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LON/OOAE/LSC/2006/0411

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT 1985 (as amended) SECTIONS 27A and 20C

PROPERTY:	**54 CAMPBELL HOUSE CHURCH LANE LONDON NW9 8AA**
APPLICANT:	**Mrs DAKSHA SHAH**
RESPONDENT:	**LONDON BOROUGH OF BRENT**
Represented by:	**Ms S Werder, solicitor**
In attendance:	Mr A Loizou Building Surveyor for Brent Housing Partnership Ms A Fife Senior Leasehold Manager for Brent Housing Partnership

TRIBUNAL

Mrs T I Rabin Chairman
Mr I Holdsworth
Mr D Wills

Date of Tribunal's decision: 6th April 2007

54 CAMPBELL COURT CHURCH LANE LONDON NW9 8AA

FACTS

1. The Tribunal was dealing with an application by the Tenant, Mrs Daksha Shah ("the Applicant"), for a determination whether the service charges levied by the Respondent landlord, London Borough of Brent, in respect of the major works undertaken at Campbell Court Church Lane London NW9 8AA ("the Building") chargeable during the service charge year 2006 were payable. The application has been made under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act"). The Applicant is the long leaseholder of Flat 54 Campbell Court aforesaid ("the Flat"). A copy of the lease of the Flat ("the Lease") has been produced to the Tribunal.

2. The tenant's obligations in relation to payment of the service charges are contained in Clause 4(A) of the Lease and the landlord's obligations with regard to repair of the Building are contained in Clause 6(2) of the Lease.

3. The issue before the Tribunal was whether the service charges levied in service charge year 2006 in respect of some of the items in the major works undertaken at the Building following a Section 20 Notice served on 22nd September 2003 were payable by the Applicant..

THE LAW

4. The Tribunal's jurisdiction is set out in Section 27A (1) of the Act as follows:-

> (1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, 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 payment has been made

5. The Tribunal has power under Section 20C of the Act to make an order preventing the Landlord from adding the costs of the proceedings in the Tribunal to the service charges where the lease allows the landlord to recover such costs

INSPECTION

6. The Tribunal inspected the Building on the morning of the hearing. The Building formed part of an estate comprising 54 flats in 4 three storey purpose built blocks and six bungalows. The Building appeared to be well maintained, although the internal common parts were shabby. The Tribunal inspected the Flat which was well appointed and the Applicant pointed out small areas where there was pointing

missing around a few bricks and the coping stones on the balcony. The Tribunal noticed a hairline crack on the flank wall of the Building.

HEARING

7. The hearing took place on 26th March 2007 at 10 Alfred Place London WC1E 7LR. The Applicant was present, accompanied by an interpreter and gave evidence in Gujerati and the Respondent was represented by Ms Werder, solicitor employed by the London Borough of Brent. .

EVIDENCE

8. In her statement of case the Applicant had referred to the excessive cost of the scaffolding when the works were undertaken as well asserting that she had no obligation to pay for variations to the contract. She pointed out the lack of pointing to a few bricks on the balconies at the Flat and also complained that the coping stones on the edges of the balconies were not smooth nor had they been well painted. She complained that the floor of the balconies had not been satisfactorily painted and generally complained that the cost of the works was too high. She had not provided any alternative quotes for the Tribunal's consideration. She confirmed at the hearing that these were the matters she wished the Tribunal to address.

9. Mr Loizou, the Building Surveyor employed by Brent Housing Partnership who managed the Building gave evidence. He referred the Tribunal to his statement at pages 43 to 48 of the Respondent's bundle. The Applicant confirmed that her daughter had read her the contents of Mr Loizou's statement and that she was fully aware of its contents. Mr Loizou explained the tender procedure in his statement and pointed out that Brent Housing Partnership had obtained five tenders for the major works which included general fabric repairs, external decorations, roof works, communal window replacement, individual window replacement and other estate works. The Applicant had installed her own double glazed windows and the Respondent did not include the cost of windows in the demand for the Flat.

10. Mr Loizou dealt with the matters raised by the Applicant. He first stated that the erection of scaffolding over the Building was necessary to install the communal windows, individual windows and external repairs to the Building which is a three storey block and the scaffolding was a health and safety issue. There was a fixed cost for the scaffolding and the Respondent was removing the charge for additional scaffolding from the Applicant's account.

11. Mr Loizou then dealt with the variation costs relating the variations of the contract. . The cost attributable to the Flat for additional work amounted to £2,282.53. He dealt with the various items as shown on the list of extras (pages 111 and 112 of the Respondent's bundle) in Paragraph 19 of his statement at pages 43-48 of the Respondent's bundle. A number of deductions were made to the total account in the Applicant's favour and Mr Loizou stated that these were the items referred to in paragraph 19 (a), (i), (j), (k), (l), (n), (o), (p), (t), (w) and (y). He also accepted that there was an arithmetical error in Paragraph 19(x)

which had now been corrected. The total due from the Applicant after making all deductions was **£1,649.96,** a reduction of **£632.57** from the original figure for variations of **£2,282.53.**

12. Mr Loizou gave evidence on a number of other variation items where he had been unable to provide full details in his statement. These related to the following items referred to in Clause 19 of his statement:

    (b) Drain survey – Mr Loizou produced reports A1 London Drains Ltd showing that there had been CCTV surveys undertaken for the surface water and foul drainage at the Building and that these reports were evidence that the surveys had been undertaken. Dealing with paragraph 19(r), which related to refurbishing the drain outlets, Mr Loizou stated that the works had been undertaken in accordance with the findings of the CCTV survey. The cost of the CCTV survey was **£135.75** and the refurbishment of the drain outlets was **£2,812.20.** A copy of the repairs history of the Building was produced which showed that there had been a history of blocked drains at the Building which had ceased since the drains had been repaired.

