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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference:	**LON/00BE/LSC/2017/0419**
Property	**21 Stansfeld House, Longfield Estate, SE1 5PP**
Applicant	**LIONEL TUN**
Representative	**In Person**
Respondent	**THE LONDON BOROUGH OF SOUTHWARK**
Representative	**Ms Jennifer Dawn**
Types of Application	**Liability to pay service and administration charges under Section 27A of the Landlord & Tenant Act 1985 and a Section 20C Costs Application under the same Act.**
Tribunal Members	**Judge Shaw** **Ms S. Coughlin MCIEH**
Venue of Hearing	**10 Alfred Place, London WC1E 7LR**
Date of Directions	**13th February 2018**
Date of Hearing	**26th and 27th March 2018**
Date of Decision	**3rd April 2018**

DECISION

INTRODUCTION

1. This case involves an application ("the application") made by Mr Lionel Tun ("the applicant") in respect of the property at 21 Stansfeld House, Longfield Estate, London SE1 5PP ("the property"). The applicant is the long leasehold owner of the property, the freehold of which is owned by the London Borough of Southwark which is and will be referred to as "the respondent" to this application. The property is one of 49 flats in this particular building which forms part of the Longfield Estate. The application is made pursuant to section 27A of the Landlord and Tenant act 1985, and the applicant seeks a determination from the tribunal as to whether an estimated service charge demand served upon him, is reasonable and payable pursuant to the provisions of the act. The sum estimated and claimed is contained in 2 invoices and totals £18,831.86. As the size of the demand indicates, the services concerned are major works which were carried out during 2015 and 2016 at the building of which the property forms part. The charges therefore in respect of which the tribunal has been asked to make a finding, are estimated charges; the final account has not yet been calculated nor served upon the applicant.

2. A case management conference took place in this matter on 13th February 2018 and the directions issued by the tribunal appear in the bundle prepared pursuant to those directions on page number 11-18. The applicant represented himself at the Case Management Conference, as he has at the main hearing before the tribunal. The respondent was previously represented by Mr Peter Cremin, an enforcement officer with the respondent, who has also attended the hearing before the tribunal. At the main hearing the respondent has been represented by Ms Jennifer Dawn, also an enforcement officer with the respondent. The various issues to be determined by the tribunal are listed at paragraph 5 of the directions. In the event there were some other matters which the applicant sought to raise at the hearing. Given that the applicant

represents himself, the tribunal has endeavoured to permit the raising of such further issues, subject only to significant prejudice to the respondent.

THE HEARING

3. Following upon the directions issued by the tribunal, the parties helpfully prepared a schedule in respect of the disputed items of service charge, which schedule appears on pages 28-30 in the bundle prepared by the respondent. The schedule contains 8 main items of challenge and the tribunal heard evidence and submissions from both parties in respect of these matters. Further, the tribunal heard some evidence from Mr Brian Checkley, who is a contracts manager with the respondent and who made a statement appearing at pages 169-170 of the bundle and Mr Phil Garriccio who is also a contracts manager, but with the contractor Keepmoat Ltd (which has a long term partnership agreement with the respondent). Mr Garriccio's statement appears at pages 171-172 of the bundle. Further, and with the consent of the applicant, the tribunal heard some evidence from Mr Daniel Simmons who is a building surveyor with Calford Seaden, which is a multi-disciplinary building consultancy, which scrutinised certain aspects of the project.

4. It is proposed to deal with the respective submissions and evidence put forward on behalf of both parties in summary form and in respect of each of the challenged items and in relation to these items to give the tribunal's respective findings.

WINDOWS

5. Part of the major works was the replacement of the windows at the building. The applicant contended that no such replacement was necessary, certainly in respect to the windows to his flat. In the context of his submissions in relation to the windows he made a general point, which was repeated in respect of several of the items that were challenged. The point was that *"I have little or no choice on the council's expenditure"*. He considered that in reality the respondent had carte blanche to carry out such works as it wished, without restraint in respect of either scope or cost. He said *"we are at the mercy of the council's decision."* He added that so far as he was concerned the building

generally and his property in particular had not benefitted in any significant way from these works.

6. In the light of this general observation, the applicant was asked whether, as part of the statutory consultation process (the completion of which was not challenged) he had registered his observations or objections in respect of the windows or any other matters. He told the tribunal *"I did not object because it would not have made any difference. It is a large estate and I am just one voice."*

7. More particularly, in respect of the windows, he said with the exception of the main window to his living room which he had replaced with a UPVC window some time ago, the other windows were of timber frame, double glazed, painted and maintained. They were in working condition and satisfactory. Secondly he said that he would have expected, if there were to be replacement, that economy of scale would have produced a more competitive price. He showed the tribunal an alternative quotation he had obtained for replacement windows in the order of £3000, as compared to the £3236 (before on costs and profit), he had been required to pay in the estimate from the respondent. Although these 2 sums are comparable he considered that given the size of the project, the respondent could and should have carried out the job more economically.

