

12653



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

Case reference : **LON/00AY/LSC/2017/0321**

Property : **Flat 2, 15 Hayter Road,
London SW2 5AR**

Applicant : **London Borough of Lambeth**

Represented by : **Mr Stocks instructed by Judge &
Priestley Solicitors**

Respondent : **Mrs Isoken Susan Solanke**

Represented by : **In Person**

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

Tribunal member(s) : **Judge Daley
Mr M Taylor FRICS**

**Date and venue of
hearing** : **23 January 2018 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **28 February 2018**

DECISION

Decisions of the tribunal

(1) The Tribunal's decision is set out at paragraphs 41-55

The application

The background

1. On 2 September 2016, the Applicant issued a claim in the Northampton Business Centre for arrears of Service Charge in the sum of £4859.91. By order of District Judge Sterlini, the claim was transferred to the First-tier Property Tribunal.
2. Directions based on the papers were issued on 31 August 2017 where it was decided that the following matters were in issue:- (1) The payability and reasonableness of the works amounting to £4859.91. (2) Whether the landlord has complied with any consultation requirements under 20 of the 1985 Act (if any). (3) Whether the works are within the landlord's obligations under the lease/ whether the costs are payable by the leaseholder under the lease.
3. The premises which is the subject of this application, is a flat situated in a converted four storey Victorian building comprising Flat 1 at basement and ground floor levels and the subject Flat 2 situated on the first and second floor. There is a Communal Hall at Ground Floor level.
4. The premises are subject to a lease agreement dated 28 July 2003, which requires that the Applicant will provide services the costs of which are payable by the leaseholders as additional rent (a service charge).
5. Where specific clauses of the lease are referred to, they are set out in the determination.

The Hearing

6. At the hearing the Applicant was represented by Mr Stocks, counsel for the Applicant. Also in attendance was Mr Ajayi, a Leaseholder Team Leader. The Respondent Mrs Isoken Solanke represented herself.

Preliminary Matters

7. The Tribunal was informed that the Tribunal had varied the Directions so as to enable the Respondent's witness statement to be served late.

However as a result of issues that had been raised in her statement, the Applicant had additional documents that were provided in a black A 4 bundle comprising a witness statement of Johnson Ajayi and 5 sections of supporting documents.

8. There was also a single document: *Housing Standards Project Update*. The Tribunal granted a brief adjournment to enable documents to be exchanged.

The Applicant's case on the major works

9. The Tribunal was informed that the Respondent had arrears of service charges which went back a number of years however the Applicant's claim was in relation to major works carried out at the premises. The Tribunal was informed that the work related to plaster repairs to the communal lobby, repairs to the front elevation, and work undertaken to the roof.
10. A certificate of practical completion had been signed off by the contractor's agent Mr Chris Plummer and the Council's surveyor Mr Charles Whateley-Moss on 23 January 2014. The final account had been prepared and a demand for the Respondent's share in the sum of £3433.02 had been sent to the Respondent on 30 October 2014.
11. The Tribunal was informed that although the accounts referred to block and estate charges, the actual sums related to only two properties which comprised the building. The service charges were apportioned 51 % and 49% with the respondent's share being 51%.
12. The Tribunal was informed that the major works comprised two sets of work, one of which had been identified as necessary following a survey ("the Frankham Report") after this report was commissioned, it became apparent that there were issues with the roof and given the need for scaffolding, it was decided that it was practical and costs effective for the work to be undertaken at the same time.
13. The Report which was dated January 2013, noted at paragraph 3.0 that -: "*... Fractures within the Ashlar effect render are to be seen above the window heads to the basement/lower ground floor... at paragraph 5.0 it was recommended that the soundness of the external render is checked and that the work required was to "Internally cut out fractures noted and make good"*". A schedule of works was prepared which dealt with the disrepair.
14. A Section 20 Notice dated 11 September 2013 was issued. In it the work was set out as " Carrying out repairs to external cracks to the building; Internally cut out fractures and make good to the communal areas of both flat 1 and 2." In the notice, the Respondent was informed of the Applicant's intention to use Morrison's Facilities Services, pursuant to a long-term qualifying agreement.
15. The implication of this was that the Applicant had sought a dispensation at some earlier time in respect of the use of a contractor who was subject to a long-term qualifying agreement. This meant that it was not necessary to carry out the full Section 20 Consultation procedure.
16. The section 20 notice was served in respect of the repairs to the roof on 17 April 2014. This again involved a more limited consultation

