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HM Courts & Tribunals Service

LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00AG/LSC/2012/0805
Premises:	27B Oseney Crescent, London NW5 2AT

Applicant (tenant):	Mr N Linnell
Applicant's representative:	In person
Respondent (landlord):	London Borough of Camden
Respondent's representative:	Mr K Schooling, in-house Legal Officer
Leasehold Valuation Tribunal:	Ms F Dickie, Chairman Mrs J Davis, FRICS Mrs L West
Date of Hearing	25 March 2013

Summary of tribunal's determination

i. The parties agreed that service charges for the major works to which invoice 110094057X in the sum of £12,427.70 referred were not payable by the Applicant.
ii. The tribunal makes an order under s.20C.
iii. All disputed annual service charges are reasonable and payable except for the following items which were conceded by the Respondent:
   a. Year ending March 2010 – block expenditure of £76.40 for aerial repairs.
   b. Year ending March 2011 - block expenditure of £827.39 on an intercom for Flat 27C. Credit for Mr Linnell's contribution has already been made.

Preliminary

1. The subject premises are a one bedroom raised ground floor flat within a converted Victorian house. The Applicant is the long leaseholder and the Respondent is the local authority freeholder. By an application to the Leasehold Valuation Tribunal received on 4 December 2012 the Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1987 ("the Act") as to the service charges payable in respect of major works carried out in 2006 and invoiced in 2012, and annual service charges for the years 2006/07 to 2011/12. A pre-trial review was held on 19 December 2012 at which both parties were present and legal issues were identified for determination by the tribunal.

Major works

2. At the commencement of the hearing, Mr Schooling on behalf of the Respondent conceded the estimated major works invoice 110094057X in the sum of £12,427.70, and confirmed that the Council agreed service charges were not payable by the Applicant for the actual cost of those works. He also conceded the applicant's application under Section 20C of the Act for an order preventing the landlord from recovering its costs in these proceedings through the service charge. The only matter therefore outstanding for the tribunal's determination was the dispute over annual service charges.

Annual Service Charges

3. Mr Linnell disputed a number of service charge invoices. His overall complaint was that the council had spent too long resolving defects, and made too many repeat repairs, to the front door, communal lighting, blocked drains and the chimney. Mr Linnell was unhappy that repairs were carried out on a responsive basis after reports to the council, which did not make checks to see if the repairs had been carried out to a proper standard. The fact that the council had returned to repeat apparently the same job indicated to Mr Linnell, that the job had not been competently carried out. He felt the council should not be coming back to do the same job again and again, and that repairs should have been addressed within the major works.

4. Mr Linnell said he thought electrical problems in the common parts had been caused by water ingress to the circuit box from the flat above him, but he had not experienced subsequent problems. He had not had problems with the front door apart from a sticky Yale lock and smashed glass, both of which were changed. Mr Linnell explained that there had been a turnover of leaseholders and council tenants in the block. He did not know anything about the condition of the drain in the back garden of the basement flat A, could not see it from his flat and had heard nothing of it from neighbours.

5. Mr Schooling explained that repairs were carried out to the block on a responsive basis when reported by one of the occupiers. The council relied on the occupiers to tell them if a repair had not been effective. There was no caretaker and Mr Schooling said that it would be too expensive for a small

block of this type for the council to carry out checks to identify whether repairs were required, or had been carried out to a good standard. He remarked that Victorian houses are known for drain problems, particularly when converted into several residences. Mr Schooling said that the council would take responsibility to repair damage to the common parts caused by a leak from one of the flats, and would only seek recovery if there was evidence it was caused by a tenant's default. If the work to the chimney flue and steps might have formed part of the major works, they had not been charged for as part of those works.

Year end March 2007

6. Only repairs and maintenance expenditure of £102.54 for drain work was in dispute. The Council produced the works orders for two separate jobs carried out in May and December 2006 to remedy a blocked drain outside flat 27A. Mr Linnell sought to raise an argument under section 125 of the Housing Act 1985, but this has not been contained in his application or statement of case, so this tribunal did not allow it.

Year end March 2008

7. Mr Linnell did not dispute insurance and electricity charged for this year. Repairs and maintenance expenditure on the block of £1,848.46 was challenged and comprised three repairs to the communal lights, scaffolding (at £475.39) and repairs to flue and brickwork, and two repairs to the stone steps. All of the works orders were produced. Mr Linnell said that the council had come to the property several times to do the same job, and that some or all of these works should have been part of the major works.

