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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A TRANSFER  
FROM THE COUNTY COURT AND IN CONNECTION WITH SECTION 27A  
LANDLORD & TENANT ACT 1985**

**Case Reference:** LON/00AU/LSC/2012/0657

**Premises:** 5 Buckmaster House, Loraine Estate London N7 9SB

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**Applicant:** London Borough of Islington ("the Landlord").

**Representative:** In House Legal Services

**Appearances for  
Applicant:**

- (1) Mr S Bhatia, solicitor
- (2) Ms F Monkman, architect
- (3) Mr R Powell, Home Ownership Officer

**Respondent:** Mr Bolane Balogun ("the Tenant")

**Representative:** N/A

**Appearances for  
Respondent:**

Mr Balogun

**Leasehold Valuation  
Tribunal:**

- (1) Mr A Vance LLB (Hons) (Chair)
- (2) Mr P Roberts DipArch RIBA
- (3) Ms S Justice BSc

**Date of Hearing :**

24.04.13

### **Decision of the Tribunal**

1. The sum of £9,863.63 demanded from the Respondent by the Applicant on 20.08.10 in respect of an estimated major works invoice was reasonable and is payable by him.
2. The Tribunal notes that following provision of the actual figures for costs of the major works, the sum being demanded from the Respondent has been reduced to £8,985.26

### **Introduction**

3. This matter comes before the Tribunal on transfer from Croydon County Court following an order dated 24.09.12 in proceedings 1QK20425 ("the County Court proceedings").
4. Within those proceedings the Applicant sought to recover sums alleged due from the Respondent in respect of service charge in the sum of £9,863.63. This sum claimed related to the costs of major works carried out between 15.02.10 and 30.03.11 under a Qualifying Long Term Agreement and was sought on the basis of an estimated demand dated 20.08.10. The final account of the costs of those works was not available until about October 2012 and the sum now sought from the Respondent has been reduced to £8,985.26 as the actual costs of the major works has come in under budget.
5. In the Respondent's Defence to the County Court proceedings he asserted that the sum claimed is unreasonable and that he wished the Leasehold Valuation Tribunal to determine the reasonableness of the costs of the works once the actual figure was known.
6. Our jurisdiction in this matter is such that we can only deal with the matters that were before the County Court and transferred to us. As the sum claimed in those proceedings related to a demand for the *estimated* costs of works and not the *actual* costs we cannot determine whether or not the actual costs are reasonable and payable. We can only make a determination in respect of the *interim* sum demanded from the Respondent.

7. The Respondent is the leasehold owner of 5 Buckmaster House, Loraine Estate London N7 9SB ("the Property"), a one-bedroom ground floor flat in a five-story block built in about 1937 ("the Building"). There are 75 flats in total in the Building that is one of six blocks forming the Lorraine Estate ("the Estate").
8. The Applicant, London Borough of Islington ("the Council"), is the Respondent's landlord and has the benefit of the freehold reversion of the Property.

### **The Lease**

9. The relevant lease is dated 29.09.03 originally granted by the Applicant to Judith Alakija for a term of 125 years from 24.06.88. Following an assignment of the lease, the unexpired residue of the term granted by the Lease is now vested in the Respondent, who was registered as the leasehold owner on 28.11.06
10. The relevant provisions of the lease can be summarised as follows:
  - 10.1. The Tenant covenants to pay by way of service charge a proportion of the expenses and outgoings incurred or to be incurred by the Council in carrying out his obligations under the Third Schedule to the lease and which include the repair, maintenance, renewal and improvement of the Building and any facilities and amenities appertaining to the Building and the Estate.
  - 10.2. The Council's obligations are set out in the Third Schedule which is in three parts. Part 1 relates to the Building and includes maintaining, redecorating, renewing, amending, improving, cleaning, repointing and painting the Building. Part 2 relates to the upkeep and maintenance of the Estate. Part 3 concerns the management and includes an obligation to supervise and manage both the Building and the Estate including liaising with technical staff within or without the Council concerning repairs, maintenance, renewals and decorations and all other matters referred to in the Schedule.

