

9.467



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

**Case Reference** : **MAN/00CL/LSC/2013/0085**

**Property** : **31 Northbourne Road  
Jarrow  
Tyne & Wear  
NE32 5JS**

**Applicant** : **Mr N Ciarlo**

**Representative** : **N/A**

**Respondent** : **South Tyneside Homes**

**Representative** : **Legal Services, South Tyneside  
Council**

**Type of Application** : **Landlord and Tenant Act 1985 – s27A  
Landlord and Tenant Act 1985 – s20C**

**Tribunal Members** : **Judge J Holbrook  
Mrs E Thornton-Firkin BSc MRICS**

**Date and venue of  
Hearing** : **Determination on the papers**

**Date of Decision** : **21 October 2013**

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**DECISION**

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## DECISION

- A. **The sum of £460.00 is payable by the Applicant to the Respondent as part of the service charge for the Property. This sum represents the contribution due from the Applicant to costs incurred in repairing the roof of the extension to the Building in the autumn of 2012.**
- B. **The application for an order under section 20C of the Landlord and Tenant Act 1985 is refused.**

## REASONS

### Background

1. Mr Nicholas Ciarlo is the leasehold owner of a property known as 31 Northbourne Road, Jarrow, Tyne & Wear NE32 5JS ("the Property"). The Property is a two bedroom ground floor flat which forms part of a building known as 29 & 31 Northbourne Road ("the Building"). In addition to the Property, the Building comprises a three bedroom first floor flat.
2. On 22 May 2013 Mr Ciarlo made an application to a leasehold valuation tribunal under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of liability to pay, and reasonableness of, service charges in relation to the Property. The application related solely to works undertaken during the 2013-14 service charge year to repair a flat roof above the first floor flat.
3. As an ancillary matter, Mr Ciarlo also applied for an order under section 20C of the 1985 Act for an order preventing the Respondent, South Tyneside Homes, from recovering costs incurred in connection with the proceedings under section 27A as part of the service charge.
4. On 1 July 2013, the functions of leasehold valuation tribunals transferred to the First-tier Tribunal (Property Chamber) ("the Tribunal") and so this matter now falls to be determined by the Tribunal.
5. The parties were informed that the applications would be determined on the basis of written representations alone, without an oral hearing, unless either party gave notice that they required an oral hearing to be held. No such notice was received. The Tribunal therefore proceeded to determine the matter on the papers alone. In addition to Mr Ciarlo's application form, the Tribunal had before it statements of case prepared by each party (with supporting witness statements and documents) together with a further exchange of comments thereon. The Tribunal did not inspect the Property or the Building (the parties having indicated that they did not require an inspection to take place).

## Issues

6. The Respondent seeks to recover the sum of £460.00 from Mr Ciarlo (being 50% of the costs incurred in connection with the disputed roofing works). Mr Ciarlo disputes that it was necessary to incur these costs. He says that the flat roof was not in need of substantial repair. He also disputes the extent of the works that were actually carried out and argues that, even if those works were as extensive as the Respondent claims, the cost incurred were unreasonable in amount.
7. Mr Ciarlo does not dispute the Respondent's argument that his lease of the Property obliges him to contribute one half of the costs incurred by the Respondent in repairing and maintaining the structure of the Building, including the roofs (and for the avoidance of doubt the Tribunal is satisfied that the lease contains obligations to this effect). Nor does Mr Ciarlo dispute that the Respondent complied with the relevant statutory consultation requirements before undertaking the works.

## Law

8. Section 27A(1) of the 1985 Act provides:

*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.*

9. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
10. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

11. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

*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 provision 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.*

12. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

*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.*

### Argument

13. The Respondent maintains that, having received a complaint from the tenant of the first floor flat on 8 June 2012 to the effect that water was leaking into the Building from the flat roof of the extension, an assessment of the roof was carried out and this concluded that the flat roof required a full re-board and felt repair. As the anticipated cost of this work would require the Respondent to consult with the tenants of the Building, temporary repairs were effected while that consultation took place.
14. The temporary repair and assessment work was undertaken by a roofer engaged by the Respondent's Roofing team. However, the Respondent tendered for the work involved in carrying out the permanent repair. Three contractors were approached for this purpose, and quotes for the work were obtained from two of them. One of the contractors quoted £920.00 plus VAT for the work, and the other contractor quoted £948.00 plus VAT. On 30 August 2012 the Respondent engaged Springs Roofing Ltd (which had submitted the lower quote) to do the work. Scaffolding was erected on 27 September and the work which was carried out comprised replacement of the felt roof coverings including the decking. The contractor re-inspected the roof in May 2013 at the Respondent's request and found it to be in satisfactory condition.
15. Mr Ciarlo's position is that the re-roofing work was unnecessary. Upon receiving the Respondent's notice that it proposed to carry out the works, Mr Ciarlo's son went onto the flat roof of the extension to inspect its condition. He says that a three inch section of a previous patch repair had come loose, but that the roof was otherwise sound and could easily withstand the weight of a man walking over it.
16. In relation to the extent of the works subsequently carried out, Mr Ciarlo disputes that Springs Roofing did as much work as is now being claimed. He says that he witnessed scaffolding being erected, but that no chute or skip was used. Mr Ciarlo says that this evidences his belief

that the roof was not replaced – because there was no means of taking the original roof boards down from the roof, nor of taking new materials up. In Mr Ciarlo’s opinion, all that the contractor actually did was to “hammer three nails in” and apply a new layer of tar to the roof. He says that the work took just a couple of hours to complete and that the cost of £920.00 is unjustified. In Mr Ciarlo’s view, a cost of no more than £150.00 would have been reasonable.

