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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT COMMITTEE

IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 AS AMENDED

CASE NUMBER	:	LON/00AE/LIS/2006/0145
IN THE MATTER OF	:	843A HARROW ROAD WEMBLEY HAO 2NY
PARTIES	:	LONDON BOROUGH OF BRENT Applicant
		Ms DONNA NEVINS Respondent
Appearances	:	
For the Applicant	:	Miss S Werder Solicitor for Brent Housing Partnership
		Mr S Gillam BSc (HONS) Building Surveyor for the Applicant
		Miss A Fife Senior Leasehold Officer
For the Respondent	:	Miss Nevins in person
Committee	:	Mr A A Dutton Chair Mr M Matthews FRICS Mrs R Turner JP
Date of Hearing	:	02 April 2007
Date of Decision	:	26 April 2007

DECISION

A. BACKGROUND

1. This application came before us as a result of transfer from the Willesden County Court by an Order made on 27 November 2006 when judgment was given to the Local Authority in the sum of £5,542.79 with the remainder of the claim remitted to us for consideration.

2. In the claim made before the Willesden County Court the sum sought, excluding interest, was £25,410.28. As a result of admissions made in the witness statement of Mr Sean Gillam dated 16 March 2007 the total amount the Applicant sought from the Respondent was reduced to £19,480.05.

3. The dispute relates to the cost of the major works carried out in 2001 and 2002 and the standard of those works. Although there was initially an indication there may be some dispute as to whether or not the Applicant Council had followed the s20 procedures, under the Landlord and Tenant Act 1985 ("the Act") Miss Nevins confirmed that she was not pursuing that matter.

B. EVIDENCE

4. As well as hearing from Mr Gillam and Miss Nevins we had before us a bundle of documents containing, amongst other things, Miss Nevins' lease, the court papers, Miss Nevins' Statement in reply with the Applicant's answer thereto and the witness statement of Mr Sean Gillam. There was also a bundle of documents provided in respect of Miss Nevins' purchase of the flat under the Right to Buy legislation and details of the major works carried out in 2001/2002. We noted the relevant documentation. We were also helpfully provided with photographs of the block taken in November 2000 and further copies taken following completion of the works which are the subject of this dispute.

5. On behalf of the Applicant, Miss Werder raised an initial issue concerning documentation which had been requested by Miss Nevins in respect of a property at 389-423 Kenton Road where it appeared similar works had been undertaken. Miss Nevins appeared to rely on this as indicating that she was paying more than she should for the works being carried out at her property. Apparently the leaseholders of the property in Kenton Road faced bills of just under £9000. We were told by Miss Werder that the property was different, there were different circumstances and the works were not identical. On this basis the documentation was of no assistance to us.

6. Miss Werder then went on to tell us that the works to the subject property started in 2001 and were completed in 2002. She believed that Miss Nevins real complaint was that the works were carried out beyond the timescales as provided for in the notice given under s125 of the Housing Act 1985 and that it was unreasonable for her to have to pay this money. She confirmed that the sum of £19,480.05 was still outstanding and that no payments had been made towards these costs notwithstanding that the work was undertaken a number of years ago.

7. We then heard from Mr Gillam who told us that he was not involved in the works and that the information he had been able to retrieve was from files. Matters were not helped by the fact that between the works being completed and this case arising the responsibility for the issue had been transferred to the Brent Housing Partnership. We noted the contents of his witness statement. He was asked to comment on the different costings between the block of flats in which Miss Nevins property was to be found and a neighbouring block in what was termed the Gauntlet Court development, which were flats 833-837 Harrow Road. He pointed out that the other block had not had the roof replaced although he did concede that the block appeared to be larger and may therefore have incurred some additional costs, for example in the replacement of fascias. He also expanded on the 15% administration charge which had been levied and which was he told us was divided as to half for Amey the Contract Administrator and the other half for the Applicant for dealing with, amongst other issues, the s20 Notice and preparation of the final accounts. It was felt that a 7.5% charge for the Local Authority was reasonable and the Council relied on the terms of the Lease to recover the charge.

8. In response Miss Nevins produced some further photographs which showed that her flat did appear to suffer from some form of condensation difficulties particularly in the bedroom and she also highlighted that, certainly to flat 841A, the "A" had fallen off and that in her view some of the windows and the main doors did not close properly. She queried some of the work that was claimed indicating that she felt the brickwork had just been cleaned and some re-pointing had been done but not sufficient to justify the charges made in that regard.

