In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case reference	**:**	**LON/00BJ/LSC/2020/0354**
County Court Claim Number	**:**	**G08YX393**
Property	**:**	**95 Godley Road, SW18 3HA**
Applicant (Claimant)	**:**	**London Borough of Wandsworth**
Respondent (Defendant)	**:**	**Rachel Hine**
Type of application	**:**	**Transfer from County Court**
Tribunal	**:**	**Tribunal Judge Martyński (also sitting as a Judge of the County Court)** **Mr A Harris LLM FRICS FCIArb**
Present at hearing:	**:**	**Mr Salter (Counsel for the Applicant)** **Ms Hine** **Mr Russell (Applicant's witness)** **Ms Ennafii (Applicant's witness)** **Mr Flewett (Respondent's witness)**
Date of hearing	**:**	**26 March 2021**
Date of decision:	**:**	**8 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was V VHS Remote. A face-to-face hearing was

not held because it was not practicable and no-one requested the same, and all issues could be determined in a remote hearing.

Decision summary

1. The costs incurred by the Applicant in works of roof replacement were reasonably incurred and are payable by the Respondent.

2. The Respondent's claims against the Applicant are dismissed.

3. The Respondent is to pay interest and costs to the Applicant (this is partly an order of the County Court and is explained later in this decision)

Background

4. This is a Deployment case concerning proceedings in the County Court ("the Court") and in the FTT ("the Tribunal"). In the Court proceedings Judge Martyński is sitting alone. In the Tribunal proceedings, Judge Martyński and Mr Harris are sitting together.

5. The subject property is a flat on the first floor of a purpose-built maisonette. The Applicant holds the freehold interest in the building. The Respondent holds the long leasehold interest in the flat.

6. The Applicant issued proceedings in the County Court in January 2020 making the following claims:

Service Charges:	£5736.02
Interest:	£1084.28 and continuing at a daily rate of £1.06

7. A Defence was filed on 17 February 2020.

8. On 26 October 2020 D.D.J. White made the following order:

   Transfer the matter to the First Tier Tribunal

9. The issues in the case were as follows;

   i. Was the replacement of the roof necessary?

   ii. The effect of the Applicant's answers to pre-contract enquiries when the Respondent purchased the property

   iii. Whether there was an failure of the s.20 consultation process.

   iv. Whether the Applicant was liable for damage to the property and subsequent loss resulting from the works

The issues, evidence and reasons for the tribunal's decisions

The reasonableness of the decision to replace the roof

10. When the Respondent was in the process of purchasing the subject property in 2008, as part of the answers given to pre-contract enquiries by the Applicant, the Respondent was told that the Applicant intended to replace the roof within the next five years and that the estimated cost to the Respondent would be £5,000.

11. It would appear therefore, at this stage the Respondent did not have an issue with the principle of roof replacement.

12. In 2013 the Applicant instructed external consultants, Keegans Limited, to carry out external roof surveys and a sample of internal loft surveys on the Magdalen Park Estate. This estate, which includes the subject property) contains a number of buildings built at around the same time.

13. The relevant parts of the report produced by Keegans (dated 9 December 2013) read as follows:

> The client brief is to carry out external roof surveys and a sample of internal loft surveys to determine the full extent of roof repairs/remedial works required to be carried out to properties on the Magdalen Park Estate……
>
> The buildings within the estate share similar structural construction……
>
> External visual surveys were carried out for all units from ground level to the front elevations and rear elevations where access was made available by the resident or the rear gate was open. Also a number of internal loft inspections were carried out where the resident allowed internal access.
>
> The estate was built in around the 1930s and it was noted that vast majority of the properties still have the original roof structure and coverings. There are a number of properties that were bombed during the war and were found to have had the roof coverings or structure replaced in around the 1950s.
>
> The majority of the roof coverings are now past their life expectancy of between 50 and 70 years and are generally in a poor state of repair.
>
> Various defects were noted to the original plain tiled covering. These range from loose/slipped tiles, missing tiles, delaminated and crumbling tiles. Also on a large number or [sic] properties the roofs appear to have spread over time causing the tiles to heave up in line with the party wall.
>
> The roofs that have been replaced following bomb damage have weathered better and are still in a reasonably good conditions with only minor works required to be carried out.
>
> Considering the age and conditions of the vast majority of the roof coverings it is highly recommended that these roof coverings are completely renewed, with the exception of 15 properties where overhaul of the roof covering is recommended.

