



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

Case Reference : LON/00AY/LSC/2016/0385

Property : Flat 25 Greener House, Clapham Road Estate, London SW4 6ND

Applicant : London Borough of Lambeth

Representative : Jonathan Elfer Solicitors Agent
David Ansah

Respondent : Ms Sarah Rose

Representative : Not in attendance

Type of Application : For the determination of the reasonableness of and the liability to pay a service charge

Tribunal Members : Judge Daley
Mr J Barlow FRICS

Date and venue of Hearing : 24 April 2017 at 10 am 10 Alfred Place, London WC1E 7LR

Date of Decision : 12 June 2017

DECISION

Decisions of the tribunal

The tribunal makes the determinations set out below paragraph 43 onwards.

The application

1. On 17 October 2016, this matter was transferred from the Lambeth County Court by order of DDJ Smith, for a determination of the reasonableness and payability of the service charges in the sum of £2952.62.
2. Directions for the determination of this matter were given at a case management conference, on 15 November 2016.

The background

3. The premises which are the subject of this application are a ground floor flat situated in a purpose built block of flats.
4. The premises are subject to a lease agreement dated 15 March 2004, which provides that the Applicant will provide services, the costs of which are payable by the leaseholder as a service charge.
5. Where specific clauses of the lease are referred to, they are set out in the determination.

The Hearing

6. At the hearing the Applicant was represented by Mr Johnathan Elfer, solicitor's agent for Judge and Priestley solicitors, who was instructed on behalf of the Applicant, a local housing authority.

Preliminary matters

7. The Tribunal noted that the respondent had not appeared, and asked that the clerk made enquiries concerning her non-attendance. The Tribunal decided to delay the start of the hearing to allow the respondent to participate, in the event that she was delayed.
8. At the start of the hearing, the Tribunal informed the applicant that it would proceed in the absence of the respondent. The Tribunal would, however require the applicant to prove its case, on a balance of probabilities. In order to facilitate this and in fairness to the respondent, the Tribunal would ask questions of the applicant. The

Tribunal noted that the respondent had filed a statement of case and accordingly the applicant would be asked questions on the basis of this document.

9. . The Tribunal was satisfied that it remained appropriate and proportionate to proceed in the absence of the respondent. This decision was made in the light of all of the circumstances in this case; including the overriding objective of the tribunal to deal with the matter fairly and proportionately.
10. The Tribunal noted that there were matters in the bundle that required clarification. There were two statements one a Statement of Facts from David Ansah and another applicant's Statement of Case from Emma Brew-Riverson. It was noted, that whilst on the face of it these documents appeared to be identical, there were in fact ten more pages included in Ms Brew-Riverson's statement. They would be referred to as the first statement (David Ansah) and the second statement (Emma Brew Riverson).
11. At the hearing the applicant's representative informed the Tribunal that the respondent's property was situated in a large block of flats which had been the subject of major work which had involved a significant overhaul of the electrical supply to the communal areas.
12. The Tribunal was referred to a letter sent by the applicant to the respondent dated 2 January 2012 which gave notice, served in accordance with Schedule 3 of the service charges (Consultation Requirements) (England) Regulations 2003, relating to the Landlord's electrical services refurbishment programme . In respect of the reason for the work the notice stated as follows-: "*Lambeth Living have commenced a programme of inspecting and testing the communal electrical installations within its housing blocks. It has identified that the communal electrical installation in your block has reached the end of its economic and useful life. Specifications have been prepared and priced to renew the communal electrical installations and lighting together with the cables which supply your flat...*"
13. The Tribunal was informed that the applicant had complied with the more limited form of consultation as the work was part of a long term qualifying agreement. The Tribunal was informed that the project came in under cost. The Tribunal was referred to a letter dated 15.1.2015, sent to the respondent setting out the major works final account, the amount due for payment was £4464.29, this sum having been certified by an accountant. A break-down of how the costs had been calculated was included.
14. The Tribunal was informed that the respondent's costs had been calculated on the basis of her contribution being set at 2.79% of the rateable value of the building.

