



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

Case Reference : **LON/00AG/LSC/2014/0571**

Property : **69 Mornington Street, London
NW1 7QE**

Applicant : **Mr James Maitland Lyons**

Representative : **In person**

Respondent : **London Borough of Camden**

Representative : **Ms M Moloney (Court Officer)
Ms I Ettienne (Court Officer)
Mr S Alam (Contracts Manager)**

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

Tribunal Members : **Tribunal Judge L Rahman
Mr H Geddes JP RIBA MRTPI**

**Date and venue of
Hearing** : **29.6.15 at 10 Alfred Place, London
WC1E 7LR**

Date of Decision : **3.8.15**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum claimed by the respondent in respect of the Major Works in the sum of £15,038.86 is reasonable and payable by the applicant.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) The tribunal determines that the respondent shall not reimburse any tribunal fees paid by the applicant.

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 costs of the major works ("the Major Works") in the sum of £15,038.86.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant appeared in person and was accompanied by his friend Mr Mouzouros, who left at 12:05pm and was replaced by Mr Greenberg, the applicants cousin. The respondent was represented by Ms Moloney, Ms Ettienne, and Mr Alam (a Contracts Manager since April 2011 who is employed by the respondent in its Repairs and Improvements Division. He was previously employed as a Project Manager between 2002 and 2011. Both his roles involved managing external and internal repair works to properties, ranging from Victorian and Georgian street properties to high rise buildings, owned and managed by the respondent).

The background

4. The property which is the subject of this application is a two bedroom ground floor / basement flat in a 4 storey Georgian building built around the 1840's and comprising two flats. The applicant does not live at the property. The property has been let since 2000.
5. Cyclical repairs and decorations works to the property were carried out in 2001 under the Councils 'Raising the Standard' programme of works. The works included repairs to the main roof and redecoration to windows and external areas of the building.

6. The property was included in the Councils 2011/2012 external 'Decent Homes' programme of works, the Major Works, now the subject of the application to this tribunal.
7. The respondent confirmed at the hearing that the relevant works were done under a partnering agreement entered into after a fully compliant tender procedure. The works concerned external works only, with the exception of the inside of some of the windows. The works commenced in the service charge year starting April 2012 and were completed on 19th March 2013.
8. The estimated cost for the works was £46,057.19 excluding management fees. The actual total cost of the works was £27,343.38, of which the appellant is liable to pay 50% under the terms of his lease. A further management fee in the sum of £1,367.17 brings the total amount payable by the appellant for the Major Works to £15,038.86.
9. Photographs of the building were provided in the hearing bundle. 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.
10. 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 specific provisions of the lease will be referred to below, where appropriate.

The issues

11. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether particular elements of the Major Works (listed on pages 181-182 of the bundle), as identified by the applicant and considered below, are reasonable in terms of the costs and whether they were carried out to a reasonable standard.
 - (ii) The applicant had agreed at the previous case management hearing that he accepts that the works were within the landlords obligations under the lease and the cost of the works were payable under the lease.
 - (iii) The applicant confirmed at the hearing that he accepts that the landlord had complied with the consultation requirements under section 20 of the 1985 Act. He stated that he did not make any observations because it was pointless when he made observations in relation to the 2001 works.

