



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

**Case Reference** : **LON/00BE/LSC/2014/0018**

**Property** : **8 Yarnfield Square London SE15  
5JD**

**Applicant** : **Mr Bello Balogun**

**Representative** : **In person**

**Respondent** : **London Borough of Southwark**

**Representative** : **Ms E Bennett Senior Income  
Officer**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Members** : **Ms N Hawkes  
Mrs A Flynn MA MRICS**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **12<sup>th</sup> May 2014**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal determines that the sum of £386.66 is payable by the applicant in respect of the service charges for the year 2012-13 relating to block responsive repairs.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, by consent, so that none of the landlord's costs of the tribunal proceedings may be passed to the applicant 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 of service charges payable by the applicant in respect of the service charge year ending March 2013 relating to block responsive repairs. The respondent seeks to charge the applicant £409.21 under this heading.
2. The Tribunal has numbered the items in the respondent's breakdown of the block responsive repairs 1-25 (item 1 is work order 5292501/1 and item 25 is work order 5434332/1).
3. The applicant disputed the reasonableness and/or payability of items 1, 2, 3, 10 and 21. His contribution to the cost of these items amounts to £71.39. Accordingly, the value of the items which the applicant did not dispute was £337.82.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

5. The applicant appeared in person at the hearing and the respondent was represented by Ms E Bennett.

## **The background**

6. The property which is the subject of this application is a two bedroom maisonette in a purpose built block containing 14 maisonettes. The applicant is the assignee of a right to buy lease.
7. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. The applicant 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.

### **The issues**

9. During the hearing the parties identified the relevant issues for determination as follows:

The payability and/or reasonableness of service charges for 2012 -2012 relating to items 1, 2, 3, 10 and 21 in the breakdown of the block responsive repairs.

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.

### **Items 1, 2 and 21**

11. These work orders relate to repairs to an area of roof which is located directly above the applicant's property. The applicant informed the Tribunal that he has experienced repeated leaks through the roof into his flat.
12. The Tribunal was informed and accepts that item 1 relates to a preliminary visit which was carried out in May 2012; item 2 relates to the carrying out of a permanent repair approximately two weeks later; and item 21 is a work order which was raised following the recurrence of the leak in October 2012.
13. The applicant stated that paper invoices for the work orders had not been produced by the respondent; he argued that the job descriptions in the breakdown are insufficiently particularised; and he put the respondent to proof that it monitors the standard of the work which is carried out by its contractors.
14. The applicant also questioned the reasonableness of the sums charged but he informed the Tribunal that he did not have any alternative quotations and that he was not in a position to put forward any alternative proposed figures.
15. In respect of items 1, 2 and 21 the applicant argued that the work at items 1 and 2 cannot have been carried out to a reasonable standard in May 2012 because there was a recurrence of the same problem in October 2012.

16. Ms Bennett informed the Tribunal that the respondent operates an integrated system and does not use paper invoices because over 25,000 repairs are carried out per annum to the respondent's properties.
17. She explained that the respondent has an agreed schedule of rates and that, whilst it is not practical for the respondent to inspect every item of work which is carried out, the respondent checks random samples of the work which is carried out by its contractors. She said that in addition to these inspections, walkabouts of the estate are undertaken with tenant's representatives during which the standard of the work carried out by the respondent's contractors is considered along with various other matters.
18. Ms Bennett stated the applicant had been invited to view some further information about the work on the respondent's computer system which she said could not be printed out in isolation. The applicant indicated that he had had difficulty in booking an appointment in order to do this but Ms Bennett stated that, in any event, there was not substantially more information on screen.
19. She said that it would not be cost effective to require the contractors to provide more detailed descriptions of the work undertaken or for the respondent to inspect every job which was carried out. She said that if this were done, the leaseholders (and the respondent) would be charged considerably more for the work and that the reasonableness of the charges would be likely to be subject to challenge. Ms Bennett stated that she believed that all the work had been carried out to a reasonable standard.
20. The Tribunal accepts that it is likely to be impractical for the respondent to inspect every job which is carried out, however minor, and that a brief description of the work will be sufficient if the nature of the work which was carried out can be sufficiently ascertained from that description.
21. In respect of items 1, 2 and 21, the Tribunal is of the view that, if the work had been carried out to a reasonable standard, the sums claimed would be reasonable and payable.
22. However, the Tribunal accepts the applicant's argument that the work at items 2 cannot have been carried out to a reasonable standard in May 2012 because there was a recurrence of the same problem in October 2012, only five months later.
23. The Tribunal accepts that a preliminary visit would have been necessary and allows item 1. The Tribunal allows only £200 in respect of item 2 (£414.18 is claimed by the respondent) having regard to the fact that further work was required by October 2012. The Tribunal

