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Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
DECISION BY LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985 Section 27A**

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**Ref: LON/00AE/LSC/2010/0581**

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**THE TRIBUNAL'S DECISION**

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**Address:** Flat 5, Moot Court, Fryent Way, London NW9 9RY

**Applicant:** The Mayor and Burgesses of the London Borough of Brent

**Respondent:** Maria Charmaine Phillips- Taylor

**Tribunal:** Mrs S O'Sullivan Solicitor  
Mr F Coffey FRICS  
Mr A Ring

**Date of hearing:** 8 November 2010

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**Background**

1. This is an application seeking the Tribunal's determination of the lessee's liability to pay service charge in respect of major works in the sum of £4917.88 carried out in 2003/2004 and service charges in the total sum of £5,626.62 for the years 2004 to 2010 pursuant to section 27A of the Landlord and Tenant Act 1985 (the "Act").
2. The Flat is contained within a purpose built block of six flats known as 1-6 Moot Court, Fryent Way, London NW9 9RY (the "Block") and the Respondent holds 5 Moor Court (the "Property") pursuant to a lease dated

15/11

18 February 1991 made between the Applicant and the Respondent (the "Lease").

3. The Applicant commenced proceedings against the Respondent on 5 October 2009 claiming a total of £10,985.92. By a Defence dated 9 November 2009 the Respondent admitted the sum of £4,832.57 but it was unclear as to which part of the claim the admission related. These proceedings were transferred to the Leasehold Valuation Tribunal by Order of Deputy District Judge Read dated 12 January 2010.
4. A pre trial review was held on 15 September 2010 following which directions were made and the Applicant lodged a bundle for use at the hearing.
5. The Tribunal found and the parties agreed that no inspection of the Property was necessary in view of the nature of the dispute and the time that has elapsed since the major works took place.

### **The Hearing**

6. The Applicant was represented at the hearing by Mr Asghar of , in-house Counsel for the Applicant. Also attending for the Applicant were Ms Martin, a Home Ownership Manager and Ms Ansalmar, a Senior Leasehold Manager. Neither of the managers had been involved in the Property at the time of the major works in issue.
7. A summary of the evidence heard from the parties and the Tribunal's decision is set out below.
8. The Tribunal first clarified the sums challenged in the proceedings. The Respondent confirmed that she had admitted the sum of £4,832.57 in the County Court proceedings as the sum due in respect of general service charges as at 10 September 2008 as per the statement of account at tab 6 of the bundle. She confirmed that she did not wish to challenge any of the remaining general service charges claimed in the proceedings, in the sum of £794.05. The total sum therefore admitted in relation to general service charges was £5,626.62.
9. Ms Phillips-Taylor confirmed that the only sums now challenged were the sums claimed in respect of the major works. Three sets of charges in respect of major works were claimed in the proceedings. The Respondent confirmed that she did not challenge the major works charged at £609.09 in respect of works to the cold water tanks carried out in 2005/06. In addition she did not challenge the major works charged at £127.72 in respect of improvements to estate security lighting.

10. The Respondent did not challenge the validity of the consultation process although she did make general comments about how the consultation process laid down by the Act did not, in practice help Lessees

11. The Respondent did however wish to challenge the major works invoice in respect of works to the external decorations to the Block in respect of the works carried out in 2003/04.

12. The Tribunal took some time in clarifying the sums which should properly have been invoiced in respect of the major works in 2003/04. The amount claimed in the proceedings was £4273.46.

12. Mr Asghar was asked to clarify how the sum demanded in respect of major works was calculated. After taking a short break to clarify the figures Ms Asghar confirmed that the major works sum was made up as follows:

Add	£16,574.70 (J5 final account)
	£9,201.73
Total	£25,776.42
Respondent's contribution (1/6)	£4296.07
Add preliminaries	£424.88
Add management fee	£82.46
Total	£4803.41
Less LVT deductions	(£109.61)
	(£548.06)

**Total now in dispute** **£4145.74**

13. The final account showed a total due of £16,574.70 in respect of major works. To this was added the sum of £9201.73 claimed in respect of the variations. This latter sum being a net amount following concessions made therein by the Applicant. This made a total due of £25,776.42 which when divided by 6 gave the Respondent's contribution of £4,296.07. To this should be added the cost of preliminaries at £424.88 and a management fee of £82.46 making a total of £4,803.41. From this the further sum of £657.67 should be deducted as representing the deductions made by the LVT in a previous decision made in 2008. (The Tribunal was informed that these had been applied as the result of an earlier LVT decision in relation to the property known as 3 Moot Court. The Applicant was unable to provide a copy of this decision and the Tribunal was unable to locate the

decision having been provided with an incorrect reference number by the Applicant).

