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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 SECTION 27A

LON/00AG/LSC/2010/0342

Premises	**Flat B 132 Agar Grove, London NW1 9TY**
Applicant:	**Mrs H Lewis**
Represented by:	**Mr A Georgiou** **Ms L Searle** **Mr T Maynard from the College of Law**
Respondent:	**The London Borough of Camden**
Represented by	**Mr D Danvers- Housing Officer**
Date of hearing:	**19 July 2010**
Tribunal:	**Ms M Daley LLB (Hons)** **Mrs A Flynn MA MRICS** **Mr C Piarroux CQSW JP**
Date of decision:	

Background

1. (a) The property is a two-storey converted maisonette. The Applicant is the leasehold owner of flat B 132 Agar Grove London NW1 9TY.
(b)The Respondent, the London Borough of Camden are the freehold owner of the property. Flat A is let as part of the Respondent's social housing stock.

2. On the 19 May 2010, the applicant applied to the tribunal for a determination of the reasonableness and payability of service charges in respect of major works (of damp-proofing) which had been undertaken in 2007.On 20 May 2010, directions were given by The Tribunal, for the determination of the matter and an application under section 20C for limitation of the landlord's cost of the proceedings.

The law

Section 18(1) of the Landlord and Tenant Act 1985 ("the Act") provides that, for the purposes of the relevant parts of the 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.

Section 19(1) provides that 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 provision 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.

Section 19(2) of the Act provides that, 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 27A (1) of the Act provides that an application may be made to a leasehold valuation 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 payable.

[Section 27A(3) of the Act provides that an application may be made to a leasehold valuation 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.]

The Hearing

3. At the hearing the Applicant was represented by students from the College Of Law (Mr Georgiou, Ms Searle and Mr Maynard). The Respondent was represented by Mr Danvers, from Camden's housing department.
4. Mr Geogiou referred the Tribunal to proceedings that had recently been issued in the county court concerning outstanding service charges for major works, and for service charges of approximately £400 for 2008. It was accepted by Mr Danvers that these proceedings had been issued in error. As a result he agreed that the proceedings would be withdrawn, although he indicated that the 2008 service charges were still in issue.
5. Mr Geogiou stated that the Applicant's case was that there had previously been works undertaken at the property, which had involved underpinning the property

12. In reply, Mr Danvers raised a number of issues, on the Respondent's behalf. He stated that the work undertaken was under the scope of the Lease and were category B repairs. He submitted that flat A, was caught by the definition of "*the estate,*" and that in any event the damp-proofing work was structural. Given this, the associated making good of items in Flat A (occupied by the Respondent's tenant) were reasonable items that flowed from the work.

13. Mr Danvers stated that the Works done in 2003 had not included damp-proofing. The work had been undertaken following a jointly prepared schedule. The Applicant had a surveyor, who had taken part in drawing up the specification, it was submitted that if neither expert had recommended the damp-proofing work, then it had not been undertaken, as neither expert had considered it to be necessary. The Respondent therefore, could not be blamed for failing to carry out work which hade not been considered necessary.

14. Mr Danvers also placed some reliance on the fact that the Applicant had not been charged for the 2003 major work. He submitted that there was no duplication of cost for the Applicant, even if some of the items of work had been duplicated. The Tribunal reiterated that the charges had not been passed on to the Applicant as a result of the Order of Deputy District Judge Avis. Point 4 of the order stated " *The liability of the Claimant to contribute to the cost of the remedial works whether pursuant to the terms of the lease of Flat B 132 Agar Grove, London NW1 dated 4 September 1995 made between the Defendant(1) and Claimant (2) , or otherwise shall be nil.*"

15. The Tribunal asked the Applicant to set out those works that she considered to involve an element of duplication. The Applicant's representative identified-:(a) Item F disconnecting of the WC and hand wash basin in the basement of flat A. (b) Removing existing PVC floor covering to the WC and ...supply and lay new PVC floor covering to match existing on completion of the underpinning.(c) and Break out existing concrete floor of the WC and construct a new floor in concrete. The Tribunal were also referred to the table on page 41 which included a costing for work to ... *break out existing concrete floor of WC and construct new to include damp proof membrane".*

16. Mr Danvers did not know whether this work had taken place, or whether it had been excluded from the work. He could not confirm that the work in the specification involved the same area as the damp-proofing work undertaken in 2007. He was asked by the Tribunal to take further instructions on this point and refer to the Tribunal in **writing within 7 Days**. At the time of writing this decision no further information has been provided.

