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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAM/LSC/2013/0521**
Property	:	**29 Dovedale House, Bethune Road, London N16 5DX**
Applicant	:	**London Borough of Hackney**
Representative	:	**Mr D Kilcoyne – Counsel** **Miss L Enukora – Lawyer with the Council** **Mr A Evans –Major Works and Disputes Resolution Manager with the Council** **Mr J Collyer – Project Manager with the Council**
Respondent	:	**Mr O H Umunna**
Representative	:	**Represented in person**
Type of Application	:	
Tribunal Members	:	**Mr A A Dutton (Judge)** **Mr L Jarero BSc FRICS** **Miss S Wilby**
Date and venue of Hearing	:	**6th January 2014** **10 Alfred Place**
Date of Decision	:	**21st February 2014**

DECISION

DECISION

The Tribunal determines that the Applicants have proved their case and makes the findings set out below.

The Tribunal declines to make an order under Section 20C of the Landlord and Tenant Act 1985 (the Act).

BACKGROUND

1. On 15th July 2013 the District Judge sitting at the Clerkenwell and Shoreditch County Court in claim number 3YJ25592 between the Applicant and Respondent transferred the matter to the Leasehold Valuation Tribunal. Technically by that time we had become the Property Chamber London Residential Property First Tier Tribunal, but there is no issue that the matter has been transferred to us for determination. The claim in the County Court sought to recover some £25,694.92 in respect of major works to the building in which the Respondent's flat was to be found. These included major external works and also the installation of a door entry telephone system. In addition to the sum of £25,694.92 the Applicants sought interest and costs but those two elements are not a matter for us to determine and will be remitted back to the County Court for consideration by them in due course.

2. Whilst we are considering the procedural issues it is also appropriate to address the claim made by the Respondent, Mr Umunna, in the Clerkenwell and Shoreditch County Court under claim number 1EC00185. In those proceedings Mr Umunna had sought to claim for damages sustained to his property during the course of the major works. We were able to see an order made by the District Judge on 26th February 2011 following an attendance at the Court by Mr Umunna and a solicitor for Hackney Homes who are the defendants in those proceedings, which resulted in the claim being stayed pending referral to the Leasehold Valuation Tribunal for its decision. It is right to say that according to this Tribunal's records no such referral has taken place. A further order was sent through to us by the Court dated 27th June 2012 which although it refers to the claim number that we have mentioned above and cites Mr Umunna as the claimant and Hackney Homes (Major Works Section) as the defendant, clearly contains matters within the order that are no relevance to the proceedings. The order must, therefore, it seems to us be in error.

3. For the record, we understand that the local authority had made an offer which was rejected and that Mr Umunna appeared to be indicating in these proceedings that his claim for damages was in the region of £10,000 although in the papers before us there was no evidence available to substantiate that loss. In those circumstances, therefore, even had we been seised of the jurisdiction we suspect that we would have reverted the matter back to the County Court for them to consider. We find that the jurisdiction remains with the County Court and therefore we will not deal with the claim for damages in these proceedings or in these reasons.

4. A bundle of documents was provided to us prior to the hearing, which contained copies of the County Court proceedings between the London Borough of

Hackney and Mr Umunna, the directions issued, the tenants' statement of case with supporting documents and a witness statement of Mrs Umunna. We had witness statements from Mr Alex Evans and Mr Jeff Collyer with exhibits, copies of the lease to the flat, the Section 20 documentation which was not in fact in issue and invoices and other information relating to the works that had been carried out at the property.

5. We were also provided on the morning of the hearing with the Applicant's outline preliminary submissions and we will briefly set out the chronology from those submissions, which is not in dispute.

6. We were told that there were two sets of works to which the dispute related. The first were substantial works following a stock condition survey carried out in 2002 and the second works were to the door entry system because of serious anti-social behaviour experienced at the block. The submissions set out the terms of the lease which the Applicants say entitle the Council to recover the costs and also addresses the provisions of Section 19 with regard to the reasonableness of the works being undertaken, the amounts charged and the standards. There is also a brief mention as to the Respondent's complaints about disrepair and the damage that he suffered but, as we have indicated above, we do not need to deal with that matter in these reasons.

