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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2015/0523**
Property	:	**62 Crutchley Road, London, SE6 1QJ**
Applicant	:	**Mr Adewale Ajayi**
Representative	:	**In person**
Respondent	:	**Phoenix Community Housing Association**
Representative	:	**Mr R Parker (Leasehold Consultation Adviser)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mr M C Taylor FRICS**
Date and venue of Hearing	:	**5/5/16 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**16/6/16**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £25,756.81 is payable by the applicant in respect of the major works.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the applicant in respect of major works.

2. Both parties confirmed that the proceedings started by the respondent at the county court, concerning the same dispute and in which the applicant was the defendant, has been withdrawn. The respondent stated that the matter had been withdrawn as the applicant had paid the relevant service charge. The applicant stated that the matter had been withdrawn because he had made the application to the tribunal. The tribunal found the reason for the withdrawal to be irrelevant to the considerations before it.

3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The applicant appeared in person and the respondent was represented by Mr R Parker (leasehold consultation adviser) and Mr N Golvin (clerk of works).

5. Immediately prior to the hearing the respondent handed a bundle of documents it intended to rely upon. The respondent stated that the bundle included items sent to the applicant as appendices but which the applicant had not included in his own bundle. The applicant stated that he had been served with the bundle two days prior to the hearing. The applicant stated that he had considered the bundle and confirmed that it contained evidence he had previously been served with except for the second page from the end of the bundle. He stated that he had not included documents sent to him by the respondent which he considered to be irrelevant or not credible. The applicant stated that he objected to the late submission of the bundle by the respondent. The respondent clarified that the relevant page the applicant had not seen before was a receipt confirming that a document had been delivered to the applicant.

6. The tribunal determined that the respondent be allowed to rely upon its bundle. It was a matter for the tribunal, not the applicant, to determine what evidence was relevant or credible. The applicant had previously been served with the relevant documents therefore it was fair and in the interests of justice to allow the respondent to rely upon documents the applicant should already have included in his own bundle. The applicant confirmed he did not need any additional time to consider the respondents bundle.

The background

7. The property which is the subject of this application is one of six flats on a three storey block containing two flats on each level. The applicant purchased his flat in 2007 and had never lived there.

8. The dispute between the parties concerns major works to the property. The works started in 2012 and were completed at the beginning of 2014. The applicants share of the estimated cost was in the sum of £22,128.65. The applicants share of the actual cost is £25,756.81.

9. The respondent stated by way of background, and which was not challenged by the applicant at the hearing, that reports were carried out prior to the works in 2007 and 2009. The 2009 report was relied upon to form the basis of the proposed works and the proposed works covered 81 blocks, each containing six flats. The respondent went through a tendering process which was overseen by an independent firm appointed by the respondent. Five tenders had been received, of which Lakehouse, the appointed contractor, had provided the lowest quote. The works were carried out in two phases, the first covering works to the roof and external works except the balcony works. The second phase concerned works to the balconies.

10. The applicant accepts that he had been properly consulted on the proposed works and had been invited to make observations. He initially stated that he made observations and referred the tribunal to an email dated 27/8/10 on page 227 of his bundle. The tribunal noted that the relevant email did not state that the proposed works were unnecessary or that the cost was too high. When asked why that was so, the applicant stated that he " did not go into details". Later in evidence the applicant stated that he could not recall what observations he had made and then stated that he did not recall if he made any observations. When asked why, the applicant stated that he did not think that his observations would be noted, despite the relevant notices explaining the legal requirement for the respondent to consult and to invite observations.

11. The applicant further stated that he works as a consultant in IT and Business Analysis and also works as a supply teacher teaching science, maths, and IT. He has no background in construction work. With

respect to the issue of the disputed costs, he had spoken with a Mr Kunte, a member of the Chartered Institute of Housing, who had inspected his flat and had stated that the costs were too high and that the works did not directly benefit his flat. This information was provided to the applicant in February 2016. The applicant did not have any statement or letter from Mr Kunte. The applicant accepts that he should have got a statement from him but Mr Kunte was too busy and had not attended the hearing as he was booked with other work. When asked what evidence he had to show that the works were not necessary, the applicant stated that it was "*just based on my views and what I saw*". The applicant confirmed that since he had purchased his property, no repairs had been carried out prior to the major works.

