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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2014/0384**
Property	:	**29 Loreburn House, Lorraine Estate, Holloway Road, London N7 9SP**
Applicant	:	**London Borough of Islington**
Representatives	:	**Mr Sachin Bhatia (Lawyer)** **Mr Richard Powell (Special Projects Officer)** **Mr Daniel Betts (Building Surveyor)**
Respondent	:	**Ms Nuru Keba**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mr L Rahman (Barrister)** **Mr F Coffey FRICS** **Mr J Francis QPM**
Date and venue of Hearing	:	**1st & 2nd December 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**26th January 2015**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the sum of £6,959.71 is payable by the respondent in respect of the service charge for the major works carried out in 2010.

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount payable by the respondent in respect of the service charge in the amount of £9,156.22, for major works it carried out in 2010.

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

The hearing

3. The applicant was represented by Mr Bhatia (lawyer), Mr Richard Powell (special projects officer), and Mr Daniel Betts (building surveyor). The respondent appeared in person and was assisted by Ms Zoe Kettel (leaseholder of flat 31 Loreburn House). Also present at the hearing was Ms Kettel's mother.

4. Immediately prior to the hearing the parties handed in further documents. The respondent provided additional photographs of the building. The applicant provided clearer copies of photographs already in the applicants bundle. The applicant also adduced, on the second day of the hearing, copies of the minutes of a meeting held on 15.2.11.

The background

5. The property which is the subject of this application is one of a number of five storey purpose built local authority blocks on the Loraine Estate (comprised of six blocks). It was built in the late 1930's, the walls being mainly solid brick set under a pitched tiled roof. Access to the upper stories is by communal staircase or lift onto open walkways providing individual access to the flats. There was a mixture of windows, some being stained wood, white painted sash windows, while others were replacement UPVC. A number of flats had individual balconies. There are 36 units in the block.

6. Major works were carried out in 2010 under the "Decent Homes" programme. The overall works included kitchen replacements, mechanical and electrical works, window renewal and repairs, roof repairs with associated works, concrete and structural repairs to balconies, and electrical riser and lateral works. In particular, the rechargeable works undertaken to Loreburn House, for which the applicant states the respondent has a service charge liability, includes works to the common parts, namely, the roof, window repairs, structural balcony repairs, and the waterproofing of communal walkways.

7. On 1st December 2014 the tribunal undertook a general inspection of the front and rear of Loreburn House. We inspected the open walkway on the third floor outside flat 29, the area in front of the lift, the communal staircase, and the interior of flat 29, namely, the windows in bedrooms 1 and 2 and the kitchen.

8. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Both parties agree the respondent is liable to pay 1/36th of the landlords costs.

The issues

9. At the start of the hearing the parties confirmed the relevant issue for determination, as set out in the Scott schedule, was in relation to the costs concerning the scaffolding, roofing and guttering, balcony waterproofing, windows, brickwork, painting and decorating, and the professional fees.

10. Having heard evidence and submissions from the parties and considered all of the documents referred to, the tribunal has made determinations on the various issues as follows.

Scaffolding

11. The applicant calculated the respondents share at £1,380.84.

12. The applicant referred the tribunal to the works schedule on page 238 of the bundle, which it claimed explained when the scaffolding was due to be erected and dismantled and when the works were due to commence and finish. However, the applicant was unable to inform the tribunal when the scaffolding was actually erected, when it was due to be dismantled, when it was actually dismantled, and when the actual works were started or had finished. The applicant was unable to explain how long it had taken to erect and then dismantle the scaffolding. The applicant was only able to confirm that the period of hire had been

longer than anticipated and that the scaffolding was up for 7 months in total from September 2008.

13. The applicant suggested the scaffolding was up for longer than expected because it had realised, once the scaffolding was up, that there was a greater quantity and depth of works that were required. However, the applicant was unable to refer the tribunal to any evidence within the applicants bundle to show what the "greater quantity and depth of works" were.

14. The applicant also suggested the additional cost of the extra period of hire was not passed onto lessees but then stated it was unable to state what the original cost was or what the additional costs were, other than providing the final cost. The applicant then conceded it was unable to show that any additional costs had not been passed onto lessees.