14. It is not clear from the report whether the 15 properties that did not require replacement roofs were simply those with 1950's roofs.

15. The Applicant carried out pilot roof works on one of the properties in the Estate in March 2015 and concluded that the costs of repair and

replacement with existing tiles was not economic when compared with complete replacement.

16. The roof to the subject property was replaced in the Summer of 2016. The costs of the roof works, amounting to £10,957.81 were demanded in October 2016. Some time later, the Respondent paid approximately £5000 towards the costs of the roof works based on the estimate she had been given when she purchased the subject property.

17. The Applicant produced photographs taken of the subject property's roof taken from ground level to demonstrate that the roof required replacement. The only photograph that clearly showed disrepair in the roof covering was in fact of a different property. Of the other photographs, there was no clear disrepair/damage shown.

18. In January 2015, repairs were carried out to the subject property's roof, that work being the securing/replacement of a limited amount of tiles. The work was carried out by independent contractors at a cost of in the region of £200. There is a note on the Applicant's computer system from when the roof was inspected in December 2014 which states; "*roof in poor overall*"

19. Ms Hine stated that she had lived in the subject property for a number of years after she purchased it and that it had been tenanted in recent years. She stated that she had never had any issues or problems with the roof. It was her case that there was no evidence that her roof required replacement.

20. We have concluded that the replacement of the roof was reasonable for the following reasons;

    (a) The roof, given its age, was either at or coming near to the end of its expected serviceable life

    (b) There was clear evidence that similar roofs in the locality were failing

    (c) It was inevitable that, given the age of the roof, repairs were going to be necessary in the years to come. There was clear evidence that the costs of ongoing repair were going to be as expensive, if not more expensive, than replacement

    (d) Whilst there was no direct and clear evidence, it was a reasonable assumption that the roof on the subject property would have required repair or replacement in the next few years

    (e) There was evidence, albeit limited, by way of the contractor's report, to suggest that the roof was in poor overall condition

    (f) The Respondent did not produce any evidence regarding the condition of the roof to counter the evidence submitted by the Applicant

(g) The Applicant therefore had to make a decision as to whether to wait for disrepair to occur to the point that it caused damage and to carry out patch repairs, or to replace. It seems to us on the evidence presented that it may have been a reasonable course of action for the Applicant to wait and see and carry out patch repairs where feasible or, in the light of the age of the roof, to plump for complete replacement even where there was no clear evidence of current disrepair. In those circumstances, the Applicant is entitled to choose one of those courses of action.

(h) The Respondent purchased the subject property knowing that there was the distinct possibility of the roof being replaced and raised no objection at the time. Further, the Respondent paid £5,000 towards the costs of the replacement. It is clear therefore that she did not have an absolute objection to the principle of replacement.

21. No specific challenge was raised as to the standard of the roof works (apart from the issue of the leak – see below) nor to the general cost (other than a complaint that the eventual cost far exceeded the estimate given in 2009 – see below). The Respondent did not produce any independent or expert evidence as to the standard of works or the cost of the works.

22. In June 2014 the Applicant sent a Notice of Intention to carry out works to the Respondent at the subject property. The closing date for observations was given as 25 July 2014.

23. In response to that notice, the Respondent asked for a copy of the specification of works. This was only provided on the evening of 24 July 2014.

24. Despite the Applicant supplying the specification at the last moment, the Respondent managed to submit detailed observations to the Applicant on 25 July.

25. The Respondent's comments were responded to by the Applicant on 6 August 2014.

26. Prior to this, by letter dated 25 July 2014, the Applicant wrote to all leaseholders informing them that, in response to comments received regarding the proposed works, they were going to carry out work on one of the roofs in the affected area to see if repair over replacement was a more economic course of action.

