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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON 00AB/LSC/2010/0408

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985**

Applicant: Stella Okobi

Respondent: London Borough of Barking and Dagenham

Premises: 107A Woodbridge Road Barking Essex IG11
9EU

Date of Application: 5th June 2010

Date of Determination 9th September 2010

:

Mr P Leighton LL B (Hons)
Mr H Geddes RIBA MRTPI JP

Date of Tribunal's Decision 10th September 2010

- 1 By an application dated 5th June 2010 the Applicant seeks a determination of liability to pay service charges against the Respondent in respect of the property known as 107A Woodbridge Road Barking IG11 9EU for the service charge years 2008/9 and 2009/10
- 2 Directions were given for the conduct of the application on 6th July 2010 and the matter came before the Tribunal for a paper determination on 9th September 2010. Unfortunately the parties have failed to comply adequately with the directions given so that the task of the tribunal in reviewing this case has been made immeasurably more difficult than it need have been.
- 3 According to the application there are two issues raised by the Applicant and referred to as part of the service charge accounts for 2008/ 9and 2009/10. The two issues relate to the repair of mould growth on the external walls of the sitting room and bedroom of the property, and the replacement of a double glazed window in the property.
- 4 in relation to the mould growth the Applicant contends that this was caused by leaking from an old external pipe owned by the Council. The Respondent in its reply denies that the mould arises from an external source but maintains that it was caused by condensation within property.
- 5 It is clear from the Respondents' statement that the item was not charged as part of the service charge account but is a claim by the Respondent for reimbursement of a repair paid for by them and carried out on behalf of the Tenant, which was in fact the Tenant's own liability. Consequently the Council is seeking to recover the full cost of repair in the sum of £849.71 for which the Council claims the Tenant is responsible because the Tenant allowed the work to be carried out and for which the Council intends to invoice separately (The Tribunal noted that the Tenant appeared to have obtained an alternative quote of £275 for he same work).
- 6 However the Tribunal believes that this is in the nature of a dilapidations claim and does not relate to the recoverability of service charges within the meaning of section 27A of the Landlord and Tenant Act 1985. Whilst there

might be circumstances in which the Tribunal could treat a claim such as this as part of an equitable set-off against service charges, the Tribunal would consider it to be inappropriate to accept jurisdiction in respect of this claim within the context of this application.

- 7 The reason for adopting this course is first that the evidence provided by each of the parties is totally inadequate to enable the Tribunal to make a determination as to whether the damp was caused by water ingress or by condensation. Secondly even if there were such evidence it would be extremely difficult to make such a determination on the basis of a paper claim without hearing the evidence of the parties and also of any experts. The claim would therefore be more appropriate to be heard by the county court. .
- 8 The second aspect of the claim relates to the replacement of a double glazed pane of glass in the sum of £168.73 the total cost of which has been allocated to the applicant and appears in the service charge account for 2008/9
- 9 Whilst this matter does clearly fall within the jurisdiction of the Tribunal as the Respondent sought to recover this amount as a service charge, the Tribunal again has serious reservations about making a determination in this case without any detailed information from the parties as to (a) the circumstances in which this window pane came to be replaced (b) whether the tenant authorised the replacement and if so in what circumstances and (c) further evidence relating to the replacement cost. The figures produced by the local authority in its letter of August 2010 to the Applicant show two entries under the works orders which total £89.25. The letter also states that in addition to the charge for re-glazing there was also a cost associated with removing/dismantling the window casement but this figure has not been identified or broken down and if it relates to the window frame itself which would appear to be the responsibility of the Landlord under the terms of the lease and would be recoverable as part of the service charge, but not recoverable in full as stated in the service charge account. The letter of 5th August. In addition the letter from the Applicant and from ????? suggest that the amount charged for this is extortionate. .

10 The Applicant's lease dated July 2005 states as follows: --

"subject to sub clause 4.12.2 hereof to keep the interior of the property clean and in good and tenantable repair and condition it being hereby agreed that such is without prejudice to the generality of the foregoing or to the lessee's obligations in clause 4.10 hereof. For the purposes of this sub clause the interior of the property. Clause 4.10 relates to internal decorations and clause 4.12 relates to heating and hot water

11 Clause 4.9.1 states that the following items are included

4.9.1.1 cisterns tanks pipes wires drains conduits and other conducting media situated within the property which exclusively serve the property

4.9.1.2 window panes

Clause 4.9.2 states that the covenant does not include carrying out repairs to *4.9.2.1 external window frames, doors opening onto a balcony or patio or the exterior of the building and the frames thereof and 4.9.2.4 also relates to cisterns tanks pipes drains conduits which do not exclusively serve the property.*

12 The Applicant claims that the charge of £168.93 is extortionate and therefore not recoverable. She further states that the work could have been undertaken more cheaply by her contractors

13 The issue relating to the window frames and the pane of glass is again not ideally suited to a paper determination and this is particularly so when the parties have failed to provide any adequate information as directed as to the circumstances giving rise to the replacement of this pane of glass

14 If this sum is recoverable, then of the two items shown in the letter of August 5 2010 - one appears to relate to the sash and the removal of the sash or casement and the other covers the costs of glazing. . lthe letter also refers to works being authorised by a contract administrator, which suggests that it may have been undertaken as part of a wider contract. No details have been provided to the Tribunal in relation to this. Work to the sash would appear to be the Landlord's responsibility and only

recoverable out of the service charge account as an apportionment rather than recoverable in full.

- 15 The second Item shown in the invoice relates to the double glazed unit in the sum of £45.58, which the Tribunal would on its face consider to be a reasonable sum. It also appeared to the Tribunal that the additional cost claimed, which appears to relate to the frame is not recoverable other than on the basis of being apportioned in accordance with the normal apportionment under the lease.
- 16 Beyond those observations the Tribunal is not prepared to make any firm findings in the absence of further information both in relation to the necessity for the works, the manner of its execution and details showing exactly how the costs are broken down.
- 17 It may be that the limited findings made by the Tribunal may assist the parties in reaching a compromise in relation to the windows claim. However if the parties are unable to agree then it will be necessary to provide the Tribunal with detailed statements to be submitted on both sides dealing in detail with the matters concerning the windows and would probably be appropriate to be determined at a short oral hearing.
- 18 If the parties wish to adopt this course the Tribunal is willing to give further directions to enable this to occur. It should be noted, however, that the amount at stake is very small and any costs incurred in a future hearing might well prove to be disproportionate and the parties may wish to bear that in mind before deciding on any future course of action. It appears to the Tribunal that a compromise in respect of the window pane would be in the interests of both parties.

Chairman Peter Leighton



Date 10th September 2010