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**LEASEHOLD VALUATION TRIBUNAL**  
**FOR THE LONDON RENT ASSESSMENT PANEL**

LON/00BE/LSC/2009/0538

**Landlord & Tenant Act 1985 (as amended) Section 27A and 20C**

**Property:** 81 Pynfolds Estate, Jamaica Road, London SE16 4NX

**Applicant:** Mr B. Hemmes (Leaseholder)

**Represented by:** In person

**Respondents:** London Borough of Southwark (Freeholder)

**Represented by:** Ms E. Sorbjan, Litigation Officer, London Borough of Southwark

**Also Present:** Ms E. Amaritefe; Project Manager, London Borough of Southwark

**Hearing:** 25<sup>th</sup> February 2010

**Members of the Tribunal:**

**Mr L. W. G. Robson LLB(Hons) (Chairman)**  
**Mr P. S. Roberts DipArch RIBA**  
**Mr L. G. Packer**

**Preliminary**

1. The Applicant leaseholder seeks a determination under Section 27A of the Landlord & Tenant Act 1985 (as amended) of reasonableness and liability to pay estimated service charges of £3,315.53 relating to major works completed in 2009, (but no final account has yet been completed) pursuant to a lease ("the Lease") dated 22<sup>nd</sup> November 1982.
2. Pursuant to Pre Trial Directions given on 22<sup>nd</sup> September 2009 and on 20<sup>th</sup> October 2009, the case was finally heard on 25<sup>th</sup> February 2010. The Respondent successfully applied for an adjournment for more time to produce documents on 20<sup>th</sup> October. The Respondent only complied with Directions in early December. The Applicant successfully applied on 4<sup>th</sup> January 2010 for further time to send his detailed Statement of Case by 14<sup>th</sup> January 2010, but a postponement of the case was refused. The Applicant unsuccessfully applied for a further postponement on 5<sup>th</sup> January 2010. The Applicant did not produce a Statement of Case for the hearing.

### Hearing

3. The Respondent had made written submissions before the hearing, and made further oral submissions at the hearing. The Applicant made oral submissions at the hearing. From the papers the Tribunal agreed with the Applicant that the matters in dispute were:
  - a) The Section 20 Notice procedure
  - b) Costs of Concrete Repairs
  - c) External repairs – cost and quality
  - d) Bird Control netting – unnecessary work
  - e) Scaffolding – cost £25,000
  - f) Professional fee for contract administration 8.65%
4. The Applicant stated that certain documents relating to other blocks had been withheld by the Respondent which related to the concrete repairs, although the Respondent disputed this. The Applicant considered that he had served his statement of case on 7<sup>th</sup> January 2010, but inspection of the document disclosed that it was a letter of complaint about the Respondent's conduct. The Respondent stated that it had not considered the letter of 7<sup>th</sup> January 2010 to be a statement of case and therefore not prepared a Response. The Tribunal considered there had been considerable misunderstanding over the documents but decided that the papers in the bundle presented to it contained sufficient information to proceed with the case, particularly as the demand was still only based on an estimated amount. The Chairman then adjourned for a short period to allow the parties to negotiate, but they returned to state that they wished to proceed with the case.
5. The Applicant confirmed that he accepted that the terms of the Lease entitled the Respondent to levy the estimated service charge.
  - a) The Section 20 Notice Procedure
6. Ms Sorbjan submitted that the procedure had been correctly followed, and outlined the timetable and procedure adopted, referring to relevant items in the bundles. The Notice of Intention had been served on 20<sup>th</sup> September 2007 and the Section 20 Notice on 6<sup>th</sup> March 2008. At that point the Applicant was informed of the estimated costs. Two public meetings had been held, both within the consultation periods. No observations had been received from Mr Hemmes during that process. He had written a letter in December 2008 but it had been treated and answered as a "Stage 1" complaint and was answered on 22<sup>nd</sup> December 2008. Other correspondence and emails had followed.
7. Mr Hemmes agreed that he had received the notices. He accepted that the work needed to take place. He had only started to question things when work commenced on site. Seeing what he felt were poor standards of workmanship and supervision he had started to complain.
8. The Tribunal carefully considered the evidence. Mr Hemmes did not appear to be challenging the Section 20 Notice procedure itself, and the Tribunal noticed no irregularities. The Tribunal decided that the Section 20 Notice procedure in this case was valid.