15. The respondent stated that the scaffolding was up for 7 months from August 2010. The respondent stated that the works to her windows were completed in one day in October 2010. It took two weeks to complete the windows on her side of the block but it could have taken longer to do the other side. During the same two weeks works were also carried out to the balcony. The respondent stated that in her view the scaffolding was only required for 2 weeks to complete the works to the windows and balcony. The respondent did not provide any supporting evidence to show that the applicants overall proposed works would only have taken two weeks to complete.

16. The tribunal noted the cost of erecting and dismantling the scaffolding would have remained constant and any additional cost would be dependent on the period of hire. The applicant was unable to inform the tribunal what the breakdown of the scaffolding costs were.

17. Based upon the tribunals accumulated knowledge and experience of such matters, which the parties at the hearing stated the tribunal should rely upon, the tribunal found a period of five months would have been adequate to complete the proposed works (to the roof, window repairs, structural balcony repairs, and the waterproofing of communal walkways). The tribunal found a deduction of approximately 20% adequately reflects the additional costs incurred by the applicant in keeping the scaffolding for longer than required. The tribunal found a payment in the sum of £1100.00 for the scaffolding is reasonable and payable by the respondent.

Roofing and guttering

18. The applicant calculated the respondents share at £96.87.

19. The applicant stated the proposed works are set out on page 307 of the bundle and the works had been completed and signed off by the clerk of the works.

20. The applicant stated it was aware of the defect with the existing gutter system and downpipes which resulted in rainwater channelling back onto the communal walkway soffit between the tiles and gutter, causing minor cracking and damage to the decoration to the walkway soffit. Additionally, as the rainwater was not falling correctly into the gutters and the top walkways are exposed, there is a problem with water ponding on communal walkways and seeping through and damaging the walkway decorations to the soffits below. In order to fully rectify these gutter issues, extensive works would be required (page 226). The applicant stated it did not propose extensive works as it would involve substantial costs and the roof was sound. However, minor works, such as isolated alterations to the gutter, would assist in alleviating the issues in particular problematic isolated areas, but would not solve the problems (page 226).

21. The respondent stated the guttering was still leaking onto the balcony. It last leaked on 22.11.14. The respondent stated the guttering works couldn't have been done properly, otherwise the problem should have been resolved.

22. The tribunal found the guttering work would not have dealt with the underlying problem because water would continue to overflow because of the design fault and the half round gutter. The applicant accepts there is a design fault. The tribunal noted that some works were carried out to the gutters, namely, cleaning and replacing parts that were damaged. However, the tribunal found that the applicant should have known that the problem with water overflow from the gutters would continue, therefore, the tribunal found the works to the gutters, without remedying the underlying design fault and changing the half round gutters, were unreasonable.

23. The applicant was unable to provide a breakdown of the cost to explain the amount expended on the roofing and the amount spent on the guttering works.

24. Using the tribunals accumulated knowledge and experience of such matters the tribunal found a payment in the sum of £50.00 for the works to the roof only is reasonable and payable by the respondent.

Balcony waterproofing

25. The applicant calculated the respondents share at £563.13.

26. The respondent states that patchwork repairs to the asphalt flooring on the balcony / walkway to the flats were carried out, where necessary, to prevent ponding. Additional asphalt works were carried out in 2013 for which the respondent had not been charged (letter page 614).

27. The applicant stated that she accepts that some patchwork repairs had taken place but stated there is still ponding. It had not got better or worse. The respondent relied upon a photograph that she had taken since the works had been completed (exhibit NK6). The respondent stated that repairs to the balconies / walkways in other parts of the building were also not done properly. The respondent confirmed that she did not have photographs of the other parts of the building and she did not have any statements or letters from other tenants because they did not wish to give evidence.

28. Ms Kettel stated that after works were done to her side, it had definitely got better, but that water still collected. She too provided a photograph (exhibit NK6 also).

29. The tribunal noted that the respondent accepts that there had been patchwork repairs. The tribunal found that the photographs relied upon by the respondent were not sufficiently clear and those that were clear did not disclose any significant ponding. The old photograph on page 322, before any works had been carried out, shows the extent of the problem, which the tribunal had noted was now better. Ms Kettel stated that the repairs had improved the ponding and the tribunal found that the photograph outside her own flat did not show any significant ponding, other than some water in the "trench". On inspection the tribunal identified no defects. The tribunal found the full amount demanded by the applicant in the sum of £563.13 is reasonable and payable.