9. It was agreed during the course of the hearing that the Local Authority, at no charge to Miss Nevins would inspect her flat to see if the problems with what appeared to be condensation in her main bedroom, could be addressed.

10. Her main complaint however was that she could not afford the cost of the works. When she had acquired the flat the notice served at the time indicated that the prospective costs would

be in the region of £6,000, to include some roofing works. She was concerned that she now faced a bill of some £21,000 and that the problems she was suffering from with her bedroom ceiling appeared to indicate that the re-roofing works were defective. She did however concede that the block did look better and that her windows and doors, which had been replaced, worked satisfactorily. She was happy with the level of decorations. What she could not come to terms with was the fact that the work had, in her terms, been "foisted" upon her. She made the point that if she had bought a freehold property she would be able to decide when the works were carried out and at what price and not be forced to accept these works and be expected to find the funds to pay for them. She told us that when she had purchased the lease under the Right to Buy Scheme in 1994 she had concluded that the works which were set out on her Notice would be carried out within the five-year period and not within two years of that five year period expiring.

11. At the conclusion of the hearing the Council indicated that they intended to recover half the fees for these proceedings which totalled £222.75 through the service charge regime. Miss Nevins objected to paying that and she thought it unfair that the other leaseholders would also have to pay a share. We were told that there would be no fee claimed for the attendance of Mr Gillam.

C. INSPECTION

12. As a result of the helpful photographs provided by the Council on a before and after basis, and the photographs Miss Nevins provided and her confirmation that she did not believe that an inspection would facilitate our decision making process, we concluded that an inspection was not required.

D. THE LAW

13 The law applicable to this application is to be found at s27A of the Landlord and Tenant Act 1985 as amended. It requires us to determine the amounts to be paid, by whom, to whom and other factors that we have taken into account when reaching our decision.

E. DECISION

14. On the documentation we had before us there appears to be no doubt, and indeed is not challenged, that the procedures under s20 of the Act were followed. It seems that Miss Nevins may have just been outside the month consultation period when she raised queries but it is also clear from the documentation that those queries were addressed even if Miss Nevins may not have liked the response she received.

15. We are also satisfied from the evidence given by Mr Gillam that the works were required and needed to be done at this stage. By virtue of the fact that the Council has followed the s20 procedures it seems to us that in accepting the lowest estimate they have established that the costings are reasonable. The tender documentation was before us and was considered and it did not seem that there was anything untoward. Further it is clear from considering the photographs taken in November 2000 and those taken since the works were completed, that there have been substantial improvements to the block in question. The entrance doors are much improved and the property does have the benefit of double-glazing. The internal decorative works to the common parts appeared to be carried out adequately as did the external works. On that basis therefore we find that the costs incurred in connection with these major works are reasonable and we are satisfied on the evidence before us in the form of the statement from Mr Gillam and the other documents within the bundle that the works were carried out satisfactorily and were required. Indeed Miss Nevins makes no real challenge to the standard of the work accepting that it has improved the look of her block.

16. We concluded that the Management fees at 15% divided by the Amey Property Services and the Council are reasonable given the scope of the works and the supervision that would be required.

17. We do however have some sympathy for Miss Nevins in the position in which she finds herself. She was encouraged to pursue the Right to Buy provisions by virtue of the s125 Notice and within two years of that protection expiring was facing potentially large bills for work to her property. However as Miss Nevins has probably now appreciated, acquiring a leasehold interest is not the same as owning a freehold property and it is clear that the Local Authority has complied with the terms of the lease in carrying out these works and that Miss Nevins is obliged to make the contribution due. We find therefore that she must pay to the Local Authority the sum of £19,480.05. We do hope that she and the Local Authority can come to terms as to how that sum is paid although it is appropriate to note that Miss Nevins has not made any contributions to the costs in the three or more years since the final invoice was rendered and nor has she satisfied the judgment.

18. On the question of costs, whilst we would not find that the sum claimed by the Local Authority was unreasonable, we cannot see any provision within the terms of the lease that would enable them to recover this sum. Miss Werder referred us to paragraph 14 in the Third Schedule which contains the lessees covenants. However this clause in our finding relates solely to the preparation of and service of s146 notices under the Law of Property

Act 1925 and is not, in our interpretation of the clause, intended to include costs incurred in these proceedings. Accordingly for the avoidance of doubt we make an order under section 20C of the Act that the costs of these proceedings shall not be recoverable as a service charge.

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Chairman

Dated 26 April 2007