

3421



Residential  
Property  
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
OF THE LANDLORD AND TENANT ACT 1985 SECTIONS 27A AND 20C**

**Ref: LON/00AU/LIS/2007/0043**

**Property:** Flat B, 2 Ashley Road,  
London N19 3AE

**Applicant:** Mr E L Abraham

**Respondent:** Southern Land Securities Ltd

**Appearances:** Mr E L Abraham  
Mrs J Abraham

For the Applicants

Mr Raymond Taube  
Mr Barry Taylor (Hamilton King Management Ltd)  
Mrs Debbie Toson (Hamilton King  
Management Ltd)

For the Respondents

**Date of hearing:** 17/18 September 2007

**Date of Decision:** 18 October 2007

**Members of the Tribunal:** Mr S Shaw LLB (Hons) MCI Arb (Chairman)  
Mrs J Davies FRICS  
Mr C Gowman BSc MCIEH

## **DECISION**

### **Introduction**

1. This case involves an application dated 15 May 2007 for a determination as to the liability to pay service charges in respect of Flat B, 2 Ashley Road, London N19 3AE ("the Property"). The application is made by Mr E L Abraham ( "the Applicant"). He and his wife, namely Mrs Janet L Abraham are the joint long leaseholders of the Property. 2 Ashley Road is divided into two flats and the property in question is the flat on the upper floor.
2. The property was purchased from the London Borough of Islington by Southern Land Securities Ltd ("the Respondent"), and so the Respondent company is the present freeholder and the Landlord for the purposes for this application. In fact however the works which are challenged by the Applicant were carried out by and on behalf of the former freeholder, namely the London Borough of Islington. The property was sold to the Respondent at a time when the issues concerning these works had not yet been resolved.
3. It should be noted that this case was transferred for determination by the Tribunal by a virtue of an order made in the Edmonton County Court on 15 December 2006. In addition, the parties conducted a mediation prior to this hearing before the Tribunal. It had been thought that the mediation had been successful, but unfortunately (for reasons the Tribunal has not enquired closely into), the settlement appears to have unravelled when the parties endeavoured to implement the agreement.

### **The issues**

4. The hearing before the Tribunal has involved examination of three items of works:
  - a. The so-called "Contract 65" works

- b. Certain other works described in the document appearing at page 135 of the bundle prepared by the Applicants as "Block Repairs" and involving a total cost of £1,470.73.
- c. The cost of an asbestos survey in the sum of £346.63. This survey was billed to the Respondent's Managing Agents, namely Hamilton King Management Ltd, having been commissioned by the managing agents. The survey and cost is challenged by the Applicant.

### **The Hearing and Inspection**

5. The members of the Tribunal inspected the property during the morning of 17 September 2007. On this occasion, Mr & Mrs Abraham took the members of the Tribunal around the property to show those areas which were to be referred to later during the hearing and Mr Taube of the Respondent company and Mr Taylor and Mrs Toson of the Managing Agents were also able to view these areas on the occasion of the inspection. The hearing resumed in the afternoon of 17 September and continued during the next day on 18 September.
6. The Tribunal heard evidence from both the Applicant and his wife Mrs Abraham. They had prepared a bundle and also showed the Tribunal various photographs. Mr Taube of the Respondent Company was in attendance on the first day of the hearing and at the inspection as was Mr Taylor and Mrs Toson of the managing Agents. Mr Taube and Mr Taylor were unable to attend on the second day, but the Respondent remained represented by Mrs Toson.
7. Both Mr Taube on the first day and Mrs Toson on the second day explained to the Tribunal that they were in some difficulty in meeting the allegations made by the Applicant. The reasons for this were that they had not been responsible for the works challenged and although they had made efforts to discover from their predecessors in title, namely the London Borough of Islington their response to these allegations, they had

been completely unsuccessful. The works in questions were in the main carried out during 2001/2002, which had not assisted attempts to make enquiries, but to be fair to the Applicant, the complaints in respect of the works were made at an early stage.

8. The result of this has been that the Respondent has not been able to offer any significant substantive replies to the complaints and allegations made by the Applicant. The hearing thus proceeded on the basis that the Tribunal would hear the detailed allegations of the Applicant, which allegations were scrutinised by the Tribunal. However, as indicated, the Respondent itself was able to offer very little, if anything, by way of response to these allegations.