8. Finally, he said that even when replaced, the new windows had been problematic, in that he had some trouble opening and closing the windows, as did his tenants. Although those problems have now been overcome and dealt with, he registered that the quality of the work and materials so far as he was concerned, were not good, and indeed less satisfactory than had previously been the position.

9. By way of explanation of how the charge had been calculated, Ms Dawn on behalf of the respondent explained, that the charge isolated and extrapolated by the applicant from the calculation sheet relating to these works at page 129 in the bundle, was not arrived at by application of any particular percentage approach. Instead the familiar bed-weighting method had been used, which in this case involved a division of the cost by 294 multiplied by 7. This would not always therefore mean that there was a direct or exact correlation between the individual service supplied and the cost.

10. As to the objection that the work was not necessary, the respondent pointed to the fact that a feasibility report had been commissioned prior to the carrying out of the works, which was prepared a firm of surveyors called Blakeney Leigh Ltd, commissioned by the contractor Keepmoat Ltd. That report at pages 144-165 of the bundle. She made the point that the particular complaints of the applicant had not previously been raised, nor had he previously asserted that such work was not necessary. At page 151 in the bundle the feasibility report records at section 11.7 the detailed findings after inspection culminating in the recommendation that renewals are recommended and will be more cost effective than repairs. Also that the UPVC double-glazed windows will improve thermal efficiency.

11. That these works were proposed was clearly indicated in the S20 notice of intention appearing at pages 106-108 in the bundle. No objection was raised by the applicant. Ms Dawn explained that the partnership agreement with Keepmoat Ltd gives certainty as to charging, and part of the agreement is that those contractors will test the market to ensure that their pricing is in the appropriate range. Nobody else so far as the respondent was concerned had raised an objection to this work, and as indicated, this was the first time according to the respondent, in response to this application, that this objection was being heard.

12. The tribunal has to consider whether the amount claimed is a reasonable estimate for present purposes. No objection to the work was raised by the applicant, and the fact that his particular windows may or may not have required replacement is unlikely in any significant way to have impacted upon this estimate. Several times in the evidence the applicant made the point that his flat had not benefitted from these works certainly not to the degree of cost involved which he understandably, described as *"huge."* Unfortunately, from his point of view, that is not how his costs are calculated by reference to his lease, which is the yardstick, together with the Act which governs these costs. Whilst the tribunal hears what he says about his objections being perceived to be futile, the objection in this application would have been much stronger in weight, had he so objected because, amongst other matters, the respondent would have had to demonstrate in some way how due regard was had to his observation. Sadly, from his point of view, there was no such observation in the context of the consultation for which parliament has provided in the Act. Given the evidence of the respondent, and the detailed feasibility study recommending the renewal of these windows, the tribunal considers that the decision to replace cannot seriously be challenged for the purposes of the Act. Notification was duly given within the S20 procedure together with an opportunity to object, a separate feasibility study was carried out, and the cost arrived at was not outside the range that could be deemed reasonable. In all the circumstances and by way of estimate, this sum is allowed.

THE FRONT DOOR

13. At the directions hearing, it was recorded that this charge was not challenged by the applicant. However, at the hearing the applicant did seek to challenge this cost, and the tribunal allowed him to do so. Once again, his particular front door he contended, was unproblematic, and certainly had been replaced since he purchased the flat in 1991. He had received no benefit from the replacement door, which indeed had to be adjusted in some way, and although these matters have been dealt with, again he did not see himself as having benefited from this work in any way.

14. At page 151 of the bundle it is recorded in the Feasibility Study, along with accompanying photographs and a *'door schedule,'* that the front doors at the flats vary in condition. As indicated, there is a full photographic door schedule which has been attached to the report. The recommendation in the report is that door renewals or upgrades are carried out for the block due to the disrepair. There was a design criteria dictated by the layout of the flats on the upper floors which led to the recommendation that doors should be FD20 self- closing as a minimum standard.

15. It could well be that some of the doors in the building, the applicant's included, may have been functioning satisfactorily prior to these works. The question for the tribunal is whether or not this estimated charge is based upon a decision that within the provisions in the act can be regarded as unreasonable. Clearly the feasibility study speaks, as it were, of a mixed bag; there would have been scope for any individual leaseholder to represent to the respondent that his or her door did not need replacement. The applicant did not do so in this case, and it seems from the evidence before the tribunal that the decision to accept the feasibility study in this regard cannot be seriously criticised. This sum is allowed as estimated.

