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LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00BE/LSC/2013/0106
Premises:	38 Ambergate Street, London SE17 3RX
Applicant:	Mr R D Jones
Representative:	N/A
Respondent:	London Borough of Southwark
Representative:	Miss E Sorbian (Income Enforcement Manager)
Date of hearing:	10/06/2013
Appearance for Applicant:	The Applicant appeared in person and represented himself
Appearance for Respondent(s):	Mr K Kiernan, Area Programme Office Miss J Dawn, Final Accounts Manager
Leasehold Valuation Tribunal:	Miss J E Guest (solicitor) Mr S Mason FRICS Mr L G Packer
Date of decision:	17/06/2013

PP78

Decisions of the Tribunal

- (1) The Tribunal determines that the sums set out in the table below are payable by the Applicant in respect of the service charges in dispute in relation to major works undertaken by the Respondent in 2007:

Major works	£1,478.98
Professional fees	£65.52
Administration fee	£77.22
Total	£1,621.64
Less reduction under section 125 of the Housing Act 1985	£298.34
Total due	£1,323.30

- (2) The Tribunal makes the determinations as set out under the various headings in this decision.
- (3) The Tribunal determines that the Respondent shall pay the Applicant the sum of £100.00 within 28 days of this decision in part reimbursement of the Tribunal fees paid by the Applicant.
- (4) No application was made under the section 20C of the Landlord and Tenant Act 1985. The Respondent, nevertheless, undertook not to seek to recover the costs of the proceedings before the Tribunal through the service charges.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 as to the amount of service charges payable by the Applicant in respect of major works undertaken by the Respondent in 2007.
2. At a pre-trial review hearing on 13/03/2013, the Tribunal identified that the Applicant disputed that the costs of the major works because he asserted: the costs were high as the works included a programme of works incorporating an unrelated estate; some of the work was not necessary or had not been undertaken; and that the Respondent had not complied with the statutory consultation procedures.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant appeared in person and represented himself. The Respondent was represented by Ms Sorbjan, the Respondent's Income Enforcement Manager. Mr Kiernan, the Respondent's Area Programme Officer, and Miss Dawn, the Respondent's Final Accounts Manager, both gave oral evidence. The hearing lasted just over half a day.

5. Immediately prior to the hearing, the Respondent's representative handed in further documents, namely copies of the Respondent's internal emails and attachments sent on 17/05/2006, 20/06/2006 and 21/06/2006 and, in addition, a statement of account dated 10/06/2013. Copies of these documents were also provided to the Applicant and he informed the Tribunal that he had had sufficient opportunity to consider the same prior to the commencement of the hearing. The Applicant also produced an additional photograph during the hearing, which showed a casement window to the rear elevation of the building. The bundle and the other documents were all carefully considered by the Tribunal in reaching its various determinations.
6. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

The background

7. 38-40 Ambergate Street is a two storey terraced house ("*the building*") comprising of two self-contained dwellings. 38 Ambergate Street ("*the flat*") is a two bedroom maisonette situated on the first floor of the building with its own entrance door at ground floor level. 40 Ambergate Street is a separate dwelling situated on the ground floor of the building also with its own separate entrance at ground floor level.
8. The Applicant holds a long lease of the property which requires the Respondent to provide services and the Applicant to contribute towards their costs by way of a variable service charge. The Applicant acquired the leasehold interest under the Right to Buy scheme. The lease is dated 24/04/2006 and it is for a term of 125 years commencing on 24/04/2006. The specific provisions of the lease will be referred to below.
9. The major works undertaken by the Respondent in 2007 related to the external redecoration and maintenance of the building. These works were part of a larger programme of 'Decent Homes' works carried out by the Respondent to street properties situated on Ambergate Street and other neighbouring streets and also on the Alberta Estate, which comprises of a mix of high and low rise blocks of flats. The Respondent had initially demanded £6,768.13 on account but this was reduced to £2,117.70 when the final account was prepared.
10. The Tribunal's decision was made on the basis of the evidence before it and what follows is a summary of the evidence heard and the Tribunal's various decisions.

Section 20 consultation

11. There was no dispute between the parties that the consultation procedures required under section 20 of the Landlord and Tenant Act 1985 applied to the works. The Applicant's position was that the Respondent had not served the first notice required under the procedure, known as the Notice of Intention. The Applicant assumed that he had been missed from the general mail shot sent to leaseholders as he only became a leaseholder a few weeks prior to the start of the consultation. The Applicant was in the process of obtaining quotes from workmen regarding internal works to the flat at this time. He said that he would have obtained quotes for the exterior works if he had received the first notice.
12. The Applicant confirmed that he had received the second notice, the Notice of Proposal, served on 16/11/2006. The second notice referred to the earlier notice. The Applicant did

not make any observations on the proposal nor did he raise any issue regarding the service of the first notice at that time.

