



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/29UG/LIS/2015/0071**

Premises : **2 Napier Road, Gravesend, Kent DA11
7BY**

Applicant : **Miss Louise Martin**

Representative : **None**

Respondent : **Gravesend Borough Council**

Representative : **None**

Type of Application : **Service Charges - Sections 27A and
20C of the Landlord and Tenant Act
1985**

Tribunal Members : **Mr R Athow FRICS MIRPM – Chair
Mr N Robinson FRICS - surveyor
member**

Date of Inspection : **12th January 2016
No Hearing**

Date of Decision : **18th January 2016**

DECISION

Decision

1. The sum of £3,006.50 is due in respect of the major works, as stated in the year end accounts for the period to 31st March 2015.
2. No order is made under Section 20C of the Landlord and Tenant Act 1985.

Background

3. The Applicant is the lessee of the upper maisonette known as 2 Napier Road, Gravesend (the premises). The Respondents are the freeholders of the subject property and they manage the property (2 & 4 Napier Road).
4. The Applicant applied to the First-tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) on 22nd September 2015 under Section 27a of the Landlord and Tenant Act 1985 (“the Act”), as to whether certain service charges were payable that had been incurred during the financial year of 2014/5. There was also an application under Section 20C of that Act.
5. Directions were issued by the Tribunal on 5th October 2015 and a case management hearing took place by telephone on 20th October 2015.
6. The case management hearing took place on the appointed day Chaired by Mr D Banfield FRICS. Miss Martin represented herself, whilst Mr Goodman, corporate lawyer for Gravesham Borough Council, represented the council.
7. The hearing highlighted the works and sums challenged as follows:

a. Access tower (scaffold)	£1,183.00
b. Wash of fascias and windowsills	£60.00
c. Masonry	£472.00
d. Rendering	£1,662.51
8. Both parties agreed that mediation was not required and that the matter should be dealt with by written representations. The Applicant requested that the Tribunal carried out an inspection of the outside of the property before making a decision on the case.
9. At the conclusion of the hearing the Tribunal issued further directions setting out a timescale for the parties to make their submissions and responses.
10. In the directions it was made clear that the Tribunal would only consider those documents in the hearing bundle. There was to be no hearing unless either party requested one. Neither party requested a hearing.

11. The works undertaken are the subject of Qualifying Long Term Agreements (“QLTA”) that have been entered into by the Respondent and copies of various QLTA’s were included in the bundle. The QLTA at page 221 covers the work that is the subject of this case and is dated 28th March 2011.

Inspection

12. On 12th January 2016 the Tribunal inspected the outside of the property. The weather on the day was fine and sunny, although cold and windy.

13. The property is two storey and situated at the end of a terrace on a corner plot with a large side wall which is rendered and colour-washed. It is arranged as two flats with the subject premises, 2 Napier Road, being situated on the first floor. 4 Napier Road forms the ground floor of the property, but was not party to this application.

14. Miss Martin was present at the inspection. The Respondent was not present.

15. The Tribunal observed the side wall of the building and garden wall/steps area which gives access to the premises, and the work that had been undertaken to the property.

16. Miss Martin pointed out:

- a. The areas where she felt there had only been one coat of paint applied to the walls being of a different tone of colour to the rest of the wall.
- b. An area of crack repair that had been carried out to the side wall which she suggested had not been properly rubbed down and prepared before the paint was applied.
- c. The area of wall that had been re- rendered together with the bell-drip that had been formed to the lower part of the side wall of the building.
- d. An area at the junction of the side wall and chimney stack where the detailing of the paintwork was poorly executed.
- e. The handrail on the external staircase to her flat which had paint which had flaked in some areas.
- f. The window sills which she stated were only given a very thin coat of paint allowing the previous colour to “grin” through.

17. The Tribunal also noted there were other areas of paintwork to the side wall which did not match the rest of the wall. This will be commented on later.

18. Because the matter was to be considered purely on the papers submitted no evidence was taken at the inspection.

Consideration and Reasons

19. The Tribunal considered all the documents which had been supplied by and on behalf of the parties and all that had been seen at the inspection.

20. The Directions required the Applicant to provide a fully detailed list of items she sought to challenge which the Tribunal would be asked to make decisions on, together with appropriate evidence supporting her case.

21. The Tribunal deduced from the papers that the sums referred to were not the full cost of the works, but was the half share due from the Applicant in accordance with the terms of the lease.

22. The Notice giving the tender accepted in the sum of £7,435.02 (p277) stated that the estimated cost was as shown in the analysis from Axis, the contractor (p279), and the portion due from the subject flat was £3,717.51.

23. The Tribunal has not seen a full specification of the works undertaken, only the painting specification from Crown Paints (p195).

24. The Tribunal has considered each of the heads of estimated costs as set out in Axis' analysis (p279).

Access tower/scaffold - £1,183.00

25. The estimate from Axis specified a sum of £1,183.00 for scaffolding, but did not state what type of scaffolding was intended.

26. Tower scaffolding was used as opposed to traditional scaffolding, and this tends to be quicker to erect and dismantle and does not require the contractor to be qualified to erect and dismantle as is the case for the traditional type.

27. However, the contractor did not obtain the appropriate licence to erect the scaffold on the highway and the Applicant classed this as an illegal act which meant, in her view, that she should not pay for the scaffold hire at all. It would appear that the contractor either did not know that a licence was required for tower scaffolding, or he chose not to make an application for a licence in advance of the work starting. As a Tribunal we do not have jurisdiction on the legality of this issue. We are restricted only to consider if the provision of the scaffolding was reasonable in its use and cost.