COMMUNAL WALKWAYS

16. The applicant's main point in this regard was that there is virtually no difference from a functional point of view between the walkways before and after the work. He produced photographs for the tribunal, replicated by photographs from the respondent, indicating that there is some pooling on the walkways after it rains. He made the point that the photographs were taken some days after the rain.

17. On behalf of the respondent, it was said that the purpose of this work was not to resurface in such a way as to alter the camber of the walkways, but to apply a new waterproof coating. This evidence was expanded upon by Mr Checkley, in evidence, who added that although some minor imperfections in the original surface might be dealt with, the coating would otherwise follow the

existing surface. The estimated proportionate cost of this work for the applicant is £483.44.

18. The tribunal has seen photographs of this limited work. It is satisfied that the estimated cost is reasonable for the work carried out. The work is in fact less in extent and nature than had originally been proposed. This sum is allowed as a reasonable estimate. The tribunal would however note that the evidence relating to the costs of this work was unimpressive, in that the original revised proposal appears at page 132 in the bundle. The reduced work is specified at page 140. However, that description does not properly correlate to the work that was in fact carried out. It seems unfortunate given the level of supervision of professionals in this case, that that had not been corrected before coming to the tribunal.

COMMUNAL ELECTRICAL WORKS

19.The applicant challenged the estimate, describing it as *"what seems like a high cost"*. He said that his main point was, that there was no evidence to support the need for and cost of these works. In response, the respondent said that this was not the case, and referred the tribunal to pages 130-142 in the bundle, the revised specification of works and especially to page 135. Ms Dawn told the tribunal that the works were properly documented and particularised in the specification and there was reference to an electrical report which had been commissioned in respect of the installation condition. Although not in the bundle, a copy of the report was obtained; it is made by an approved electrical contractor and has itself been reviewed and confirmed by a registered qualified supervisor of the contractor. The report itemises by reference to 3 particular codes parts of the installation that are regarded to present as either *"danger present'*, *'potentially dangerous'* or *'improvement recommended'*. The report runs to 10 pages and itemises in great detail the installation at the building. With one or two exceptions the report indicates that works are "*recommended*" in the manner in fact ultimately carried out. The applicant commented that there was neither actual nor potential danger in the existing

installation, and therefore questioned whether it was reasonable to carry out this work as part of the major works.

19. Once again, the statutory criteria by which the tribunal is obliged to test the estimated charge made, is by reference to reasonableness. Given that the respondent had a clear recommendation from qualified practitioners saying in terms that these detailed works were recommended, it is difficult for the tribunal in the absence of any other evidence to conclude that there was something unreasonable about their decision in this regard. There was no particular alternative evidence either as to necessity or cost for the tribunal other than the applicants generalised assertion that *"this seems high"*. On the evidence before it, this seems to the tribunal again to be a reasonable estimate of costs, which were themselves were reasonably incurred.

PAINTING AND DECORATION WORKS

20. By reference to the schedule, the cost incurred for the applicant was £610 for these works. He sensibly told the tribunal that he did not want to spend a great deal of time on this category of work, but that in general terms the property looked no different to him after the works as compared with before.

21. On behalf of the respondent it was said that at the directions hearing the applicant had accepted that these works were carried out and to a reasonable standard. In fact, there were no external redecoration works other than to some areas of repaired concrete and balcony soffits, and painted railings. The mere fact that these may not be apparent immediately upon looking at the property is not compelling evidence for disallowing the charge made in the estimate. The tribunal agrees with this contention and this sum is regarded as reasonable.

ROOF, DRAINAGE, RAILINGS, RE-POINTING AND REPAIR OF DAMAGED BRICKWORK.

22. Whilst accepting that there had been a history of problems in respect of drainage at the property for over a decade, the applicant told the tribunal that again, in a sense in a similar fashion to some of his earlier challenges, there appeared to

have been no improvement or major changes after the work had been carried out. He did not challenge that the work in question that has been itemised in the schedule at page 29 had been carried out. That work included repairs to tiles on the pitched roof, patch repairs to downpipes together with jetting, de-scaling and clearing gullies, some provision for repairs to structurally unsound balustrades and, where needed, re-pointing and repair of damaged brickwork. The point was made by the respondent both in writing and orally, that the access balconies and walkways are open to the elements and in particular to rainfall. This design feature accordingly requires periodic maintenance. If it be that there are continuing leakages then the contract remains within the defect period, and these matters could and should be bought to the attention of the respondent by the applicant for remedy. The sum is allowed as estimated.