13. The Respondent's position was that it had complied with the consultation requirements. The Respondent adduced evidence on the day of the hearing that the first notice had been delivered by hand on 16/05/2006. The Statement of Delivery was dated 17/05/2006 and stated that the notice had been delivered on 16/03/2006. The Respondent provided a screen shot of the leaseholders served, which included 38 Ambergate Street and referred to the completion of the Applicant's purchase on 24/04/2006. The Respondent informed that Tribunal that the reference to 16/03/2006 was a clerical error and that the date the notice was served was corroborated by an email confirmation sent on 17/05/2006 that stated that notice had been delivered on 16/05/2006. Other evidence produced by the Respondent in relation to this issue also stated that the notice had been served on 16/05/2006.

The Tribunal's decision

14. The Tribunal determined that the Respondent complied with the consultation requirements.

Reasons for the Tribunal's decision

13. The Tribunal accepted that the first notice was served. The Respondent produced contemporaneous documentary evidence regarding the hand delivery of the notice to leaseholders, including the Applicant, on 16/05/2006. Whilst the date on the Statement of Delivery was wrong, the Tribunal accepted that this was a typographical error since the other documents, such as the email sent on 17/05/2006, referred to the correct date. The Tribunal was satisfied that the first notice was served on 16/05/2006.

Overhauling of windows and doors – £320.00 (All costs given are for the Building)

14. The Applicant objected to contributing towards the costs of the overhauling the sash windows (£200.00), the overhauling casement windows (£40.00) and the overhauling of timber doors and frames (£80.00). The Applicant argued that these works had not been undertaken. He was of the view that the windows and doors had only been repainted and pointed out that no works had been undertaken internally within the flat. The Applicant confirmed that his windows were left in proper working order following completion of the works save that the sash windows were stiff and there was some decay to the interior side of one of the windows to his dwelling.
15. The Tribunal was informed that there were a total of about 12 windows in the building. Scaffolding was in place to the front and rear of the building during the works. The last redecoration of the exterior had been undertaken in about 2000. The Respondent's position was that the overhauling included an assessment of the condition of the windows so that any works required alongside repainting could be undertaken. The cost of the overhauling was part of a fixed price tariff that had been agreed with the contractor, Standage & Co, who had submitted the lowest price when the programme of works had been put out to tender.

The Tribunal's decision

16. The Tribunal determined that the sums were payable in full.

Reasons for the Tribunal's decision

17. The Tribunal accepted that the overhauling of the windows and doors had been undertaken as part of the external redecoration works. 'Overhauling' does not require any substantial works. The term includes a process for inspecting and checking that the windows and doors were functioning properly, which the Applicant confirmed was the case.
18. The Respondent is required to, amongst other things, repair the structure of the flat and of the building (see clause 4(2) of the lease) and paint the outside of the building (see Clause 4(4)). The Respondent is entitled to recover the costs of such works under Clause 7(1) of the Third Schedule.
19. The Tribunal considered the costs to be payable and reasonable. The issue of the apportionment of the costs will be dealt with as a separate issue.

Roof works - £400.00

20. The Applicant's position was that no works were undertaken to the roof and he considered that the provision of scaffolding had, therefore, been unnecessary. The issue of the costs of the scaffolding will be dealt with separately.
21. Mr Kiernan was unable to specify the works that had been undertaken, if any. He explained that a fixed sum had been agreed with the contractor that was paid irrespective of the amount of minor works undertaken. Ms Sorbjan, however, stated that the fixed sum included an inspection of the roof and that the fixed sum would be varied in the event that more substantial roof works were found to be necessary.

The Tribunal's decision

22. The Tribunal determines that the amount payable in respect of the inspection of the roof was £100.00.

Reasons for the Tribunal's decision

23. The draft account referred to 'repairs to existing roof coverings' whilst the final account described the works as 'renewal of existing roof coverings'. No roof renewal had been undertaken and the inaccurate description in the final account did not provide the transparency necessary to try to avoid a dispute. On balance, the Tribunal decided that no actual repairs had been undertaken. However, the Tribunal accepted that an inspection of the roof was undertaken once the scaffolding was in place. The Tribunal considered that the sum of £400.00 was an excessive charge for the inspection, given that there was scaffolding in place to assist and the contractor and/or the clerk of works, which would have been on site in any event. Drawing on its own experience, the Tribunal considered that a charge of £100.00 for a roof inspection in these circumstances would be reasonable.