7. The chronology attached set out the dates upon which the Section 20 notices were issued, when the works were completed and the history of the County Court proceedings. In a table attached to the submission, Counsel, Mr Kilcoyne has set out the matters which appear to be challenged by Mr Umunna and has set out within the provisions of Section 19 what those complaints might be. In addition to providing us with copies of various sections of the Landlord and Tenant Act 1985 (the Act), we were also provided with a copy of Section 125 of the Housing Act 1985 which relates to the Right to Buy notices which form part of the complaint made by Mr Umunna.

8. Mr Umunna's written submissions accompany a Scott schedule which sets out the issues that he raises. This is a document common to both parties and it is not necessary for us to go into great detail as to the matters contained thereon. At page 40 of the bundle is the Scott schedule to which the Council's comments have been appended and we have noted all that has been said.

9. We should record that at the commencement of the hearing Mr Kilcoyne on behalf of the Council confirmed that they would not be seeking to recover the costs in respect of works to the bin chamber doors of £48.98 nor costs which were referred to as risk assessment but were in reality contingency costs, which were never used and nor would the Council be seeing to recover any costs in connection with the window renewal because Mr Umunna had replaced his own windows previously.

10. In the initial schedule which is without date, Mr Umunna challenges the costs of the windows, which are now no longer in issue, the scaffolding, asbestos removal and contingency fees which are referred to as risk assessments which are, again, no longer in dispute. Accordingly when considering the Scott schedule we were required to make a determination on the following matters:-

- The installation of the controlled door entry system at a price of £1,381.80, the administration cost of £125.62 and the professional fees of £76.67.
- The cost of asbestos removal originally recorded on the Scott schedule as £473.91 but in fact reduced to £386.84.
- The cost of replacing the walls to the communal walkways which included the installation of galvanised steel posts and new brickwork at a price of £3,842.27. Mr Umunna had confused this with the costs charged originally for the contingency fee of £3,527.36 which is no longer an issue for us to consider.
- The charge of £7,263.31 in respect of works to the roof.
- External and internal communal decorations of £725.14 and concrete repairs and rendering works of £1,544.76 but actually recorded in the final account as £1,262.86.

11. At the hearing Mr Umunna, although indicating that he wished to recover the costs of the installation of the windows by Everest of £7,585.10, accepted that in the Council waiving any claim for costs against him for window works under the major works he would not seek a refund of the cost to him of installing the new windows.

12. Mr Umunna also helpfully confirmed that he did not challenge the Section 20 procedures.

13. We were told by Mr Kilcoyne that the asbestos removal was proper and reasonable management of the block and was therefore covered by the lease as was the installation of the door entry system which was used to prevent anti-social behaviour in particular drug taking and dealing and prostitution. It was said by Mr Kilcoyne that the provisions of the lease in the 9th schedule paragraph 6 included works of improvement and that accordingly if the door entry system were taken to be such the lease allowed that to be charged.

14. In respect of Mr Umunna's suggestion that the Council were aware that the property was going to require major works when he bought in 2003, we were told that the Council's position was that the notice under Section 125 of the Act gave a five year period which would have expired at the latest in March of 2008. It was not known whether Mr Umunna was shown a copy of the conditions of survey prior to his purchase of the property but he had been living as a tenant from 1998 or 1999.

15. It was submitted to us that the costs had been reasonably incurred by reason of the stock condition survey and the evidence we were to hear from Mr Collyer. The amounts of the works were reasonable as they had been dealt with under a qualifying long term agreement, the general view of such agreements being that they were beneficial in bringing down costs of works. As an example of this, Mr Kilcoyne drew our attention to the costs contemplated for replacement of the windows of around £4,300 admittedly excluding the preliminary costs, when compared with the nearly £8,000 paid by Mr Umunna to Everest.