- exercise pursuant to the long-term qualifying agreement with Morrison's Facilities Services.
17. In the notice dated 17.04.2014 the work was described as "*Erect scaffolding to rear, unblock 2no hopper heads, refix 4lm of downpipe, renew 3lm flashing, renew 2m2 of felt apply 6m2 of polymer sealant and clear out gutters at Hayter Road*".
 18. The work was estimated in the sum of £1,179.72.
 19. The Applicant received responses from the tenant only in relation to the Frankham Report works. No response to the section 20 notice concerning the roof repairs was received.
 20. The Response from the tenant regarding the Frankum Report dated 23 September 2013 stated-"*... Unfortunately, both leaseholders were never contacted neither was there an inspection visit of the building by Morrison Services. Can you please furnish me with date as to when this work review was carried out?*" Both leaseholders were not informed of any visit since the erection of the scaffolding.
 21. In the letter the Respondent refers to a meeting held by Lambeth Housing Standard on 2 June 2013. It is not clear from the content of the letter whether this meeting was a general meeting of all Lambeth Leaseholders rather than a meeting which deals with the specific scheme of work.
 22. The Applicant merely provided a holding response to the Respondent's letter.
 23. Neither leaseholder responded to the Section 20 notice (concerning the roof works) dated 17 April 2014.
 24. The Applicant representative Mr Stocks submitted that the work had been undertaken and that the major work was payable in accordance with the clauses in the lease. In particular he placed reliance on clauses; 3.2.1 (in respect of insurance of the premises) and 3.5 (landlord's covenant to repair), 3.8.2 and 4.1.4 (covenant supporting the payment of service charges) and 4.2.1.3 (payment of 10% charge for administration) which set out the respondent's obligation to pay service charges including the management charge.

The Respondent's case in reply

25. Ms Solanke's case was set out in her witness statement dated 17 November 2017 in her statement in paragraph 4 she stated that -:" *The Applicant has not done enough to show that they have fulfilled their obligations. I work nights and am home during the day. So there is no way work of that magnitude will be carried out in the building I live in , without me noticing workmen, and not been called or asked on completion of the work to sign a certificate. It's a building you can only access through either of the 2 flats therein contained, to carry out repairs & maintenance. No other access* ".
26. The Respondent disputed that the work had been carried out, and relied on photographs taken of the exterior. In her statement she said that the photographs were taken in 2016.
27. One of the photographs appeared to be just above the ground floor window. There were two photographs of internal cracks and one of the

ceilings, which was stated to show water penetration. There were also two showing external fractures and an un-plastered area near the hallway.

28. The Respondent also placed reliance on a letter dated 1 January 2015, which she had written to the Applicant's officer challenging work having been undertaken. In her letter she stated: "*...I contest the claim of Lambeth living carrying out work to my property ...Surely for such work there should be consultation of the proposed work by the contractor and a start date.*"
29. In reply Mr Ajayi stated that the work in the photograph may not form part of the work undertaken as part of the Frankham Report. He also wanted to know when the photographs were taken. Mrs Solanke confirmed that she did not know the exact date however it was either late 2015 or early 2016. The Tribunal queried whether the Applicant had replied to the letter.
30. The Tribunal was informed that an inspection had been carried out in October 2015, although the Respondent had not seen the report. The Tribunal asked how long the scaffolding had been in place. Mrs Solanke stated that it had been in place for about 2 years.
31. The Tribunal was informed that the work in the Frankham report took place between 26 November 2013 and 24 January 2014. The Applicant's representative also informed the Tribunal that the costs of the scaffolding had not been borne by the Respondent.
32. In respect of the roof work, Mrs Solanke stated that she had never had a problem with the roof or water penetration prior to the works being carried out. She stated that she had been at the property when the repair had been undertaken and that this had amounted to two slates being replaced. She also referred to the Housing standards document which had referred to a delay in works being undertaken in 2014.
33. Mr Ajayi responded by saying that this delay had resulted in the roof works being postponed until June 2014. However this did not affect the "Frankham works" which had commenced in 2013.
34. The Applicant stated that some of the charges included a flat fee of £68.00 for management and building insurance and ground rent.
35. Mrs Solanke had previously stated that she was at the property most days however she acknowledged that she spent some periods out of the country in particular between October to around 20 December of most years.
36. The Tribunal asked the Applicant whether they intended to recover their hearing costs as a service charge. The Applicant's representative stated that the lease provided for the recovery of costs. In respect of costs the Applicant intended to recover their costs of bringing the proceedings.
37. Mr Stocks stated that it was only at the hearing that the Applicant became aware of the nature of the Respondent's case. He stated that there had been a delay in exchanging witness statements and that point 2 of the Directions had not been complied with.
38. Mrs Solanke stated that her absence for a period of 6 weeks had been pre-booked before she had been aware of the need to exchange statements.

