10249

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2014/0308**
Property	:	**119A Islip Street, London NW5 2DL**
Applicants	:	**Mr Keith Mottram in person**
Respondent Represented by	:	**London Borough of Camden**
	:	**Ms Insley Ettienne Consultation & Final Accounts Officer**
	:	**Mr S Platt Planned Works Team Leader**
	:	**Mr J Rutter Final Accounts Officer**
		Mr M Demetriades Contract Manager - observing
Type of Application	:	**Application for a determination under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members		**Ms M W Daley LLB (Hons)** **Mr P Roberts Dip Arch RIBA** **Mr L Packer**
Date of Hearing and determination and venue	:	**4 September 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**14 October 2014**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes the various determinations set out in the decision below.

(2) The Tribunal determines that in respect of the amount claimed for major works the sum of £9760.73 minus the performance fee of £166.47 was reasonably incurred as service charges.

(3) The Tribunal determines that the Respondent has not complied with Section 20 of the Landlord and Tenant Act 1985, or the Service Charge (Consultation etc) (England) Regs. 2003. In that the Section 20 notices were not served at the Applicant's known address.

(4) The Tribunal determines that the sum payable, unless a dispensation shall be applied for, and is granted, is limited to £250.00.

(5) The Tribunal determines that the Applicant's Application fee in the sum of £250.00 and the hearing fee of £190.00 should be reimbursed by the Respondent.

(6) The Tribunal noted that the Applicant was no longer the leaseholder of the premises, and that as such no application was made by him under Section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant sought a determination in respect of the reasonableness and payability of service charged for major works in the sum of £9760.73

2. Directions were given by the Tribunal at a Case Management Conference on 1st July 2014.

The matter in issue

3. At the Case Management Conference On 1st July the Tribunal identified the following issues-: paragraphs 9 of the directions.

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

The background

5. The premise which is the subject of this application is a ground floor and basement flat in Victorian terrace which has been converted to form a basement and ground floor flat and a first floor flat. The Applicant was the former leaseholder of the ground floor flat. The Respondent, local authority is the freehold owner of the premises. The first floor flat is occupied by the Respondent's secure tenant.

6. The Applicant held a long lease of the flat, which required the landlord to provide services; and required the Applicant, as a leaseholder, to contribute towards the cost of the service, by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The Hearing

1. At the hearing the Applicant represented himself and, the Respondent was represented by Ms Ettienne assisted by her colleagues.

2. At the hearing the following additional documents were provided-:

   (i) Copy of the change of use subletting/ under letting form

   (ii) Photographs depicting the general condition of the premises before and after work commenced

   (iii) The witness statement of Mr Platt the Respondent's officer

3. The Tribunal were informed that the premises in issue were a lower and ground floor flat, converted maisonette sold under a right to buy. The Leaseholder had exclusive use of the garden entered though the lower ground floor. The Applicant purchased the premises in 2004.

4. The Applicant informed the Tribunal that he occupied the premises until January 2012, when he left the premises to move to his current address, thereafter the Applicant decided to let the premises under an assured shorthold tenancy.

5. The Applicant stated that he had contacted the council as he was aware that he needed to notify the council that the premises were being let. Mr Mottram stated that he *"spoke to someone over the phone and they told him that he needed to download a council form which dealt with subletting".*

6. He stated that after down loading the form from the internet, he filled out the form on 6 January 2012. This form was a pro forma document: *Subletting/Underletting* form which had sufficient details from which a deed granting the right to sub-let could be prepared. It also included details of the leaseholder's change of address.

7. Mr Mottram stated that he contacted the council and had attended the offices and had handed over the form and the sum of £180.00 cash for the change of use permission. Mr Mottram stated that the transaction had been dealt with by a woman.

8. The Tribunal were referred to a copy email sent by Mr Mottram on 3 January 2012 sent to Anne Cole of the Respondent council, the email stated-: *Will get these forms filled out and bring cash. What time are you there till?* The reply had confirmed that Ms Cole would be in the office until 4.30pm.

9. Mr Mottram was asked what the woman, who he had handed the money to had looked like. He stated that he could not recall this, his comment was that "... *She was not particularly young, and not particularly old.*"

10. On behalf of the council, Ms Ettienne accepted that the council received the form; however there was a note endorsed on the form to the effect that Mr Mottram had not paid the£180.00, therefore the form had been put on hold and no action was taken on the change of use.