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- 10.3. The service charge year is the period 1<sup>st</sup> April to the 31<sup>st</sup> March in the following year.
- 10.4. On the First day of April the Tenant is to pay the Service Charge yearly in advance including an interim payment on account for that particular financial year if so demanded by the Council.
- 10.5. The method of apportionment of the Service Charge is based on the rateable values of all the residential units on the Estate but the Council has the right at any time to fairly and reasonably substitute a different method and has, in fact, done so.

#### **Pre-Trial Review and subsequent events**

11. A pre-trial review took place on 24.10.12 at which both parties attended and at which the Tribunal identified the issues to be determined as:
- 11.1. Whether or not the Council had complied with the consultation requirement under s.20 Landlord and Tenant Act 1985 ("the 1985 Act").
- 11.2. Whether or not the works carried out by the Council were within its obligations under the lease.
- 11.3. Whether or not the costs are payable by the Respondent under the terms of the lease and having regard to s.20B of the 1985 Act.
- 11.4. Whether or not the costs of the works are reasonable.
12. Directions were issued by the Tribunal on the same day that provided for the Respondent to send his Statement of Response to the Applicant by 19.12.12 and that listed the matter for hearing on 20.02.13.
13. The Respondent did not comply with the Tribunal's direction and by letter dated 19.01.13 the Respondent asked the Council to agree to an extension of time for service of his Statement of Response and to adjourn the hearing of 20.02.13. The Council agreed to that request but advised the Tenant to contact the Tribunal to seek a formal variation of directions.

14. On 29.01.13 the Council wrote to the Tribunal stating that the Respondent had still not served his Statement of Case and that this was prejudicing the Council's preparation of this application.
15. On 30.01.13 the Tribunal directed that unless the Respondent complied with the Tribunal's previous direction and served his Statement of Response by 04.02.13 that he was to be debarred from defending this application.
16. The hearing listed for 20.02.13 was postponed on 08.02.13 and the application listed to be dealt with on the Paper Track.
17. The Tribunal received a letter from the Respondent on 14.02.13 requesting an oral hearing and stating that his previous non-compliance with directions was due to emotional problems.
18. On 26.02.13, (following receipt of a further letter from the Council stating that the Respondent had not complied with the direction of 30.01.13 and that they considered he was therefore debarred from defending the application) a Procedural Chairperson listed the application for an oral hearing.
19. It was not until 26.03.13 that the Respondent's Statement was received by the Council.

### **Inspection**

20. Neither party requested that the Tribunal inspect the Property and we did not consider this to be necessary.

### **The Hearing, Decision and Reasons**

21. At the start of the hearing one of the Tribunal members Ms Justice informed the parties that she was one of the three members of the Leasehold Valuation Tribunal who determined a previous application relating to the same Estate and on which the Applicant was placing reliance (LON/00AU/LSC/2012/0783). We invited either party to make representations as to whether or not she should sit in the present case. No objections were made and the Tribunal did not consider there were any grounds on which she needed to be recused.

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22. At the start of the hearing Mr Bhatia asserted that the Respondent was debarred from defending this application and that his only role in the proceedings should be as an observer. The Respondent agreed that he had been non-compliant and explained that he had recently suffered two close bereavements in January and February and that these had had a traumatic effect on him. He could not explain why the initial deadline in December was not met.
23. The Tribunal's decision was that the Respondent should play a full part in the Tribunal proceedings and that his role should not be limited to that of an observer. We considered that the effect of the Procedural Chair listing the application for hearing (at a time when, according to the Council he was already debarred from defending the Application) without making any direction as to the Respondent's role in the hearing was an implicit lifting of the debarring order.
24. If we are wrong in that interpretation we consider that in light of the Respondent's personal circumstances (and having regard to the Respondent's European Convention on Human Rights Article 8 right to a fair hearing) that it is appropriate to rescind the debarring order as it would not be in the interests of justice to do otherwise.
25. The Council had, in our view, ample time to consider and respond to the Respondent's Statement and supporting brief 'expert' report and we allowed the late admission of this evidence.
26. As well as hearing evidence from the Respondent the Tribunal had the benefit of hearing the evidence of Ms Monkman who oversaw the major works project on behalf of the Council and Mr Powell, a Special Projects Officer in the Home Ownership team.
27. Ms Monkman explained that the need for major works across the Estate was established following an initial Budget Check Report prepared by Amey and Homes for Islington dated October 2008 [32]. Included in the hearing bundle were various subsequent reports commissioned by the Applicant including Technical Briefs and a Budget Check Report dated 23.10.09 [125] and [355]; a structural appraisal report [177] and a brief for external repairs and repainting [461].