    (m) Soffit insulation - A copy of the invoice was produced to the Tribunal at a cost of **£8,887.56.** Mr Loizou stated that the soffits had been renewed to provide insulation and minimise the loss of heat from the Building.

    (u) Cutting of chases to chimney and tank room- This was required to enable the felt to be tucked under. The cost was **£364.55**

    (v) Tank room doors – Although no invoice was produced, Mr Loizou did produce a written instruction to undertake the work and there is no evidence that the work was not undertaken. The cost was **£264.50**

13. Mr Loizou then dealt with the matters raised by the Applicant at the inspection. The Applicant had complained about the condition of the floor of the balcony. However, it was clear from the tender documents and the invoices that no resurfacing work was undertaken to the balcony floors. This was evidence from a review of pages 65 of the Respondent's bundle where there is reference to repairs to asphalt balconies and walkways at Items E 29 and 30 of the invitation to tender and page 86, being part of the tender where it is clear that there is no charge for items E 29 and 30.

14. It was accepted that there was damage to the mastic seal around the window, probably caused by pressure washing of the brickwork during the major works. The Applicant had not drawn the attention of the Respondent to the damage at the time the contractors were on site, in which case they would have been asked to remedy the damage. However, Mr Loizou agreed that he would repair the mastic, provided that access could be obtained without the need for scaffolding.

15. The Applicant had complained that the coping stones on the balconies were not smooth. Mr Loizou pointed out that there had been no replacement of the coping stones and that the only work undertaken had to be remove the existing coping stones, repoint and replace them and these were the original fitments. There had been no renewal of the coping stones which had the effect of reducing the costs to the leaseholders.

DECISION

16. The Tribunal was satisfied that the Applicant had understood the proceedings throughout with the help of the interpreter and accept that her daughter had explained the contents of Mr Loizou's statement to her. The members of the Tribunal were at a loss to understand exactly what she was complaining about. Her application form referred to all the costs of the major works, her statement of case referred to the cost of the scaffolding, the cost of window replacement and the inclusion of extras and at the inspection she complained about the surface of the coping stones and some minor requirements for repointing. The cost for windows had been deducted, even though the Lease provides for the Respondent to replace the windows at the cost of the Applicant. The Applicant has complained throughout about her lack of funds and her inability to pay the service charge. This is referred to in her application form and she mentioned her lack of funds several times both at the inspection and the hearing. The Tribunal has formed the view that the Applicant has brought these proceedings in order to reduce or avoid payment and not because she has a genuine complaint about the work.

17. The Tribunal found that the Building was well maintained and all the work the subject of this application had been completed to a good standard and the costs were reasonable and consistent with the prices tendered. It was clear that Brent Housing Partnership had adopted a proper marketing procedure and appropriate consultation and that the tender selected presents value for money. Or redecoration. The Applicant has stated that she has no liability for variations to the contract but the Notice of Intended Works dated 22nd September 2003, which the Applicant accepts that she received, clearly states that if unforeseen work arose which would increase the cost by more than 15%, there would be a further consultation. The variations at £2,282.53 are well within and additional 15% of the total cost and it is clear from Mr Loizou's statement and his oral evidence that the additional works only became apparent during the course of the work being undertaken and were fully justified.. The scaffolding was required in order to comply with health and safety requirements as work was undertaken to roof level of a three storey block.

CONCLUSION

18. The Tribunal found that the work to the Building and the Estate was properly undertake and of a reasonable standard. The original sum quoted (see Page 114 of the Respondent's bundle) was **£11,299.45** and, having adjusted that sum to reflect the agreed allowance of **£632.57,** the amount due is **£10,666.88** for the works in question. The Tribunal finds that this is a reasonable cost for the work undertaken and is payable immediately by the Applicant. .

SECTION 20C OF THE ACT

19. An application was made by the Applicant for an order under Section 20C of the Act to the effect that the costs of these proceedings are not proper costs to be included in the service charges. The Respondent objected to the application as the costs have been unnecessarily increased by the Applicant's conduct. Ms Werder

stated that the Applicant had failed to respond to correspondence, had failed to attend the Pre Trial Review where matters could have been discussed further and had not complied with the directions given by the Tribunal. The Respondent had invited the Applicant to a meeting in order to resolve matters and a meeting was eventually arranged for February 2007 but the Applicant said she wanted to try and organise a solicitor to advise her. An extension of two weeks was allowed at the Pre Trial Review in order to try and settle the matter, but the Respondent found it difficult to contact the Applicant.

20. The Applicant stated that she had encountered difficulties in contacting a solicitor but was unable to instruct anyone to act for her. She tried to agree a six month extension to enable her to obtain help. She has experienced difficulty on obtaining funds from the DHSS or her bank to enable her to pay the bill and she had informed the Respondent that she was receiving benefits and could not pay the service charge.

21. The Tribunal found that the purpose of these proceedings was a cynical attempt by the Applicant to avoid payment. The Applicant has rejected all attempts to resolve the matter with the Respondent and has failed to provide any cogent reasons for her objection to the charges, other than her inability to find the money. Her actions have involved the Respondent in a considerable amount of unnecessary work and all their efforts to address the Applicant's concerns have been rejected. The Applicant was accompanied at the inspection by her son, who resides with her and who speaks excellent English. She has told the Tribunal that her daughter was able to translate the statement for her and there is no reason why she could not have sought the help of her children when dealing with the Respondent. The Tribunal is mindful that the expenses incurred by the Respondent are from public funds and, in view of the Applicant's conduct and the Tribunal's findings do not consider that an order under section 20C of the Act would be appropriate.

CHAIRMAN.....

Mrs T I Rabin JP

DATED: 6th April 2007