16. As to the reasonable standard, having conceded the works in relation to the bin doors, it was said that the other works were carried out correctly, were needed and were therefore payable.

17. After the lunch adjournment we heard from Mr Collyer who had made a witness statement and which had been read by us. He told us that he was an electrical engineer with an HND qualification and knew the block quite well. The stock condition survey was in fact nothing more than a drive-by assessment by an independent surveyor for the purposes of meeting the requirements of the Decent Homes standards. We were told that the properties owned by the Council were assessed as either being "decent" and not requiring works, "not decent" or "right for regeneration". As a result of the survey and the Council's knowledge of other blocks of a similar vintage, it was noted that this property was "not decent" and that works were required. Schedules were put forward by the preferred contractors which were then reviewed by Hackney Homes who are the ALMO for the London Borough of Hackney. The review of these schedules enabled the Council to have a say as to the extent of the works that may be undertaken. The works on this contract were carried out by Connaught who unfortunately went into receivership or liquidation in 2010, which has caused some difficulties with obtaining documentation. We were told that the majority of residents at the block were tenants and not long leaseholders. Some evidence was given as to the procurement of the contracts and we were told that the rates were competitive, particularly when compared to other boroughs. Mr Collyer told us of the inspections that had been carried out before, during and after the works and we were told that with Connaught going into liquidation/receivership the contract was finished by Mansells and any additional costs were subsumed into the contingency funds, which were not recharged to the leaseholders.

18. An issue had been raised with regard to asbestos in the block and Mr Collyer told us that he thought the building had been erected in the 1950s and that asbestos was not uncommon. The soffits where the asbestos was to be found were flaking and it was considered appropriate not to try to redecorate those but to remove the soffits and replace them. As to the door entry system, we were told that the Amhurst Park area was notorious as a high crime region with prostitution and drug problems. The door entry system was installed following representation of at least 60% of the people living in the block and he was of the view that the residents were grateful that the system had been installed.

19. Mr Umunna asked him about the survey carried out in 2002 which he said had not been supplied to him. He also said that he was not aware that the property had asbestos.

20. In regard to the external decorations we were told by Mr Collyer that all parts of the exterior brickwork which had previously been painted were repainted, including the staircases. The concrete repairs were to the corridors and walls which were subsequently painted and the works to the chimney stacks were under the heading roofing. The rebuilding of the walls to the walkways was at a price of £120,818.20 which he considered to be perfectly reasonable.

21. Mr Collyer's evidence was followed by that of Mr Evans. He was not able to say why a 6% fee for professional charges had been relied upon but he thought that

that was a reasonable percentage. The 10% administration charge included the Council's costs of issuing the notices and collecting the monies. The 10% charge was made on the total of the costs after the professional fees had been added but Mr Evans thought that this was reasonable as the professional fees were an integral part of the overall costs. He told us that he thought on average the annual service charge management fee was around £250 per unit. He explained to us the apportionment of the costs on the bedroom weighting basis and that the door entry system included the building of screens, telephone connections to each flat and the installation of the equipment at two entrances.

22. In cross examination he was asked why the living space factor had been used for calculating the apportionment of the charges between the residents and he said that this was on a borough-wide basis and had not been challenged.

23. Mr Umunna then gave evidence, first disagreeing with the method of apportionment but offered no alternative. He also raised the point that a demand of 75% of the major works costs had been made allegedly by reference to the lease which appears not to be the case. However, Mr Umunna had not made any payments on account and this was not, therefore, an issue that was pursued. On the question of the door entry charge, he thought that this should be paid on an equal basis and that thus he would pay 1/35th . Insofar as the administration charge was concerned, he thought that 10% was too high and it should be between 1½ and 2% although he gave no reasons for that figure. It was also noted that the professional charge in respect of the door entry phone system was 6.5% but no explanation was given by the Council as to why that differed from the 6% charge other than it may have involved additional works and the overall cost was less. Mr Umunna agreed that the brickwork had been carried out but he said that the works were substandard and showing faults and thought that the roof costs was an overcharge. He believed that the bill was unacceptable and overinflated and that the works had been carried out in a careless way to punish leaseholders.