#### **The "Contract 65" Works**

9. As indicated above, during 2001/2002 certain major works were carried out by the London Borough of Islington on the Property, it is thought as part of a larger project of works in respect of this and several other properties owned by the council in the area. The Applicant was presented with an estimated invoice for these works dated 18 December 2001 amounting to £5,292.59 (50% of the total cost of £10,585.18). The Applicant told the Tribunal that he had endeavoured to obtain from the local authority a breakdown of how this figure had been arrived at, and the specific works which were alleged to have been carried out and which had generated this bill. There was no issue that some works had been carried out at the property that in the main the Applicant contended that the sum charged was excessive, and that some of the works either had not been carried out at all or had been carried out in a cursory fashion.
10. Although he had made the request as indicated, for a breakdown, he had been entirely unsuccessful in obtaining such a document from the council (although there was evidence and correspondence that this had been promised) and the closest he came to an itemised document explaining how the figure had been arrived at was a schedule, referred to in evidence

as "Contract 65" which appears at pages 105-108 in the Applicant's bundle.

11. This document had been obtained from the leaseholder on the ground floor who had also been pressing for clarification of the sum claimed. The document lists various works of external repair and redecoration together with some other works relating to redecoration of common parts. There are two subtotals within the document of £3,354 and £2,050 which approximately equate to the figure which was billed to the Applicant. However the figures are not exactly identical and indeed in some respects, the works listed are not easy to marry up with the property and may well be part of a pro-forma which would have been subject to variation upon completion.

12. However, this document has been the best document available from which to reference the works, and the Tribunal has had to do its best on the information provided to it. One curious feature of the document is that no sum has been included for the cost of scaffolding, although undoubtedly scaffolding would have been required for these works, and indeed the Applicant confirmed that some scaffolding was erected. As indicated, the Tribunal has however done its best to use this document, as it was invited to do by the Applicant, as a working guide in respect of the works for which a claim has been made.

### **Inspection**

13. The Tribunal as mentioned above inspected the property during the morning of the 17 September 2007. Given that the works had been carried out in 2002 the Property appeared to the Tribunal to be in reasonable repair, taking into account the passage of time since completion of the works. However, this comment is subject to the Tribunal's conclusions on the particular matters challenged by the Applicant, and which will be mentioned now in more detail below.

## **The Particular Challenges in Respect of Contract 65**

14. Contract 65 contains a number of items for external repair and decorations listed under letters A-Pp. The Applicant challenged item A which is a renewal of the cast iron gutter in the bay for which a charge of £193 has been made. He said there is no such gutter in the bay and indeed the inspection by the Tribunal confirmed this. The Respondent had nothing to offer by way of explanation and in the circumstances the sum of £193 is disallowed.
  
15. The Applicant also challenged a charge of £976 made for the re-pointing of certain brick work at the front and the rear and flank walls of the property. The Applicant again contended that no such repointing had taken place. He conceded that there had been some re-pointing on the flank wall where there had been some repair work carried out by the council relating to some subsidence. He argued however that this should have been the subject of an insurance claim, a contribution to the premium for which he makes in his service charges, and therefore not referable to him.
  
16. It appeared to the Tribunal that in so far as there had been such work on the flank wall this was in the context of entirely separate works and not the re-pointing referred to in this contract. Also, on inspection, the mortar work around the building seemed to be of uniform colour and style and there were no obvious patches of re-pointing capable of detection. Of course, it is always possible that the re-pointing work may have become discoloured in the 5 year period since the works were carried out, but nonetheless given the age of the building, the Tribunal would have expected some variation in colour evidencing the more recent re-pointing - and none was clearly visible. In the absence therefore of any explanation or further evidence from the Respondent, and on the balance of probabilities, the Tribunal accepts the evidence of the Applicant and disallows this part of claim in the sum of £976.