24. The Respondent is entitled to charge for such an inspection since it forms part of its obligation to keep the building in repair (Clause 4(2) of the lease) and such a cost is recoverable (Clause 7(1)).

Paintwork to stonework to entrance lobby - £245.00

25. The Applicant confirmed that the stonework to the recessed porch area of the building had been redecorated. The Applicant was, however, concerned about the terminology used since there is no lobby or communal area and he was also of the view that the cost was not reasonable in the context of the package of works. The Applicant did not put forward any evidence of alternative costs but asserted that the cost should be no more than £120.00.

The Tribunal's decision

26. The Tribunal determines that the amount payable in respect of this item is reasonable.

Reasons for the Tribunal's decision

27. The Applicant produced no evidence that the amount charged is unreasonable. The Tribunal, drawing on its own expertise and knowledge of such matters, considered that the amount charged is fair and reasonable, particularly having regard to the fact that the works were part of a contract awarded to the contractor who submitted the lowest tender.
28. The sum is payable since it relates to works the Respondent is obliged to undertake (Clause 4(4)), which falls within the costs and expenses it can recover (Clause 7(1)).

Painting timber doors and frames - £166.00

29. The Applicant stated that his own workman had painted the flat entrance door just a few months prior to the works. He had requested that the Respondent's contractor should not undertake this work. However, both entrance doors and frames to the building were painted as part of the Respondent's external redecoration. The Applicant considered the cost to be excessive. The Applicant suggested a figure of £80.00 but produced no evidence regarding an alternative cost.

The Tribunal's decision

30. The Tribunal determines that the amount demanded is fair and reasonable.

Reasons for the Tribunal's decision

31. The lease provides that painting of the front door is the landlord's responsibility. The Applicant produced no evidence to support his claim that the works could have been undertaken at half the cost. The Tribunal allowed the sum in full for the reasons as stated above.

Renewal of sash window - £900.00

32. The Applicant was adamant that no window in the building had been replaced during the course of the works.
33. Mr Kiernan was unable to provide any information to the Tribunal on this point. He was only able to state that a window 'may' have been replaced at 40 Ambergate Street and he explained that the works appeared in the final account since they would have been 'signed off' by the clerk of works.

Tribunal's decision

34. The sum was disallowed in full.

Reasons for the Tribunal's decision

35. This was the largest item in dispute, and the Respondent was aware of the Applicant's contention that no window had been replaced, from the Applicant's Scott Schedule prepared following the pre-trial review. Despite this, the Respondent produced no evidence to support the alleged window replacement, other than the final account for the Building. The Tribunal accepts that the final account would have been approved by a professional person, but even with the greatest diligence, mistakes can occur. The

Tribunal takes the view that, having been put on notice of the matter, the Respondent could and should have provided some more specific evidence concerning the alleged window replacement. The Tribunal concludes that, in this disputed situation, the final account alone, without any other supporting evidence, is not sufficient to support this work having been undertaken.

Repointing brickwork - £342.00

36. The Applicant's position was that no repointing works had been undertaken to the brickwork. Mr Kiernan was unable to identify the areas that had been repointed but considered that this work would have been undertaken via the scaffolding.

Tribunal's decision

37. The sum was allowed in full.

Reasons for the Tribunal's decision

38. On balance, the Tribunal considered that, given the age and character of the building, it was likely that some repointing works would have been undertaken whilst the scaffolding was in place. The sum claimed was considered reasonable and the amount is recoverable for the reasons set out above.

Cleaning and testing rainwater goods and drainage - £82.20

39. The Applicant's position was that this work had not been undertaken. The Respondent produced a CCTV drain survey dated 11/06/2007. It was unclear whether, save for the inspection of the drains, any works had been undertaken as a consequence of the findings of the survey. The Respondent's position was that the drains had been cleaned and, in any event, the Applicant had not been charged for any resultant works if such works had been undertaken.

Tribunal's decision

40. The Tribunal allowed the sum in full.

Reasons for the Tribunal's decision

41. The Tribunal accepted that the survey and cleaning of the drains had been undertaken. Relying on its own expertise, the Tribunal considered that the sum claimed was reasonable. The Respondent is obliged to keep the drains in repair (Clause 4(2)) and entitled to recover the costs (Clause 7(1)).

