



12002
**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00BJ/LSC/2016/0303

Property : 19 Fernthorpe Road, Streatham
SW16 6DP

Applicant : Kathryn Walker

Representative : In person

Respondent : Three Keys Properties Limited

Representative : Mr Bagley

Type of Application : Application under s.27A of the
Landlord and Tenant Act 1985

Tribunal Members : Judge W Hansen (chairman)
Mr Frank Colley FRICS

**Date and venue of
Hearing** : 10 January 2017 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 20 February 2017

DECISION

Decision of the Tribunal

- (1) The Tribunal determines that the Applicant is liable to pay £3,436.79 for the service charge year 2014-15. Insofar as the Applicant has paid more than this sum for that year, credit is to be given.
- (2) The Tribunal determines that the Applicant is liable to pay £1,043.67 for the service charge year 2015-16.
- (3) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent shall not be entitled to add the costs incurred in connection with these proceedings to the service charge.

The Application

1. The Applicant is the tenant of the ground floor flat ("the Flat") at 17 and 19 Fernthorpe Road, Streatham, London SW16 ("the Property"). The Respondent is the freehold owner of the Property having acquired the same in or about June 2014.
2. The Property is a mid-terraced two storey property divided into 2 self-contained flats. By an application dated 10 August 2016 the Applicant seeks to challenge a number of service charge items for the service charge years 2014-15 and 2015-16.
3. In particular, for the year 2014-15, she challenges (i) the cost of the building insurance in the sum of £1,717.84 (£858.87 per flat); (ii) the cost for works of repair to the Property in the sum of £8,240 (£4,120 per flat); the cost of surveyors' fees in the sum of £847.68 (£423.94 per flat) and (iv) the cost of the block management fees in the sum of £1,144 (£572 per flat).
4. For the year 2015-16 she challenges (i) the cost of the building insurance in the sum of £1,757.35 (£878.67 per flat) and (ii) the costs of the block maintenance fees in the sum of £330 (£165 per flat).

The Lease

5. The Applicant holds the Flat under a long lease dated 10 May 1991. By Clause 4(4) she covenants to pay the Service Charge at the times and in the manner provided in the Fifth Schedule. By Clause 5(1)(a)(i) and (ii) the landlord covenants to insure the Property against any loss or damage by fire and all other risks normally covered by a comprehensive policy together with such other risks as the lessor deems necessary in the full reinstatement value thereof and to maintain such policy in some insurance office of repute. The remainder of Clause 5(1) contains a variety of landlord's repairing covenants, the principal one being Clause 5(1)(b) by which the landlord covenants to maintain in good and substantial repair and condition the exterior of the Building. Clause 5(1)(e) provides that the lessor may "*do or cause to be done all such works installations acts matters and things as may in the lessor's absolute discretion be necessary or advisable for the proper maintenance safety and administration of the Building ... and the employment and payment of such contractors agents or servants as the lessor shall think necessary*". The Fifth Schedule provides that the service charge shall be 50% of the cost to the lessor of **maintaining** such insurance and services as are referred to in Clause 5(1). The remainder of the Fifth Schedule provides for an advance payment of service charge in ten half yearly instalments based on the previous year's cost "*plus ten per cent*" with provision for a later balancing payment or credit as appropriate after the actual sums incurred are known.

2014-15

6. The Statement of Service Charge Expenditure for 2014-2015 identifies the four items under challenge as set out in paragraph 3 above. We deal with each item in turn.
7. The basis of the challenge to the cost of the insurance is set out in the Scott Schedule as follows: "*Our current charge is too high. The policy provides cover for many things beyond rebuilding (e.g. loss of rental income etc.) with no benefit to us. Our new insurance policy was started three months before the old ran out and we have had no rebate*". This latter point must be pursued (if at all) with the previous freeholder. As to the former point, there is simply no comparative or other evidence to sustain a challenge. All the points made by the landlord in its comments on this item in the Scott Schedule are well made. The Property has been insured in the normal course of business with an insurer of repute. The extent of the cover is

reasonable. The reinstatement value has gone up following a periodic re-assessment and this has been reflected in the premium. The landlord is not obliged to shop around and find the cheapest quote. In any event, the Applicant has adduced no evidence to suggest that the premium charged is in any way unreasonable. This sum is payable in full.