12. Mr Golvin stated by way of background, and which was not challenged by the applicant at the hearing, that he is a construction consultant employed by Owen Construction Consultancy Limited, of which he is a director and shareholder. He has been employed for 11 years but has been in the construction industry for over 35 years. He is a member of the Clerk of Works & Construction Inspectorate. He has worked on the relevant programme of works from the start. He is independent of the respondent and the contractor. His duty was to oversee the major works and to ensure that the contractors were carrying out the works as agreed with the respondent. After completion of each of the individual works, he was required to inspect and sign off the relevant works as having been completed. Where he found any shortcomings, the contractor was required to remedy the works before he finally signed off the relevant work. The works had a 12 month defect period, which he signed off at the end of the 12 months. He stated in evidence that as far as the works to the applicants block was concerned, the relevant works were carried out and the works were to a reasonable standard.

13. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

14. The applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

15. The applicant identified disputed items of work as set out under each of the sub-headings below.

16. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the specific items of work as follows.

Scaffolding

17. The applicant stated that the cost was higher than it should have been as the works were delayed. He wanted to know how many workers were employed and the hours spent by each worker. He stated that he did not have any evidence with him to show that the costs of the scaffolding was too high but he had spoken with a scaffolder who had told him that the cost was too high. He did not get a letter or statement from the scaffolder as he did not think it would be necessary.

18. The respondent stated that the cost of the scaffolding was fixed and therefore there was no increase in the cost due to any delays. The chosen contractor had provided the lowest quote through a tendering process and therefore it was not possible to provide the detailed breakdown of costs requested by the applicant.

19. The tribunal notes that the cost of the scaffolding was fixed and therefore it was unlikely that there would be any increase in the cost due to any delays.

20. The tribunal notes that the price quoted by the contractor was the lowest of five prices tendered and the tendering process was overseen by an independent consultant. The tribunal notes that the applicant did not raise any objections concerning the price during the consultation process and has failed to provide any supporting or persuasive evidence to show that the cost is too high.

21. The tribunal therefore found the cost of the scaffolding to be reasonable and payable.

External decorations

22. The applicant wanted to know what evidence there was to show that the works were necessary.

23. The respondent stated that the photograph on page 589 showed the condition of the outside of the block and the photograph on page 595 showed a part of the inside of the block, both photographs were taken before the works, and both showed flaking paint work.

24. The applicant stated that page 595 showed a photograph of the area outside his flat but he was not sure that the photograph on page 589 was of his block.

25. In reply, the respondent confirmed that the photograph on page 589 and all the other photographs were of the relevant block.

26. The tribunal noted the photographs referred to, which showed evidence of flaking paintwork.

27. The tribunal noted that the respondent had properly served section 20 consultation notices setting out the proposed works and explaining why it was necessary to carry out the proposed works. The applicant was invited on three separate occasions to make observations yet the applicant made no observations objecting to any of the proposed works and has failed to provide a reasonable explanation for his failure to do so. The tribunal notes the respondents claim that it purchased the block in a condition of disrepair and the applicants evidence in his witness statement dated 28/3/16 that the property had been neglected over many years and his oral evidence that no repairs had been carried out since he purchased the property in 2007. The tribunal further noted the absence of any supporting or persuasive evidence from the applicant to show that the works were not necessary.

28. In the circumstances, the tribunal found the relevant works were necessary and reasonable.

Internal decorations

29. The applicant wanted to know whether there was any evidence concerning the state of the property before and after the major works. The applicant was also of the view that the cost was too high.

30. The respondent referred the tribunal to the photographs on pages 595-597, which showed flaking paintwork in various parts of the inside of the building, and pages 266-289, showing the inside of the building after the internal decorations.

31. For the reasons given at paragraphs 20 and 27 above, and in view of the photographs the tribunal was referred to, the tribunal found that the works were necessary and the cost is reasonable in amount.

Structure and fabric - balcony works

32. The applicant wanted to know what evidence there was that the works were necessary.

33. The respondent referred the tribunal to the photographs on page 624, part of the condition survey report, and the photographs on pages 255-257, after the balconies were completely demolished and replaced with completely redesigned lighter new steel framed / clad balconies. The respondent also referred the tribunal to the condition report on pages 537-544, concerning the whole estate (which had similar balconies). In particular, the report concluded that the majority of the balconies (sixteen out of the 20 groups of blocks) needed immediate attention as

they had Category A damage (internal steel elements were exposed and were exhibiting signs of corrosion) and all the blocks had Category B damage (internal steel elements were not visible however cracking can either be seen in the balcony soffit or brickwork). The report further concluded that the better option would be to replace the balconies rather than to repair, which was unlikely to be a cost effective solution (pages 540-541).

