FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AP/LSC/2021/0083**
Property	**:**	**69 Mount Pleasant Road, London, N17 6TW**
Applicant	**:**	**Glen Alfonso Johnson**
Representative	**:**	**Hugh-Jones LLP**
Respondent	**:**	**Chinedu Patrice Okoli**
Type of Application	**:**	**Service charges**
Tribunal Members	**:**	**Judge Nicol** **Mr M Taylor MRICS**
Date and venue of Hearing	**:**	**7th June 2022** **By remote video**
Date of Decision	**:**	**27th June 2022**

DECISION

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(1) The Tribunal has determined that, if the proposed costs of £41,507.40 were to be incurred for the works proposed by the Applicant, a service charge would be payable by the Respondent for half of those costs.

(2) The Tribunal refuses to make an order under section 20C of the Landlord and Tenant Act 1985.

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

The Tribunal's reasons

1. The Applicant is the freehold owner of 69 Mount Pleasant Road, London N17 6TW, a two-storey end-terrace house converted into two flats,

number 69 on the ground floor and 69b on the upper floor. He is also the lessee of flat number 69. The Respondent is the lessee of the other flat, 69b, which he rents out.

2. Following his purchase of the freehold on 18th March 2019, the Applicant instructed Cemcroft Consultancy Ltd to survey the property. Their report, dated 27th July 2019, identified a significant number of dilapidations and included a comprehensive schedule of works.

3. Under his lease, the Respondent would be responsible for half of the cost of carrying out such works. Therefore, the Applicant's solicitors prepared a notice of intention to carry out the works in accordance with section 20 of the Landlord and Tenant Act 1985. It was sent to the Respondent at the subject property but, when he did not respond, it was sent to his mortgagees, Coventry Building Society.

4. A fresh notice was drawn up on 9th October 2020 and delivered by a process server at 12 Tayside Drive, Edgware, Middlesex HA8 8RD, the address still given for the Respondent on the Land Registry entry for the subject property.

5. The Applicant obtained two quotes for the works, using Cemcroft's schedule as the specification, from MPD Gjoka Building Services Ltd for £51,619.60 and from NWTS for £41,507.40. The requisite second section 20 notice, with information about these quotes, was delivered by a process server at both addresses, 69b Mount Pleasant Road and 12 Tayside Drive, on 8th January 2021.

6. The Applicant still did not hear from the Respondent and so his solicitors issued the current application on 16th March 2021, seeking a determination of whether, if the proposed costs of £41,507.40 were to be incurred for the works proposed in Cemcroft's schedule, a service charge would be payable and reasonably incurred for those costs in accordance with sections 19 and 27A of the Landlord and Tenant Act 1985.

7. The Tribunal issued directions on 1st April 2021 but they had to be amended several times to extend deadlines and to arrange for a hearing instead of a determination on the papers. This was principally to accommodate the Respondent who says he only obtained the details of this matter after the issue of proceedings. It turned out that he had moved from 12 Tayside Drive in November 2017 but had only informed his mortgagee, not the Land Registry.

8. The Tribunal heard the application on 7th June 2022 by remote video. The attendees were:

- David Brounger, Counsel for the Applicant
- The Applicant
- Eddie Dervish, the Applicant's Solicitor
- Emmanuel Amemeka, the Applicant's quantity surveyor
- The Respondent

- Peter Archbold, the Respondent's quantity surveyor

9. The documents before the Tribunal, in electronic form, were:

- A bundle of documents, in 5 parts, totalling 584 pages;
- Some additional documents from the Respondent (to which the Applicant did not object);
- A skeleton argument from Mr Brounger; and
- An Excel spreadsheet with excerpts from the Scott Schedule compiled by the parties just for the items which remained in dispute.

10. The Respondent had objected to the Applicant's methods for trying to contact him but, by the time of the hearing, he accepted that the problems with service had not invalidated the process of consultation on the proposed works in accordance with section 20 of the Landlord and Tenant Act 1985.

11. The Respondent also objected to the fact that the Applicant had been able to purchase the freehold without his knowing about it. He felt that he had not been given the benefit of his right of first refusal under the Landlord and Tenant Act 1987. He asserted that, if he had, he would now be a joint freeholder and the current dispute may have been avoided. However, in the Tribunal's opinion, this is not relevant to the current dispute. There is no way of knowing whether he would have ended up as a joint freeholder, let alone what his influence in that position would have led to. His remedy for any breach of his right of first refusal does not lie with the Tribunal, let alone within the current proceedings.

12. The Tribunal's directions provided for the parties to complete a schedule setting out the issues in dispute. A schedule was compiled, based on Cemcroft's schedule of works. Each party employed their own quantity surveyor to comment on the reasonableness of each line within the schedule.