Preliminaries - £603.30

42. Miss Dawn gave evidence to explain how the preliminaries were apportioned between the leaseholders. Miss Dawn explained that the preliminaries were apportioned on the basis of the percentage of the total cost of the work attributed to a specific block excluding the cost of the scaffolding. The Applicant was concerned that the initial estimate for the works was far higher than the actual costs incurred and he was also concerned about the delay between the completion of the works and the final account being served. Miss Dawn explained that the contract provided for a retention for a period of 12 months after the works had been completed to all properties.

43. Mr Kiernan gave evidence as to the type of costs that were covered by the preliminaries, which included providing facilities for the contractors, storage of materials, monthly project meetings, etc. The Applicant's view was that these costs were not payable by him as they related to the programme of works being undertaken to other properties.

Tribunal's decision

44. The Tribunal allowed this item in principle but made an adjustment to reflect the recalculation of the measured works undertaken to the building as a result of the Tribunal's decision.
45. Accordingly, the preliminaries apportioned to the building amounted to £356.20.
46. It should be noted that the Tribunal similarly revised the administration charge of 5% and the professional fees of 4.43% to reflect the reduction in the actual costs as a result of the decision.

Reasons for the Tribunal's decision

47. The Tribunal considered that the Respondent was entitled to undertake a programme of works to various properties. The Applicant has benefited from services obtained as a result of a large scale contract that provides costs saving due to economies of scale. The Tribunal considered that the costs were reasonable.
48. The Respondent is entitled to recover the costs since Clause 7 includes 'all costs and expenses of or incidental to' the carrying out of works.

Scaffolding - £886.00

49. The Applicant's position was that the scaffolding was unnecessary given the works actually carried out. The Applicant was of the view that the works could have been undertaken with ladders. The Applicant did not produce any evidence regarding alternative costs.
50. Mr Kiernan explained that the scaffolding was required in order to carry out the external redecoration of the building and to inspect both before the works and post completion. Mr Kiernan informed the Tribunal that scaffolding was necessary for the health and safety of the workmen on site. He also stated that it was more time consuming and, therefore, more costly to undertake such works using ladders.

Tribunal's decision

51. The sum claimed was allowed in full.

Reasons for the Tribunal's decision

52. The Tribunal accepted Mr Kiernan's evidence regarding the use of scaffolding. Using its own expertise, the Tribunal considered that the sum claimed was reasonable. The sum is payable in accordance with the lease as it relates to the costs/expenses incidental to the exterior redecoration (as per Clauses 4(4) and 7(1)).

Apportionment

53. The Tribunal heard from Miss Dawn as to how the cost of the works was apportioned. Miss Dawn explained that only the costs of works to the building were charged and that a 'bed weighting' method was used to apportion the costs between the flats. This resulted in the Applicant being required to pay half the costs of the actual works. The apportionment of the preliminaries was undertaken on a different basis, as set out above.
54. The Applicant did not object, in principle, to paying half the costs of the works since he took the view that the surface area of the two flats in the building was approximately the same. However, the Applicant appeared to dispute the 'bed weighting' method on the basis it appeared to relate to the internal description of the flat.

Tribunal's decision

55. The Tribunal decided that the apportionment method used by the Respondent was in accordance with the terms of the lease.

Reasons for the Tribunal's decision

56. Clause 6(1) of the lease provides that the Applicant shall pay a 'fair proportion' of the costs and expenses incurred by the Respondent in carrying out its obligations. Clause 6(2) allows the Respondent to adopt 'any reasonable method' of ascertaining the fair proportion and that it may adopt different methods in relation to different items of costs and expenses.
57. The apportionment of the actual costs of the works using the 'bed weighting' method is a reasonable method. The apportionment of the preliminaries on the basis of a percentage of the measured works was also a reasonable method of apportioning those costs.

Reimbursement of fees

58. The Applicant applied to the Tribunal for the reimbursement of the application fee of £100.00 and the hearing fee of £150.00

Tribunal's decision

59. The Tribunal decided that the Respondent should reimburse the Applicant in the sum of £100.00.

Reasons for the Tribunal's decision

60. The Tribunal has the discretion under Reg. 9 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 to require a party to reimburse any other party the whole or part of any fees paid by him in respect of the proceedings. The Tribunal exercised its discretion and awarded a part reimbursement of the fees since the Applicant succeeded on a number of the issues but not all.

Chair:

Date:

17/06/2013

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.

- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (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.