24. At the end of the hearing we invited submissions from both sides. The Applicant's submissions were essentially that there were no really substantial complaints made by Mr Umunna nor was there any evidence to support those complaints that had been made. There had been a continual attempt by Mr Umunna to prevent the Council from reaching an agreement and as to the overcharging, there was no alternative quote obtained or any item nor any rational explanation as to why the charges were too high. He confirmed that the final account which was within the papers showing the sum of £19,547.23 less the sum of £48.98 for the bin doors was the correct amount. It was said by Mr Kilcoyne on behalf of the Council that the total sum due and owing by the Respondent was £20,871.92, this including the works to the door entry system.

25. On the question of costs, the Applicants asked that no order under Section 20 C was made but that as Mr Umunna had had some success, particularly with regard to the omission of the costs of the windows and the contingency which represented some 25% or thereabouts of the total costs, the Council should be entitled to recover up to 75% of the costs. The Council relied upon the terms of the lease in support of this entitlement and in particular clause 8(a) and the provisions of the 9th schedule at clauses 5 and 6.

26. Mr Umunna felt that the Council had disregarded the order made in his proceeding in 2011 which he thought meant that the action could not be commenced against him by the London Borough of Hackney. It was pointed out to him that his proceedings were against Hackney Homes who are the ALMO and a separate legal entity from the London Borough of Hackney. Accordingly there seems to us to be no merit in his assertion that the London Borough were not entitled to commence an action but he may need to consider whether in his proceedings under claim number 1EC00185 he amends those to include the London Borough of Hackney as a defendant. He thought that he should not have to pay any costs as the case should have been settled and that he had not been treated fairly in respect of the problems of disrepair.

The Law

See attached appendix

Findings

27. Although the hearing lasted until well into the afternoon, we must say that there was in reality little merit to Mr Umunna's case once the question of the windows, contingency fees and the bin room doors had been resolved, which had been conceded by the local authority before the case came before us. Our findings in respect of the specific items are as follows:-

(a) The installation of the door entry system at a price of £1,381.80 is we find reasonable. We accept the evidence that the block had been blighted by anti-social behaviour and the installation of the secured entrances appears to have stopped this problem. The costs involved do not seem to us to be unreasonable and were the subject of the appropriate Section 20 procedures. The Respondent had offered no alternative quotes and we find therefore that the charge made in respect of the door entry system is fair and reasonable and is payable in full.

(b) We then turned to the major works by reference to the final account which was to be found at page 110 in the bundle. We will utilise the various headings set out on the final account to deal with those elements.

<u>Construction of new walls to the communal walkways £3,842.27.</u>
We have seen photographs of the building showing that there are some four communal walkways fronting two elevations to the building. In addition there appear also to be four balcony sections. These walls are quite extensive and we were actually somewhat surprised that the cost was as low as it was. Although Mr Umunna suggested that the brickwork was suffering from problems, he produced no evidence at the hearing, although said he had some photographs which he had not included in the papers. We are satisfied that the costs in respect of this element of the major works are reasonable.

<u>External/internal decorations at £481.63</u>
This was not it seems challenged by Mr Umunna and is payable.

Repairs to rainwater goods etc £717.75.
This was not challenged by Mr Umunna and is apayable.

Replacement of bin doors £48.98.
This has been removed from the final account by the Council.

Brickworks £765.56.
This did not appear to be challenged by Mr Umunna and is payable.

Concrete repairs and rendering works £1,262.86.
This appears as a different figure in the Scott schedule but the allegation is that it has been overcharged and is of poor quality. There is no evidence as to the overcharge produced by Mr Umunna nor does he produce any evidence that the work was of poor quality. Considering Mr Collyer's evidence as to inspections and approval of the works, we find that the sum claimed is payable in full.