SCAFFOLDING

23. Scaffolding was installed at the property for the purpose of installation of the new windows, as required by health and safety regulations. The challenge by the applicant was that the cost to him, £2,089.93, was disproportionately high, and he queries whether the scaffolding was in situ for an unnecessarily long period. The explanation given on behalf of the respondent, which is accepted by the tribunal, is the fact that the period for which the scaffolding was in place, has no bearing on the cost to the applicant. The cost of the scaffolding is part of the overall price and is calculated in accordance with rates forming part of the partnership agreement; the cost is independently checked and is not time specific. The applicant responded to this on the basis that if this be so, it must be that the rates are boosted by the fact that there is no particular time constraint.

24. The tribunal has no particular evidence before it to challenge this cost or the rates used. The mere assertion that the cost seems high, as under other heads is not forceful unless and until supported by some confirmatory evidence. Whilst the tribunal does not interfere with this estimated charge, it would make the observation that having been told during the course of the evidence that scaffolding was in place for 9 months, this would seem to be a period of time during which the contract works, and perhaps some other works could have been carried out. In other words,

given that the scaffolding was in place for this period, its presence could usefully been exploited to carry out other high level work which may have been needed, either at the time, or in the foreseeable future. If this should prove the case, upon which the tribunal cannot comment at this stage, then it is possible that this may have a bearing on future major works, which require the erection of fresh scaffolding. On the evidence before it, the estimate as charged does not seem unreasonable to the tribunal.

MISCELLANEOUS CHARGES

25. The applicant challenged two forms of additional charges, that is to say professional fees at 8.08% and administration fees at 10%. Dealing with the first of these, the tribunal was informed on behalf of the respondent by Mr Daniel Simmons of Calford Seaden, that his firm, and he in particular, albeit at a later stage, was employed as an independent consultant to oversee Keepmoat, the building contractor, on behalf of the respondent. He told the tribunal that once the Feasibility Report is commissioned and produced, his firm co-ordinates between the respondent and the contractor and produces a task order price. His firm checks the rates and scrutinises quantities and cost. He said that this often involved as he described *"quite a bit of to-ing and fro-ing."* His firm then administers the contract through a building surveyor, quantity surveyor and clerk of works. It is his firm which certifies payments and the completion certificate. It also deals with questions of snagging and oversees the final account. Given the scope of work and the major nature of the works, the tribunal did not consider this percentage unreasonable. Mr Simmonds was tested by the applicant as to his independence. He readily accepted that he had not been appointed by the leaseholders themselves, but nonetheless said that his firm is governed by its professional body and code of conduct. The inference was that it is not the firm's practice to give prejudiced or unprofessional advice, and there was certainly no proper evidence to support any such conclusion. The sum is allowed as an estimated sum.

26. The challenge from the applicant to the administration fee of 10% was to the effect that *"I think that 10% is rather high."* In effect he queried why such a charge should be made at all, and wondered why such administration as might be carried

out by the respondent, was not already catered for in the borough's council tax. On behalf of the respondent the tribunal was told that in fact projects of this kind are administered from a specially designated housing revenue account, which is ring-fenced for such purposes. From this account all incidental costs occurring in the carrying out of the works are funded. The income for the account is from rent and service charges. This specific proportion of fee is fixed by the lease into which the applicant freely entered. This can be found at page 84 in the bundle and is paragraph 7(7) of the Third Schedule to the lease. For the reasons given on behalf of the respondent, it seems to the tribunal that the percentage is contractually provided for in the applicant's lease, and the incidental costs of administration are funded from a dedicated account containing rent and service charges. The sum is allowed as an estimated sum.

CONCLUSION

27. For the reasons indicated, the tribunal is satisfied that the sum has been estimated reasonably and is recoverable and reasonable as an estimated sum. The tribunal is well aware that this conclusion will be an unhappy one from the point of view of the applicant. However, the tribunal is compelled to approach this case by reference to the statutory provisions, and it seems to the tribunal that the process has been meticulously followed by the respondent in the case, it has been overseen in terms of quantum and necessity by an appointed external consultant, the work was preceded by a feasibility study and followed in large part the recommendations in that study and, in addition, the sum claimed although undoubtedly high, is less than was originally indicated in the original notice. It should be stressed that this is a finding in respect of estimated costs only. Should it come to light, when the bill is made final, that there are grounds supported by evidence upon which the applicant can rely to challenge the final bill, such challenge remains open under Section 27A of the Act. This could include issues relating to the quality of the work which was carried out which the tribunal could not consider in relation to an estimated charge.

SECTION 20C APPLICATION

28. The applicant sought an order under this section precluding the respondent from recovering its costs of the application. The respondent confirmed that it would not be seeking such costs in any event, and accordingly the section 20 order is made as requested by the applicant.

29. The Tribunal was informed by the parties that endeavours will be made to explore the manner in which this large sum may be paid, and will revert to the Tribunal in this regard, either with confirmation that agreement has been reached, or with a request for such further order as the Tribunal has power to make, to assist in this respect.

JUDGE SHAW **3rd APRIL 2018**