Windows

30. The applicant calculated the respondents share at £2,654.39.

31. The applicant stated that the photographs on pages 109-115 show the state of the windows in general prior to the works in 2010. It stated that the original plan was to replace all the windows with UPVC, but that was refused by the planning department. Double-glazed wooden sash windows were very expensive. Given that the windows still had a life expectancy of at least seven years, it decided that it was cheaper in the circumstances to simply repair the windows. All the windows on the respondents block, except the windows along the balcony walkway, were repaired. The respondent had five windows in her property that were repaired. The photographs on pages 128-132 show the windows on the block after the repairs.

32. The applicant accepts that the respondent had complained about her windows becoming stuck after the works and that remedial works were carried out in 2012 (at no additional cost to the respondent) to ease and adjust bedroom 1, bedroom 2, and the kitchen windows to ensure free open / close movement, and that the sash cords may need to be adjusted (letter page 616).

33. In answer to the observation made by the tribunal during its inspection, that the respondent had been complaining that the window in her second bedroom was still "rattling" and she could not pull it down and upon inspection by the tribunal the window became stuck, the applicant stated it accepts the window was not working properly now but it was not clear whether the problem was a recent development or whether it dates back to when the works were completed.

34. The respondent stated that her second bedroom window still does not open properly, despite the works in 2010 and the further works in 2012, after she telephoned the applicant in February 2012 when her window became stuck. The respondent states that her first bedroom window still does not open / close smoothly. The respondent stated that she is now alright with her kitchen window. With respect to her living room and bathroom windows, the respondent stated that the repairs were so bad that she privately paid £900 to the contractors who had carried out the major works in 2010, to have them completely replaced within two weeks of the repairs carried out on behalf of the applicant. The respondent stated that she paid in cash, did not have any receipts, and did not have a copy of the complaint that she had made to the applicant.

35. The applicant stated in response that there was nothing in the bundle to show that the respondent had complained about the living room and bathroom windows.

36. The tribunal noted the respondent had not mentioned any problems with the living room and bathroom windows, resulting in her having to pay for them to be replaced at her own expense, in her 2012 statement or her statement dated 8.10.14 or in the Scott Schedule. The tribunal noted the respondent did not mention during the inspection that she had any problems with the living room and bathroom windows and had stated during the inspection that those two rooms were fine and did not allow those rooms to be inspected. When asked by the tribunal why this had not been mentioned before, the respondent stated "No reason why I didn't show the windows or mention it before in my statements". For the reasons given, and in the absence of any receipts / invoice or letter of complaint to the applicant, the tribunal is not satisfied that the respondent had any specific problems with the living room or bathroom windows or that they had been replaced after the major works.

37. However, the tribunal noted that the respondent had consistently stated that she had problems with the bedroom and kitchen windows. The applicant accepts it had carried out remedial works in 2012 to ease and adjust bedroom 1, bedroom 2, and the kitchen windows to ensure free open / close movement, and that the sash cords may need to be adjusted.

38. The tribunal noted, on inspection, there were open joints to the sub-frame to the inner and outer linings of the frame. The tribunal was not told at the hearing exactly what had been done to the windows. The sashes were still rattling and loose in the box frame due to a failure to properly adjust parting and staff beads. The applicant accepted at the hearing that the partial binding in the sashes and the frames could be due to swelling. The tribunal accepts the repairs to the windows were not to a reasonable standard and accordingly makes a deduction of 50%. The tribunal found a payment in the sum of £1,327.00 for the works to the windows is reasonable and payable by the respondent.

Brickwork

39. The applicant calculated the respondents share at £751.66.

40. The applicant stated there was a need for minor isolated brickwork repairs around existing metal painted grilles to communal walkways (page 226). The proposed works for this block, which were carried out, are detailed on page 306-307, which includes cleaning and re-pointing to isolated and specified areas. Pages 318-321 show photographs of the brickwork that needed to be repaired. Pages 355-357 show photographs of the relevant block and demonstrate the problems that needed to be addressed. The applicant stated that the proposed works were completed and the specific issues raised by the respondent were not part of the contract.