Year end March 2009

8. Of total expenditure of £224.01 for repairs and maintenance to the block, only the sum of £58.49 to remedy defective communal lighting was in dispute as this was a recurring defect. All other expenditure for this year was agreed by the tenant.

Year end March 2010

9. Actual expenditure on repairs to the block of £263.68 was disputed. This included expenditure on work Mr Linnell considered to have been repeated, namely:
    a. 16 November 2009 - Secure the front entrance door as the leaseholder of flat 27B reports it is hanging off. Mr Linnell denied he had made this report;
    b. 3 December 2009 subtenant flat 27C called to report communal front entrance door not closing. Ease and adjust.
    c. The council agreed to credit the sum of £76.40 to the service charge accounts for ad hoc repairs expenditure to remedy no TV signal to flat

27D, conceding that this was not a service charge item as there is no TV antenna on the building.

Year end March 2011

10. The council conceded that expenditure of £827.39 on an intercom for Flat 27C was not recoverable as a service charge, and relevant credits for Mr Linnell's contribution have already been made. Other repairs and maintenance costs were disputed. An electrical testing report was obtained at a cost of £195.13. However, Mr Linnell said that there had been a mains cable hanging off the wall in the communal area since he moved in, and the safety check should have picked up on this and the certificate not issued until the cable was made safe. He produced a photograph of the trailing mains cable, which he said had been clipped back since he issued these proceedings. Mr Schooling confirmed that the electrical safety test is only once in a five year period. There had been expenditure of £337.52 on follow-up works – repair / renew damaged front doorframe.

11. Mr Linnell considered that the cost of £136.08 to unblock drain was another example of repeated work. He said it was always the drain in the back garden getting blocked, which had cast iron gutters coming down to an open grate.

Year end March 2012

12. Expenditure of £608.73 on repairs and maintenance to the block and £94.84 to the estate was in dispute. The former included another invoice for clearing the blocked drain located in the garden of flat A before, finally, the down pipe was renewed at a cost of £278 .64. Mr Linnell argued that if this was the problem causing the leak it should have been identified years before and the ongoing repeat repairs avoided. He agreed the cost of £93.92 to renew the missing back gate in the communal garden. An invoice for £72.24 to repair the lock on the communal front door was challenged as a repeat of the repair carried out in the previous year.

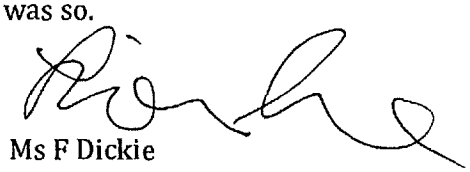
Decision

13. Mr Linnell had not communicated with his neighbours about his concerns over repairs to the block. Without evidence as to what led to the reports to the council, it was mere speculation on his part that the work was redone unnecessarily or not done at all. There was no first hand evidence of defective repairs, or of works not completed. The tribunal accepted the council's explanation as to the best way of raising repairs to the block. Mr Linnell was unrealistic in expecting a fuller monitoring service from the block. The applicant has failed to discharge the burden of proof that lies upon him in bringing this application, The tribunal is satisfied that each and every one of the repairs was prompted by a report to the council by a tenant or leaseholder and in the absence of further evidence from the applicant is satisfied that the works were of reasonable standard and price.

14. The fact that, for example, the drain to flat 27A was repeatedly unblocked does not demonstrate the work was poorly executed or unnecessary. A council tenant will tend to feel unconstrained by cost when reporting a repair to the council. There was no technical evidence or analysis by Mr Linnell to show what problem had existed with the drains and how the council did or could have addressed it, or to show that a fault to the flue could have been identified during the major works.

15. Mr Linnell did not raise in his application or statement of case his specific ground for disputing the invoice for the electrical safety report, so the Council had no reason to produce it at the hearing. It could not be known therefore what defects the report had identified, and whether there had been a good reason for the delay in any recommended work being actioned. It was reasonable to obtain the report and its cost was reasonable. Without sight of it, the tribunal cannot conclude that it was of unreasonable quality.

16. Due to the passage of time since the major works, it is not unreasonable to suppose that further work was required to the chimney flue on the roof which was not carried out within the major works or covered by the defects liability period. The burden of proof is on the applicant, whose reliance merely on an assumption that roof works must be related to work that formed part of the major works was insufficient to persuade the tribunal that this was so.



Signed Ms F Dickie

Dated 20 May 2013