15. Mr Elfer stated that the respondent had not raised any issue concerning the costs of the work. The applicant referred to a letter dated 10 November 2015 from Judge and Priestley recording an agreement which had been reached with the respondent to discharge the debt at the rate of £152.92 per month. He stated that after April 2016 no further payments were made.
16. The Tribunal was referred to the statement of Mr Ansah, who was the Major Works Coordinator. In his statement he set out the provisions in the lease relied upon by the applicant, and also provided details of the history of payments made by the applicant. He stated that the applicant had complied with the requirements in accordance with Section 20B of the Landlord and Tenant Act 1985 by serving a notice on 2 January 2012. He set out, that following an agreement made by the respondent to pay the amount outstanding, the respondent had paid only £1,511.68 (on account of the service charge demand of £4,478.06) before payments ceased in April 2016.
17. In his statement at paragraph 22 he states:- *"...On 18 July 2016 the Respondent called Judge and Priestly to state that she disputes part of the outstanding amount as the Major Works commenced by the Applicant had interfered with the electrics on her block and was causing her problems..."*
18. Mr Ansah further stated that the respondent had filed a Defence in the county court dated 8 August 2016. In her Defence, the respondent stated that she disputed the amount that was outstanding in full. On the grounds of *"...lack of maintenance of her estate and poor management of works by the Applicant as her reasons for withholding payment of the outstanding amount. In particular the Respondent mentions faulty electrics and vermin in her garden as to why in her opinion the Applicant had not fulfilled its obligations as a Landlord and therefore she is entitled to withhold payment."*
19. The Tribunal referred to the statement of Miss Sarah Rose dated 17.01.2017 in which she set out that she had had numerous complaints over the years concerning water penetration. With regards to the major works she stated as follows:- *"...In 2011/12 Lambeth began works to my estate electrics. Their contractors entered my premises and completely ruined my electrics to my flat. So much so, that the electricity had cut out in one part of my flat for over a year. I called throughout 2012 to 2014 and asked someone to come over and look at the issue. And was told by Lambeth that I had to contract the contractor directly and that that they could not deal with the matter because I was a leaseholder and that the works has already been completed. They gave me a number for their contractor whom I called repeatedly and received no reply or resolution on the matter. When I called to complain about the ongoing situation. They asked for the Major works bill to be paid as the works had been done. Stating that if*

I wanted to complain, I should contact their complaints department. On each occasion, I called, I was told that I had not called before, which was extremely frustrating. They were not logging my complaints.

I did contact the complaints department who did not even acknowledge my complaint but just insisted ... that I should pay the outstanding bill. These Works were not completed to satisfaction or to safe standards. Lambeth contractors left the electrics at my premises in a dangerous state. Lambeth are under the impression that I have mixed up the two bills. They are incorrect. They continue to send me two joint bills for both the Service charge and Major works bill... Lambeth have failed in their obligations to my remit as a leaseholder, on both fronts. A bill for over £4,000 for incomplete and unsafe works does not fall into my remit as a leaseholder but it is the responsibility of Lambeth Council to ensure their contractors complete their jobs safely and correctly and that they deal with complaints and issues regarding these works in a prompt and fair manner."

20. In support of her statement, Ms Rose had submitted a number of documents. The Tribunal noted that the documents included details of a number of complaints that had been made from approximately 2005 onwards, and that although they supported Ms Rose's assertion that she had made complaints about the condition of the premises; the majority of the documents were unrelated to the matters before the Tribunal. There was however an email included in the bundle, as the quality of the copy was poor it was difficult to ascertain the date. In the email headed Property Damage the respondent wrote amongst other matters that:- *"...My electrics have not been working to my flat correctly since Lambeth Contractors came and carried out works to (undecipherable) being severely damaged..."*
21. There was an acknowledgement to this email dated 2/09/2014 from Feonia Wildman.
22. Mr Elfer stated that the majority of the matters complained of by the respondent did not relate to the major works, and that insofar as they related to the management of the property, the respondent could report those matters to the disrepair team. She was not, in his submission entitled to withhold service charges that related to her major works, as the works had been carried out satisfactorily, and the respondent was obliged to contribute to the costs of the works pursuant to Clause 2 of the lease.
23. The Tribunal noted that there was a dispute concerning whether the electricals had been carried out to a satisfactory standard and asked whether any action had been taken by the Applicant to establish whether there was any ongoing problem with the electricals.