34. The applicant stated that pages 540-541 supported his argument that it was not reasonable to replace the balconies.

35. In view of the photographs referred to, which showed signs of corrosion consistent with the age and design of the original balconies, the clear conclusions reached on pages 540-541 of the report that the balconies needed to be replaced, and for the reasons given at paragraph 27 above, the tribunal determine it was reasonable to replace the balconies.

Roof

36. The applicant questioned whether the works were necessary.

37. The respondent referred the tribunal to page 591, which provides a photograph of the roof prior to the major works. Mr Golvin stated that the original roof had hand-made clay tiles dating from the 1920's therefore the roof had reached the end of its overall lifespan and there were various reports of water ingress in one of the top floor flats, therefore, it made sense to replace the roof.

38. The applicant stated there was no evidence that the age of the roof suggested that it needed to be changed, he did not have any evidence to say whether the age of the roof was such that it needed to be changed, and that the respondent must provide conclusive evidence to show that the roof needed to be replaced. He confirmed that he had some leaks into his top floor flat in 2007-2008 but he was unable to state whether there were any leaks to the other top floor flat.

39. In view of the age of the roof, the evidence of leaks, and for the reasons given at paragraph 27 above, the tribunal determine it was reasonable for the roof to be replaced.

External plumbing

40. The applicant questioned whether the works were necessary.

41. Mr Golvin stated he had inspected the plumbing before the works started, the plumbing was of original cast iron, it was reaching the end of its life, and was high maintenance. Each individual downpipe was

inspected. Some of the downpipes were sound and were therefore simply decorated instead of being replaced.

42. The applicant stated that he had not inspected the pipes and had therefore requested evidence that they needed to be changed.

43. In view of the works that were being done to the roof and the age of the cast iron downpipes, the tribunal found it reasonable to carry out any necessary works to the external plumbing. The tribunal noted Mr Golvin's evidence that each individual downpipe was inspected and only those that needed to be replaced were replaced and those found to be sound were simply redecorated. The tribunal also took into account the observations made at paragraph 27 above. The tribunal found the works were necessary and reasonable.

Communal windows

44. This concerned just two windows on the communal staircase. The applicant questioned whether the works were necessary. He stated that the windows were not broken therefore they did not need replacing.

45. Mr Golvin stated the windows were the original aluminium framed crittal windows which had passed their serviceable life and had been replaced with UPVC windows. The new windows were double glazed and unlike the original windows, they did not need to be painted. The original windows to each flat had already been replaced prior to 2007.

46. In view of the type and age of the original windows, the new windows being double glazed and not needing as much maintenance, and in light of the observations made by the tribunal at paragraph 27 above, the tribunal determines the work were necessary and reasonable.

Bin Stores

47. The applicant questioned whether the works were necessary.

48. The respondent stated that the original wooden doors to the bin area were easily damaged. Furthermore, it was difficult to see behind the closed doors, which encouraged unwanted people to use the bin area. The new metal screen doors were less likely to be damaged and because they were more open plan, unwanted people would be deterred from staying in the bin area. A photograph of the old bin doors are on page 701 and a photograph of the new bin doors are on page 260.

49. In view of the explanation provided by the respondent and in view of the observations made by the tribunal at paragraph 27 above, the tribunal determines the work was necessary and reasonable.

Estate works

50. The applicant questioned whether the works were necessary.

51. Mr Golvin stated that the works to the balconies required the gas meters located on the balconies to be disconnected and removed whilst works were carried out. In some instances, the gas meters had to be reinstalled in other parts of individual flats. Southern Gas Networks, who own and manage the gas supply on the estate, stated that the incoming main to the block did not meet current standards, therefore, they insisted that the gas main be replaced before any meters could be moved.

52. In view of the explanation provided by Mr Golvin and in the absence of any evidence to the contrary from the applicant, the tribunal accepts that once the meters were disconnected an upgrade was necessary. The tribunal therefore finds the works were necessary and reasonable.

Door entry upgrade

53. The applicant questioned whether it was necessary. He stated there was nothing wrong with the original system.

54. The respondent relied upon a feasibility study on pages 705-780, which noted amongst other things the following; the respondents existing door entry systems are varied and ageing, some were installed in the 1980's and others up to early 2000's, the maintenance costs for the door entry equipment had increased due to systems becoming obsolete or parts difficult to obtain, the age and variety of the door entry system lead to delayed repair times as maintenance contractors were unlikely to hold stock of replacement parts, and none of the existing doors were 'secure by design' (page 747). The recommendations, amongst other things, were for all the external doors to be 'secure by design', the introduction of a single means of access control to allow easier control by office staff by introducing an office based system for access control to avoid the need to engage maintenance contractors or staff to visit individual blocks and enter electrical cupboards to add or delete fobs when necessary, and standardisation of the door entry and access control equipment to a single supplier to aid future upgrades and maintenance contracts. Mr Parker stated that the new maintenance contract entered into in 2013 was cheaper than the previous contract as the new system had a standardised system compared to the previous five different systems on the estate.