28. During the course of the hearing the Respondent confirmed that he was not pursuing any challenge in respect of the Applicant's compliance with the consultation requirements imposed by s.20 of the 1985 Act. Nor was any issue touching on s.20B of the 1985 Act raised or identified. The Respondent also dropped his challenge to the costs of electrical works.
29. That left the following matters in dispute:
- 29.1. The estimated costs for renewal of the windows in the communal walkways.
  - 29.2. The estimated costs for the repair and overhauling of existing windows (including the quality of workmanship).
  - 29.3. The estimated costs for roof repairs.
  - 29.4. The estimated costs of painting and redecorating existing painted surfaces.
  - 29.5. The basis on which the Respondent's apportionment share was calculated.
  - 29.6. Professional fees charged by HFI.

#### Windows

30. In evidence, Ms Monkman, stated that the need for windows repair across the Estate is set out in the Budget Check report of October 2008 that described the condition of windows in the Building to be in a generally poor condition. In addition, it had been identified that some of the existing (pivoting) windows represented a security risk, having previously been forced out by burglars. This had led to residents installing security bars over the windows, a matter that concerned the fire authorities.
31. She explained that prior to the major works programme the windows in the Building were all single-glazed wooden windows and the initial intention was that all of the windows to the individual flats would be replaced with double-glazed UPVC units. However, the view taken by the Council's planning department was that the use of UPVC windows was

inappropriate for those windows that faced the street and those that protruded to the rear.

32. As the cost of timber double-glazed windows was prohibitive the decision was taken to repair the existing timber sash windows that faced the street as opposed to replacing them. However, those windows that faced the inner and courtyard areas of the Building, and which were not on a projecting face of the Building, were replaced with UPVC windows as required.
33. This meant that in the Respondent's flat the rear facing bathroom and WC windows were replaced with UPVC windows whereas the street-facing bedroom and living-room windows as well as the kitchen window were repaired.
34. The Respondent contended that there was no need to replace his bathroom and WC windows (nor his neighbour's inward-facing windows) as they were in a good condition having been sheltered from the elements by virtue of the concrete canopy forming the communal walkway. They only needed decorating and painting as opposed to repair.
35. He also maintained, that the kitchen window and the two street-facing windows were repaired to a poor standard. He relied upon an email report that he commissioned from Mr P Scott dated 25.03.13 in which Mr Scott expresses the view that the window units concerned had been poorly repaired prior to painting. Furthermore, Mr Scott thought that the windows to the rear had been painted whilst closed as they were difficult to open and that the paintwork was sub-standard. With his submissions the Respondent supplied photographs of the windows concerned that he stated had been taken in March this year.
36. The Respondent also queried why he should have to contribute towards the costs of the repair of windows to the communal hallways when he did not have access to some of those areas.
37. The Respondent's challenge, therefore was that:

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36. The Respondent also queried why he should have to contribute towards the costs of the repair of windows to the communal hallways when he did not have access to some of those areas.
37. The Respondent's challenge, therefore was that:

37.1. The estimated costs in respect of the WC and bathroom windows were unreasonable as all that was required was repair as opposed to replacement.

37.2. The estimated costs in respect of the repairs to the kitchen, bedroom and living-room windows was unreasonable having regard to the quality of the work carried out.