24. The Tribunal was informed that an inspection had been carried out in the respondent's premises, and that an inspection report had been produced. The Tribunal asked for details of the report to be provided. A copy of the report was provided, although it had not originally been included in the bundle.
25. The report had been prepared by Paul Williams of Porterhouse Legal Surveying & Consultancy Services Limited. The report had been produced following an inspection on 22 September 2016. In the findings at paragraph 4.4 of the report, in respect of the electricals, it was noted as follows: *"...I am advised by Ms Rose that a new incoming electrical main was installed in or around 2012. In order to facilitate the installation of the metre tails, the ceiling to the electrical cupboard has been removed. I am further advised by Ms Rose that the electricians trip out on a regular basis. Ms Rose has stated that following the installation of the new electrical metre tails, the electrician removed one of the MCB's from the fuse board and has covered the hole to the electricians with a piece of electricians tape. An NICEIC qualified electrician is required appointing to undertake a periodic test of the electrical installation and provide a detailed report of remedial works required. The electrical insulating tape will require removing and a purpose made blanking plate installed. Timber grounds will require filling to the perimeter of the cupboard to allow for a replacement plasterboard ceiling to be installed together with a 3mm gypsum finish..."*
26. This item of work was included in the schedule of disrepair with an estimated costs of £120.00
27. The Tribunal asked whether the NICEIC electrician had been appointed as recommended in the report. The Tribunal was informed that an inspection was scheduled for 17 August 2017.
28. Mr Elfer in his submissions stated that the respondent had not attended the hearing and as such the Tribunal ought to give her statement less weight as it had not been tested by having been given in evidence, where she could be asked questions. He stated that the starting point for the Tribunal to consider, was the lease, the works had been carried out in accordance with clause 2 of the lease in particular 2.2 which stated: *"to pay the [Applicant] at the times and in the manner of aforesaid without any deduction by way of further and additional rent a rateable and proportionate part of the reasonable expenses and outgoings incurred by the [Applicant] in the repair maintenance improvement renewal and insurance of the Building and the provision of services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto..."*
29. He submitted that the applicant had complied with the section 20 procedure and the work had been completed and the final account had

been issued. In respect of the on-costs, the Applicant referred to clause 8 of the fourth schedule of the lease that provided for the payment of the reasonable costs of managing the building.

30. Mr Elfer stated that the respondent had reached an agreement to pay the outstanding charges; accordingly the Tribunal should find the costs of the major work reasonable and payable.
31. At the hearing, the Tribunal noted that as the works concerned repairs to the electrics, it was the tribunal's experience, that prior to the works being signed off as completed satisfactorily, there was normally a requirement that there be a certificate issued by an electrician. The Tribunal asked whether it was possible for the Applicant to establish how the work had been signed off as having been carried out to a satisfactory standard.
32. The applicant stated that it would make enquiries in particular concerning the existence of a certificate and the Tribunal directed that a certificate be produced and copied to the other side by 8 May 2017.
33. The Tribunal asked whether the Applicant was seeking to apply the costs as a service charge and if so what provision in the lease was relied upon. Mr Elfer referred to clauses 2.1 and 2.2 of the lease. He submitted that these clauses were sufficiently wide to enable the Applicant to apply the costs as a service charge.
34. After the hearing had concluded, the Tribunal was shown a copy of a letter which had been returned and marked wrong address this was a copy of the respondent's notice of hearing. The Tribunal wrote to the parties in the following terms--: *"...further to the hearing on 24 April 2017 at 10am. At the hearing it was noted by the tribunal that the respondent had not attended. Efforts were made to contact her by telephone, at 10.20.am the Tribunal decided to hear the matter in the absence of the respondent in accordance with rule 34 of The Tribunal Procedure(First-tier Tribunal) (Property Chamber) Rules 2013...*

The Tribunal had noted that the respondent had attended a mediation appointment, and had filed a witness statement, however the Tribunal was of the opinion that notwithstanding the respondent's absence it could deal with the matter fairly in her absence. The Tribunal noted that as the respondent had not attended it would put questions to the applicant which arose from the applicant's statement.

The Tribunal asked the applicant to provide a copy of the electrician's certificate in respect of the property and also to provide any information concerning the work undertaken by the contractor to

interface the communal and consumer units of the flat. This information is to be provided within 14 days. (8 May 2017)

After the hearing, the Tribunal became aware that the notice of hearing had been returned in the post and marked as having been sent to the wrong address. Although the letter was dated 7 March, it had not been returned to the Tribunal until 24 April. On reviewing this information the Tribunal have considered whether in all the circumstances, the matter should proceed to a decision without allowing further input from the respondent.

The Tribunal is satisfied that it considered the respondent's written case and that in considering how to fairly proceed with this matter it has considered the overriding objective, and that in this matter it would be disproportionate to re hear this case. That should she wishes to rely upon issues concerning the standard of the electrical installation and any difficulties that she has had. Ms Rose will also be able to comment on the surveyors report and the information that the applicant was directed to provide by 8 May. The respondent's response should be sent by 22 May 2017..."