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

Item 65: metal surfaces £493.00

13. The applicant queried what the metal surfaces were. Once Mr Alam explained that it related to painting the external metalwork, such as the Juliet balcony, railings, and the cast iron pipe works, the applicant stated the railings in the photograph on page 253-257 had not been painted and the items identified as "F7" and "F8" on the drawing on page 155 (railings) had also not been painted. The applicant stated that he did not have any evidence that the railings on page 155 had not been painted and that he had not written to the respondent to complain that the railings had not been painted.
14. Mr Alam stated the applicant was correct in that the railings shown in the photographs on pages 253-257 had not been painted and the applicant had not been charged. He stated that the railings and the cast iron pipe work referred to on page 155 were painted. He had made the notes on page 155 and he inspected and measured the areas painted.
15. The tribunal noted Mr Alam stated in his witness statement dated 3.6.15 that he carried out a joint survey with the Contractors Surveyor to identify elements of the fabric of the building that required repairs/renewals. During the course of the works he carried out several ad hoc inspections to check on the progress and quality of the works. He stated that he was aware that the Councils Clerks of Works, Martin Allen, also carried out various quality inspections to ensure the contractors were adhering to good standards of workmanship. He further stated that within the Repairs and Improvements Division they have a Quality Assurance Team that carries out random checks on properties where works have been completed to ensure the contractors are adhering to good quality standards and the work represents value for money. Following completion of the works, the subject property was inspected by the respondents Quality Assurance Officer together with Mr Alam, before the property was signed off as completed. Mr Alam stated that on 15th March 2013 he carried out a final inspection, which gave him the opportunity to check the quality of the completed works as well as ensuring the contractors had completed all the works. In his opinion, the works to the property had been carried out to a good standard.
16. In light of the evidence from Mr Alam and in the absence of any evidence from the applicant to show that the painting had not been done or was done to a poor standard, the tribunal finds the amount charged reasonable and payable.

Item 77: scaffold alarm £1,200.00

17. The applicant stated that the alarm did not work and he was burgled 8 times. Entry was gained via a basement window or door after climbing into the rear garden via the scaffolding. The alarm was useless as it just rang a bell and was not connected to the police. He would have preferred to pay more for an alarm to be linked to the police.
18. Mr Alam stated scaffold alarms were fitted to the front of the property when the scaffolding was erected. After the first report of a burglary, alarms were also fitted to the rear of the property. These were sensor based alarms triggered if anyone climbed onto the scaffolding. The alarms were not linked to the police but residents had a telephone number to call if the alarm was triggered and a security patrol would be sent out. On at least one occasion the security patrol were sent out. He tested the alarm in the front and it worked. He could not recall whether he tested the rear alarm. The cost was for the alarm to the front, side, and rear. He recalled getting complaints about the alarm going off therefore they acted as a deterrent. It was still possible to get into the rear of the property by simply climbing over the neighbours 1.8 metre high wall. He accepts the applicant told him about two attempted burglaries and one burglary.
19. The tribunal finds the amount charged reasonable and payable. Given the concerns raised by the applicant, the action taken by the respondent was a reasonable precaution. Alarms are not guaranteed to stop burglaries but act as a deterrent. The type of alarm was reasonable in that it rang a bell, which would act as a deterrent, and residents had a telephone number to call and a security patrol would be sent.

Item 78: Pavement Permit £500.00

20. The applicant wanted to know what this charge related to. Mr Alam stated a permit was required to erect the scaffolding. The applicant then agreed the amount was reasonable and payable.

Item 81: Remove and re-fix satellite dish £146.48

21. The applicant stated that he should not have to pay for the dish serving the flat upstairs. Mr Alam stated there were two dishes, one on the roof that served the upstairs flat and one to the rear serving the applicants flat. They had to be removed and re-fitted to erect the scaffolding and to carry out the relevant works. The applicant then accepted that one dish belonged to his flat and he further accepted the explanation provided by the respondent. The tribunal therefore finds the amount charged reasonable and payable.

Item 84: Total scaffolding £7,199.08

22. The applicant queried how the cost was arrived at. He confirmed he did not have any alternative quotes. Mr Alam stated the price was competitive as the respondent awarded the works contract following a tendering process.
23. The tribunal finds the amount charged reasonable and payable. The respondent had awarded the contract following a tendering process, the applicant provided no evidence to the contrary, and the applicant had no alternative quotes to demonstrate that the price paid by the respondent was unreasonable.

