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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AY/LSC/2011/0663

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL on an application under Sections 27A and 20C of the Landlord & Tenant Act 1985

Property: 12 Thornton Avenue, Streatham, London SW2 4HQ

Applicants: Mr D. Smith, Mr F. Syme, Mr B. Hathaway, and Mr D. Hickling (Freeholders)

Represented by: Mr D. Smith
Also Present: Mr B. Hathaway

Respondent: Mr F. Syme

Represented by: Mr G. Syme

Date of Application: 21st September 2011

Date of Hearing: 17th November 2011

Tribunal: Mr L.W. G. Robson LLB (Hons)
Mr M. A. Mathews FRICS

Preliminary

1. By an Application received on 21st September 2011, the Applicants seek a determination under Section 27A of the LANDLORD AND TENANT ACT 1985 (as amended)(the Act) as to the Respondent's liability to pay the Applicants' estimated service charges relating to major works charged in an interim demand dated 22nd August 2011 pursuant to a (specimen) lease (the Lease) dated 12th

September 1979. Extracts from the relevant legislation are attached as Appendix 1.

2. Directions for Hearing were given without an oral pre-trial review on 23rd September 2011. The sole issue for determination was whether the interim service charge demand was payable by the Respondent.

3. The Tribunal notes that in a previous LVT decision dated 19th January 2011 relating to this property (LON/00AY/LDC/2010/0129), a Tribunal had decided that the Notice of Intention dated 29th August 2008 and the Notice of Estimates dated 1st October 2008, both served under Section 20 of the Act, had been correctly served, and thus no dispensation under Section 20 ZA was necessary. The parties then agreed to ask Mr R. Habib, a chartered building surveyor assisting the Respondent, to draw up a further specification, advise on contractors and obtain further estimates for approval by all parties. After consultation, all parties agreed to accept the (revised) estimate of LMB Loft Conversions Limited for £26,112 inclusive of VAT for the works, dated 29th March 2011 (addressed to Mr F. Syme). The parties agreed that the work had now been completed.

4. The Applicants made an undated statement of case received on 25th October 2011, and the Respondent's undated statement of case was received on 10th October 2011. The parties (acting in person) were unable to agree or prepare the bundle of documents prior to the hearing. The Tribunal therefore brought forward the hearing time to 10.00am on 17th November 2011 with the agreement of the parties. At the start of the hearing the Tribunal outlined what was required and adjourned for the parties to agree and prepare properly paginated and divided bundles for use at the resumed hearing. The parties were still unable to agree a single bundle and eventually submitted separate bundles.

Hearing

5. At the hearing both parties made oral submissions supplementing their statements of case. The Respondent clarified that he had no complaint about the quality or cost of the work. His main complaints were that:
   a) if the work had been completed in 2008/9, there would have been less damage to his property and he would have got a Council grant to cover the cost. Now he would only get an interest free loan. The Applicants had delayed carrying out the works. They were trustees and should have considered his interests as beneficiary of the trust. He had not been kept informed. He should not have to pay if they had failed to discharge their duties under the trust.
   b) No Building Control Certificate had been provided, and it now seemed that he would have to apply for one himself. The Applicants had known since 2008 that such a certificate would be necessary for him to get the grant.

6. For the Applicants, Mr Smith submitted that under the relevant lease the contribution chargeable to the Respondent's property was 29% of the total. The freehold of the property had been bought some years ago by the Applicants. A final invoice had been received on behalf of the Applicants, although a copy had not yet been sent to the Respondent. It was available for inspection. The parties agreed that a subsequent water leak in the ceiling of the Respondent's property

had been reported to the contractor, and was being investigated. Mr Habib had inspected the work as it progressed, and it was considered generally well done.

7. Referring to events in 2008, Mr Smith submitted that the work had needed doing in 2008. At p.7 of the Applicants' bundle, the voting record of the trustees meeting on 27th August 2008 showed that the Respondent had abstained on the question of whether the roof should be replaced. All the other trustees had voted in favour. Slates were falling off the roof and it was dangerous. In December 2008 when contractors quotes had been obtained, the Respondent had voted in favour of one contractor, but the others had all voted for another contractor. This was a democratic decision. When asked about the reasons for choosing the most expensive contractor, Mr Smith said that he personally had voted for the contractor who, on interview seemed most likely to do the job efficiently. He could not speak for the others. Mr Hathaway said that the reasons offered by Mr Smith were the same for him. The Applicants then had to collect the money to pay for the works. The Respondent had then challenged the validity of the consultation procedure. The Applicants had made an application to the Tribunal for dispensation, which had been decided in January 2011. In the interim there had been a substantial deterioration of the roof. On 27th March 2011 the Respondent had produced the revised quotations. The trustees had voted unanimously for the specification and the contractor to do the work. Despite a formal estimated demand for payment dated 22nd August 2011, the Respondent had failed to pay it. The Applicants had paid the full amount of the invoice totalling £26,112 in accordance with the payment schedule noted at p.22 of the Applicants' bundle.

