



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

Case Reference : LON/00BG/LSC/2015/0160

Property : Flat 4, Jervis Bay House, Blair Street, London E14 0PP

Applicant : Mr Amir Khan

Representatives : Miss P. Lambert, Advice Caseworker of South Bromley Forum

Respondents : Poplar HARCA

Representative : Mr A. Lane, Counsel

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

Tribunal Members : Judge W Hansen (chairman)
Mr J Barlow FRICS
Mr J Francis

Date and venue of Hearing : 19 August 2015 at 10 Alfred Place, London WC1E 7LR

Date of Decision : 2 September 2015

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that all the service charges which are the subject of this application are payable and that the sum of £13,273.16 is therefore payable in full by the Applicant to the Respondent.
- (2) The Tribunal declines to make an Order under paragraph 13(1)(b) of the 2013 Tribunal Procedure Rules against the Applicant;
- (3) The Tribunal declines to make an Order under paragraph 13(1)(a) of the 2013 Tribunal Procedure Rules against the Applicant's representative;
- (3) The Tribunal declines to make an Order under paragraph 13(2) of the 2013 Tribunal Procedure Rules for the reimbursement of fees to the Applicant.

The Application

1. The Applicant was the lessee of Flat 4, Jervis Bay House ("JBH") under a long lease dated 28 January 2002 (pp.127-151). He and his parents had exercised their right to buy under the Housing Act 1985 ("HA") and the Applicant was the sole surviving lessee following the death of his parents. By virtue of an application dated 30 March 2015 the Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 to("the 1985 Act") as to the reasonableness and payability of certain service charges charged to the Applicant. The charges relate to major works to JBH carried out in 2006 ("the Works"). Although the application referred to service charges for the years 2006-2009 as being in issue, in fact, as was made clear in the Applicant's Scott Schedule (p.21), read together with his witness statement (pp.99-103), the dispute relates only to the Works.

The Facts

2. On 22 August 2006 (p.80) the Respondent sent the Applicant and his parents (hereafter referred to as the Tenant) a Major Works Invoice for £13,273.16. The Tenant's share of the costs of the Works would have been £24,651.38 but for the protections afforded to the Tenant by the Respondent's Offer Notice (see s.125, HA). The letter explained that "*A copy of the original tender document and employers instruction are available on request*". An itemised breakdown of the Works and their cost was contained in an accompanying Schedule (p.82). This broke the Works down into Roofing, Roof & associated works, Block Common Areas, Windows and Block External Works. The cost of the Works to JBH was £430,782.87. The amount attributable to Flat 4 was £24,651.38 but capped, for the reasons explained above, at £13,273.16. Although the Scott Schedule at page 21 does not correspond exactly to the Schedule at page 82, it is common ground that the entirety of the sum claimed, i.e. £13,273.16, is what is in dispute in these proceedings.

The Applicant's Case

3. The Tribunal asked Miss Lambert to clarify the Applicant's case. The Scott Schedule at page 21 listed 7 items, essentially the items comprising the Works, and in respect of 6 of those items said: "*Work not done*". In respect of item 5, windows overhaul, it said "*no repair, only painted*". The Applicant's witness statement dated 24 July 2015 alleged that any works carried out were "*not noticeable*" and went on to allege that the charges were unreasonably incurred and/or that the work was not done to a reasonable standard. The Applicant himself told us, through an interpreter, that the work was done but was not done properly. When the Tribunal asked Miss Lambert for further clarification, she persisted in the allegation that the work had not been done at all in respect of items 1-3 and 6-7 in the Scott Schedule (page 21); in respect of item 4 (entrance doors) she said the work had been done but the sum charged was unreasonable and in respect of item 5 (windows overhaul) she said that no work was necessary.

4. There is very little contemporaneous evidence as to why the Tenant refused to pay. However, it would appear that the Tenant, together with other tenants in JBH and an adjoining block known as Gaze House, instructed one Paul Ashton to inspect the Works and he prepared a letter dated 22 January 2007, marked without prejudice, addressed to the Respondent, in which he said: “... *I do have difficulty in seeing evidence of any significant works having been undertaken*”. Miss Lambert relied on this letter as the lynchpin of the Applicant’s case.

The Respondent’s Case

5. The Respondent resisted the Tenant’s attempt to rely on the letter from Mr Ashton as expert evidence as to the condition of JBH following the Works. Counsel for the landlord pointed out permission had not been granted for expert evidence, the letter was in any event marked without prejudice and it was not in proper form, with no declaration or statement of truth. He further made the point that the Respondent had not had the chance to challenge the conclusions of Mr Ashton or ask him any questions and nor had he come to the Tribunal to give evidence. Miss Lambert made no application as such to admit the letter as expert evidence and contended that it was in fact factual evidence. In any event, the Respondent’s Counsel contended that the letter did not assist the Applicant. It did not distinguish clearly between Gaze House and JBH in its conclusions and in fact tended to show that work had been carried out, contrary to the Applicant’s primary case.