27. By letter dated 21 September 2015 the Applicant wrote to leaseholders advising them that, following work on the pilot roof, they had concluded that, for the majority of roofs, renewal was the best option rather than repair. This letter set out a summary of leaseholders' comments on the proposed works and a summary of the responses provided. The letter asked for comments and advised leaseholders of a meeting to take place on 1 October 2015. The letter also gave details of the tenders received and the accepted tender.

28. We have concluded that there was no breach of the consultation regulations. The original consultation letter was sent to the subject property which was the address that the Applicant had on file for the Respondent at the time. However, the Respondent received that letter and was, as described above, able to respond to it.

29. The later letters in the s.20 consultation process were sent to an updated address provided by the Respondent.

30. It is clear from the correspondence that the Respondent's comments were considered by the Applicant.

The Applicant's liability for the replies to enquiries

31. The Respondent made the usual pre-contract enquiries when she was in the process of purchasing the subject property. In response to these the Applicant sent a letter dated 22 June 2009 which included the following;

> The following contract(s) are contained in the current programme of planned works:
>
> Roof renewal & associated work 11,000 (block) 2014/15
>
> > It is important to note that the Major Works Capital Programme is subject to continuous alterations. Works of repair and/or improvement may be added, omitted or contract contents varied subject to availability of resources and changing priorities. The estimate costs can increase or decrease at the various stages of consultation, pricing by a consultant or tendering on the open market, therefore, the estimated costs for a scheme of works are to the best of the Council's knowledge at the time of writing. Consequently, the Council cannot accept responsibility for any loss or damage caused by the variable nature of the capital programme.

32. We cannot see how the Respondent can be held liable for the estimate, given six or seven years before the works were carried out, and given the terms of the answer that it gave to the pre-contract enquiries.

The claim for damage to the Respondent's property

33. We heard evidence from Mr Russell, a Project Controller employed by the Applicant, that the roof was provided with a weatherproof covering after completion of each day's work.

34. Both parties agree that on 20 June 2016 water got into the subject property causing an electrical fire and damage to a wall. The Applicant's contractors carried out works on the wall to make good.

35. At this time, the Respondent's then tenants were in the process of moving out and the property was being marketed for a re-let. The Respondent claimed that as a result of the incident, she could only re-let the property for £99 per month less than it had previously been let for and that she had a two-week void period between lettings. She claimed for the rent lost during the void period and for the loss of rent on the new two-year letting.

36. In the absence of any supporting evidence from, say, a letting agent, we find it difficult to accept that the void period was due exclusively to the incident on 20 June. The result of that incident was a black mark on part of the wall and water damage to part of a wall. The property so far as we are aware, remained perfectly habitable. We make the same comments for the rent on the re-letting. A reduction in rent whilst the wall was made good may have been one thing, a reduction of two year's worth of rent would require more compelling evidence that this was due to the incident in question.

37. The Respondent went on to say that she next inspected the interior of the subject property in March 2017, some 9 months later. She showed us a photograph of the wall that had been damaged from the water ingress in June 2016. From that photograph it appeared that paint was peeling on the wall. It is quite possible that this was due to poor repairs having been carried out by the Applicant's contractors in June of the previous year. However, no claim was made in respect of a further repair or redecoration of this area (if there was any such done). The problem could not justify the claim for the void period or reduction of rent as the problem was not known at the time of the re-letting in June.

38. The Respondent and her partner presented further photographic evidence of damp staining in other parts of the property from photographs taken in March 2017. There was no evidence as to the cause of this staining. The Respondent says it was not there in June the previous year; however, there is no condition report on the re-letting to support this, and no reports of any complaints made in the meantime about this issue.

39. The Respondent raised another issue following the inspection of the flat in March 2017 which was the fact that there was roofing debris in the garden. The Respondent paid £120 (no invoice supplied) to remove the debris.

40. Given the length of time that had passed since the roof was replaced, we are not persuaded, on the balance of probabilities, that the debris was placed there by the Applicant's contractors. Mr Russell stated that there were a number of works being carried out to other properties in the area and this could have been fly tipping. Further, it does not appear that the Respondent contacted the Applicant regarding this debris to give them the chance to comment on it/remove it.

