

10462



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

Case Reference : LON/00AU/LSC/2014/0414

Property : 92b Alexander Road, N19 4JN

Applicant : L.B. Islington

Respondent : Mr Brian Nartey

Representatives : Mr P Glen (Counsel for the Applicant)
Mr Nartey (self representing)

Type of Application : Service Charges (referral from the County Court)

Tribunal : Mr M Martynski (Tribunal Judge)
Mrs E Flint DMS FRICS IRRV
Mr P Clabburn

Date and venue of Hearing : 20 November 2014,
10 Alfred Place, London WC1E 7LR

Date of Decision : 11 December 2014

DECISION

DECISION SUMMARY

1. Service Charges in relation to roof replacement and to works of repair to the exterior flank and front walls and to the internal common parts amounting to £3539.12 are not payable by the Respondent. A further £1085.44 has been conceded by the Applicant.
2. Service Charges relating to other items in the major works charge are payable.
3. General Service Charges amounting to £459.86 are payable by the Respondent.
4. Accordingly, in relation to the claim in the County Court:-

- (a) General service charges of £459.86 are payable
- (b) Of the major works charges of £12073.21 (capped at £10,000), only £7,448.65 is payable.
- (c) As at the date of the hearing before the tribunal, the Respondent appears to have paid the sum of £3625.55¹ towards the costs of major works.

- (d) The balance due of the claim in the County Court therefore appears to be:

Major works charges	£9413.81	
Less tribunal's findings and concession	<u>£4624.56</u>	
	£4789.25	
<u>Plus</u>		
Contractor's m'ment overheads at 8%	£383.14	
Preliminary costs at 20.25%	<u>£969.82</u>	
		£6142.21
Less paid by Respondent	<u>£3465.55</u>	
		£2676.66
Plus general Service Charges	<u>£459.86</u>	
		£3136.52

5. The tribunal does not have jurisdiction to consider the Respondent's counterclaim filed in the County Court. In any event, this tribunal is not the appropriate forum for the counterclaim.

¹ He was paying by standing order at £100 on or about the 6th of each month so this figure includes the amount that would have been credited to the account at the start of November 2014 – although this was not shown on the account before us

BACKGROUND

The Building

6. The subject property is three-bedroomed flat on the top (second) floor of 92/94 Alexander Road ('the Building'). The Building is comprised of two houses (92 is the end of the terrace and has facades on both Alexander Road and Cornwallis Road). The houses have been converted so as to create three flats, one on each floor.
7. There is a communal front door for the upper flats in the Building in the flank wall which runs along Cornwallis Road. The front door leads to a communal hallway and stairs. The hallway also leads to a door giving access to the rear courtyard garden of the Building. In the hallway is a meter cupboard. The communal stairs run up on the inside of the flank wall and serve the upper flats.
8. The Building has two main roofs (the roof coverings to the back additions do not feature in this case). Those roofs form two 'V' shapes over each house, the bottom of each 'V' being situated in the middle of each house. There are gulleys running along the bottom point of those 'V' shapes leading to downpipes at the back of the houses.
9. There is a rendered parapet wall at the top of the Building running along the frontages of the Building to Alexander and Cornwallis roads. Below that point at the first and second floor levels the walls are bare brick. At the top of the ground floor level there is a cornice running along both flanks. The walls underneath are rendered.

The condition of and works to the Building, and the litigation

10. The Respondent purchased the long lease of flat 92b in 2006, his lease is dated 11 September 2006 and is for a period of 125 years from 29 September 1985.

11. At the date of the lease the Applicant anticipated that major works would be required to the structure of the Building. The Respondent produced a letter from his solicitor at the time of his purchase of the flat which is dated 27 April 2006². In that letter the solicitor points out that a notice from the Applicant regarding the condition of the Respondent's flat and the Building stated that there is:-

- damp in the second bedroom and living room
- damp in the communal hall with water running down the wall when it rains
- major cracking running down the external wall beside the front door

² This letter was not produced and sent to the Applicant until 3/4 days before the hearing

12. Major works were carried out to the Building in 2009. Those works can be summarised as follows:-
- (a) roof replacement
 - (b) chimney repairs
 - (c) replacement of door entry system
 - (d) repairs to exterior (ie. filling cracks in render)
 - (e) woodwork repairs and some window replacement
 - (f) other minor external repairs
 - (g) part replacement of external wall
 - (h) external and internal common parts decorations
 - (i) damp proofing to the ground floor flat
13. The Respondent's share of cost of those works amounted to £12,073.21. His contribution to those costs was however limited to £10,000.
14. In or about 2012, there was a dispute between the parties regarding alleged arrears of general service charges which resulted in the Applicant taking County Court proceedings against the Respondent for a sum of money said to be outstanding in respect of general Service Charges.
15. Following some investigation by the Applicant as to payments made by the Defendant, the Applicant discontinued the proceedings against him. The Applicant's solicitors sent the Respondent a letter dated 8 March 2013 which said as follows:-

We have taken our client's instructions with regard to proceeding with the forthcoming hearing dated 18 March 2013, and note that the costs that our client has incurred to date has now proven to be disproportionate to the value of the service charges our client is entitled to recover from you.....

In the circumstances, it is our client's intention to write off the balance on the debt and discontinue proceedings; thereby putting a reasonable end to the dispute.....

16. In February 2014 the Applicant then issued further proceedings in the County Court against the Respondent claiming arrears of both general Service Charges and unpaid major works charges. The total amount claimed was £7,978.31.

The parties' respective cases

Conceded sums

17. The Applicant conceded various sums in the major works costs prior to the hearing. These sums were in respect of works to the internal parts of the ground floor flat relating to damp proofing works. The Respondent's share of those conceded costs amounts to £1085.44.

Contested sums

18. The Applicant was not able to fully identify the sums that made up the total claimed. There was a balance on the Respondent's general Service Charge account as at the issue of proceedings of £459.86. At the hearing the Applicant considered that there was a further £7,434.45 being claimed in respect of the major works charges. These sums total £7,894.31, some £84.00 short of the sum claimed in the County Court.
19. The Respondent filed a defence to the County Court proceedings. In that defence he made, amongst others, the following points:-
 - (a) he had paid the general Service Charges being claimed
 - (b) some of the major works had not been completed
 - (c) he was making payments towards the major works costs in instalments
20. The Defendant filed a counterclaim with his defence. That counterclaim was for '*Tactical harassment, psychological torture and time wasting*'.
21. These proceedings were then transferred to this tribunal by order of DJ Parker dated 4 August 2014. The order states as follows:-

Matter transferred to First Tier Property Tribunal

22. Directions were given in this tribunal on 28 August 2014. In those directions it was stated that the issues in the case were as follows:-
 - (a) the amount owed in general service charges
 - (b) whether the sum claimed in 2009 is fully recoverable based on the objections put forward by Mr Nartey that;
 - the cost is too high
 - the works have not been completed
 - the works were not of a reasonable standard
 - (c) whether some of the works could have been funded from insurance monies
 - (d) whether the tribunal could deal with the Respondent's counterclaim
23. The directions given by the tribunal required both parties to make Statements of Case. In his Statement of Case the Respondent made a large number of individual challenges to the Service Charges which are set out in the table which appears later in this decision. The Statement of Case also contained the general comment that;

The building condition at present indicates that most of the tasks requested had not been carried out or poorly repaired

Later in the Statement of Case, the Respondent says;

We were informed that the roof replacement and the dampness issue will rectify during the major works repairs

24. In his supplemental Statement of Case served shortly before the hearing, the Respondent noted;

The Respondent rejects the Applicant's claim on the basis that the original roof of 92 and 94 was fairly new (not old) prior to the major work replacement.....

We were advised at a later date prior to the repairs that, the only way of stopping the water ingress from damaging the ceilings, internal walls and dampness in the flats is by replacing the entire roof of the building because the bad weather had damaged the chimney stack and also, dislodged some of the roof tiles.

The inspection

25. We inspected the Building and the Respondent's flat on the morning of the hearing. Only the Respondent was present at that inspection. Our findings on the inspection are as follows.

External

26. Ground floor rendered and painted, remainder of building stock brickwork, valley gutter roof to each of numbers 92 and 94 Alexander Road with parapet wall (rendered) to front & flank elevations.
27. The front garden wall had been partially rebuilt.
28. The render on both the walls and parapet walls was cracked. There are significant areas of replacement brickwork to both the front and rear elevations.
29. There were cracks within the stucco at ground floor level and also within the decorative finish above.
30. The rendering on the parapet wall was cracked, some paintwork is missing.
31. The cement fillet on the rear of number 92 to the flank wall to the valley gutter was poorly finished.
32. There is evidence of failed and rotten woodwork.
33. The front door to the building is past its useful life.

Internal – communal hallway and stairs

34. Internally there were significant areas of damp in the communal hallway and stairway on both the flank and rear walls.
35. The plaster within the meter cupboard at ground level under the stairs was crumbling.

36. The damp patches on the rear and flank walls were evident at all levels of the building.

Internal – 92b

Hallway

37. Evidence of damp at high and low level on the flank wall

Living room

38. Evidence of damp at high level on the flank wall

39. Some bubbling of ceiling plaster.

Front main bedroom

40. Damp staining at high level on the front wall.

41. There was damp mould inside the wardrobe on the front wall.

General

42. Several windows could not be opened.

The evidence and our decisions

Works to the roof and structure – general issues

43. As is often the case in this tribunal, a party has a reasonable grievance but is unable, or has not (for whatever reason) set that grievance out in a concise and direct way in a Statement of Case. This is what has happened with the Respondent's case in this matter.

44. The nub of the Respondent's grievance was somewhat hidden by the numerous detailed challenges he made to the claim against him. However, on close and careful consideration of what Mr Nartey was saying in the written documents put before us and upon inspection of the Building, the reason why he was so aggrieved and why he contested the major works charges becomes apparent and it is this; the Respondent bought a flat in a building that was suffering from penetrating damp in the common hallway and stairway and further damp on the walls within his flat. After major works were carried out, at a cost to him of £10,000, and some eight years later (and having been told that the roof replacement was being carried out to resolve the damp problems in the Building), the Respondent has, what appear to be, exactly the same problems with the Building and in his flat as he started with back in 2006.

45. We consider that the Applicant was on notice from - the Respondent's Statement of Case, the documents that he had produced and the information regarding the Building available to the Applicant, that he was challenging:-
- (a) the need for the replacement of the roof
 - (b) the adequacy of the major works in view of the fact that the Building is suffering from a severe ingress of damp through the flank wall (with further limited damp in the front wall) which appears to be the same problem as was in existence when he bought his flat in 2006
46. At various places within these proceedings, the Respondent made his case in the following ways:-
- (a) In his defence filed in the County Court the Respondent says; *"However the repairs has (sic) not been completed and the damage to the building has worsen (sic)"*
 - (b) In his Statement of Case the Respondent says; *"The building condition at present indicates that most of the tasks requested had not been carried out or poorly repaired"*.
 - (c) Later in his Statement of Case at numbers 37, 38, & 39 the Respondent says that repairs to the render on the exterior of the Building have not been carried out and refers to calls that he made to the Applicant regarding this after the scaffolding was removed from the Building³.
 - (d) In his second Statement of Case served a few days before the hearing the Respondent writes; *"The Respondent rejects the Applicant's claim on the basis that the original roof of 92 and 94 was fairly new (not old) prior to the major work replacement..... We were advised at a later date prior to the repairs, that the only way of stopping the water ingress damaging the ceilings, internal walls and dampness in the flats is by replacing the entire roof of the building because the bad weather had damaged the chimney stack and also dislodged some of the roof slates."*
 - (e) Later in that Statement of Case in the Summary at points 13 and 16: the Respondent says-
 - 13) *Claimant's record indicates that calls had been logged for water ingress into Defendant's building and is damaging the internal walls and ceiling in the property since 2009/2010/2012 and 2014 but nothing had been done to rectify the defects.*
 - 16) *Due works incompleteness (sic), Water ingress into the defective and cracked parapet walls, as well as inappropriate window sealed and poor workmanship (including roofing, window repairs and plastering/repointing) are the cause of the internal walls and ceiling damage.*

³ In response to this in its Statement of Case the Applicant states that whilst it has no record of written complaints from the Respondent, phone calls are not recorded.

47. There is evidence, beyond the Respondent's own assertions, that he had made complaints about the major works after they were carried out. A document (at pages 42 & 43) of the bundle provided to us by the Applicant) records that on 6 November 2010 the Respondent raised challenges to the major works as follows:-

- Lounge ceiling and master bedroom wall after by damp (sic) as a result of the roof renewals....
- Communal area top landing near ceiling has damp staining etc., will require repair and dec as appropriate, this also includes an area to the 1st landing where the paint is flaking off due to efflorescence, brickwork sealer maybe required.
- Render feature to front (sic) of block near roof is cracked both LHS and RHS, some has already fallen off, and repaired (sic), because off (sic) this.
- Redecoration required to front also repairs required to render LHS of 94 Alexander door⁴.
- 94 Internal (damp) damp patch showing through, in hallway near entrance to bedroom (sic)/kitchen⁵

48. In this case it is the Applicant who issued the proceedings in the County Court for recovery of Service Charges. The Applicant is pursuing that application in this tribunal. The starting point therefore must be that it is up to the Applicant to prove its case and to establish that the Service Charges that it has incurred, have been reasonably incurred and that the work that is being charged for is of a reasonable standard.

49. That is not to say that we expect an Applicant to have to prove each and every element of its case. There is a burden upon a Respondent who asserts that Service Charges are not payable to state which Service Charges he considers are not payable and to give a credible reason why he says this. If this is done, it is then up to an Applicant to prove its case in respect of those Service Charges in respect of which the Respondent has raised an arguable issue.

50. The Applicant relied upon the statement of Mr Ian Lewis, a Quantity Surveyor. He stated that he had visited and inspected the Building on 28 October 2014. He noted various points on the condition of the Building. His comments on the condition of the Building accord with what we saw on our inspection of the Building. Mr Lewis made it clear that he had not been involved with the Building prior to August 2014. He concluded in his statement as follows;

I have reviewed the Final Account Invoice and believe that all works detailed on the account appear to have been executed.

51. The Applicant did not produce an inspection report for the Building dating from a time prior to the major works being carried out nor did it produce a specification for the works carried out. The only document

⁴ We realise that this does not appear to concern the building at 92 but it goes to support the Respondent's claim that the major works have failed to resolve damp problems in the Building.

⁵ As 2 above

that was shown to us is a breakdown of the works carried out with the cost of those items of work and the Respondent's share of those costs.

52. In the documents shown to us were various documents and letters sent to the Respondent regarding the major works. However none of those documents were of any assistance to explain the condition of the Building prior to the works.
53. We were shown a letter sent by the Applicant to the Respondent (undated) which stated that a section 20 Landlord and Tenant Act 1985 consultation notice was enclosed. However, we were not shown the notice itself which may have given details as to why the Applicant felt it necessary to carry out replacement of the roof and other works. That letter goes on to say; "*Prior to any work commencing each house/property will have had a detailed survey undertaken to ascertain the extent of the works required*". No such survey was available to us and nothing to explain the reason for the works (in particular the roof replacement).
54. Another letter sent by the Applicant dated 29 April 2009 refers to a second survey undertaken after the scaffolding had been erected. Again, no such survey was available to us, at least not one that explained the reason for and thinking behind the works.
55. We were shown another document containing a general breakdown of the proposed works and some estimated costings. That document started with the words; "*Now that a full survey has been carried out on your property....*" No such survey was shown to us.
56. We were further concerned to note that despite the fact that a representative for the Applicant had gone to inspect and report on the Building shortly before the hearing, and whilst it appeared that the Applicant may have plans to carry out further works to the Building to remedy the disrepair there, there was nothing before us to give an indication as to what was causing the current damp in flank and front walls of the Building.
57. The Applicant has therefore failed to bring any evidence to this tribunal to establish the reason why the roof to the Building was replaced and in general the reasonableness of the major works or their cost so far as the prevention of penetrating damp is concerned.
58. In these circumstances, we are bound to conclude that the Respondent has adequately raised general issues regarding the major works concerning the roof replacement and penetrating damp in such a way which then put the onus upon the Applicant to demonstrate that costs relating to those works were reasonably incurred and the works carried out to a reasonable standard. The Applicant has failed to explain why the roof was replaced and has failed to explain why, if the works were carried out to a reasonable standard, they appear not to have properly addressed the ongoing disrepair in the Building. The Applicant has

further failed to establish that the current disrepair is not linked to the earlier disrepair and has failed to give an explanation for the current disrepair. The Applicant has not therefore proven its case in respect of these matters.

59. Attached to this decision is a copy of the Final account of works taken showing a breakdown of the costs charged to the Respondent. On that account we have marked what items we have found not payable.

General, non-major works, Service Charges

60. The Respondent argued that, so far as he was concerned, upon the discontinuance of the first set of County Court proceedings taken against him, his general Service Charge account was reduced to zero. He relied on the letter from the Applicant's solicitors dated 8 March 2013 quoted above. As a result he was not in debit on his general Service Charge account.
61. It was the Applicant's case that the letter from the solicitors clearly related only the sums claimed in the proceedings taken in the County Court, it was only the balance of those sums that was being written off. Further sums had become due and were debited to the Respondent's account after the first County Court proceedings had been issued and before the letter from the solicitors was sent discontinuing the proceedings. As those further sums had not been claimed in the County Court proceedings, they had not been written off and were now payable.
62. The Respondent dedicated a good part of his defence and his Statements of Case in the tribunal proceedings to this point and he clearly feels very strongly about it. However, we think that he is wrong on this point for three reasons.
63. First, we consider that the letter from the Applicant's solicitors does relate only to the sums claimed in the County Court proceedings - not to the total balance on the Respondent's account at that date in time.
64. Second, we accept that the Service Charges claimed by the Applicant were debited after the first County Court proceedings were issued and so were not part of the charges that were written off.
65. Third, in our view, even if the letter from the solicitors had said (mistakenly) that all sums due at the date of the letter were being written off, we cannot see that this fact, on its own, would have given the Respondent a defence to the claim if the Applicant had then changed its mind or realised its mistake.