17. The Applicant also challenged a charge of £384 listed under item G on the schedule for stitching cracked brick work at the front of the building. He pointed out to us both during the hearing and on the occasion of the inspection that there remained cracking at the front which had not been stitched and indeed he had put some taping across the cracks demonstrating that there had been no change. On inspection the evidence on site appeared to support the Applicant and there was no evidence and response from the Respondent. In the circumstances the Tribunal accepts this evidence and disallows this further charge of £384.
18. The next item challenged was a charge of £30 made for recapping the chimney stack at the rear. The Applicant contended that no recapping work was carried out nor there was any evident. Of course it was difficult from ground level to judge this allegation; the sum challenged was relatively small and it was not rebutted by any evidence from the Respondent. In the circumstances the Tribunal again disallows this sum.
19. The next items of significance challenged by the Applicant are listed under items P-S. They involved sums of £400, £15, £35 and £130 for work principally involved overhauling the sash windows and other work relating to the windows. The Applicant argued forcefully that the council had really done nothing in this regard but had merely painted the window frames (not especially expertly) and carried out no other works to merit these charges. There had been neither overhauling of windows nor renewing of particular parts as listed in the schedule. This appeared to be borne out by the Tribunal's inspection. There was no evidence in the bundle or otherwise from the Respondent and in the circumstances, once again, the Tribunal disallows these sums totalling £580.
20. The Respondent also challenged items Cc - Hh on the schedule. These items are all for relatively small sums and involved alleged repairs to windows or cracks of some kind in the brick work or stucco. The Applicant suggested they were repetitious or duplicative in their nature but in any event that no such works had been carried out. The Tribunal was unable

to detect any particular evidence demonstrating that such works had been carried out and of course there was no evidence from the Respondent. The sums challenged totalled £329 and are in the circumstances, and on balance of probabilities, these sums are disallowed by the Tribunal.

21. At item Ll a claim of £120 has been made for redressing the asphalt kerb at the front and at item Nn a claim of £167 is made for repointing certain brick work on a retaining wall at the rear. These items were once again challenged. There was no obvious evidence demonstrating that the works had been carried out and no evidence in rebuttal. In the circumstances the total sum relating to these items being £287, is disallowed.

22. At items Qq - Ss, various claims totalling £2,050 are made for alleged redecoration of common parts. This claim is a curious claim because, as contended by the Applicant, and as was evident on the Tribunal's inspection, there are no common parts at the property. The Applicants' flat has an entry through the main front door directly into the flat and the other flat, flat A, also has a private and separate entrance. Item Ss involves a claim for £240 for burning off all doors and frames, and it is possible, that this relates to the painting of the front doors which the Applicant conceded had been carried out. However the narrative suggests that old paint was to be burnt off and the wood work prepared for repainting. The Applicant showed the Tribunal some chipping on front door which revealed that there were still several layers of paint beneath the most recent paint applied.

23. Moreover, at item Pp a charge of £1240 is made for carrying out external decoration work which would appear to be duplicative of this further suggested charge. The matter is not entirely satisfactory and is vague for the reasons indicated above, but the Applicant's challenge appeared, in the absence of the evidence to the contrary, to make sense to the Tribunal, and the three sums totalling £2,050 are therefore disallowed.



24. The result of these findings is that from the total sum of £5292.59 claimed from the Applicant sums totalling £2425.59 should be deducted leaving a balance due of £2867.00

**“Block repairs”**

25. The second area of works challenged in the context of this application are those appearing in the document headed “Block Repairs” and dated 7 January 2003. The first and the fourth items on that document, valued at £159.43 and £21.45 respectively, were abandoned by the local authority as confirmed in the letter dated 12 February 2003 at page 136 of the bundle and therefore must be deducted. The Applicant challenged the sum of £500 in respect of the erection of various scaffolding to specified parts of the property. In principle, this does not seem to the Tribunal to be an unreasonable sum for the scaffolding referred to - indeed it would appear to be an unusually low price. The Tribunal therefore allows this figure as being reasonable save for the deduction of £50 referable to the scaffolding to refix the guttering which has been disallowed in the context of the earlier invoice dealt with above.