8. The Applicants were somewhat hazy on the relevant lease provisions legally allowing the relevant service charges to be demanded. Mr Smith submitted that they had received legal advice that the Lease gave the Applicants power to charge. This matter appeared not to be seriously in issue between the parties, but the Chairman read out the relevant parts of the Lease (clauses 5(5) and the 5th Schedule, para. 3), which appeared quite comprehensive, and allowed for demands of estimated service charges. All parties appeared content that power to charge existed in the Lease.

9. Referring to the Lack of the Building Control Certificate, Mr Smith submitted that the Applicants had no knowledge of this requirement until 26th September 2011when the Respondent emailed asking for one. They had initially been advised that a certificate was not necessary if all that was being done was to repair the roof without making any alterations. Since 26th September they had contacted the contractor, the Council, and Mr Habib. All had said that no certificate was necessary, although if one was requested, it could be obtained after an inspection, and would cost £800. There was no copy of the relevant email in the bundle, but it existed, and could supply the Respondent and the Tribunal with a copy later in the evening. (The Tribunal agreed to this course of action, and a copy of email exchanges with Lambeth Council supporting this point was subsequently emailed to the Tribunal and the Respondent on 18th November 2011). In response to questions as to who commissioned the work, Mr Smith submitted that the Applicants had not commissioned the work, and referred to the email from Mr G. Syme dated 29th March 2011, (asking the Applicants to agree to the amended LMB quote). That email had referred to the requirements from Lambeth Council,

and did not include a request for a Building Control Certificate. The Applicants were not overseeing the project. They had merely asked the contractor to get on with the work as quickly as possible.

10. Mr G. Syme for the Respondent agreed that the 29% contribution was the figure mentioned in his Lease. He also agreed that he had received the demand for payment dated 22nd August 2011. After the work had been completed water had leaked again through his roof. He did not know the cause, but it could be a defect in the work. The Respondent further claimed that the Applicants had tried to sabotage his grant application. In his written statement of case, the Respondent doubted that the cost of four specific items (the roof over the bay window belonging to Mr Smith, clearing of the garden and laying gravel, replacement rather than maintenance of the stack pipes, and replacement rather than maintenance of the front door, were within the relevant lease covenants

11. Mr G. Syme submitted that there had been concerns about the roof for some years prior to 2008. At the meeting to decide on the contractor in December 2008, the other trustees had voted for a more expensive proposal preferred by Mr Smith, although the Respondent had put forward a fully costed proposal, approved by a friend, Mr R. Habib. The tender favoured by the majority did not comply with the requirements of the London Borough of Lambeth, to whom the Respondent had applied for assistance to pay some or all of his costs. The Respondent had told the other trustees this at the meeting, and that acceptance of the other tender would make it impossible to for the Respondent to obtain assistance to pay his share of the charge. After many months of correspondence and delay the work had not been done, and the rules for grant funding changed. The Respondent thus considered that no money was payable by him. After the previous case before the LVT, the work had gone ahead, (in his view too quickly) even though he had initially been refused loan funding. He had not been supplied with a copy of the building quote to make his application. After the intervention of his local MP, loan funding was offered to the Respondent in March 2011, which would be paid following the lodging of a Building Control Certificate. On 27th September 2011, Mr Hickling had confirmed by email that he would contact the contractor to obtain such a certificate. Mr Smith seemed determined to take legal action against him. He considered that he had no particular relationship with the contractor, although he alleged that Mr Smith had a close connection with the contractor. He was managing the project.

12. The Tribunal considered the evidence and submissions. The Tribunal decided that the primary obligations of the parties were to be found by reference to the terms of the Lease. Clause 5(5) and the Fifth Schedule were clear, and not seriously disputed by the Respondent, with the possible exception of the four items of work mentioned in his statement of case. Nevertheless, the Tribunal was satisfied that the four items complained of fell within the landlords' repairing covenants. The Respondent appeared to have misunderstood the extent of the tenant's demise as stated in the Lease. At the hearing, the Respondent did not pursue these issues further. He also accepted that the cost and quality of the work was reasonable (with the exception of the leak currently under investigation).

