the cost of the works.

49. SCC indicated in its Statement of Case that the administration fee was charged for the administrative costs and expenses of the Council including staffing, overhead costs, calculating and issuing bills, verifying and paying invoices and dealing with queries.
50. The Tribunal regarded this modest administrative charge as being reasonable in view of the nature of the works and in particular the careful consideration and planning which had been undertaken to ensure that works to a proper specification were carried out.
51. In conclusion therefore it was the decision of the Tribunal that the major works carried out to 202 Brunswick Road in 2011, invoiced in 2012, were reasonable and that the service charges raised in respect of them are payable by Mrs Nasser.

SARAH GREENAN