26. The Applicant’s share for the cost of repair to a collapsed wooden fence of the rear of the property is charged on this invoice of £329.53. The Tribunal was taken to the fencing in question, and it was clear that it remains in disrepair. In the absence of any explanation, it would seem inappropriate for this sum to remain charged to the Applicant and it is therefore disallowed in its entirety. The next item down is the sum of £415.43 charged for the renewal of a bathroom window at the property. The Applicant’s evidence in relation to that was that when the contractors arrived to fit this window they either came with only one half of the relevant renewal part, or at any rate only fitted half of the window. It was not entirely clear to the Tribunal how it was possible to fit half of a window, but upon enquiry it appeared that one half of the sash had been fitted. Again there was no evidence in rebuttal and in the circumstances the Tribunal

considered it appropriate for one half of this figure to be allowed, that is to say £207.71.

27. The final figure claimed under this head is £44.10 in respect of some work to the intercom system. However, as demonstrated by the Applicant upon the inspection, and not rebutted by the Respondent, there is no intercom system to which this work could have been carried out and accordingly the sum is disallowed. The result of these deductions is that a total of £450 for the scaffolding and £207.71p for the bathroom window works is recoverable totalling £657.71 and the rest of the charges on this document are disallowed as being unreasonable for the reasons indicated.

### **Asbestos survey**

28. As mentioned above, the present owner, that is to say the Respondent through its Managing Agents, Hamilton King Management Ltd, have levied a charge of £346.63 inclusive of VAT, upon the Applicants, in respect of an asbestos survey alleged to have been carried out during mid-2005. The Applicant was very unhappy with the suggestion that any such survey had taken place. He told the Tribunal that he is himself retired from work, and was so retired in 2005. He is at home most of the day and has no recollection of anyone having called or made arrangements to carry out any kind of survey report. Moreover, he demonstrated to the Tribunal that it is impossible to obtain access to the rear of the property without making arrangements either with the Applicant himself, or with an adjacent neighbour, and no such arrangements were made. He is therefore suspicious that either no survey was carried out at all, or if it was, it is of little or no value.

29. The Respondent showed the Tribunal and the Applicant the written survey for which the charges have been made. It appears to be largely in standard form and makes little specific reference to the subject property save to say that it is alleged that an external survey was carried out and it features a photograph in part of the report which is indeed the property.

30. It is correct that apart from the lack of particularity in the report there are some other curious discrepancies. First, at the page featuring the photograph, it is recorded that the report or inspection took place on 11 May 2005. However, the letter from the managing agents to the Applicant dated 6 September 2005 states that the inspection took place on 21 June 2005. In addition, although the front page of the report makes reference to the property, the location in the body of the report on the same page just referred to describes the property as "164 Ashley Road" which is of course not the property at all.

31. These matters supported the concerns raised by the Applicant, and, coupled with the lack of any significant specific material within the report relating specifically to an inspection of this property, gave the Tribunal cause for concern. When asked about the matter, Mrs Toson for the Respondent, confirmed that she was not especially comfortable with the report herself. On balance, the Tribunal consider the report as it stands may well not be of any real value either to the Applicant or any subsequent owner, and the sum claimed in this regard is disallowed as being unreasonable in all the circumstances.


### **Conclusion**

32. The result of the findings under the three heads mentioned above is that sums totalling £2,867 are considered by the Tribunal to be reasonable and in respect of the so called "contract 65" works and the further sums of £657.71 is considered reasonable in relation to the "Block Repairs". The sum claimed for the Asbestos Report is disallowed meaning that a total sum of £3,524.71 is considered reasonable in respect of the works raised and challenged in the context of this application. An application for a direction under section 20 of the Act was made by the Applicant to the effect that the Respondents costs related to these proceedings should not be claimable by way of service charge by the Respondent on some subsequent occasion. Mrs Toson fairly and reasonably confirmed she had

no attention of making any such charge and for the avoidance of doubt the Tribunal makes the appropriate direction under section 20.

33. No further matters fall for consideration, but the Tribunal would take this opportunity to encourage the parties to continue with their efforts effectively to sever their links, by coming to terms on an overall sale of the freehold to the leaseholders. Neither party has any interest in prolonging disputes of this kind, and it did appear clear to the Tribunal that the sooner resolution is reached on the terms for transferring the freehold, the more satisfactory it would be for both sides.

Legal Chairman: Mr S Shaw LLB (Hons) MCI Arb

A handwritten signature in black ink, appearing to read 'S. Shaw', is written to the right of the typed name.

Date : 18 October 2007