Windows £5,862.71

24. The applicant stated he accepts the cost of the works but challenges the quality of the works. He accepts the exterior of the windows were "sort of repaired" and he was told to do the interiors. He states the respondent should also have done the interiors.
25. The photographs on pages 333 and 339 were of the exterior of the bathroom window, which he stated showed cracking in the paintwork and a gap appearing along the bottom, which he took recently.
26. The photographs on pages 335 and 337 were of the inside of the rear bedroom window and showed a gap in the woodwork, which he was told to fill. He bought a filler for less than £10 and filled it.
27. The photograph on page 348 is of a window which he states had a problem but he resolved it by easing the window and did not complain about it to the respondent.
28. The photograph on page 350 is of the second bathroom window. The respondent did not paint the inside and did not charge for the inside. The respondent only painted the exterior.
29. Page 352 shows a catch on the inside of the kitchen window which the respondent had put in and was now falling off. The problem had developed recently. His main complaint was that there was some paintwork on the glass along the edge. He did not complain about it previously.
30. The photograph on page 354 is of the inside of a window and shows the sash fasteners which he states did not fit/work. He did not complain about it as it was a minor problem.

31. The photograph on page 356 was taken before the works and shows rotten wood on the outside, which had been filled and painted over. However, the window did not open and sticks since the works had been done. He did not complain about it to the respondent.
32. Mr Alam stated the respondent specified works to the outside. Appointments were made for carpenters to address internal issues concerning such things as the sash cord or damage to the frame work. The respondent did not decorate the interior and did not charge for any internal works. If the windows needed to be completely taken out, the respondent would do it all. However, none of the windows needed to be taken out.
33. He accepts the photographs on pages 333 and 339 show what looked like chipped paintwork which could have been caused by poor workmanship or impact damage. He could not say without checking it. The applicant had not previously complained about it.
34. He accepts the respondent replaced the bottom rail of the sash in the photograph on page 335 and 337. The appellant had not complained about it before and had repaired it. Had he complained when the contractors were there it could have been dealt with.
35. With respect to there being paint on the glass, as shown in the photograph on page 352, Mr Alam stated the photographs on pages 223-229 showed the quality of the finishing after the works were completed. It can be seen on page 226 the care taken by the contractors to protect the glass as protection was used to cover the glass/windows.
36. The photograph on page 354 looked like condensation and flaking paint. It was internal and therefore the applicants responsibility and the applicant had not been charged for any works done to that window. He was not previously told about the problem with the fastener.
37. With respect to the photograph on page 356, the wood was decayed and needed to be raked out and treated with primer and then filled and painted. He was not told about the window sticking. The first he heard about it was at the hearing. Had he been told about this and the problem with the fastener within the defect period, he would have sent someone to address it. Once the works had been done, a survey was carried out and nothing was drawn to the respondents attention.
38. The tribunal finds the amount charged by the respondent is reasonable and payable in full. The applicant does not challenge that the cost of the works was unreasonable. The applicant complained about the quality of the works or lack of. However, some of his complaints concern items that he was responsible for under the terms of the lease, namely, the interior of the windows and for which he has not been charged. The

other complaints concern snagging items which he should have brought to the attention of the respondent but did not. Had they been raised with the respondent the contractors could have been asked to address those issues. The applicant eased one of the windows into place and spent an insignificant amount on wood filler instead of complaining to the respondent during the inspections at the conclusion of the works. The tribunal accepts that the chip to the paintwork of the exterior of the bathroom window may have been caused by impact damage rather than poor workmanship. The tribunal finds the overall finishing to the windows, as disclosed by the photographs on pages 222-229 and the oral testimony from Mr Alam, was of a reasonable standard. The tribunal also noted Mr Alam's evidence that during the course of the works he carried out several ad hoc inspections to check on the progress and quality of the works. He was aware that the Clerk of Works, Martin Allen, also carried out various quality inspections to ensure the contractors were adhering to good standards of workmanship. Following completion of the works, the subject property was inspected by the respondents Quality Assurance Officer together with Mr Alam, before the property was signed off as completed. Mr Alam stated that on 15th March 2013 he carried out a final inspection, which gave him the opportunity to check the quality of the completed works as well as ensuring the contractors had completed all the works.

