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Ref: LON/00BE/LSC/2010/0092

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

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

Applicant: **London Borough of Southwark**

Represented by: **Miss E Sorbjan and Miss E Bennett (Legal Officers)**

Respondent: **Mrs F A S Baruwa**

Represented by: **Mr C Akintoro**

Premises: **14 Petworth House, London SE22 8DD**

Hearing date: **6 May 2010**

Members of the Leasehold Valuation Tribunal: **Mrs F R Burton LLB LLM MA**
Mr T W Sennett FCIEH
Mrs G V Barrett JP

Date of Tribunal's decision: 30 June 2010

LON/00BE/LSC/2010/0092

14 PETWORTH HOUSE, LONDON SE22 8DD

BACKGROUND

1. This was a case transferred from the Lambeth County Court by order of District Judge Zimmels dated 3 February 2010, for determination by the Leasehold Valuation Tribunal of liability to pay a service charge in respect of major works. The Respondent, Mrs F A S Baruwa, disputes liability (and had filed a Defence in the County Court indicating that she wished to counterclaim for damage to her kitchen) on the grounds that the costs have not been apportioned correctly between the various units affected, that the total cost is unreasonable and that the work was not carried out to a reasonable standard. The amount in issue was the sum of £2,052.99 currently outstanding. The property, a flat on the second floor of the building, was held on a Lease dated 29 November 2004 for a term of 125 years from the same date. On 10 February 2010 the LVT issued Directions, setting the case down for hearing on 6 May 2010 and making the usual arrangements for preparation of the necessary documentation.

THE HEARING

2. At the hearing the Applicant, the London Borough of Southwark, was represented by its Legal Officers, Ms E Bennett and Ms E Sorbjan, and the Respondent, Mrs Baruwa, by Mr C Akintoro.

THE CASE FOR THE APPLICANT

3. Ms Bennett submitted that the Lease clearly indicated the Respondent's liability to pay for the works, having covenanted in clause 2(3)(a) to pay the service charge as set out in the Third Schedule. By clause 2(1) of the Third Schedule the Borough is obliged to provide a reasonable estimate of the amount payable by the

Lessee in each year and by clause 2(2) the Lessee is obliged to pay that estimate in advance by instalments on each of the 4 quarter days, 1 April, 1 July, 1 October and 1 January. By clause 7(1) of the Third Schedule the Lessee is obliged to contribute to the costs of and incidental to the carrying out of works required by clause 4(2) to (4) of the Lease (which clause requires the Borough to keep in repair the structure and exterior and the common parts of the building, and to carry out external and internal decorations ""as often as may be reasonably necessary") and by clause 7(2) to contribute to the maintenance and management of the building and the estate (but not of any other building in the estate). By clause 7(9)(i) of the Third Schedule the Lessee had covenanted to contribute to the Borough's costs of installation by way of improvement of double glazed windows (including associated sills and frames) in place of windows in the flat or other flats and in common areas of the building and by clause 7(7) of the Third Schedule to pay an administration charge of 10% of all the costs of making up the service charge demand.

4. Ms Bennett submitted that the Borough was permitted by the Lease to adopt any reasonable method of ascertaining these costs and expenses. A bed weighting method was used for major works, which assigned a figure of 4 to each flat with an extra unit for each bedroom in a property. The Respondent Lessee had a 3 bedroom flat so the flat attracted a figure of 7. There were 241 flats in the block so the Respondent's liability was for 7/241. The service charge payable was a "fair proportion of the costs and expenses incurred" in accordance with clause 6(1) of the Third Schedule.

5. Ms Bennett continued that in order to comply with its obligations and the Government's Decent Homes Initiative the Borough had commissioned a report from surveyors Baily Garner and specified works based on the report submitted. The contract was competitively tendered, and the lowest estimate accepted, and had complied with the consultation requirements of s 20 of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002. Costs consultants had been utilised and good value for money had been obtained. The Notice of Intention had been hand delivered to all Lessees on 27 May 2005 and the Notice of Proposal on 1 December 2005. There had also been a Notice of Additional Works hand delivered on 15 August 2008, and a reduction in the cost of the windows

which had been notified by letter of 29 January 2007. The costs of recharge included professional fees at 6.12% of the contract cost, which covered the planning and drafting of the specification, the tendering stage, supervision of the work and agreement of the final account. The administration fee had in fact been invoiced at 4% (despite the obligation for the Lessee to pay up to 10%) as the Borough operated a sliding scale for this fee depending on the cost of works involved.