13. In the Tribunal's opinion, the parties' reliance on the evidence of quantity surveyors was misguided and misleading. The issue before the Tribunal was as set out in paragraph 6 above. The Applicant went through a tendering process which adhered to the minimum mandatory standards of the Service Charges (Consultation Requirements) (England) Regulations 2003. The two contractors set out what they would charge for carrying out the work set out in Cemcroft's schedule. Neither party provided any evidence as to what a contractor would tender for a schedule without the items to which the Applicant's quantity surveyor objected, or even whether a contractor would be prepared to tender at all.

14. For example, Cemcroft provided for a foreman to supervise the works. NWTS put the sum of £2,500 for this item in their tender. Mr Amemeka, for the Applicant, suggested that a reasonable sum would actually be £4,000 whereas Mr Archbold said that there should be no foreman at all for a job of this size.

15. The Respondent's argument was that the cost of the works should be reduced by £2,500 to take account of this item being removed. However, that is not the basis of the contractor's tender. The contractor inserted an estimated sum which contributed to the bottom line at which they would be prepared to do the job. If there were to be no foreman, there might have been adjustments to other figures to take account of it, including alternative supervisory arrangements. There is no guarantee that the bottom-line figure would change, let alone reduce by the full amount so far quoted.

16. However it is reached, a contractor will always tender for a job on the basis that they can do it for the total figure reached. Their tender is not usually structured as an *a la carte* menu from which the customer may choose individually priced items. While contractors are likely to maintain a degree of flexibility in order to please customers and retain work, what that flexibility may consist of cannot be assumed.

17. Tendering is the process used to identify what price contractors in the market are prepared to accept for certain works. The best way to assess whether that price is reasonable is to obtain alternative quotes, examine compliance with the specification and an arithmetical check including measured rates. However, even then, variation is likely depending on issues encountered when on site, either additions or omissions. It is during this stage that detailed professional input from building or cost consultants would help determine the validity of measurements, methodology and necessary variations. In the process so far there has in essence been a retrospective professional debate over the appropriateness of the specification issued. The Respondent did suggest obtaining a third quote and it might have been sensible for the Applicant to accede to the request in order to try to reach a settlement. However, there was nothing which compelled him to do this. As already stated, he had already been through the requisite process and it is his right as the landlord of the property to insist that the works now go ahead. The Applicant's view is that the property is in need of urgent repair and, having seen Cemcroft's report, including photos, of the extensive dilapidations at the property, the Tribunal cannot disagree.

18. Moreover, a landlord is not required to meet some kind of perfect standard, whether set by an expert quantity surveyor or the Tribunal. Rather the standard is reasonableness. Within the range of what is reasonable, a landlord has a discretion as to what they wish to do. The Applicant is not an expert himself and so employed Cemcroft to tell him what works it would be reasonable to do.

19. Again, the proposed use of a foreman serves as a good example. While Mr Archbold felt that there should be no foreman, Mr Amemeka disagreed. The Applicant's justification for the foreman was in order to provide a degree of supervision and to ensure health and safety in circumstances where both flats would remain occupied for the duration of the works. The Tribunal notes that no fees have been added for supervision as commonly provided for. There is more than enough

evidence that the use of a foreman falls within the range of what it is reasonable for the Applicant to do as landlord.

20. The fact is that the works have yet to be carried out, so costs have yet to be incurred. Although the Respondent's lease provides for service charges to be demanded in advance of costs being incurred, the Applicant has yet to make any use of this so that the Respondent has not yet been asked to pay anything.

21. Mr Archbold also objected to the extent of the proposed work to the pointing of each elevation and the cost of surveying the roof in more detail. However, there is a difference between the assessment of the reasonableness of work at the proposal stage and after it has been done. It is reasonable to make allowances for what might be needed but, if it turns out that, when the work has been completed, the cost is less, then it would be reasonable to make downward adjustments at that point. If Mr Archbold's fears about the extent of the work are realised in that not as much work was needed as was allowed for, then the Respondent would have the right to object to the reasonableness of any service charges arising from those works in a fresh application to the Tribunal.

22. The Tribunal's conclusion is that, if the proposed costs of £41,507.40 were to be incurred, or an advance properly demanded, for the works proposed in Cemcroft's schedule, a service charge relating to half of those costs would be payable and reasonably incurred.

Costs

23. The Tribunal has the power under section 20C of the 1985 Act to order that the Applicant's costs may not be added to the service charge. However, the Applicant has succeeded. The Respondent made concessions extremely late in the process, limiting the opportunity for settlement. In the circumstances, the Tribunal declines to make a section 20C order.

Name: Judge Nicol **Date:** 27th June 2022

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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.

Section 27A

(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.