FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AY/LSC/2019/0062**
Property	**:**	**Flat 34 Stoddart House, Meadow Road, London SW8 1NB**
Applicant	**:**	**Metropolitan Housing Trust Limited**
Representative	**:**	**Ms Mattson of Counsel**
Respondent	**:**	**Ms Vicky Ifore**
Representative	**:**	**No representative**
Type of Application	**:**	**Determination of liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Tribunal Judge Brandler** **Mr K Ridgeway MRICS**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 29th May 2019**
Date of Decision	**:**	**14.06.2019**

DECISION

DECISION

1. The Tribunal determines that the sum of £9960.59 for unpaid service charges for major works is due and payable by the Respondent to the Applicant within 28 days of the date of this decision.
2. The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 (the Act).
3. Since the Tribunal has no jurisdiction over county court costs and fees, nor in relation to interest claimed, the matter is referred back to the County Court at Clerkenwell & Shoreditch under claim no: D9QZ8Y2A.

APPLICATION

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of the service charges claimed in relation to major works carried out.

2. On 12.09.2017 the Applicant issued proceedings against the Respondent for unpaid service charges for major works. The matter was issued under claim no. D9QZ8Y2A in the County Court Business Centre. The Respondent failed to file or serve a defence and judgment in default was ordered on 18.1.2017.

3. On 11.12.2017 the Respondent applied to set aside the default judgment and the application was listed to be heard on 22.03.2018 at the County Court at Clerkenwell & Shoreditch. The outcome of that hearing was that judgment was set aside and the Respondent was ordered to file and serve a defence by 12.04.2018. An extension of time was agreed by the parties for service of the defence by 10.05.2018. Whilst the Respondent served the Defence there seems to have been nothing on file with the Court. This was then rectified by the Applicant sending a copy of the Defence to the Court and the matter came before DJ Hayes on 7.12.2018 who gave directions initially and then by an order dated 6.2.2019 ordered that the claim shall be transferred to the First Tier Tribunal (Property Chamber) ("The Tribunal").

4. On 28.02.2019 the Tribunal made an order for directions.

5. The relevant legal provisions are set out in the appendix to this decision.

BACKGROUND

6. The property is a second floor flat in a purpose-built block known as Stoddart House ("The Building") which forms part of a larger estate known as Ashmole Estate. The Respondent's occupancy is under the terms of a lease dated 11 December 2000 between The Mayor and Burgesses of the London Borough of Lambeth and Miss V.G. Ifore ("The Respondent"). Insofar as the terms of the lease are relevant to the matters before us, we will highlight those during the course of this decision

7. Metropolitan Housing Trust Limited ("The Applicant") is the successor in title to the freehold of the Ashmole Estate made under a Transfer Contract between Lambeth Council and the Applicant dated 22.03.2010. A ballot of residents was

held in 2009 further to a formal consultation for leaseholder and a majority voted to transfer the ownership and management of the estate to the Applicant.

8. On 3.09.2010 the Applicant sent the Respondent and all other leaseholders of the Ashmole Estate a s.20 written Notice of Intention to enter into an agreement to carry out works. The Notice of Intention referred to the description of works as those "outlined in the Formal Consultation Document for Leaseholders".

9. Pursuant to a transfer contract between Lambeth Council and the Applicant dated 22.03.2010 which refers to the development agreement as forming an integral part of the housing stock transfer, the Applicant capped the existing leaseholders' individual liability for the costs of works carried out under the development agreement to £10,000.

10. The Applicant applied the major works charge of £10,000 to the Respondent's account on 31/08/2016. An invoice was sent to her on 21/10/2016 and various reminders were sent. No payments were made by the Respondent towards this bill.

11. Since the matter was transferred to the Tribunal, the Applicant has recalculated the Respondent's liability and found that to be £9960.59. Not as previously claimed £10,000.

12. The calculation is set out as follows: £615.406.80 / 17176 # 278 = £9960.59.

13. The calculation used is explained as follows: The total cost of major works (£615.406.80) divided by the total rate value for the block (17176) multiplied by the rate value for the property (278) equals the actual contribution from the Respondent.

14. Works carried out include: installing double glazed windows, roof works, grounds works

15. The issues raised by the Respondent as her defence, set out in various documents, are in essence as follows:

    (a) She was not consulted about the major works
    (b) The old windows in her flat did not need replacing, were in perfect working order, and she would not have agreed to the replacement if she had known she would have to pay for them
    (c) The replacement windows are faulty and dangerous
    (d) She has been treated unfairly and the Applicant had shown preferential treatment to a tenant in her building who was not forced to replace her windows.
    (e) That there had been no clear itemised individual cost and lack of explanation of the bill for £10000.
    (f) Her financial circumstances are difficult

HEARING

16. The Applicant was represented by Ms Mattsson of Counsel. Ms Begum provided a witness statement on behalf of the Applicant and answered questions during the hearing. The Respondent was in person.