Conclusion

41. We find that the costs of the works to the roof were reasonably incurred and that there are no grounds on which the Respondent can rely to limit the costs of the works to the estimate given by the Applicant in pre-contract responses in 2009 or to limit them in any other way.

42. Insofar as the claims in respect of loss of rent and debris removal costs were presented as a set-off against the payability of the costs of the roof works, we dismiss them.

Interest, costs, fees and judgement

Interest (County Court matter only)

43. Interest is payable on the sums claimed by the Applicant pursuant to the Respondent's lease terms at 6% above the base rate of Barclays Bank.

44. Interest calculated at 6.5% on the sums outstanding was claimed at the hearing in the sum of £2388.72. This claim appears to be based on interest running from the Respondent's account in October 2016 (when there was a debit balance of £12,655) and taking into account sums paid by the Respondent since that time.

45. However, the actual claim made against the Respondent in the County Court proceedings is interest on the sum of £5736.02 (that being the sum due when the proceedings were issued) with interest to the date of issue of proceedings amounting to £1084.28 and continuing at a daily rate of £1.06. The amount said to be outstanding as at the date of the final hearing was £4745.98. I have therefore used that figure to calculate the continuing interest from the day after the date of issue (18.1.20) to the date of the final hearing (26.3.21) which is 433 days x £0.845 [£4745.98 x 6.5%] = £365.88. The total interest therefore amounts to £1450.16.

Fees (Tribunal)

46. The Applicant paid to the Tribunal a hearing fee of £200. As the Applicant has been successful, we order that the sum of £200 is to be paid to the Applicant by 7 May 2021.

Costs (County Court matter only)

47. This claim was allocated to the Small Claims Track. Costs were claimed relying on the contractual provisions of the lease. The only lease term relied on was clause 3. (d) which provides as follows:

> To pay all costs charges and expenses (including solicitors' costs and surveyors' fees) reasonably incurred by the Council for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court.

48. There was no evidence that these proceedings were brought, either in the County Court or in the Tribunal, as a precursor to the service of a Section 146 notice or with a view to forfeiture.

49. The Upper Tribunal, in *Barrett v Robinson* [2014] UKUT 0322 (LC), when dealing with a claim for costs under a similar lease clause, stated

that; "*It is always necessary to consider the terms of the particular indemnity covenant and whether any relevant contemplation or anticipation existed in fact in the circumstances of an individual case*."

50. In that case, the Tribunal was dealing with a slightly differently worded clause which provided that the tenant was to pay the landlord's costs; "*incurred by the Lessor in or in contemplation of any proceedings or the preparation of any notice under section 146 of the Law of Property Act 1925……*". However, the approach to the clause in this case remains the same. It is necessary to consider whether there was any relevant intention to serve or prepare a s.146 notice or to forfeit the lease for non-payment of Service Charges.

51. There was no evidence of such intention on the part of the Applicant and accordingly there is no entitlement to costs under clause 3.(d) of the lease.

52. The Applicant paid a fee of £455.00 to the Court on issue of the proceedings and is entitled to the fixed solicitors costs of £100.00 Accordingly, I award costs of £555.00.

Judgement

53. The Applicant's claim, after adjustments for sums already paid, amounts to £4745.98. The attached County Court order gives judgement for that sum together with interest and costs in the total amount of £6,751.14.

54. Additionally, the Tribunal has made an order for the payment of the £200 hearing fee.

55. The total amount of £6,951.14 is to be paid by 7 May 2021.

Deputy Regional Tribunal Judge Martyński

RIGHTS OF APPEAL

Tribunal decision

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 from 16 April 2021.

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.

County Court decisions and judgement

5. This decision and judgement will be formally made on 16 April 2021. On that day, either party may seek permission to appeal. If any party wishes to make such an application on that day, they should contact the tribunal at least 48 hours prior to that date and the necessary arrangements will be made for a video hearing.

Appealing both Tribunal and County Court decisions

6. The party wishing to appeal should follow both procedures set out above.