17. Mr Ciarlo also says that, in any event, the work undertaken was unsatisfactory because in May 2013 the contractor had to return to check the roof because the tenant of the first floor flat had complained that the extension roof was still leaking.

### Conclusions

18. The cost of repairing the flat roof will only have been “reasonably incurred” for the purposes of section 19 of the 1985 Act if the works themselves were necessary. Mr Ciarlo says that the works which the Respondent says were carried out by Springs Roofing Ltd were unnecessary because the extension roof was basically sound. He bases this assessment on his own experience as a tradesman (he is a former electrician), on his son’s inspection of the extension roof and on photographic evidence submitted to the Tribunal.
19. The parties dispute whether Mr Ciarlo should have permitted his son to inspect the extension roof. It is unnecessary for the Tribunal to comment on that question. However, we note that neither Mr Ciarlo nor his son appears to have any special expertise in roofing repairs. The photographic evidence submitted to us is not conclusive as to the condition of the roof at the relevant time, and the fact that the roof could bear the weight of a man certainly does not – in our view – indicate that it was in a sound condition. In contrast, there clearly is some evidence that the roof was defective (water was leaking through it into the first floor flat) and the assessment of the Respondent’s Roofing team was that a full re-board and felt was required. Members of the Roofing team were presumably sufficiently qualified and experienced to make such an assessment and, whilst we respect Mr Ciarlo’s opinion, the evidence he has put before the Tribunal does not cause us to prefer his view to that of the Respondent’s own expert.
20. We note Mr Ciarlo’s assertion that a previous repair to the roof had been carried out within the last 10 years or so (the implication being that a roof replacement should not have been required in 2012). However, we also note the Respondent’s evidence that it has no record of such a repair. We do not find this evidence of assistance in determining whether a roof replacement was necessary in 2012.
21. We turn next to the question of whether the works carried out by Springs Roofing Ltd were as extensive as the Respondent claims. In response to Mr Ciarlo’s application the Respondent produced a witness statement from Mr Keith Muldoon, managing director of Springs

Roofing Ltd. Mr Muldoon confirmed that the work undertaken consisted of the replacement of the felt roof coverings including the decking. He noted what Mr Ciarlo had said about the inadequacy of the scaffolding and equipment used in this regard and made the following observations:

“The type of scaffolding used for this job was edge protection only, as the property in question is a two storey flat roof extension. The edge protection is erected around the perimeter of the roof to prevent the workmen from falling. Scaffolding boards are not required as they would prevent the work from being carried out, as the job was to renew the flat roof covering. Access to the roof was via a ladder and not an access tower. There was no chute used to lower the debris to the ground and all of the debris was taken away from site in the company vans. We did not use a skip because this would have required a licence and would have blocked the back lane.”

22. Mr Ciarlo made reference to a previous dispute concerning the repair/replacement of roof tiles and guttering which, he suggested, shows that the competence and reliability of the Respondent and its workmen was open to question. We are not willing to make any inferences as a result of what Mr Ciarlo has said about that previous (and quite separate) matter. On the other hand, we found Mr Muldoon's account of the works carried out in autumn 2012, and the method employed, to be credible. On balance, we accept that the work undertaken did comprise the replacement of the felt roof coverings and decking.
23. Mr Ciarlo also disputes that the works were carried out to a reasonable standard. He says that the contractor had to return to site in spring 2013 because the tenant of the first floor flat had complained that water was still leaking into the Building from the extension roof. However, the Respondent denies that this was the case. It says that the first floor tenant made no complaint after the repair was effected, and that the return visit was arranged only because Mr Ciarlo had suggested there was a continuing problem. In the event, however, the contractor found the roof to be in an acceptable condition. We therefore conclude that there is no evidence that the works were not carried out to a satisfactory standard.
24. As far as the reasonableness of the cost of the works is concerned, we note that Mr Muldoon confirms that the works were completed in a single day, but we also note that the works were carried out following a tendering exercise, and that the quote received from Springs Roofing Ltd was the lower of the two quotes obtained by the Respondent (albeit by a fairly slim margin). Bearing in mind that the contract price included materials, scaffolding and the removal from site of debris, we find that the costs incurred by the Respondent were not unreasonable.

25. Finally, we turn to the application for an order under section 20C of the 1985 Act limiting the ability of the Respondent to recover costs incurred in connection with these proceedings by way of service charges. Given that Mr Ciarlo has not been successful in his challenge to the Respondent's claim for a contribution towards the cost of repairing the extension roof, we consider that it is just and equitable to refuse to make such an order.