

12322



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

Case Reference : **LON/00BG/LSC/2017/0133**

Property : **5 Kerscott House, Rainhill Way, E3
3HX**

Applicant : **Mr Muhammad Khan**

Representative : **Self representing**

Respondent : **Poplar HARCA**

Representative : **Mr Ben Maltz (Counsel)**

Type of Application : **Liability to pay Service Charges**

Tribunal Judge : **Mr M Martyński**

Date of hearing : **19 July 2017**

Date of decision : **9 August 2017**

DECISION

DECISION SUMMARY

1. Service Charges are payable in the sum of £24,917.00.
2. No order is made pursuant to Section 20C Landlord and Tenant Act 1985.

BACKGROUND

3. The Applicant is a leaseholder of a 3 bedroomed ground floor flat with its own entrance at Kerscott House ('the Building'). He is also the owner of two nearby two-bedroomed flats. The Respondent is the freehold owner of the Building and of the other buildings where the Applicant's other flats are situated.
4. In 2014 major works were carried out to the estate in which the Building is situated. The cost of those works charged to the Building amounted to £300,707.07. The amount charged to the Applicant as his share of the cost of these works was £24,917.00. The Applicant's share of the cost was calculated by taking the cost of the works to the Building and apportioning those costs in proportion to the floor area of the flat over the Building's total floor area.

THE APPLICANT'S LEASE

5. The Applicant's lease is dated 22 August 1988 and is for a term of 125 years from 22 August 1988.
6. 'Common Parts' is defined in the lease as:

All main entrances passages landings staircases (internal and external) gardens gates access yards roads and paths parking areas and garage spaces (if any) passenger lifts (if any) means of refuse disposal (if any) other areas included in the title above referred to or comprising part of the Lessors Housing Estate and of which the Building forms part provided by the Lessors for the common use of residents in the Building and their visitors and not subject to any lease or tenancy to which the Lessors are entitled to reversion

7. The First Schedule to the lease defines the Applicant's flat. That definition includes the flat up to and including the internal plasterwork and includes the window frames (but not the exterior of those frames).
8. The Fifth Schedule to the lease provides the Service Charge mechanism. A Service Charge has to be paid towards the total expenditure incurred by the Landlord in any accounting period, that expenditure includes maintaining the structure and common parts of the Building. The Service Charge payable by the leaseholder is defined as:

...such reasonable proportion of the Total Expenditure as is attributable to the Demised Premises

THE APPLICATION

9. The Applicant's application challenged the sum charged of £24,917.35 for the major works.
10. In his Statement of Case, the Applicant put his challenges in the following ways;
 - (a) He did not receive any consultation papers regarding the major works
 - (b) The cost of the works to the subject flat were disproportionate to similar works carried out the block containing his other flats.
 - (c) The subject property does not share any internal communal access and it was unfair for him to pay towards the costs of works in these areas

THE HEARING AND EVIDENCE

11. At the hearing, the Applicant was able to add very little to his application. He referred to the fact that after similar works were undertaken to the block where his other flats are, he was only charged £7,000 for those works for one of those flats. He maintained that the same work was carried out to the Building as was carried out to the other block containing one of his other flats. The Applicant had no evidence of this other than his own observations.
12. We looked at a breakdown of costs for the major works at the Building. In respect of that breakdown, the Applicant had the following comments:-
 - (a) Balcony repairs/decoration £14,423.93 – the Applicant stated that he should not have to contribute to these works as he did not have a balcony
 - (b) Integrated reception system £5,026 – this was a new aerial system – the Applicant did not consider that he needed to contribute to this
 - (c) Asbestos removal £4,189.20 – the Applicant stated that this had been done prior to the major works
 - (d) Door entry system £938.00 – the Applicant objected to this on the grounds that he had his own front door and did not need to use the communal entrance
 - (e) Window replacements £39,346.61 – the Applicant had replaced his own windows
13. Deducting the above amounts from the total costs of the major works gives a figure of £229111 (including fees added at 12%) – this would reduce the Applicant's share of the costs down to approximately £18,900.
14. However, the Applicant considered that his share of the costs of the major works should be less than £14,000. To get to this figure he appeared to take the costs of the work to his other flat and to increase those costs to take account of the fact that the subject flat is bigger than the other flats.
15. After the hearing, I invited the Respondent to make further written representations on various matters discussed in the hearing. This decision takes account of those submissions.

DECISION

16. Given the very limited evidence and submissions from the Applicant it is impossible to conclude that the Service Charges in question were unreasonably incurred or unreasonable in amount.
17. The Respondent presented evidence that it had properly consulted the Applicant regarding the work. The Applicant claimed not to have received any consultation notices. The Respondent was able to demonstrate that it held (and had held at the relevant time) the appropriate address for the Applicant and demonstrated that the relevant notice was sent out.
18. The fact that the Applicant is being asked to pay for works to areas in respect of which he does not have direct access or does not need to use is not relevant. He is obliged under the terms of his lease to pay towards works carried out to common parts, those common parts include internal corridors, staircases and the communal front door.
19. The fact that similar works were carried out to another building at a lower cost to the Applicant is, in the absence of any other evidence, irrelevant. The Applicant has no evidence (other than his observations) that the work done on the buildings was the same so as to make the cost of the work carried out on the Building unreasonable in amount.
20. The only issues of any substance revealed during the hearing were some items on the breakdown of works set out at paragraph 12 above. Dealing with those items, I comment as follows.
21. *Balcony repairs/decoration:* Much of the work was carried out to the communal walkways. These walkways clearly come within the definition of 'Common Parts' and the Applicant is liable to contribute to the costs of them.
22. The only matter that troubled me was the issue of the private balconies. I am told that four of the flats in the subject building have private balconies. I am satisfied that, from the description of these balconies, they are part of structure of the building and so the Respondent would be liable to repair and maintain them with the associated costs being paid for by way of the Service Charge. Further, I am satisfied that in any event, these balconies are not contained within the demise of the flats in question and so would therefore have to be maintained at the expense of the Service Charge.
23. *Integrated reception system:* The Respondent clearly has an obligation under clause 5.(5)(k) of the Applicant's lease to maintain the aerial at the building. Accordingly this is a Service Charge item.
24. *Asbestos removal:* There is evidence that this work was carried out. Again, the Respondent clearly has the option under clause 5.(5)(o) of the Applicant's lease to carry out such works. Accordingly this is a Service Charge item.

25. *Door entry system:* The main door is clearly a 'Common Part' and the expense of repairing and maintaining it is properly charged to the Service Charge.
26. *Window replacements:* This is the most difficult item. The Applicant's lease clearly includes the windows in the flat. The Respondent's repairing obligation clearly excludes those parts of the flat in the demise to the Applicant. However, it would appear from the further written submissions sent in by the Respondent, that the windows that were replaced in the building were replaced in flats that were subject to weekly Assured tenancies or flats let on Right to Buy leases. So far as the flats let on Assured tenancies are concerned, the Respondent would have a statutory obligation to keep the windows in repair (as part of the structure of the building) and so the windows would not be in the demise of those flats. I was sent an example of another Right to Buy lease in the building where the windows were not specifically included in the demise. Those leases would be subject to the landlord's repairing obligations of the structure set out in Schedule 6, paragraph 14(2)(a) Housing Act 1985. Therefore the landlord would be obliged to maintain and repair those windows and the expense of this would fall to be a Service Charge item.

COSTS

27. It would not be appropriate to make any order pursuant to Section 20C Landlord and Tenant Act 1985 given that the Applicant has not been successful in this application.

Name: Mark Martynski,
Tribunal Judge **Date:** **9 August 2017**