Asbestos removal £386.84.
This appears in the Scott schedule as a figure of £473.19, the allegation being that it is unreasonable for the Council to charge the leaseholders for the removal of a dangerous substance which should not have been there in the first place. Clearly this property was built some time ago when asbestos was commonly used. The discovery of same in the soffits was properly dealt with by the Council by the removal of those soffits and the replacement of same. The costs of £386.84 are perfectly reasonable.

Roof works
The sum claimed is £6,359.18 although in the Scott schedule a figure of £7,263.31 is recorded. All that Mr Umunna said is that this is an overcharge. The extent of the works is quite great and is set out both in the Scott schedule and in the narrative to the final account. Although the photographs provided did not assist us to any great degree, there is clearly evidence of problems with regard to the chimney stacks and we were impressed by the evidence given by Mr Collyer as to the state of repair and the need for these works to be undertaken. In the absence, therefore, of any compelling challenge by Mr Umunna we find that the sum of £6,359.18 is due and owing. The repairs to the communal staircase of £76.11 and the communal windows of £108.02 are not challenged.

The next section that is under challenge was the preliminaries that included scaffolding in a sum of £2,715.15. Although this does not specifically appear in the Scott schedule, it is an item of expenditure challenged by Mr Umunna in his statement. It seems to us, however, that there is no reason to challenge this charge. The bulk of the costs in the preliminaries relates to the scaffolding which includes hoists, gates, protective fencing, debris netting and rubbish chutes. The contract was for some three months or so it is believed and the building is, from the photograph, five-storey with a pitched roof and would have required extensive scaffolding. We find this charge is reasonable. The charges in respect of risk assessment items, window renewal and other matters are not passed to Mr Umunna and the only other elements are the professional

fees and the administration charge. We find that 6% is a reasonable professional fee for a contract of this nature and was not in reality challenged by Mr Umunna other than to say it was too high. He produced no evidence to show that the costs that professionals dealing with a contract of this nature would have been less than 6% and it seems to us that that is a perfectly reasonable percentage charge to make. As to the administration charge, we were told by Mr Evans all that went into such administration and a 10% charge we believe has been upheld by other Tribunals both at our level and at the Upper Tribunal. It does not seem to us unreasonable given the amount of involvement that was required for a contract of this nature, although whether strictly speaking it is a charge that should be paid on the total costs including the professional fees is a moot point. However, in the case the sum involved is de minimis and we would not, therefore, propose to interfere with the method by which the Council has calculated the final recharge.

28. We therefore find that the sum payable by Mr Umunna is as set out in Mr Evans' witness statement including the costs of the door entry system at £20,871.92. We would urge Mr Umunna to enter into negotiations with the Council to agree a repayment programme but also to endeavour to agree any damages that might be payable and be offset in respect of the flooding problems that his flat suffered from during the course of the major works. There appears to be no particular issue that there is some allowance due but, at the moment, as we indicated to Mr Umunna, there is no scintilla of evidence to support his compensation figure of £10,000.

29. Insofar as the costs are concerned, we take the view that we should not make an order under Section 20 C of the Act. The Council has by and large been successful and in agreeing to limit it costs to 75% of those incurred, it seems to us reflects the limited success that Mr Umunna has had and which he had before the matter came for hearing. We make no ruling as to whether or not the lease properly allows the recovery of these costs. That can be dealt with by any aggrieved person who seeks to challenge the quantum of the service charge under the provisions of the sections 19 and 27A of the Act.

30. We would urge Mr Umunna if he is not going to reach some form of agreement with the Council to get in touch with the Clerkenwell and Shoreditch County Court in respect of his claim to make sure that the stay is lifted. In the alternative, of course, the Council could contact the Court for that purpose.

Judge: _____

A A Dutton

Date: 21st February 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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.