11. Ms Ettienne stated that in the normal course of things chaser letters would be sent asking the Applicant to complete the process by paying the outstanding sum.

12. The Respondent's case on the form was set out in their reply dated 23 April 2014, which was written for the purpose of responding to a formal complaint raised by Mr Mottram.

13. The Respondent's officer Vivienne Caswill who reviewed Mr Mottram's complaint stated "*...At Review stage you state that having missed the cashiers office you handed over the sub-letting form with cash and phoned the council on the following working day to check that the form had been accepted. I have a copy of the ...form which I note is date stamped as received by Leaseholder Services on 6 January 2012 although I am advised a note was subsequently added on 9 January 2012 "waiting for payment". There are no details completed under 'Fee Enclosed' and Leaseholder Services advise they have no facilities to accept payments in cash. I would have expected the service to contact you to advise you no fee had been received however I understand no reminder was sent on this occasion...*"

14. The Respondent's position was that this form only became effective for notifying a change of address after payment was received.

15. The Tribunal asked for information concerning where the service charge demands for the routine service charge items had been served. The Respondent clarified that they had continued to be served at the property until the Applicant's address had been updated in October 2012.

16. In the Respondent's statement of case, the Respondent stated that "... *The disputed charges of £9760.73 have been correctly demanded. LB Camden has complied with both CLRA Act 2002 and the lease and served notices onto the known address at the time of issuing such notice. The Notice of Intention was sent on 20 June 2014 to flat A, 119 Islip Street and no observations were made by you...*"

17. The Tribunal were referred to the section 20 Notice which was served at the address of the premises. The Tribunal queried the arrangements made by the Applicant for letters sent to the property addressed to him to be brought to his attention.

18. Mr Mottram stated that he had made arrangements for his letters to be forwarded to him, and that in any event his tenants at that time were good tenant's whom he expected would have notified him had a letter arrived for his attention.

19. The Applicant stated that the first the matter came to his attention was when he was informed by his tenants that scaffolding had gone up at the premises in October 2012.

20. Mr Mottram had entered into correspondence with the Respondent and had pointed out that he had not been consulted as he had not received a copy of the section 20 notice, he had also requested that the process be halted, and that he should be given the opportunity to be consulted in accordance with section 20 of the LTA 1985.

21. In reply to his request on 11 October 2012, Steve Harding wrote by email as follows-: *"As the consultation period has concluded, any submissions you make now would not be considered part of the official consultation process, however Edosa will consider and respond to technical questions and amend the project appropriately..."*

22. On 11 October 2012, Mr Mottram by email stated that scaffolding had previously gone up only a few years ago and this should have been used as an appropriate opportunity to inspect the roof. Mr Mottram queried whether the price of the windows at £500 a piece was realistic as he considered the price to be "*ridiculously cheap*"

23. Mr Mottram also queried the proposal to change the front doors as he considered the proposed upstairs door replacement not to be in keeping with the building. He also pointed out that his door had been recently changed.

24. In reply to a question from the Tribunal concerning what if any further consultation the Applicant would have wanted, Mr Mottram stated that given the short notice and the lack of proper consultation, it was impossible to say whether the works undertaken where carried out in compliance with the lease given the short period in which he had had to deal with the matter. The Applicant also stated that the Respondent's contractual prices were exorbitant and he considered that it would have been possible for the work to have been carried out for a less expensive price.

25. Mr Mottram had also seen a copy of the survey report and he queried the adequacy of the survey report as Mr Mottram considered that items had been missed that ought to have been identified as necessary. Mr Mottram stated that his bathroom window had been rotten and that this had not been repaired as part of the process. This together with the cost of the work and the fact that scaffolding had been erected approximately two years earlier, when the work could have been carried out, appeared to be the Applicant's main objections to the reasonableness of the cost of the work.

26. In reply the Respondent's representative confirmed that there was a further validation survey once the scaffold was in place which then confirmed what was actually required. The Respondent's representatives were unable to say why the bathroom window had not been repaired, however they stated that this item had not been charged as part of the major works.