17. The Tribunal asked Mr Danvers to expand upon his definition of estate, and to state why in his submission this included flat A. Mr Danvers referred the Tribunal to the definition of Estate which stated-: " ... *The property in respect of which the Landlord is or was the registered proprietor under the Title Number... set out above and Managed Buildings thereon and there over and including the Common Parts...*"

18. Mr Danvers accepted that the WC and hand basin were in the demise of flat A, however he submitted that if the landlord was carrying out structural repair work, this was going to involve removal of fixtures and restoring them back to the original condition. Mr Maynard on the Applicant's behalf, asked Mr Danvers to explain the clauses that related to the tenant's obligations to do internal repairs. Mr Danvers referred to clause 3.8 which referred to the tenant's obligations to redecorate and clause 3.9.1 in relation to the fixtures and fitting of the landlord including sanitary apparatus.

The Closing Submissions

The Respondent's submissions

19. Mr Danvers submitted that although there was some ambiguity about whether or not damp-proofing work had been carried out in 2003. It was accepted that if it were carried out, then there would have been an element of duplication. However it was not clear whether any damp proof work had occurred and had failed, or whether the damp-proofing involved a different area. It was however clear that the work undertaken in 2007, was within the scope and ambit of the lease, and was reasonable, given the Respondent's duty to carry out work to maintain the

structure of the premises. It was submitted that the 2003 repair work which was subject to the court order were for repairs occasioned as a result of subsidence and not damp. Given this he submitted the Respondent had not failed in their duties under the 2003 court order, neither could it be said that they were duplicating earlier work.

20. Whilst it was accepted that the Respondent could not charge for the earlier 2003 work as a result of the court order, there was no element of duplication in respect of the cost now due from the Applicant. Therefore the cost of the 2007 work was reasonable and payable.

The Applicant's closing submissions

21. Mr Maynard stated in closing, that the case before the Tribunal was straightforward, the major work carried out in 2007 which related to the damp proof course should have been carried out in 2003, as this was when the problem had been identified. Instead the Respondent had chosen to carry out patch repairs. As a result some of the "making good" items of work, had needed to be duplicated.

22. The Respondent had argued that the 2003 work only related to the agreed schedule, however Mr Miller (the applicant's surveyor at the time), had stated that at no time had he inspected the interior of flat 123A, and given this, his recommendations related to the conditions that existed in flat 123B.

23. The Respondent had direct control of flat 123A and given this, it was unfair to say that the Applicant's surveyor had not specified works to these premises. The Respondent had a duty in respect of flat 123 A to "repair and maintain". Therefore as they knew, or ought to have known of the condition that existed within this flat at the time the work was carried out and thus they had a duty to remedy the disrepair.

24. It was clear from the correspondence that they were aware of the damp problem that existed, although neither party had referred to them in the specification.

25. In answer to Mr Danvers, he stated that if the work had been carried out it had been inadequately installed and as a result extensive work had been needed to remedy it. If it had been installed and had failed, it was not reasonable for the Applicant to pay for this work. If the work had not been undertaken, then it ought to have been. There was evidence that this would have cost £410 in 2003, which

was a much less than the 2007 work. However there was nothing to suggest that damp-proofing work had been undertaken.

26. Mr Maynard did not accept that the work undertaken was subject to a contribution from the Applicant. In his submissions the definition of an estate did not include flat A. The works were internal works to a property under the Respondent's control. The benefit was solely to 132A and involved fixtures and fittings, which were properly the responsibility of the landlord. In summary the Respondent knew of the need for the work and did nothing about it.