Decision and Reasons

38. We are satisfied on the available evidence that it was reasonable to replace, as opposed to repair, both the WC and bathroom window.

39. We do not find Mr Scott's email to be at all persuasive given that (a) it was written long after the works had been completed and therefore he did not know the existing condition of the windows; (b) we have no indication as to his qualifications, if any (all the Respondent could say on this point was that he had been in the building trade for some time); and (c) that the Respondent conceded to us that he had not shown him the detailed specifications and reports being relied upon by the Council in these proceedings.

40. The need for works to the windows is, in our view, clear from the reports included by the Council in the hearing bundle, in particular the Budget Check Report of October 2008. That report indicates that the last major external redecoration programme was completed in 2002 (para 4.0 [37]) and, at paragraph 6.8 [57], it is recorded that:

*"The Casement communal walkway windows are in the poorest condition in Buckmaster House"*

and that,

*"...it is recommended that window replacement is undertaken to the casement windows to the communal walkways...due to their overall poor design and fitness for purpose".*

41. We recognise that the Council chose to replace the WC and bathroom windows as opposed to repairing them and that this is likely to amount to an improvement. Nevertheless, the Respondent's lease allows the Council to carry out improvements in addition to repair and maintenance

and we consider that their election to do so was a reasonable one given the lack of any evidence from the Respondent to counter this assertion. As an aside, replacement with double-glazed UPVC windows is also likely to achieve savings in the costs of on-going maintenance as well as improved thermal efficiency.

42. As to the quality of the works to the kitchen, bedroom and living-room windows we are not persuaded by the Respondent's case. Whilst the photographs he supplied show some paint spillage to brickwork it appears to us from these photographs and also the close-up photographs provided by the Council that the quality of the works was reasonable.
43. Furthermore, if this was a significant problem we would have expected the Respondent to have raised it with the Applicant prior to these proceedings given that the works to the windows were completed by March 2011. We do not find the Respondent's explanation as to why this was only raised in March 2013, namely that he was not an expert in such matters, to be persuasive. In our view, poor workmanship would have been easily identifiable and yet no complaints were made.
44. The Respondent's challenge focused on the works carried out to his Property as opposed to the reasonableness of the overall costs of the project across the Building. In the absence of any evidence to the contrary it is our view that the estimated costs for both the renewal of the windows in the communal walkways (£116,499.45) and the costs of the repair and overhauling of existing windows across the Building (£165,274.14) are reasonable for a project of this size and that they are payable by the Respondent under the service charge provisions of his Lease as set out above as per his apportioned share.

Roof repairs.

45. In the breakdown provided with the major works invoice of 20.08.10 [684] the estimated cost of repairs to roof coverings, flashings, gutters, rainwater downpipes, outlets and parapets amounts to £2,906.77.
46. Ms Monkman confirmed that the estimated sum included debris and vegetation clearance as well as minor repairs to the roof of the Building

including replacing loose roof tiles. A breakdown of the provisional works is included in the 23.10.09 Budget Check Report [142].

47. The Respondent's only challenge in respect of this item was that from ground level he could identify no visible repairs having been carried out by the Council. Given the standard of works to his windows he did not trust the Council to carry out appropriate works to the roof.

Decision and Reasons

48. In our view the sum demanded is reasonable and we consider it to be payable in full by the Respondent as per his apportioned contribution. He has provided no evidence to substantiate that the works were not required nor that the estimated costs were unreasonable. In our view it is a modest charge for the anticipated work.

Painting and Redecorating of Existing Painted Surfaces.

49. The estimated sum for these works was £63,436.41 and comprised the estimated costs of redecorating existing painted surfaces (£39,492.73) and staircase surfaces (£23,943.68).
50. Ms Monkman informed us that this included the costs of repainting the stair-treads with a special anti-slip paint and that there were three internal stairwells and four upper floors to the Building. Details of the external works are stated in the 2009 Budget Check Report at [140] and details of the internal works at [143]. Photographs of the state of the communal staircase, lobby and landing areas are set out in a specific stairways report at [525].
51. The Respondent had no substantive challenge to these estimated costs save that he thought they were high when compared to what it would cost him to paint his own Property to a better standard.