The further submissions of the parties

35. The Applicant asked for an extension of time to provide the information sought. On 25 May 2017, the Applicant provided two additional documents, one of which was a copy invoice of the Electrical works invoice, and the other was a copy of the other a Notification of Assessment of Payment. Although the invoice set out some detail of the specification of work neither document dealt with how the work was inspected or certified as safe.
36. The Tribunal wrote to the parties acknowledging receipt of the documents and stated that although these documents had been provided, they did not deal with the certification of the work. The Applicant was given until 6 June 2017 to confirm whether or not such a certificate existed.
37. In relation to further submissions by the Respondent, the Tribunal received a copy of a witness statement from the Respondent dated 9 May 2017. In her statement she reiterated her claim that the property was in poor condition and that as such she considered that this was in breach of the Covenant for Quiet Enjoyment. In relation to the work and her agreement to pay she stated:- *"...I can confirm that my position remains the same Lambeth has not allowed me Quiet Enjoyment of my premises. It is true I was making payment towards the charges (major works and service charges) However, I stopped paying because my complaints were being ignored..."*

38. Ms Rose referred to matters that related to the services provided at the premises, of the electrics she stated: "... *the electricals have continued to trip since 2012...*"
39. The Tribunal noted that the Respondent largely repeated the assertions made in her witness statement, which had been submitted before the Tribunal in the hearing bundle.
40. In response to the Tribunal's further direction, on 6 June 2017, the Tribunal received a copy of the works order from the applicant's solicitor, and an accompanying letter. The letter set out that although the works order had been raised, and the contractor attended to inspect the premises, access was refused by Ms Rose.
41. No information was provided to the Tribunal, as to when the contractor had attended the premises. Although the works order had been raised on 4 April, there was a target date of 17 August 2017. This may have been a window of time, when it was expected that the work would be completed. The respondent had also included a copy of the works order together with a copy of the surveyor's report referred to above.
42. In the absence of additional information which confirmed the standard of the workmanship, the Tribunal reached its decision on the information before it.

The Decision of the Tribunal

43. The Tribunal carefully considered the oral submissions and documents provided by the applicant and the written documents and submissions provided by the respondent concerning the issue of the standard of the works. The Tribunal noted that it was agreed that the work had been completed. No issue was raised concerning the payability of the works, or the Applicant's compliance with section 20 of the Landlord and Tenant Act 1985. The main issue was the standard of work.
44. The Tribunal noted that the report of Paul Williams commissioned by the applicant stated that *that "following the installation of the new electrical metre tails, the electrician removed one of the MCB's from the fuse board and has covered the hole to the electrics with a piece of electricians tape."* In terms of required work he stated that -: *An NICEIC qualified electrician is required appointing to undertake a periodic test of the electrical installation and provide a detailed report of remedial works required.*
45. Based on this report it would appear that the major work, (so far as they interface with the respondent's premises) have not been carried out to

the required standard, and that remedial work is necessary in the premises.

46. The Tribunal noted that the respondent had made complaints about the effect of the work on the electrical in her flat in 2014, and that the inspection which took place in 2016 confirmed that the work had not been completed in her flat. In her statement the respondent stated that the applicant's contractors entered her premises and undertook works in her premises. The Tribunal considers that the execution of the work was not carried out to a satisfactory standard. The Tribunal makes this assessment on the basis that removing one of the MCB's and taping the hole cannot be considered completing the electrical work to a satisfactory standard.
47. Given this, although the Tribunal is satisfied that the costs of the major work is payable, the Tribunal finds that a reduction is due to the respondent on account of the standard of the workmanship and the length of time between the work being undertaken, and this matter being satisfactorily resolved. The tribunal has taken a global approach and assessed the reduction at 25% of the total costs of the work.
48. This assessment is based on the fact that the applicant could have resolved the respondent's complaints in 2014, and that although the report dated 2016, revealed that there was a need for a further inspection, up until April 2017, this has not been undertaken. The Tribunal acknowledges that there is and remains an obligation on the respondent to provide access to enable this matter to be resolved.
49. Accordingly the Tribunal finds that the sum of £3348.23 is payable the Tribunal finds that as the respondent has paid the sum of £1,511.68 the outstanding sum due is £1836.55.

Application under s.20C and refund of fees

50. At the hearing the Applicant indicated that the lease enabled the legal costs to be recovered by reference clauses 2.1 and 2.2 of the lease and in particular schedule 4, clause 8. The Tribunal is satisfied that clause 8 enables the costs to be recovered. However, given the findings of this Tribunal and the failure of the Applicant to address the respondent's complaint by inspecting and if necessary resolving the outstanding work to the electricals within the flat, the Tribunal considers it just and equitable to make an order. Accordingly none of the charges incurred for this hearing should be passed on as service charges.
51. The Tribunal having made its findings by way of this decision remits this matter to the county court in respect of any further action including any counterclaim or enforcement action.

Name: Judge Daley

Date: 12 June 2017

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

(1) 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 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).

of any question which may be the subject matter of an application under sub-paragraph (1).