6. Ms Bennett said that there had been a request for a breakdown of the costs by letter of 5 December 2008 which had been responded to by letter from the Borough on 17 December 2008, which had included alternative arrangements for payment of the sum due including contact details for discussion of these options. Several unsuccessful attempts had been made to make contact by telephone for this purpose. She said that there were several reasons why differing amounts might be payable by different Lessees, for example when the Right to Buy process had been commenced by Lessees at different times so that the related s 125 offer notices would have different dates. The size of property also affected the amounts payable; however the Borough Council did not believe that these issues had any relevance to the Respondent Lessee's obligation to pay. In fact an agreed payment plan had been put in place (as admitted by the Lessee in her Defence in the County Court) and this allowed for payment to be spread over 30 months, but the Borough had received only 1 payment.

7. With regard to the alleged damage to the Respondent Lessee's kitchen, and/or her bathroom, the Borough Council denied any responsibility, as there was no evidence of causation of any such damage and in any case it was up to the Lessee to provide insurance cover for internal damage, although the Borough Council insured the building for accidental damage. She submitted that it was believed that the work was necessary in accordance with the report obtained before the works were commissioned, of good quality and satisfactory standard, but that as the works were still within the 12 months defect period, any defects identified would be addressed in the usual way. She did however concede that the s 125 offer notice dated 19 June 2003 issued in the Respondent Lessee's case was incorrectly calculated and that the costs for the Respondent Lessee would in fact be higher for her than the figure for repairs and renewals in that notice as the apportioned provisional estimated cost had

not been included in the calculation of the service charges. She added that it was the Borough Council's view that all the necessary explanations had already been given by December 2009 so that mediation had not appeared to be an option.

8. Ms Bennett called Ms Sharon Shadbolt, the Projects Manager, to support the Borough Council's case with her own evidence. Ms Shadbolt said that the works had been part of the regeneration scheme for the East Dulwich Estate which had started in 2002. Baily Garner's report had determined the scope. It had initially been intended to demolish some blocks and to refurbish the rest but in fact only 1 small block had been demolished as demolition had been agreed to be inappropriate for most. Roofs, brickwork, windows and tanks had been looked at and there had been resident consultation and monthly meetings of the project team. Baily Garner had been asked to survey the whole estate and the works tackled in succeeding tranches. Petworth House had been in the last tranche, as the survey had been done in 2001 and the tender had not been until 2006, but there had had to be some prioritising. There had been no further survey before these priorities had been decided. Mr Akintoro had no questions to ask of Ms Shadbolt.

9. Ms Bennett then called Mr John Flowers FRICS of Baily Garner,Chartered Surveyors. Mr Flowers stated that Baily Garner was a contract surveyor, also providing design services, and that he agreed with Ms Shadbolt's account of the activity leading up to the works, as he had in fact been involved with the works longer than she had. He said that a secondary report had been done on the windows as the borough Council did not want "blanket replacement". There were limited funds available so they had made the most of the available resources. Quantities had been estimated in relation to individual flats and there had been a clear separation between Lessees' and tenanted flats. There was a rolling quality programme and the team was still on site and would be until July 2010. Practical completion had been in May 2009 for the subject block but the defect period had not yet expired. In answer to questions from the Tribunal, Mr Flowers said that he had personally not been involved in the window survey, which had been done by his company, although he was aware of what had happened: as there had been no scaffolding up at the time it had only been possible to survey the windows which were accessible and then not every window had been inspected. The windows had been single glazed, of timber, with sashes, and

were 60-70 years old, ie the original windows. Their defects were set out in the report. He could give no detailed account of the condition of the doors which had not been specifically included in the report. He said the snagging was continuing, but that the standard of work, and of sub contractor tradesmen, was good.

10. In cross examination, Mr Akintoro, for the Respondent Lessee, asked Mr Flowers if he was aware that 2 contractors had come to Mrs Bawura's flat but did not complete the work which needed to be done. Her ceiling had been damaged due to a WC leak from a flat above, which had been attributed to work in that location, but they had said that this was not part of the contractors' work. Photographs were submitted to show the water damage. A complaint had then been made to the Borough Council but still nothing had been done. Mr Flowers responded that this might have been addressed as a part of the snagging programme which would continue throughout May 2010 and that any outstanding defects would be referred to the contractor for remedy.