55. In view of the problems with the previous door entry system, the advantages of the new door entry system, the long term savings to be made, and the observations made by the tribunal at paragraph 27 above, the tribunal found the works were necessary and reasonable.

Communal lighting

56. The applicant questioned whether the works were necessary.

57. The respondent stated that relevant photographs were not taken before the works but photographs taken after the completion of the works were on pages 268, 270, 272, 273, 276, and 278. Mr Golvin stated that the electrical cables in the block were single PVC and dated from the 1950's, most PVC cables had a lifespan of 20 years, the cables and communal lighting required upgrading to comply with current standards, residents now benefitted from enhanced energy efficient lighting, the new lighting included sensor controlling lighting, and residents now benefitted from new PVC Low Smoke Fume cables which will provide a stable electricity supply.

58. In view of the explanation provided by the respondent and for the reasons stated by the tribunal at paragraph 27 above, the tribunal found the works were necessary and reasonable.

TV aerial

59. The applicant stated at the hearing, once the respondent had explained the reason for the work and the relevant terms of the lease prohibiting the installation of aerials without consent, which none of the flats had, that he accepts it was sensible to replace the various individual aerials with a communal aerial. The applicant did not dispute the cost.

Statutory fees

60. The applicant stated at the hearing that he accepts the explanation provided by the respondent, namely, that the costs related to fees for building and planning control.

Project overheads

61. The applicant stated at the hearing that he understood what the costs related to but he felt that 18.5% (of the total cost of the works) was too high. The applicant stated that 10% would be reasonable. When asked to explain why he felt that it should be 10% the applicant stated "*because I think it should be 10%*".

62. The tribunal notes that 18.5% was part of the original contracted figure and was capped. For the reasons given at paragraph 20 above, the tribunal found the cost reasonable and payable.

Head office and profit

63. The applicant stated at the hearing that he accepts the explanation provided by the respondent, namely, that this related to the profit made by the contractor which was declared as part of the tendering offer. The applicant stated that he no longer disputed this item of expenditure.

The cost of works and the payment accepted by the respondent concerning the applicant's brothers flat

64. The applicants brother, who owns a flat on an identical block opposite to the applicants block, also had major works carried out as part of the same programme of works. The applicants brothers share of the actual costs to his own block was challenged at the tribunal and the respondent had agreed to settle on a final bill of £9,176.27.

65. The applicant stated that the cost for the same heads of works should be the same for both the blocks. For example, the applicant noted that the cost of the works to his roof was in the sum of £45,491.19 yet the cost of the works concerning the roof on his brothers block was in the sum of £27,724.69. The applicant further stated that the respondent should also accept a similar reduced bill for him.

66. The respondent stated that the specific works carried out under the same heads of work to each individual block varied and therefore the actual price for each block also varied. For example, the original roof and tile on the applicants block had been completely replaced. However, the roof on the applicants brothers block was not completely replaced. The relevant work comprised of tiles being taken off the mansard part, relevant insulation being put in, and the original tiles being put back on the roof. The respondent also stated that it had agreed to settle on a lower sum concerning the dispute with the applicants brother as it did not have the relevant evidence concerning the applicants brothers flat.

67. The tribunal accepts that the specific works carried out on each block, under the same heads of work, were different. Therefore, the cost to each block under the same heads of work were different as they reflect the particular works that were carried out on each block. The tribunal notes that the respondent had agreed to settle with the applicants brother as it states that it did not have the relevant evidence and it was therefore prudent to settle. The tribunal does not find that the evidence of the settlement suggests that the costs were unreasonable. The respondent has provided the relevant evidence concerning the works to the applicants block and has satisfied the tribunal that the costs were reasonable in amount.

Application under s.20C and refund of fees and costs

68. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the respondent to refund any fees paid by the applicant.

69. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines the respondent acted reasonably in connection with the proceedings and was successful on all the disputed issues, therefore the tribunal decline to make an order under section 20C. However, the respondent indicated at the hearing that it would not be seeking to recover its costs.

Name: Mr L Rahman **Date:16/6/16**

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal

to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.