14. The Tribunal was referred to the notice of intention in the bundle. It is clear from the notice of intention that the works proposed covered works to some six different estates across the borough. The notice sets out the tender submitted by the successful contractor in the sum of £5,178,590.38. We were provided with no information as to how the cost of works to the subject block were established and nor could anyone give evidence in this regard. This was most unsatisfactory and rendered our deliberations extremely difficult. Nor was the Tribunal provided with the specification, the schedule of works, the accounts, cost estimates, any condition surveys, the contracts and variations thereto as directed by the Tribunal in their directions dated 5 September 2010.
15. The only documents with which we were provided was a purported extract from the schedule of works at tab 10 of the bundle. However this did not contain reference to any variations to the original contract although the final major works invoice clearly showed that substantial variations had taken place. After a break the Tribunal was provided with a two-page document which the Applicant says represented the variations which had taken place to the contract. Although the Tribunal requested the variation orders during the course of the hearing these were unavailable and the Tribunal was simply provided with a purported summary of the variations. This was in the Tribunal's view far from satisfactory. The variations were relatively substantial comprising approximately one third on the total invoiced cost to the Respondent.
16. During the course of the hearing the Applicant was asked to clarify which works comprised the variations. It became clear the representatives at the hearing had no knowledge of the Block, had had no involvement in the major works contract at the time the works were undertaken and were unable to amplify the extract. This extract comprised of a number of headings with prices against some entries.
17. It was noted that although the Respondent had challenged the cost of window replacement in the final account, no sum in fact appeared in the account in respect of individual or communal window replacement. The confusion may arise from the fact that earlier charges in respect of windows appear to have been made as part of the major works contract but have been since removed as a result of the LVT's decision to disallow the cost of window replacement in respect of the subject dwelling in an earlier decision, a copy of which the Tribunal did not have before it.
18. The Respondent's original dispute in relation to the major works appeared to be confined to a charge for windows. However it was clear that the

major works no longer contained a charge for windows. At the hearing she confirmed that the works were challenged generally on the basis that she did not believe any works had been carried out. In relation to each item she commented as follows;

- Scaffolding – the Respondent alleged that there was no necessity for scaffolding as her windows were replaced without any necessity for scaffolding. The Applicant pointed out that the works included works to the roof, guttering, fascias and soffits etc., together with sundry repairs to the block and external decorations.
  
- Roof Works – the Respondent objected to these on the basis that her roof had leaked and continued to leak after the works had been carried out
  
- Guttering Costs - the Respondent questioned whether any works were done under this heading
  
- Variations - the Respondent questioned whether any works were done under this heading
  
- Preliminaries – no comment was made

19. The Respondent confirmed that she was working at the time the major works were said to have been carried out and she acknowledged that works may well have taken place whilst she was at work. In any event, she adduced no evidence to support any of her averrals.

### **The Tribunal's decision**

20. The validity of the consultation process in relation to the major works was not challenged and the Tribunal was satisfied on the basis of the documentation provided that valid consultation had taken place.

21. The Tribunal was disappointed with the quality of the information provided by the Applicant in support of its case. Although it notes Mr Asghar's submission that it had been difficult to prepare for the case in view of the unparticularised case it had to answer, in the Tribunal's view it was clear from the directions what information the Tribunal would expect to be made available at the hearing. The Tribunal was also disappointed that neither the contract administrator, quantity surveyor nor any other representative of the authority directly involved with the contract works was called by the Local Authority to give evidence or provide a witness statement.

22. Likewise the Tribunal was disappointed with the quality of the evidence put forward by the Respondent. She had failed to put forward any real defence to the claim and relied on the assertion simply that the works had not been carried out. It was noted that the Respondent had failed to raise any issues in relation to the major works until action to recover the sum due was taken by the Applicant.

23. The Tribunal notes that the contract for the major works was competitively tendered. The Tribunal was provided with a copy of the certificate of practical completion dated 20 September 2004. The Tribunal accepts the cost of the works as reasonable in principle. The Tribunal was provided with no information as to how the cost of the global contract was apportioned to each block. However the apportionment of the charges to the Block was not challenged by the Respondent and on the evidence before us as to apportionment of the block charges we are satisfied on the balance of probabilities that the apportionment of the contract as a whole was carried out properly.

24. The Tribunal had no evidence before it to support the variations to the contract. The Applicant had provided no written documentary evidence in the form of variation instructions nor had it arranged for someone with knowledge of the variations to appear at the hearing to provide evidence. In view of the total lack of evidence before it to support the claim the Tribunal therefore concluded that it had no option but to disallow the part of the claim relating to variations.

25. The Respondent has admitted the following sums in the proceedings:

Arrears of service charges	£5,626.62
Major works (cold water)	£609.09
Major works (lighting)	£127.72

26. The sums allowed by the Tribunal in relation to the matters in dispute before it are set out below:

Cost of major works	£16,574.70 (J5 final account)
Respondent's contribution (1/6)	£2,762.45
Add preliminaries 9.89% (say 10%)	£276
Add management fee	£82.46
<b>Total payable</b>	<b>£3120.91</b>

**The s 20C application**

27. Although the directions note that the Respondent has made an application under section 20C of the Act, the Tribunal has no jurisdiction to consider such an application where the proceedings have been transferred from the County Court. The issue of costs in relation to such proceedings is a matter for the County Court.

Chairman: Sonya O'Sullivan

Dated: 15 November 2010