The Decision of the Tribunal

27. The Tribunal in reaching its decision carefully considered the oral evidence and submissions of the parties, and in particular, the documentary evidence in the form of the schedules, which set out the scope of both the 2003 work and the 2007 major work.

28. The Tribunal noted that as early as 2001, there was some suggestion that there was a problem with damp in the basement flat. The Tribunal noted this from an undated specification, which calls for the problem to be investigated by a damp proof specialist. The Tribunal noted that at the time of the 2003 work there was an exercise, which involved the pricing of this work (this would have been undertaken on the Respondent's behalf). Although we do not know the extent of the work, The Tribunal are aware from the evidence that it related to the bathroom, in the basement, which forms part of the 2007 major work.

29. Given this the Tribunal have asked itself whether this work had been included in the 2003 work program, or alternatively whether it ought to have been included and given this, had this work been inadequately specified or alternatively not been carried out, or carried out inadequately.

30. Whatever the answer to this question, it was clear that at the time of carrying out the work, there was an opportunity to undertake damp-proofing to an adequate standard at a lower cost. There was also evidence that this had been contemplated as a result of the pricing up of this work, which was included in the schedule of rates. The Tribunal having considered the specification considered that the hacking off of plaster at pages 72 A-F and the reinstatement work did represent a duplication of the earlier work.

31. If, which is not clear, the damp-proofing of the bathroom was carried out, this was duplicated when the 2007 work was undertaken. (Although there is nothing to

suggest that the extent of the work was as radical as that undertaken in 2007), It is clear to the Tribunal that there was evidence that this work was being contemplated as early 2001, given this, we consider that there would have been substantial, obvious, deterioration in the intervening six years. The Tribunal find that the damp-proofing work ought to have been undertaken in 2003, we find that the subsequent cost of the work would almost certainly have escalated by the time it was carried out in 2007.

32. We find no comfort in the fact that the Applicant was not charged for the 2003 work, This was as a result of the Order of Deputy District Judge Avis, who undoubtedly came to the decision, that this was right on all of the surrounding facts, as they were presented.

33. Not withstanding the Order of Deputy District Judge Avis, the Respondent could have addressed its mind to any additional, necessary work, which, although outside the agreed specification, was nevertheless prudent and cost effective to do. Had the Applicant been approached about damp-proofing at this stage and rejected the suggestion that this additional work was reasonable and payable, a Tribunal could have considered the cost of damp-proofing, if necessary, and a finding could have been made. This did not occur.

34. We have considered that if this work had been undertaken at the time it may have resulted in a service charge being payable by the Applicant, which would have been in the region of £410. Given this we find that this sum, is reasonable and payable by the Applicant as a contribution to the 2007 work. We reject the cost of the supervision and management, and also the reinstatement as these items represent a duplication of the supervision, management and reinstatement, which was needed to 2003.

35. We also find, (although this is not germane to our decision) that the reinstatement of the fixtures and fitting in flat A, were the responsibility of the Landlord as this was within their demise. It was also their decision to undertaken this work on two separate occasions.

36. The Tribunal therefore find that the Applicant's charges in respect of the 2007 Major work, is limited to £410.

The Section 20 C Application

37. At the hearing Mr Maynard submitted that the legal cost associated with the Tribunal hearing should not be recoverable in all the circumstances of the case.
38. Mr Danvers stated that it was not the Respondent's policy to seek reimbursement of the legal cost as a service charge. The Tribunal were grateful for this indication.
39. The Tribunal nevertheless consider that notwithstanding the practice of the Respondent, in all the circumstances of this case, it was just and equitable to grant the section 20 C order sought. The Tribunal also consider that it is appropriate for the £150 fee paid by the Applicant to be reimbursed.

CHAIRMAN.....

DATE.....19th July 2010.....