13. Dealing with matters chronologically, The Tribunal decided that whether the landlord had acted prejudicially to the known interests of the Respondent tenant was a matter which in this case fell within the terms of Section 27A, i.e. it affected how much a party should pay towards the service charge. The Applicants as a landlord were acting as trustees in the matter. However the Tribunal rejected the Respondent's version of events.

14. The Tribunal found that the parties had all been aware for a number of years prior to 2008 that significant works were needed to the building. The parties agreed that the roof leaked and needed work urgently. During August 2008 some estimates were being obtained for the work. At a meeting on 14th August 2008, the Respondent had revealed his need as a benefits claimant for assistance from the local authority, although without apparently giving any detail of what was required. Some estimates had then been sent to him, for approval by the local authority. At the Applicant's general meeting on 27th August 2008, the Respondent had abstained over the question of proceeding with the work, whereas all the other trustees had voted in favour of it. The Applicants had then proceeded to obtain estimates and serve Notices under Section 20. The Respondent, being discontented with those estimates, had obtained an alternative estimate with expert advice from Mr Habib, and when outvoted by the other trustees in December 2008, had commenced protracted correspondence, alleging a number of defects in the estimates and procedures. Some of those concerns appeared reasonable, but as a result no work was started. The Applicants made attempts to clarify some of the points raised by the Respondent and finally issued a demand for payment of a contribution to the estimated cost on 5th May 2009. On 8th May 2009 the Respondent challenged the validity of the Notices served by the Applicants under Section 20. Matters dragged on until the Applicants made the application to the LVT for dispensation under Section 20. On 19th January 2011 the LVT decided that the notices issued by the Applicants were not defective. However, the parties agreed at the hearing to seek advice from Mr Habib as to how best to progress the matter. Mr Habib, acting originally on the Respondent' instructions, put a revised quotation before the Applicants on 27th March 2011, which was accepted. The parties disagreed as to whether there had been any discussion of the Respondent's need for a Building Control Certificate at that meeting. However the only written request was made on 26th September 2011, after the work had been finished. The Tribunal accepted the Applicants' submission that there was no legal obligation to obtain such a certificate, and in any event, it appeared to the Tribunal that Mr Habib, (not Mr Smith as submitted by the Respondent), was in fact managing the contract. Even Mr Habib, apparently, was unaware of the Respondent's need for the certificate until 26th September 2011.

15. In the light of the above findings, the Tribunal decided that relating to the Respondent's complaints, as finally formulated in Paragraph 5 above;

a) There had been no unreasonable delay by the Applicants in carrying out the work. Further, much of the delay appeared to have been occasioned by the Applicants' attempts to resolve the queries raised by the Respondent.

b) There appeared to be no legal requirement for a Building Control Certificate in relation to the works carried out. Neither the contractor, nor the contract supervisor (Mr Habib) appeared to have thought that such a certificate was necessary. After detailed examination of the evidence and submissions, the

Tribunal concluded that the first occasion upon which the Respondent had sufficiently particularised his need for such a certificate was on 26th September 2011.

16. **Thus the Tribunal decided that the interim demand for payment made by the Applicants dated 22nd August 2011 was validly demanded, and the amount demanded (£7,572.48) was reasonable.**

Section 20C Application

17. In paragraph 14 of his written submission the Respondent effectively made an application inviting the Tribunal to make an order under Section 20C to limit the Applicants' costs of this application being added to the service charge. He submitted that Mr Smith should personally pay the costs, rather than the Trust collectively, as he had made the application without the authority of a trustees' meeting.

18. The Tribunal decided that the Applicants as landlords had entirely succeeded in their application. The Tribunal had no jurisdiction (or evidence) relating to the allegation of irregularities in the Trust's procedures. The Tribunal's power under Section 20C is discretionary. **The Tribunal decided to make no order under Section 20C.**

19. The Tribunal noted that no other application relating to fees or costs was made at the hearing, or raised in the Directions.

Signed: Lancelot Robson
Chairman

Dated: 20th December 2011

Appendix 1

Landlord & Tenant Act 1985 Section 27A

(1) 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 is payable
d) the date at or by which it is payable, and
e) the manner in which it is payable

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also 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 would be payable, and
e) the manner in which it would be payable

(4) – (7)……..

Section 20C

"(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal, or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

(2)……

(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances."