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DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985 & SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]

Case References
LON/00BH/LSC/2012/0333

Premises:
FLAT D 200 VICARAGE
LANE LONDON E10 5DX

Applicant **MRS NADINE COX**

Representative: Bellevue Mortlakes Managing agents

Respondent: **Ms SALLY-ANNE JOHNSTON**

Representative:

Date of hearing: **2nd November 2012**

Appearance Applicant: **for Mr L Saunders of the managing agents**

Appearance Respondent(s): **for The Respondent represented herself**

Leasehold Tribunal: **Valuation**
Mrs T Rabin
Mr M Cairns
Mrs J Clark

Date of determination: **12th November 2012**

Determination of the Tribunal

- (1) The Tribunal was not persuaded that there had been any invoice for £1,750 produced. In the circumstances the £250 claimed is disallowed in full.
- (2) Since there was no invoice produced for the sum of £1,527.48 and no evidence that the work had been undertaken, the sum of £250 claimed is disallowed in full.
- (3) The Tribunal noted that the Respondent accepted that work had been undertaken to the common parts and an invoice had been produced. The proportions due from the Respondent is the capped figure of £250 is allowed in full.
- (4) The Tribunal were concerned to note that no audited accounts were produced for any of the service charge years in question as required by law. It was therefore impossible to check what payments had been made.
- (5) The sum of £528.75 is disallowed in full in the absence of any evidence to support the claim
- (6) The Tribunal will remit the matter to the Wrexham County Court in order that the outstanding issues, including the counterclaim, can be determined.

The application

1. The Applicant issued proceedings in the Wrexham County Court for recovery of service charges and these were transferred to the Tribunal on 13th April 2012 by order of District Judge Perry. The application before the Tribunal was for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the outstanding service charges payable by the Respondent amounting to £2,331.08 plus contractual interest on the outstanding sum were reasonable and payable by the Respondent. The application relates to Flat D 200 Vicarage Road London E10 5DX ("the Flat") of which the Respondent is the long leaseholder. The Applicant is the freeholder of 200 Vicarage Road aforesaid ("the Building")
2. At the start of the hearing Mr Saunders stated that the outstanding sums were as follows:

23.3.2005	External work and painting dampproof course	£1,750.00
26.10.2006	External stonework and installation of damp course	£1,527.48
13.1.2007	Common parts Internal decorations and carpet	£2,731.87
28.9.2006	Repair damaged ceiling due to leak from the Flat	£ 528.75

3. At the outset of the hearing Mr Saunders acknowledged that no consultation procedure under Section 20 of the 1985 Act had been undertaken and he limited his claim to the capped figure of £250 for each of the first three invoices. He was seeking full recovery of the cost of repairing damage caused by a leak from the Flat. He also stated that the Applicant would not be pursuing the sum of £1,831.94 relating to legal costs mentioned in the Particulars of Claim in the Wrexham County Court. He stated that he had only recently taken over management of the Building and his knowledge of the circumstances regarding the sums claimed was limited
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The hearing took place on 2nd November 2012 and the persons listed on the front sheet attended the hearing. The Tribunal were provided with a bundle of papers produced by each of the parties. Neither party had produced a bundle in accordance with the directions but the Tribunal nevertheless considered the papers before them.
6. The Tribunal determined that no inspection was necessary.

The Building

7. The Building is a converted double fronted Victorian house now arranged as four flats.

The Evidence

8. Having considered the evidence, the Tribunal considered each of the four issues in dispute separately and made the following findings:

General repairs - £1,750

9. The Applicant's bundle included a copy of a pro forma document referring to works described as "makeover decorate exterior". The Appellant drew the Tribunal's attention to an inconsistency between the copy in the Applicant's and the Respondent's bundles. They were identical documents, with the same date and handwriting. However a letter accompanied the copy in the Respondent's bundle dated 27th March 2006 describing the document as a quote. In the Applicant's bundle where there were the words "invoice/quotation" the word "quotation" had been struck through.
10. The Applicant stated that the work had not been undertaken. Any work undertaken in 2005 was in connection with the Applicant's refurbishment of Flat A owned by her. No work had been carried out to her windows or to the front door of the Building.

The Tribunal's decision

11. The Tribunal was not persuaded that any invoice had been produced and, in the light of the Applicant's evidence, did not consider that the document purported to be an invoice was such but was a quotation. In addition Mr Saunders has already acknowledged that there was no Section 20 consultation. In the circumstances the Applicant has no liability at all and the £250 claimed is disallowed in full. The Tribunal were concerned to note that no audited accounts were produced for any of the service charge years in question as required by law. It was therefore impossible to check what payments, if any, had been made by the Applicant.

External repairs - £1548

12. The Applicant did not produce an invoice for the work allegedly carried out.
13. The Respondent maintains that the damp proof course was not installed in the right hand wall of the Building and the only stonework that was treated was in the Applicant's own flat. The Applicant's own windows were not painted and there was no stonework at the rear of the Building. Mr Saunders had no comment other than to state that the Applicant would not have pursued the Respondent through the County Court had there not been genuine case.

The Tribunal's decision

14. Since there was no invoice produced and no evidence that the work had been undertaken, the sum of £250 claimed is disallowed in full.

Internal repairs and carpeting of common parts £2,731.87

15. The Applicant did produce an invoice in respect of these works. The Respondent maintains that the wallpaper to the upper part of the upstairs wall was not stripped and no lining paper was hung as described. Only the base plaster was painted and the woodwork and ceilings were not prepared or painted. Mr Saunders had no information but acknowledged that the common parts were shabby. At the hearing the Respondent accepted that some work had been undertaken, including stripping some wallpaper and painting of walls.

The Tribunal's decision

16. The Tribunal noted that the Respondent accepted that some work had been undertaken. From the description given by her, the Tribunal was satisfied that the work would have cost at least £1,000. The proportion due from the Respondent is $\frac{1}{4}$ and therefore the capped figure of £250 is allowed in full.

Repair of leak £528.75

17. The Applicant is seeking full reimbursement of this sum. Mr Saunders alleged the kitchen of the Flat overlapped the living room of the flat below, belonging to the Applicant. He produced a plan of the Flat on which the outline of the flat below had been indicated. Mr Saunders stated that there had been water ingress from the Respondent's kitchen in the Flat and that this has caused damage to the ceiling. The Applicant wrote to the Respondent on 10th August 2006 asking for access to the Flat to inspect and ascertain the source of the leak, although she acknowledged that the leak may not stem from the Flat. Mr Saunders said that, as no access was granted, the leak had to be repaired from below, through the ceiling.
18. The Respondent stated that, upon receipt of the letter from the Applicant, she contacted the agents to arrange for access and made an appointment with them to inspect. They did not attend. The Applicant then went into the flat below, which was occupied by a tenant, who told her that he did not have any knowledge of any leak from above.
19. The next communication was a letter from the Applicant to the Respondent dated 14th September 2006 stating that it appeared that the Respondent had repaired the leak. On 28th November 2006 the Applicant again wrote to the Respondent stating that the insurers would not pay for the repair and asked for payment of £450 plus VAT. The Respondent was clear that she had not had a leak and had accordingly carried out no repairs and was unaware of any water ingress into the flat below hers.

The Tribunal's decision

20. The Applicant only produced an estimate, which gave various options. The first option was to remove the ceiling and reconstruct it in its entirety. Option 2 was to redecorate the ceiling only. Despite Mr Saunders' assertion that the leak was mended and the ceiling repaired from below, neither estimate refers to repairing damaged pipework and the only work claimed for is redecoration of the ceiling only, unsupported by an invoice. The plan produced did not indicate that the kitchen of the Flat was above the lounge in the Applicant's flat – rather that it was over the communal hallway which was undamaged at the time of the alleged leak.
21. No evidence has been produced to support the claim that there has been damage caused by a leak from the Flat. No correspondence from the insurance company, photographs or invoice were produced. The Tribunal therefore disallows the sum of £528.75 in full.

Conclusion

22. The Tribunal has considered the terms of the lease under which the Flat is held. The lease has no obligations on the part of the landlord to maintain the

fabric of the Building and to clean and light the common parts. There is an obligation on the part of the tenant to contribute towards the costs. In the Tribunal's view this lease is largely unworkable.

23. However, there are four flats in the Property and all four long leaseholders want the Property maintained properly, both in order to live in congenial surroundings and also to maintain the value of their investment. The Property needs to be professionally managed or steps taken to regularise the terms of the lease or the management of the Property. The long leaseholders would be well advised to take legal advice as a group as to the best way forward. Whatever route they choose will involve the expenditure of money but the resulting ability to ensure that the Property is properly managed would be worth it.
24. There appears to be a history of dispute and poor management of the property and all the parties should look forward and see what steps they can take to prepare for a better future management of the Property.
25. The Tribunal will remit the matter to the Wrexham County Court in order that the outstanding issues, including the counterclaim, can be determined. the Respondent should ensure that the counterclaim is filed in the County Court.



Tamara Rabin – Chair

12. 11. 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this 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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) 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 provisions 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.
- (2) 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) 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 it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.