17. A bundle of documents was prepared by the Applicant and a skeleton argument on their behalf was provided on the day of the hearing.

18. The Tribunal were taken to the relevant terms of the lease as set out in Ms Mattsson's skeleton argument, which demonstrate the Respondent leaseholder's liability to pay for works carried out to her property by the Applicant.

19. In first considering whether the Applicant had properly consulted with the Respondent in relation to the major works, the Applicant produced documentation to prove consultation in relation to the transfer from Lambeth Council to the Applicant, the terms of the transfer and what works were proposed upon conclusion of the transfer. Also provided in the bundle were the S.20 consultation documents and various letters addressed to the Respondent. The Respondent made the point several times that the Applicant could not be sure that letters had reached her in relation to the consultation. Ms Begum explained the Applicant's process and how the letters were sent out by way of a spread sheet and a mail merge document to all the leaseholders. She explained that the Respondent would have been included in that document and the Respondent was referred to several letters in the bundle addressed to her. However, the Respondent's position remained that the copy letters were not proof that she had received them. She said that she did open letters that were personally addressed to her, for example her service charge letters, but if not addressed and just pushed through the letter box, she seemed to indicate that she considered these junk mail that she could not look at everything she considered to be under that category. In cross examination, although the Respondent on the one hand continued to say that it was for the Applicant to prove delivery of the letters, on the other hand conceded that she may not be certain about receipt or otherwise of letters some 9 years earlier.

20. The Respondent confirmed that she had allowed access for the windows to be surveyed and then replaced and when asked whether she had ever said she didn't want the windows, her response was that it was only one back window that she did not want.

21. When asked about the scaffolding on the buildings on the estate and whether that would alert her to major works, the Respondent said that she didn't think that it affected her.

22. In oral evidence in relation to the allegations of defective and dangerous windows, the respondent suggested that it was difficult and dangerous to open the windows as they were too high. However, no documentary evidence was provided to show that any complaints had been made to the Applicant in this regard. The Tribunal considered the records in the bundle headed up Person Notepad and Contact History. The Respondent expressed surprise as to why no complaints were recorded in those documents. She then told the Tribunal that she had reported the problems orally at the local office. She provided no photographs of the problem windows, or of the old windows that she claimed should have remained in place.

23. In response the Applicant contacted the local office who confirmed that no oral complaint had been made.

24. There is documentary evidence setting out some of the works planned by the Applicant contained in the formal consultation document for leaseholders. Although neither the survey nor the corresponding report were available at the hearing. In oral evidence Ms Begum relied on the formal consultation document, although this was vague in relation to the windows required for Stoddart House.

25. In oral evidence the Respondent described the condition of her old windows. She initially told the Tribunal that they had been 5 years old when replaced by the Applicant, however in cross examination it transpired that the old windows must have been much older than that. The Respondent, having confirmed that she had not paid for any windows since purchasing the leasehold interest of the property in 2000, accepted that maybe the old windows were older than she had originally suggested. The suggestion was made to her that the previous windows had therefore been installed prior to 2000 as that was the only explanation as to why she had not had to pay for them, bearing in mind her liabilities set out in the lease under 'tenant's covenants'. It was also suggested to the Respondent that the age of the previous windows would indicate that they did not comply with the current safety requirements and therefore required replacement. The Respondent said she could not be sure how old the previous windows had been.

26. In relation to why one tenant did not have to replace her windows – Ms Begum said that particular tenant was an elderly vulnerable tenant who also had hoarding issues and there had been access issues. Ms Begum was asked why an access injunction could not have resolved this issue. Ms Begum did not have that information. Nor could Ms Begum provide information as to the current state of those remaining old windows but indicated that she thought they had to date not been replaced. No photographs were provided to show the condition of that tenant's windows to compare them to the new windows

27. Although the Respondent raised an argument that she had not understood the charges or been given a breakdown of those charges, this was a late addition to her defence. The Tribunal did have some queries about why proposed charges and actual charges differed so significantly in the documentation provided. For example, the differences between the figures on p. 160 as compared to p.439 of the appeal bundle. Ms Begum could not clarify why those differences had occurred.

28. In relation to the high management charges of 15.5%, Ms Begum was able to confirm that these had not been charged in the final account. When asked whether that had been made clear anywhere in documents, the response was that it had not and Ms Begum could not clarify why the management fee had not been charged.

29. There was some discussion about the leak into Respondents flat some years after completion of works. The evidence indicating that this leak had not been as a result of any of the major works, rather as a result of another occupier in the block.

30. The relevant terms of the lease were highlighted to the Tribunal setting out the Respondent's liabilities. In particular clause 2.2. of the lease sets out the Respondent's covenants and Schedule 4 particularise the charges and expenses recoverable.

31. In relation to the Respondent's personal financial circumstances, it was explained to her that these could not be taken into account.

DECISION

32. In relation to the Respondent's claim that there had been no consultation, there was sufficient written evidence of consultation under s.20 of the Act. Numerous letters had been sent both prior to the transfer of the freehold to the Applicant, as well as specific s.20 consultation documentation. Although the Respondent denied having any knowledge of such documentation and claimed that she had not noticed any works on the estate to alert her to issues, she confirmed to the Tribunal that she had allowed access for a survey and works on the windows.

33. The Respondent said she could not remember whether she received correspondence in relation to the consultation on major works or on the transfer of the freehold of the estate from Lambeth to the Applicant. The Tribunal found on balance that even if one or even two letters had not reached the Respondent, it was highly unlikely that all letters would have got lost. She would and should have been alerted to the works planned and even if only one letter reached her, it should have alerted her to the fact of the major works and allowed her time to investigate issues.

34. While the Respondent denied knowing that she was required to pay for new windows, she had been a leaseholder since 2000. As such she would, or should, have known that Lambeth, and now the Applicant, do not carry out works to leaseholders' properties without recouping the costs. She is aware that she has to pay service charges and in oral evidence this was the only correspondence that she did admit receiving. She therefore has an understanding of the responsibilities and rights of a leaseholder. The Tribunal found therefore that there had been consultation.

35. In relation to the quality of the windows and the Respondent's claim that they are faulty and dangerous, she has produced no evidence that she has reported such defects. The windows were installed some years ago, and there has been sufficient time for her to contact the Applicant in relation to these claims. There is nothing in the person notepad or contact history in relation to the Respondent which sets out any complaints about the windows.

36. In oral evidence the Respondent asked the Tribunal to accept that she had reported the defects in person to her local office and asked for this to be taken into account. The Applicant telephoned the person referred to by name by the Respondent who said no contact had been made. This evidence is all too late, and of little weight. The Tribunal preferred to rely on the written records in relation to the Respondent's flat which mentions nothing in this regard.

37. The Respondent has had sufficient time from the initial demand, through to the County Court proceedings and up to the Tribunal hearing to produce documentary evidence or at least photos of the defects that she claims. None have been produced.

38. In relation to unfair treatment of the Respondent as compared to a tenant in the block who was allowed to keep the old windows, the Tribunal had some concerns. It was not clear from oral evidence from Ms Begum exactly why the tenant had been allowed to keep the old windows. When asked about this, Ms Begum stated that the tenant was a hoarder and elderly. This in the Tribunal's view was not sufficient reason not to install new windows. The Applicant should have obtained an injunction to allow them to carry out works that they say are essential and raised concerns as to how essential the windows actually were.

39. We had no documentary evidence or photographic evidence of the tenant's windows to show the difference to those that were installed to the Respondent's property. However, the fact remains, there is no evidence of the Respondent refusing to allow a survey or works to her windows. Had she refused her argument may have had more force. Her defence, however, was that she did not know that she would have to pay for the windows, which were not required. The Respondent is bound by the terms of the lease, the relevant clause in this case being clause 2.2 of the Tenant's covenants. The Tribunal did not accept that the old windows were only 5 years old. The fact that the Respondent, in her own evidence had not had to pay for windows before, indicates that the old windows were installed prior to 2000. Those windows were therefore likely to have had wear and tear and likely to have required replacement and the Tribunal therefore does not accept that the new windows were unnecessary.

40. Nor did the Tribunal accept that the Respondent should not have to pay for the windows. She is liable to pay £9960.59 which is a reasonable charge for the extent of the works carried out overall. The only works disputed within the major works being the replacement windows.

41. In relation to the Respondent's claim that there had been no explanation or breakdown of the costs, the Tribunal found although some of the documentation provided by the Applicant was not as clear as it could have been, the Respondent could have made enquiry at any time with the leasehold office about such sums. She has been a leaseholder since 2000 with all the responsibilities that entails under the covenants set out in the lease and it was not reasonable at this stage, after the issue of proceedings to claim this as a defence.

42. Finally, given the Applicant's success, the Tribunal makes no order under section 20C of the Act.

Judge: D. Brandler

D. Brandler

Date: 14.06.2019

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 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 to 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 (ie 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

Section 20 Limitation of service charges: consultation requirements

(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.— Limitation of service charges: costs of proceedings.

(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 leasehold valuation tribunal [or the First-tier 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 [the county court];
[(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;]
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
[(ba) in the case of proceedings before the First-tier Tribunal, to the 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 [the 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.

Section 27A Liability to pay service charges: jurisdiction

(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.
(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on [the appropriate tribunal] in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.