28. Modern Health and Safety legislation is well publicised and there is a strict requirement on contractors to ensure the safety of their staff when on site. There are specific working at height regulations in place and these require the erection of scaffolding when work over a certain height above ground level is concerned. The Tribunal considers that some form of scaffolding was required to the side wall in this instance, although the

contractor was happy to allow the front and rear elevations to be painted from ladders as stated in the Applicant's submissions.

29. We have not been provided with alternative quotes for the scaffolding by the Applicant. The onus is on the Applicant to prove her claim, but because she has failed to provide evidence of cheaper quotes from suppliers to back her claim, we are unable to accept her claim that the cost incurred was excessive.

Washing of fascias and window sills - £60

30. The washing of fascias and window sills was not covered in the estimate as a single item. It is unclear what is meant by Wash, especially as there was no specification provided. It might be considered to be part of the painting specification.

31. The Respondent states that contractual wash downs are carried out to windows, frames and doors to flats.

32. The Applicant states that this was not done.

33. The Applicant pointed out the window sills to us at the inspection stating they were only thinly painted and the previous finish could be seen when viewed from her window. We were not able to accept this information as there had been no reference to this item in her written submissions.

34. It is unclear from the papers exactly what the claim is by the Applicant, but the cost is de minimus in this instance so the Tribunal decides it is fair and reasonable, and therefore due from the Applicant.

Fascia/Soffit (Rear) paint – and (Front) - £125.00 each item

35. These two items have not been challenged by the Applicant and so the Tribunal is not required to make a decision on these. As a result these sums are payable.

Masonry - £472

36. Without a copy of the full specification we assume this refers to the cost of painting the walls white and there is a specification for this in the bundle (p195).

37. The Applicant highlights the fact that there are some areas where the finish is of a different shade of white asserting that these areas were only given one coat of paint. The Tribunal noted additional areas which were also showing as a different shade.

38. The Respondent states that there were twelve cans of paint used to paint the entire property and that the works are of an "excellent quality". We do not know the size of the cans. The Respondent states that the original colour of the property was cream.

39. The report from Crown gives the opinion that there was likely to have been two coats applied, although they say that from their laboratory tests it appears they would have been thin coats.

40. Whilst the Tribunal has not carried out any test (as was done by Crown) its members are both experienced Chartered Surveyors and are of the opinion that the original cream paint may be “grinning through” in these areas and that an additional coat is likely to cover these areas more effectively.

41. We do not consider that the quality of workmanship was “*excellent*”, but merely adequate. The contract was concluded about 15 months ago and does not show signs of deterioration at this time. Based on the balance of probabilities and the report from Crown, the Tribunal decide that it is most probable that two coats of paint were applied. The overall cost of labour of applying the paint, together with the cost of twelve cans of paint to the whole of the exterior of the property, is decided as being reasonable in this instance (£944 shared equally between the two flats).

Doors (F) paint

42. In the Respondent’s statement of case it states (p189) that the Applicant had “*declined the painting of the flat’s front door*”.

43. The Tribunal assumes that the final invoice has been reduced to take this into account.

44. This item has not been challenged by the Applicant and so the Tribunal is not required to make a decision on this.

Repairs (Rendering)

45. The specification for the render repairs was set out at page 315 with an accompanying sketch plan of the areas to be included and was in two parts. The main work was to the side garden/external staircase wall whilst the bell drip to the main side wall was only a relatively minor part of the work, although its insertion is designed to reduce the potential for damp penetration into the ground floor flat at floor level.

46. The Tribunal accepted the repair to the crack was not carried out to a high standard, but it is considered to be adequate. The Tribunal finds that the other render works appear to be of a satisfactory standard.

47. In the Respondent’s statement of case it states (p189) *that the [cost of] rendering had come in cheaper than estimated*”. The Tribunal has not been informed of the saving.

Other matters

48. The Applicant referred us to the handrail to her flat and the paint that was now missing.

49. The Tribunal noted that the handrail had originally been treated with a galvanised finish and it is likely that this occurred when it was installed. Galvanising of metal is designed to replace the need to paint, but it is common practice for paint to be applied after a period of time. Unless specific treatment and preparation is carried out the paint will not adhere to the galvanised surface and this has happened in this instance. The Tribunal was not informed if this was the first occasion that it had been painted. As a result the Tribunal makes no decision on this matter.

Conclusion

50. The Respondent has taken the complaints of the Applicant seriously and undertaken a multiple stage complaints process. Its conclusion is that the complaints are not valid because sufficient evidence has been obtained to substantiate the Respondent's view.

51. The Tribunal has been placed at a disadvantage as neither the final invoice, nor an analysis, for the whole contract was included within the bundle. Had this been done we could have been able to assess the breakdown of the sum claimed by the Respondent, the Applicant's share of which shows in the certificate for the year ending 31st March 2015 as £3,006.50 (p281).

52. As a result we can only make a finding based on the Applicant's share of the overall cost of the contract (£3,006.50).

53. The Tribunal's decision is that the works have been undertaken to a satisfactory standard and as a result the sum claimed of £3,006.50 is due from the Applicant.

Section 20C

54. The Applicant had made an application under Section 20C of the Act but failed to refer to it in her submissions. After careful consideration the Tribunal consider that an Order should not be made because she had failed to address the matter in her submissions. Furthermore, the Tribunal felt that the Applicant had failed to substantiate her case in this instance and as a result the Respondent should not be prevented from recovering their costs if they so wished and could find the appropriate clause in the lease which enabled them to do so.

Richard Athow

Chairman

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.