27. The Tribunal were informed by the Respondent that the contract had been subject to a long term qualifying agreement which the Respondent had entered into. In his brief witness statement Mr Stephen Platt, the Team Leader Planned Works exhibited two photographs of the exterior of the premises post contract, and also stated that the first consultation would normally have been to notify the leaseholders of the work and the estimated cost, as the contract was subject to a long term qualifying agreement. A land based aerial photograph would have been used to provide the visual information together with a further survey. He also stated that *"... The Original estimated work costs for the block were £28,801.76 and the final account work costs are confirmed at £16,317.50."*

28. The Tribunal were informed that the Respondent's representatives considered the process to be fairly robust, there was a contracts manager and a clerk of works who would verify that the work had been undertaken. The Respondent stated that items such as the scaffold were a fixed cost item, and that the cost of other items included would have been subject to a charge for overheads and profit and a fee for managing the contract; there was also a performance fee in the sum of £166.47 which was payable by the Respondent to the contractor for the overall delivery of the contract over the financial year.

29. In closing arguments the Respondent stated that they had properly served the section 20 notice at the property address, and that this was the correct approach as they were not formally noticed as to the change of address. They also cited the fact that the work had been carried out to an appropriate standard. They stated that if they were wrong about this then it was possible to apply for dispensation, and that the Applicant had not been prejudiced by any alleged failure to consult, and that as such they were entitled to recover the full cost of the major works.

30. The Applicant in reply did not accept this, he stated that he had not had the opportunity to consider whether the work complied with the terms of the lease, and cited that when he had tried to sell the premises the Respondent had withheld permission until the arrears of service charges were paid.

The Tribunal Determination

31. The Tribunal accepted that the Applicant had completed the under letting form, the Applicant states that he had also paid the fee for the change of use.

32. The Respondent was equally adamant that the fee had not been paid and accordingly the form had not been processed. However the Tribunal has not found it necessary to make a determination on this issue.

33. At the hearing Ms Ettienne noted that this form was in order to permit the Applicant to sub-let his premises, and that it was possible for the leaseholder to notify a change of address by using another form. It was also the case that once the fee had been paid a deed would then be prepared by the Respondent.

34. The Tribunal noted that the primary purpose of this form, and the requirements to pay the fee, were so that a change of use could be recorded, and as such, this was an administration charge which was payable in order for the deed to be prepared.

35. The form was not required merely to notify of changes of address and this was not the reason for payment of the fee.

36. The Tribunal noted that the Respondent had been made aware of the change of address and in accordance with the note on the form, which stated-: *"... The council's policy is that all information will be shared among officers and other agencies where the legal framework allows..."* should have come into effect and other departments should have been notified of the change of address.

37. The Tribunal noted that section 190 of the Law of Property act 1925 which is incorporated into the lease provisions requires notices to be given at the last known address. As the forms had been received, the

last known address was *Times Square,* and accordingly the section 20 notices should have been sent there.

38. Accordingly the Tribunal finds that the Applicant has not been provided with the notices as required by the regulations of the service charge consultation regulations 2003.

39. The Tribunal noted that other than the concerns that the Applicant had about the front entrance steps being asphalted and de-weeded and the bathroom window not being repaired which was not reported, there was no evidence that the cost of the work was unreasonable.

40. The Tribunal noted that the overall cost of the major works included a performance fee. The Tribunal queried the reason for this, as this was not part of the cost of the work, neither did it reflect any element which was normally paid in accordance with the Tribunal's knowledge and experience, as this element was a bonus and did not reflect a cost which would be payable to any other contractor who agreed to carry out major works.

41. Accordingly the Tribunal find that the sum of 166.47 is not payable.

42. The Tribunal find that the cost of the major works in the sum of £9594.26 is reasonable and payable.

43. The Tribunal noted that the Respondent did not concede that the consultation had not been in accordance with the Section 20 procedure, and that they raised the issue of the lack of prejudice to the Applicant in the scheme of work going ahead. As such it remains open to the Applicant to apply to the Tribunal for a section 20ZA Application.

44. The Tribunal noted that this was a course open to them, and that unless the Applicant had been prejudiced by the scheme of work this might result in a dispensation being granted in accordance with *Daejan Investment Limited –v- Benson.*

Application under s.20C and refund of fees

45. The Tribunal noted that there is an application for a re fund of the fees.

46. The Tribunal makes an order for reimbursement of fees in accordance with its determination.

47. The Tribunal noted that the Applicant no longer lived in the premises and the Respondent's representative stated that other than officer time no cost had been incurred and they did not intend to claim costs in these proceedings; accordingly no order is made under Section 20C of the Landlord and Tenant Act 1985.

Name: Ms M W Daley **Date:** 14/10/2014

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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation 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) a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).