11. Ms Bennett then called Mr Trevor Wellbeloved, the Capital Works Manager for the Borough Council. Mr Wellbeloved said that the service charges were constructed from the specification and that care was taken to distinguish between the Tenants and Lessees and that he could confirm that the Lessees were *not* charged for Tenants' work. The Respondent Lessee should pay 7/241 of the costs. Ms Bennett produced a revised spread sheet, explaining that the reduced cost of the windows was because an additional price had originally been included for aluminium windows, so that the overall cost was now £357,265.61 (as opposed to £465,097.83). The Estate costs were apportioned between 758 properties so that the Respondent Lessee paid 1/758 of those. With regard to the s 125 Notice which had omitted certain figures, the Borough Council was leaving the billed amount as it was, and they would be seeking the amount sought in the County Court, not the larger figure. In cross examination, Mr Akintoro, suggested that there was a good deal of duplication in the works and services but Mr Wellbeloved did not agree with this. Mr Akintoro also put it to Mr Wellbeloved that the Landlord should be making a contribution to Estate costs, but Mr Wellbeloved explained that the Borough Council was in any case paying for the Tenants' shares of costs, and not charging them to the Lessees.

THE CASE FOR THE RESPONDENT LESSEE

12. Mr Akintaro began his submissions by submitting that the Applicant Landlord had not observed the Directions, as dates prescribed had not been met. Moreover there had been no witness statements from the witnesses produced. Ms Bennett responded to this that the Directions had not specifically ordered Witness Statements to be provided at any stage.

13. Mrs Baruwa then gave evidence. She said that she had been treated unfairly. She had called the Borough Council to complain about the water leak into her flat which had been caused by work in another flat above her but nothing had been done. Ms Shadbolt said that she would address this, although it did appear that no complaint had been recorded. She said that her windows were ill fitting and that there had been no decoration done in her flat following the works although Tenants had had their decorations done. Ms Shadbolt again undertook to address this issue and added that she would see that a decorating allowance was given to make good after the window installation and also the water ingress. Asked by the Tribunal whether the new windows were better than the previous ones, Mrs Baruwa said that they were, except in her kitchen where the window would not open. Again Ms Shadbolt agreed to address this matter wit in the snagging programme. In answer to further questions from the Tribunal Mrs Baruwa agreed that the front door was satisfactory, and that it had needed replacing; also that the Estate was now in a better state than previously.

FINAL SUBMISSIONS

14. Mr Akintaro said that he had no further submissions to make, but relied on the case already put both in his own submissions and in cross examination. Ms Bennett submitted that she also relied on her statement of case and had nothing further to add. She asked for the costs of the hearing to be refunded (the Borough Council had had to pay £15 extra on top of the County Court fee plus a £150 hearing fee. Mr Akintaro opposed this application, saying that it was not reasonable, due to the long delay in doing the works and in providing the final bill, which had all added up to trouble for the Respondent Lessee besides in further delay in getting her window and

decorations finally dealt with. It was for this reason that she had paid only 1 instalment of the amounts owed.

DECISION

15. It appeared to the Tribunal that the Respondent Lessee had no quality complaint, but only a complaint about the finishing of the work and the length of time it had taken to be completed. The major works programme had been a £24m project, the Lessee had been asked only for just over £2,000, and while it might be difficult for a Lessee to understand such a large contract she had not paid more than 1 instalment of the agreed payment programme because the Council did not address her concerns. On the other hand the Council had gone straight to the County Court without attempting to resolve the matter in any form of Alternative Dispute Resolution.

16. In all the circumstances, the Tribunal is of the view that, subject to the proper completion of the snagging period together with any necessary remedial action, the works are of satisfactory standard, comply with the obligations of the Lease and of the consultation requirements, and that liability to pay is established. The Tribunal therefore determines that the Respondent Lessee is liable to pay the service charges which are reasonable and reasonably incurred. The Tribunal further orders that the Respondent Lessee shall reimburse to the Applicant Borough Council the application and hearing fees paid to the LVT upon transfer from the County Court. These fees (amounting to £165) shall be paid within 28 days of the date of this Decision.

17. The Tribunal determines accordingly.

Chairman.....

Date..... 30.6.2010