41. The respondent stated that the bricks were still mouldy and had holes / chips (exhibit NK7). The amount paid to the contractors should have covered such work. The respondent stated that she did not know the cost of such work and that she was assuming that the amount paid to the contractors would have covered such work.

42. The respondent had referred to a "Kier Record Sheet" (page 27), which apparently showed no brickwork repairs for Loreburn House. When the tribunal asked where that report was to be found, the applicant stated it did not know anything about such a record and the respondent stated the Law College had referred to it but she did not know where it was.

43. The tribunal accepts that cleaning mould on every single brick and replacing every single brick with chips / holes was not part of the contract. The respondent had not been charged for that. The

respondent has been charged for the other works as specified in the schedule of works on pages 306-307. The tribunal found no evidence to suggest the amount charged by the applicant was unreasonable or that the specified works had not been carried out. The tribunal found the full amount demanded by the applicant in the sum of £751.66 for the brickwork is reasonable and payable.

Painting & decorating

44. The applicant calculated the respondents share at £1,123.74.

45. The applicant stated the works that were carried out are set out on page 305. External painting and decorating had been carried out to all previously decorated external surfaces.

46. The respondent stated the brown windows along the walkway were not painted for the whole block. The cream paint on the wall outside the front of each flat on her block, along the walkway, were not painted, except for the outside of her flat, which was painted after she had complained that it had not been painted. The respondent is sure of her evidence as she had checked at the relevant time. The paint on the ceiling above the walkway was bubbling. The respondent relied upon photographs exhibited as NK (22.11.14). In answer to the observations made by the applicant, the respondent conceded that the photographs did not show bubbling but water droplets. The respondent then stated that the photos showing bubbling was not before the tribunal. The respondent also stated that the paint on the stairway was flaking.

47. In response, the applicant stated that the brown windows and the walls along the walkway should have been painted. It states that as far as it is concerned, the windows were painted, as they were expected to be painted. However, it does not have any documents saying that they were painted. It accepts that prior to the windows being painted, appointments would have been made with the occupants of each flat. The applicant stated that it did not have any appointment letters in the bundle to show that appointments had been made to paint the windows. With respect to the walls outside the flats, the applicant states it has no evidence to show that it had checked that the painting had been done, but it would have expected the painting to have been done. The applicant acknowledged that after these specific points had been raised by the respondent in the Scott Schedule, it should have checked with the relevant person whether these works had been done and / or adduce evidence to show that the relevant works had been done, but it failed to do so.

48. Based upon the evidence before the tribunal the tribunal accepts the windows along the walkway for the whole block were not painted. The tribunal also accepts, that for the whole block, the walls along the

walkway were not painted, except for the wall outside the respondents house after her insistence.

49. Based upon the evidence provided and upon its own inspection, the tribunal is not satisfied that there is any significant evidence of the paint bubbling or flaking.

50. The tribunal accepts that some painting and decorating had taken place, for example the balconies, communal entrance doors, and sash windows, etc. However, the tribunal has not been provided with a breakdown of the actual figures concerning the painting and decorating. In the circumstances, using the tribunals accumulated knowledge and experience of such matters, the tribunal makes a deduction of 30% to reflect the fact that the windows along the walkway for the whole block were not painted and the walls along the walkway, except outside the respondents flat, were not painted. The tribunal found a payment in the sum of £800.00 for the painting and decorating is reasonable and payable by the respondent.

Professional fees

51. The applicant states the respondent was charged her share of 11% of the actual costs of the works to her block. The applicant also states that 11% is the industry standard and that there is no separate management charge for these works.

52. The respondent states that based upon what her advisers have told her, it should be 5%.

53. The respondent has not provided any persuasive evidence to show that 11% is an unreasonable amount. Based upon our accumulated knowledge and experience of such matters the tribunal found an 11% charge for professional fees is reasonable and payable. The tribunal calculates 11% of the adjusted figures, as found by the tribunal under the various subheadings above, to be £689.70.

Application under s.20C and refund of fees and costs

54. Having heard submissions from the parties and taking into account the determinations above, the tribunal does not order the respondent to refund any fees paid by the applicant and the tribunal determines that it is just and equitable for an order to be made under section 20C of the 1985 Act, so that the applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. Although the respondent had not won, she has made a substantial saving in the sum of £2,196.51.

Name: Mr L Rahman **Date:** 26.1.15

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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.