The major works issues raised by the Respondent

66. We now deal with the numerous individual issues raised by the Respondent on the detail of the charges for the major works in the table set out below.

Item number (as per Respondent's Statement of Case)	Issue	Decision
1	Roof replacement must be covered by insurance	We accept that the probable reason for the roof replacement was wear and tear ⁶ and that this would not be covered by insurance.
2	Damp in ground floor flat	Conceded by Applicant
3	Scaffolding should be covered by insurance as per point 1	See point 1 above
4	See point 1	See point 1
No 3	Sash window replacement	Not charged
No 6	Repair and overhaul windows	Not charged
No 09	Repoint stack	No evidence to show that work was not reasonably done
No 10	Repair cracked render	See our decision regarding works to structure above
No 13	Door entry renewal	We accept that the door entry system was replaced and possibly upgraded. Under the terms of his lease, even if he does not benefit from it, the Respondent is liable to contribute to the cost [clause 6 of the lease].
No 14	Front door repair / overhaul	Whilst the door now appears to require complete replacement, we cannot be sure what the position was in 2009. At that time it may well have been (it is difficult for us to tell but on the balance of probabilities and from our inspection it is more likely than not) that the Applicant was justified in repairing rather than replacing.
No 16	New loft hatch	Conceded
No 17	Loft insulation upgrades	Not charged
No 18	Hack off damp plaster in stairway	See our decision regarding works to structure above
No 19	Walls, plaster repairs	See our decision regarding

⁶ This however does not satisfy us that the work was reasonably carried out for the reasons set out earlier in our decision

		works to structure above
No 20	Redecorate soffit and ceiling	See our decision regarding works to structure above
No 21	Decoration (internal)	We are not convinced that this relates to major works deficiencies
No 22	Decorate internal doors and door frames	No evidence that this was not done
No 23	Decorate previously painted joinery/skirtings etc.	No evidence that this work was not properly done
No 25 & No 26	Front wall	As far as we could see, the front wall has been properly replaced/repaired where required
No 27	Rebed covers	No evidence to suggest that this is in any way linked to issues of damp in the Building
No 28	Remove debris from gutters etc.	Work relates to downpipes not part of roofing and is allowable
No 29	Redecorate fascia soffit bargeboards.	No evidence that this was not properly done
No 32	Painting of external communal doors	See our decision on no 14 above
No 33	Redecorate previously painted surfaces	The works of purely decoration appear to have been done reasonably and will have value even if further works now need to be done to render – what do we think about this??
No 34	Repoint brickwork	See our decision regarding works to structure above
No 36	Repoint around subcills	There does not appear to be any evidence that damp is coming from the subcills ?? is this right??
No 37-39	Repair render	See our decision regarding works to structure above
No 40	Replace roof	See our decision regarding works to structure above

The Counterclaim

67. We do not consider that we have jurisdiction to consider the counterclaim. We only have jurisdiction to consider a counterclaim where such a claim may go to the payability of a Service Charge⁷. Generally speaking therefore such a counterclaim must be capable of

⁷ Continental Property Ventures Inc v White [2006] 1 E.G.L.R. 85

operating as a set-off against the claim. In order to operate as a set-off, the counterclaim must be directly linked to the substance of the claim.

68. The Respondent's counterclaim appears to seek damages for the Applicant's behaviour in pursuing the claim. Such a claim does not directly relate to the incurring of Service Charges by the Applicant. This can be contrasted with, for example, a counterclaim for damages for the damp conditions in the Building and the Applicant's alleged failure to carry out works (for which a Service Charge has been levied) to properly deal with those damp conditions.
69. Even if we did have the jurisdiction to deal with the counterclaim, we do not consider that this tribunal would be the correct forum for a claim in respect of damages for harassment and other such alleged behaviour. That subject area falls far outside the tribunal's experience and normal remit and is better suited to the County Court.
70. We should note that in any event it does appear to us that the way in which the counterclaim is currently framed does not show any case in law that can be properly pursued by the Respondent.

Costs

71. The Applicant confirmed that it does not and will not seek to put the costs of the proceedings before this tribunal on the Service Charge.

Mark Martynski, Tribunal Judge
11 December 2014