39. The Tribunal noted that an extension had been sought in respect of the filing of the statement. The Tribunal noted that there was no breakdown of the actual costs of the work undertaken as a result of the Frankham Report works.

40. After the hearing on 25 January 2018, the Applicant provided the Tribunal with a copy of the works orders in respect of the major works in the total sum of £4023.14

The Decision of the Tribunal on the Reasonableness and payability of the service charges

41. The Tribunal having heard from the parties determined as follows:-
The Tribunal having noted that the insurance and management charges are not in dispute accordingly it has confined its decision to the major works.

The roof repairs in the sum of £1179.72

42. The Tribunal noted that this was for the rainwater goods and to support the structural integrity of the roof. The Applicant had not stated that the roof had been re-tiled. The Tribunal noted that the tenant had accepted that scaffolding had been in place, she also acknowledged that she had sight of the workmen on one occasion.

43. The Tribunal finds on a balance of probabilities that the repairs to the roof were carried out.

44. The leaseholder in her evidence stated that she had complained on one occasion concerning a leak to the roof. However she has not raised any further issues concerning problems with the roof.

45. The Tribunal also noted the age of the building, and the fact that from time to time buildings of its age and character would require roof repairs. The Tribunal has had no evidence placed before it to undermine the charge of £1179.72.

46. Accordingly the Tribunal finds the costs of the roof work reasonable and payable.

The Major works ("The Frankham Report")

47. The Applicant's in their bundle of documents provided the Tribunal with a copy of Certificate of Completion, the Tribunal noted that it had been signed on behalf of the Applicant by a surveyor. Accordingly the Tribunal finds no reason to look behind the Certificate.

48. The Tribunal noted that Mrs Solanke was not present at the property for the whole of the period that the work was carried out. The Tribunal also noted that her photographs were not contemporaneous accordingly there was no evidence before the Tribunal on what the building looked like immediately after the work was undertaken.

49. Notwithstanding the Tribunal's findings that the work was undertaken, the Tribunal noted that the Respondent had complained in 2013 and 2015 and that her complaints raise issues concerning the standard of the work.
50. The Tribunal has accordingly considered her photographs as providing support for her written queries concerning the work.
51. The Tribunal accepts that on the evidence of the photographs which were taken between 12 and 18 months of the work being undertaken, the standard of workmanship was not what it ought to have been given the existence of the cracking shown on the photograph.
52. The Tribunal noted that the leaseholders had not been asked to sign a pro forma indicated that they were happy with the standard of the work Accordingly the Tribunal finds that the costs of this work are not reasonable.
53. The Tribunal makes an order that the sum payable for the work should be reduced by 1/3 (One third) and that this reduction should apply for any costs associated with the management of the work.

Application under s.20C and refund of fees

54. The Tribunal was referred to clause 2.4 and 2.5 in respect of the Applicant's ability to recover the costs of the hearing. These clauses provide that the costs may be recoverable as an Administration charge.
55. The Tribunal noted its findings that 1/3 of the costs of the Frankham Work should be deducted from the service charges as not reasonable and payable. The Tribunal makes an order that only 2/3 of the costs of the hearing are recoverable as a service charge.

Name: Judge Daley

Date:
28/02/18

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the

case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985

(1) Section 27A

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).