disallows item 21 on the grounds that if the work had been carried out to a reasonable standard in May 2012 the future remedial work at a cost of £88.77 would not have been required. Accordingly, a deduction of £302.95 falls to be made from the total block costs.

### **Item 3**

24. Item 3 is a charge in respect of scaffolding relating to October 2012. The Tribunal was informed by the respondent and accepts that this is one of a series of charges for asbestos related works which were carried out following an asbestos survey which was undertaken in September 2012. An asbestos survey report was prepared for the respondent by Pennington Choices Limited appears at page 78 of the bundle.
25. The applicant stated that he did not see the scaffolding and on this basis he disputes the charge. Whilst the Tribunal accepts the veracity of the applicant's evidence that he did not see the scaffolding, having considered the report prepared by Pennington Choices Limited, the Tribunal also accepts that scaffolding would have been required in order for the asbestos work to be carried out.
26. The Tribunal was not provided with evidence about how large the scaffold was, where it was located, the date on which it was erected, or precisely for how long it was used. However, the Tribunal does not consider that extensive scaffolding was likely to be necessary and is of the view that it is possible that the applicant did not notice that a limited amount of scaffolding was in place for a relatively short period of time.
27. The Tribunal finds that it is likely on the balance of probabilities that the scaffold was used, notwithstanding that the applicant did not see it, and the Tribunal finds that item 3 is reasonable and payable.

### **Item 10**

28. Item 10 reads as follows:

Work Description: The Occupant Of No.8 Has Reported A Leak Coming Down To Just Outside The FED & His Neighbours FED. He Had A Private Engineer In To Assess & He Confirmed That The Issue Was With The Main Cold Water Down Pipe. Please Repair Report.

Work description 2: Plumbing – Plumbing Repair – Composite Sod

29. The applicant stated that this work order relates to a plumbing defect within his neighbour's flat and that these costs are therefore not recoverable under the terms of his lease. He informed the Tribunal

that he has had a similar plumbing issue within his own property and that he paid for the necessary repairs to be carried out.

30. The applicant stated that the plumbing defect within his neighbour's property is ongoing and that a leak occurs whenever the bathing facilities within that property are used. He stated that his neighbour had informed him that he cannot currently afford to carry out the repairs.
31. Ms Bennett argued that "the mains cold water down pipe" could refer to a main serving the whole of the block but she also rightly informed the Tribunal that she could not give direct evidence about what had happened. Accordingly, she was, understandably, reliant upon the written records.
32. The Tribunal considers that, in this instance, the short description of the work is ambiguous. The mains could be the mains within the flat or it could be the mains serving the block. The applicant has given evidence that the mains in question was the mains within the flat and Ms Bennett is not in a position to give direct evidence to the contrary. Accordingly, the Tribunal accepts the applicant's evidence that item 3 relates to an internal plumbing defect within his neighbour's property rather than to a repair falling within the service charge provisions of his lease and therefore disallows item 3 (which is in the sum of £46.54).

### **Conclusion**

33. The total sum to be deducted from the block costs for block responsive repairs is £349.49. The applicant pays 6/93 of these costs and the sum to be deducted from the applicant's service charge account is £22.55. Accordingly, of the sum of £409.21 claimed by the respondent from the applicant in respect of block responsive repairs, the Tribunal finds that £386.66 is reasonable and payable.

### **Application under s.20C and refund of fees**

34. At the hearing, the applicant applied for an order under section 20C of the 1985 Act. The respondent consented to the making of such an order explaining that the respondent did not intend, in any event, to pass any of the landlord's costs of these proceedings to the lessees through any service charge.

Judge Naomi Hawkes

Date: 12<sup>th</sup> May 2014

## **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.