8. The basis of the challenge to the repair works is set out in the first instance in the Scott Schedule (*"Much of the work was not undertaken. The completed work was bodged"*) but then developed extensively in the evidence, particularly the photographic evidence (photos 1-32) and report of Mr J Byers FRICS, the Applicant's expert whose report dated 15 November 2016 (pp.177-210) was prepared with the permission of the Tribunal granted on 26 August 2016 following an inspection by Mr Byers on 8 November 2016. Mr Byers' report identifies work not completed at all, work not completed to specification and work (in particular the repair, preparation and redecoration of joinery and render) which has not been carried out to a satisfactory standard.
9. The work commenced on or about 9 November 2015 and was completed on or about 23 November 2015. The works were specified in a revised schedule of external redecoration, dated 17 March 2015, prepared by the Respondent's surveyor, Mr Barron. The vast majority of the work related to external painting with some necessary pre-painting repairs. The Schedule provided for thorough preparation of previously painted surfaces, including appropriate rubbing off and stripping or burning back as necessary of loose, flaking or defective paint. It also provided for filling of all cracks, joints and imperfections, removal of defective putty and appropriate timber repairs prior to painting.
10. Mr Byers' Scott Schedule from item 2.01 onwards (pp.191) and his photographs identify numerous instances of defective work to both the front and rear elevation, including lack of suitable preparation, flaking paint, evidence of only one coat being applied, splitting paint finishes, brush marks, paint run marks, unpainted render, lack of proper filling, cracks in the render, rippling and bubbling paint finishes and a miscellany of other defects in the works. His photographs support the narrative provided as do the photographs provided by the Applicant (e.g. photos 8, 8, 22, 24). Mr Barron, who was not an independent surveyor but prepared the schedule and supervised the works, sought to counter this evidence with a report of his own (p.211-240). His report was said to be based on *"a review of our own files ... and our knowledge of the works"*. It does not suggest that he revisited the site to inspect and

many of the comments suggest that he did not: *“When work was complete on 23 November 2015, the windows had been satisfactorily painted”*; *“When the building was completed in November 2015, the masonry work was in good order”*. To our mind, this misses the point. A paint job may well look satisfactory on the day it is completed but if the paint has flaked off within a year, it will not generally be satisfactory. In substance, Mr Barron does not properly address the evidence of Mr Byers and we unreservedly prefer the independent evidence of Mr Byers. We are satisfied that the work was not completed to a satisfactory or reasonable standard for the reasons identified by Mr Byers, particularly the redecoration work which comprised the vast majority of the work. It is not possible to effectively re-decorate external surfaces of a building without proper preparation and the undertaking of any necessary, pre-decorative repair. We are satisfied that neither was done properly in this case with the inevitable consequences that followed.

11. In those circumstances, and doing the best we can based on the evidence, we consider that the cost charged to the tenants should be reduced by 50%. Accordingly, the Applicant is only liable to pay £2,060 for the works (50% of £4,120).
12. The Applicant also challenges the cost of surveyors' fees in the sum of £847.68 (£423.94 per flat) in connection with Mr Barron's supervision of the works. This charge was based on a charge of 11% of the contractor's final sum of £8,240 = £906.40 less a prepaid amount of £200.00 = £706.40 + VAT. Given our findings on the appropriate sum for the contractor's final sum, we consider that it is appropriate to reduce this sum accordingly and we consider a reasonable sum to be $11\% \times £4,120 = £453.20 - £200 = £253.20 + \text{VAT} = £303.84$. The Applicant is liable to pay 50% of this = £151.92.
13. The final challenge for this year relates to the block management fee of £1,144. It was not readily apparent how this figure had been arrived at or why it was so much more than the charge for the subsequent year. Mr Bagley said it represented 10% of the contractor's final sum, i.e. £824, to reflect the additional work occasioned by the works plus a figure of £320 for routine management.
14. Given our findings on the appropriate sum for the cost of the works, again we propose to reflect this in the charges levied under this head. Thus we allow £732 ($10\% \times £4,120 = £412 + £320 = £732$) of which the Applicant is liable to pay 50% = £366.

2015-16

15. The Applicant challenges the cost of insurance for this year too. We repeat our comments in paragraph 7 above. There is no basis upon which this challenge can be sustained. The sum of £1,757.35 is payable in full and the Applicant's share is £878.67.
16. The Applicant also challenges the block management fee for this year but we consider the sum charged to be reasonable. The sum of £330.00 is payable in full and the Applicant's share is £165.

Section 20C

17. The Applicant sought an order under section 20C of the Landlord and Tenant Act 1985 in her application. As regards the section 20C application, the Tribunal has a discretion in the matter which must be exercised having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). We consider that we should make an order given the measure of success enjoyed by the Applicant, particularly in relation to the cost of the works, which was the main area of controversy and where substantial time and money has been expended in order to resolve the issue.

Name: Judge W Hansen

Date: 20 February 2017