Roof £6,967.85

39. The applicant accepts the cost was reasonable but challenged the quality of the works. He relied upon the report prepared by David Raleigh (DipBS MRICS) dated 24.1.12, which predates the works to the roof, which was carried out in August 2012. The applicant was unable to explain how this report could help in challenging the quality of the finished works.
40. The applicant stated that the main roof leaked. He was told by the upstairs tenant. He did not have any statements from the tenant.
41. The applicant relied upon a Party Wall Report (page 370), which referred to "some slipped slates", in support of his argument that the leak was due to poor workmanship. He believed that the whole roof should be re-slatted.
42. The applicant stated that the roof on his side extension leaked. He spoke to the Council about it in 2014 and was provided a response by email (page 316), which confirmed that Mr Bolt, Contracts Manager, had observed damage to the shower room ceiling but did not have the opportunity to inspect the roof.
43. Mr Alam stated he had not received any complaints from the upstairs flat about any leaks.

44. When the works were completed, it was satisfactory. All slates were in place when he carried out an inspection. The photograph on page 366 was taken on 7.1.15 and showed more than 90% of the roof and only one slate can be seen to have slipped. This could be for any number of reasons, including people walking on the roof. The Party Wall Report was compiled by number 46, who were carrying out a roof extension, therefore, there was good reason why people may have been walking on the roof.
45. Mr Alam stated that some minor works were done to the side extension roof. However, the applicant was not charged for that work. It did not appear under the roof costs. The only works for which he had been charged was in relation to item 64 on page 182, the replacement of stolen lead. This was done 6 months after the works to the roof.
46. As part of his original survey, he had carried out an inspection of the extension asphalt roof. It appeared to be in a reasonable condition and therefore did not need replacing. He had accessed the bathroom and noted staining on the ceiling, which he attributed to condensation as there was no extractor fan in the bathroom and there were three outside walls and a flat roof. Mr Bolt, who had visited the bathroom last year, was also of the view that it was related to condensation, as confirmed in his email on page 313, which states *"I would confirm that in my view the defects to the shower room roof are not related to any work done or charged for under the Better Homes work done a short while ago...Additionally I did have further discussions with Shamsul Alam who believes there may also be an issue with condensation to the ceiling of the shower room and having seen the area I believe that could well be the case"*.
47. The tribunal finds the full amount charged by the respondent to be reasonable and payable. The applicant accepts the cost of the works is not unreasonable. The applicant has failed to provide any persuasive evidence to show that the works to the roof was of a poor quality. The report by David Raleigh cannot assist in any way as the report was prepared before any works had been carried out to the roof. The Party Wall Report was not relevant to the works done on the main roof. The applicant has failed to provide a surveyors report to comment on the works to the roof. The photograph on page 366, taken in January 2015, shows only one slipped tile. Given the roof extension being carried out by number 46, there was good reason that the tile may have slipped due to people walking on the roof. Mr Alam stated that he had not received any complaints about any leaks from the upstairs flat. The applicant has failed to provide any supporting evidence such as a letter or witness statement from the tenant from the upstairs flat to confirm any leak.
48. Whatever complaints the applicant may have about leaks in the roof to the extension, which the respondent states is due to condensation,

there is no evidence that the applicant has been charged for any of the minor works carried out to the roof.

Item 64: Replacement of stolen lead and access £548.99

49. The applicant states that the respondent should pay for it as it was stolen whilst the scaffolding was up. The scaffolding was up for 10 months and the lead went missing in about September 2012. In any event, the cost should be covered by the insurance.
50. Mr Alam stated the photograph on page 19 of the report by David Raleigh shows where the lead was stolen from. The scaffolding was taken down in March 2013 and the lead was stolen 6 months later. Mr Alam stated the respondent had insurance cover but the value of the claim was too low, in other words, the excess paid would not have covered the cost of the works.
51. The tribunal finds the full amount reasonable and payable. The applicant has failed to provide evidence to show that the lead was stolen whilst the scaffolding was in situ. Even if that were the case, whilst it is unfortunate that the theft occurred, the respondent was not at fault as it was reasonable to have the scaffolding to carry out the necessary works. The level of insurance excess meant that it was not possible or proportionate to recover the cost through the insurance.

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

52. Taking into account the determinations above, the tribunal does not order the respondent to refund any fees paid by the applicant.
53. The applicant applied for an order under section 20C of the 1985. Taking into account the determinations above and the respondent having been successful on all the disputed issues, the tribunal decline to make an order under section 20C

Name: Mr L Rahman

Date: 3.8.15

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.