Decision and Reasons

52. The Respondent did not dispute the need for these works and in our view the stairways report [514] and the painting specification [482] establish that the proposed works were reasonable.

53. There was no evidence before us to counter the Applicant's assertion that the estimated costs of these works was reasonable. In the absence of any evidence to the contrary it is our view that the costs are reasonable and payable by the Respondent in full as per his apportioned contribution.

#### Apportionment

54. In evidence, Mr Powell explained that approximately nine years ago the Council took the decision to move over to a borough-wide apportionment system based on the number of bedroom units. As such, the rateable value calculation method set out in the Respondent's lease no longer applied (the Council having exercised its discretion to substitute a different method, which it considered to be fair and reasonable).
55. Under the new method, occupants of one-bedroom units paid 10% less than the base-level charge paid by occupants of two or to three bedroom property and those with four or more bedrooms paid 10% more than the base level.
56. The Respondent considered this system to be unfair for those, like him, who occupied one-bedroom properties. He argued that a method of apportionment based on floor-size would be fairer and that a 20% difference between a 1 bedroom and a 4 bedroom unit was not enough.

#### Decision and Reasons

57. There is simply no evidence to support the Respondent's assertion that the current method is unfair. We consider that it has the significant benefits of simplicity and comprehensibility. It also saves on the considerable expenditure that would be incurred in adopting a method based on floor-size. In the absence of any supporting evidence to the contrary we consider the Respondent's apportioned contribution (10% less than the baseline) to be reasonable.

#### Professional Fees

58. The Respondent challenges the professional fees of HFI for administering the contract apparently on the basis that it failed to ensure that the works carried out were of a good quality and value for money.



59. The sum budgeted for in the major works estimate was £81,291.27 based on 11% of the Agreed Maximum Price. The Respondent considered that no more than 6% was reasonable.

Decision and Reasons

60. We consider the costs to be reasonable and payable by the Respondent in accordance with his apportioned contribution. The costs include all professional fees including those of Ms Monkman as contract administrator, a Clerk of Works, a consulting engineer, a quantity surveyor as well as other specialists. In our view and on the available evidence, 11% is a reasonable sum given that it includes the costs of all such specialists as well as the general administration of the Contract.

**The Applicant's application for Costs**

61. The Applicant seeks an order for costs under Schedule 12, paragraph 10(2) of the Commonhold and Leasehold Reform Act 2002 in the sum of £500. In support of that application Mr Bhatia stressed the Respondent's lack of engagement in these proceedings and his non-compliance with the Tribunal's directions that had led to the Council incurring unnecessary costs
62. We do not consider it just and equitable to make such an order. Whilst there was clearly non-compliance with directions we do not consider the Respondent's conduct to have been frivolous, vexatious, abusive, disruptive or otherwise unreasonable. In reaching that decision we bear in mind the bereavements that he has informed us he has experienced and that he states impacted on his ability to comply with directions. However, even if the likely impact of those bereavements is disregarded we still do not consider that the threshold for a costs order is met.

**Concluding Remarks**

63. This matter will now be remitted back to the County Court. Both parties are encouraged to seek to reach agreement where possible before this matter is next considered by the County Court. If restored for further hearing the Applicant should ensure that the Court is provided with

updated figures of what sums he considers remain outstanding from the Respondent bearing in mind this decision.

Chairman: Amran Vance

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Date:

20/05/2013

## Annex

### Appendix of relevant legislation

#### **Landlord and Tenant Act 1985**

##### **Section 18 - Meaning of "service charge" and "relevant costs"**

- (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 – Limitation of service charges: reasonableness**

- (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 – Liability to pay service charges: jurisdiction**

- (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.

## **Commonhold and Leasehold Reform Act 2002**

### **SCHEDULE 12**

#### **Costs**

- 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.