Conclusions

6. The Tribunal considers that it makes no difference to the outcome of the case whether or not we admit the letter from Mr Ashton and we have therefore considered its contents in reaching our decision, despite the obvious force of Mr Lane’s submissions that we should disregard it.
7. This is a somewhat unusual case. JBH no longer exists, the block having been demolished in March 2015 prior to the Applicant’s

application. The Applicant is no longer the lessee of Flat 4, having sold his leasehold interest back to the Respondent in January 2015. However, neither party suggested (in our view correctly) that the Tribunal did not have jurisdiction to determine the application. We were told that a sum representing the disputed amount of service charge has been retained out of the proceeds of sale pending the resolution of this dispute.

8. In the circumstances we can express our conclusions quite shortly. Insofar as the issue is whether the Works were done, the Tribunal is satisfied on the balance of probabilities that they were. This applies to items 1-3 and 6-7 in the Scott Schedule at page 21. We have the letter dated 22 August 2006 (page 80) together with the invoice (page 81) and the Schedule (page 82). Furthermore, Mr Ashton's letter, far from supporting the conclusion that no work was done, supports the conclusion that work was done. Beyond that, it really does not assist. It does not distinguish between Gaze House and JBH in its conclusions. Mr Ashton was not here to speak to his report. In the event, we give it little or no weight. Even if the real complaint is that the work was not done properly, the Applicant has not begun to make a case in this regard. Insofar as the issue is whether the sum charged for the entrance doors was unreasonably high, the Applicant has not begun to make a case in this regard and we are satisfied that it was not. Insofar as the issue is whether works to the windows were unnecessary, the Applicant has not begun to make a case in this regard and we are satisfied that the works were necessary.
9. Whilst there is something of an evidential lacuna on both sides, the Respondent having lost or destroyed the underlying documents as explained by Mr Ako in his witness statement dated 29 July 2015, the Tribunal is entirely satisfied that there is no merit in the Applicant's claim and that no adverse inference can be drawn from the landlord's failure to retain and produce the documents, given the lapse of time. It

would obviously have assisted us to see these documents but we have had to make do with what we have.

Costs

10. Miss Lambert did not pursue the s.20C application intimated in the originating Application. She sought reimbursement of the fees paid by the Applicant but we decline to make any such order having regard to our findings above.
11. Mr Lane sought a wasted costs order against Miss Lambert and unreasonable costs against the Applicant. We made it clear at the hearing that we were against him on the first application and he wisely did not press the point, although he did not formally abandon the application. We see no merit in it whatever and make no criticism of Miss Lambert. The original bundle which she prepared was unsatisfactory but she conscientiously remedied that by providing a further satisfactory bundle.
12. Mr Lane did however pursue the application against the Applicant for unreasonable costs under paragraph 13(1)(b) of the 2013 Rules and produced a schedule of costs in the sum of £8,663.90.
13. Mr Lane made a number of points in support of his application. Firstly, he referred to page 10 and made the point that the real basis of the Applicant's application to the Tribunal was the Applicant's perception that he had been treated differently and unfairly as compared with other lessees who had been able to resolve their differences with the Respondent. Mr Lane submitted that this was not an appropriate basis upon which to bring the application. Secondly, he referred to the lack of clarity in the Applicant's case and the way it had changed and then reverted back to the original allegations. Thirdly, it was said to have been unreasonable to wait so long, until the building had been demolished, before bringing the application. Fourthly, he said that the

application was speculative and unsupportable on the evidence and that it was unreasonable to pursue the claim without evidence.

14. Miss Lambert resisted the application. She made the point that the landlord had produced little or no evidence on their side. She said that the Respondent had known about the likelihood of an application but had nonetheless destroyed the documents.
15. The issue is whether the Applicant's conduct was unreasonable. The relevant provision in the Rules sets the bar high. The Tribunal is essentially a costs-free jurisdiction where an applicant should not be deterred from using the jurisdiction for fear of having to pay the other party's costs. That is far from saying that a party can behave unreasonably with impunity. Clearly they cannot but the behaviour complained of must out of the ordinary. Each case turns on its merits.
16. In our view the various matters of which complaint is made were not such as to make the Applicant's conduct unreasonable. A challenge was intimated almost from the outset. It derived some support from Mr Ashton's letter or the Applicant could reasonably have thought that it did. We have ultimately found against the Applicant but there were evidential shortcomings on both sides.
17. The Tribunal is therefore not persuaded that it should make a costs order against the Applicant and we therefore decline to make such an order.

Name: Judge W Hansen

Date: 2 September 2015