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

Case Reference : **LON/00AG/LSC/2015/0014**

Property : **215B Belsize Road London NW6
4AA**

Applicant : **Mr Laurence O'Mahoney**

Representatives : **In person**

Respondent : **The London Borough of Camden**

Representative : **Ms Marie Moloney – Camden Legal
Services**

Type of Application : **For the determination of the
liability to pay and reasonableness
of service charges (s.27A Landlord
and Tenant Act 1985)**

Tribunal Members : **Prof Robert M. Abbey (Solicitor)
Mrs Evelyn Flint (FRICS)**

**Date and venue of
Hearing** : **13th April 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **17th April 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges for the roof works carried out will be reduced to zero as the charge by the respondent in respect of this particular element of the service charges is not fair and not reasonable as more particularly set out in this decision. The management charge for the roof works shall also be similarly reduced to zero as being unreasonable.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, i.e. preventing the landlord from adding the legal costs of these Tribunal proceedings to subsequent service charge accounts.

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 charge payable by the applicant in respect of service charges payable for services provided at 215B Belsize Road London NW6 4AA, (the property) and his liability to pay such service charge.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant appeared in person and the respondent was represented by Ms Maloney from their legal services team.
4. The tribunal had before it an agreed bundle of documents prepared by the applicant.

The background

5. The property which is the subject of this application comprises a converted flat on the first floor with one flat above and a shop below. The applicant has lived at the property since 1980 and has held a leasehold interest since 1998.
6. 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.

7. 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 issues the applicant raised covered the reasonableness of roofing works carried out by the respondent and the reasonableness of how these works were carried out. The applicant considers that the replacement of the roof was unnecessary. The Applicant is also concerned by the failure of the workmen to keep the property protected from water damage during the period that the works took place, by the use of a canopy over the roof area.

The issues

8. First to give evidence for the respondent was Stephen Barker Operations manager of Keepmoat for Apollo. He confirmed that the concrete tile roof was removed at the property and replaced with slate. He also confirmed that asbestos items were removed and replaced with non-hazardous materials. The valley gutter was replaced and rendering was undertaken to the parapet wall. Fiona Joseph was next to give evidence. She is employed by the Respondent as a contract manager. She exhibited to her witness statement a roofing report and other details regarding the roofing works. She stated that a canopy was not installed to protect the property when the works were being undertaken as this was not cost effective. She also confirmed that tarpaulins were used even though this roofing work was carried out from January to March, during the winter months.
9. She confirmed that the respondent decided to replace the roof and valley gutter for the reasons set out in a roofing condition report. The tribunal were able to see this report that consists of a photo and some text. The reasons for replacement were listed as
 - The need to replace the valley gutter as it was found to be beyond reasonable repair
 - If the valley gutter was to be replaced then it required three course of tiles to be removed on both sides of the roof valley
 - Asbestos was found and needed to be replaced
 - Works to coping stones and render of parapets where required
10. The applicant indicated to the tribunal that he did not consider that the valley gutter needed replacing as it had been replaced in lead as

recently as 2001 and no leaks had been encountered since that time. He was also of the view that the roof was in a satisfactory condition and did not need to be replaced as it was wind and water tight and would remain so for some years. As for the asbestos he was of the view that this was represented by just two flue covers and nothing else. He also thought that if the works were to be carried out in the winter that it was reasonable to expect the council to ensure that a canopy was installed as the alternative of tarpaulins would not be effective.

11. First to give evidence for the applicant was Maurice Prindiville, a retired builder who had inspected the roof at the property after the valley gutter had been replaced back in 2001. His recall of what he saw was that at that time a lead valley gutter had been inserted that would normally last many years and that to replace it after 12 years was unreasonable. He also stated that tarpaulins were not very good protection especially in snow which is what affected the property in this dispute. His view was that in 2001 the roof was structurally sound and that it would have lasted twenty to thirty years at least.
12. Next to give evidence for the applicant was his brother James O'Mahoney who lives at 215c, the flat upstairs. He confirmed that the water ingress that happened during these works was so bad it brought the ceiling down in his flat and that he had emailed and texted the council to report the damage. He was of the view that the work was very badly managed. His view was that the roof was sound and that there were no problems with the valley gutter as there had been no leaks that he could recall since the replacement work in 2001. Bearing in mind that his flat was at the top of the building in which the property was situate; it was clear from his evidence that there had been water ingress prior to 2001 but not after that time. It appears that the replacement valley gutter had cured the problem

Decision

13. The tribunal is of the view that there is no reasonable justification before them for these roofing works. The tribunal was not given any detailed or convincing evidence or proof that the replacement works were necessary. The Respondents say that this course of action was more cost effective but again there is no supporting evidence before the tribunal to support this assertion. The reasons for the choice made by the respondent of a complete roof replacement are set out in paragraph 9 above. Dealing with them in turn the tribunal makes the following comments.
14. We are not satisfied that the valley gutter needed replacing. It would appear that the work carried out in 2001 ensured that there were no leaks from it and that it had been replaced in lead. This meant that the valley gutter was likely to have been in a reasonable condition for many more years than the twelve it was in situ before being changed. In this

regard the tribunal takes particular note of the evidence of the applicant's brother.

15. The tribunal accept that three courses of tiles would need to be removed in order to replace the valley gutter. However this does not take account of the fact that six courses would remain in place. This means that only a third would need to be taken off and two thirds would be unmoved. Furthermore the three courses could have been put back in place. Additionally there was no evidence before the tribunal that the condition of the tiles was such that the complete replacement was necessary.
16. The tribunal accepts that two cowls or chimney/flue covers were made of asbestos. However, the respondent confirmed in evidence that they were low risk asbestos items and not broken and as such the tribunal took the view that they were not posing an immediate threat to the tenants. They were only two items in any event. This is an unlikely reason for the complete replacement of the roof.
17. The works to the parapet walls did not appear to be a major element of the works involved in the roof replacement
18. The failure to make the roof watertight during the repairs and the carrying out of these roofing works in winter appeared to the tribunal to be a failing on the part of the respondent. It therefore appeared to the tribunal that the respondent had failed to carry out these works in a reasonable manner.
19. For all the reasons set out above the tribunal is of the view that the replacement of the roof was unreasonable and that as a consequence the charge for this work should be reduced from £3893-94 to £0.00. Furthermore the management charge made by the respondent for this work of 10%, namely £389.39, would therefore also be unreasonable and that this charge will also be reduced to £0.00.

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

20. The applicant did make an application for a refund of the fees that had been paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations set out above the Tribunal does not order a refund of fees.
21. At the case management conference the tribunal directed that costs under section 20C would be considered by the tribunal, i.e. preventing the landlord from adding the legal costs of these proceedings to subsequent service charge accounts. Having heard the submissions from the parties and taking into account the determinations set out

above the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and therefore the Tribunal makes an order under section 20C. The circumstances include the conduct and circumstances of all the parties as well as the outcome of the proceedings in which they arise.

Name: Judge Professor Robert M. Abbey **Date:** 17 April 2015

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 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.