The Items of work questioned by the Applicant

9. The Tribunal emphasised that the issue which the Applicant had brought to it was the estimated sum demanded by the landlord, the final demand had not been presented to the Applicant. Therefore the question which the Tribunal considered was the reasonableness and payability of the amounts sought, as *interim estimates*. The Tribunal did not have before it the final demands, so it could not, and did not consider any criticisms the Applicant might have of the work as carried out. Those questions, if the Applicant had them, were issues which it was open to him to bring to the Tribunal, as and when the landlord presented the final demands.
10. The Applicant said that he understood the situation, and noted his right to return to the Tribunal and challenge the reasonableness and payability of the final service charge demands.

b) Costs of Concrete Repairs

11. Mr Hemmes in his application had queried the concrete cost. He considered the cost estimate too high at £38,067.75. He considered that £5,000 was reasonable. At the hearing he stated that he had originally thought the areas of work were over specified. He had now been able to get to grips with the documents.
12. Ms Sorbjan submitted that the extent of the concrete repairs had been identified from previous experience with other similar 1960s blocks, and similar contracts. A provisional estimate of 300 square metres had been made. The actual areas of repair had been remeasured and adjustments would be made for these in the final account. The concrete cost included the cost of protective coatings. There had been some brick rendering, and repairs also joinery repairs included in that section. In response to questions from the Applicant, Ms Sorbjan explained that the reason a large amount had been added to the concrete costs for paint was that it was in fact a specialist protective coating. This could be seen at p.441-446 of the Bills of Quantities.
13. The Tribunal noted that Mr Hemmes, having looked at the documents and heard the explanation, did not apparently challenge the concrete estimates. The process used by the Respondent to prepare the estimate seemed reasonable. The Tribunal therefore decided that the estimate for concrete repairs was reasonable.

c) External Repairs – cost and quality

14. Mr Hemmes in his application submitted that the costs appeared too high for the extent of the works carried out. He considered that the work done was poor, with flaking paint probably due to poor preparation and bad quality paint used.
15. Ms Sorbjan noted that the specification was in the bundle, with prices. There had been no “pre condition survey”. The Defects Period continued until June 2010.

16. The Tribunal noted the Applicant's concerns about the work actually done, but again stressed that either party was entitled to apply to the Tribunal once the final account had been issued. The sum was reasonable as an estimate, and defects could still be rectified under the defects liability in the contract without further charge.
- d) Bird Control Netting – unnecessary work
17. Mr Hemmes submitted in his application that the cost of the bird netting (£6,600) was totally unreasonable. It may not have been necessary as residents had had the option to have it or not. At the hearing he submitted that the cost was still too high, but agreed that it could be adjusted in the Final Account.
18. Ms Sorbjan in answer to questions, agreed that the bird netting was an improvement, but referred to the Lease, Clause 7(6), of the Third Schedule which she submitted gave the Respondent power to carry out improvements. The provision of netting had been voted for by a majority of residents.
19. The Tribunal decided that the estimate for the cost of bird control netting was reasonable, taking into account that the cost could be adjusted in the Final Account
- e) Scaffolding
20. Mr Hemmes in his application submitted that the estimate of £25,000 was too high. The cost was spread across all items of work irrespective of whether they required scaffolding or not. The costings were distorted. At the hearing he submitted that he had not been able to compare the scaffolding costs with other blocks. If it had been a 10 week job, as it should, the cost would have been cheaper.
21. Ms Sorbjan submitted that although for internal purposes the cost of scaffolding was spread across different items, in the specification it was clear that there was only one item. In answer to questions she submitted that the block had to be fully scaffolded to reach balconies, some of the brickwork, and rainwater goods. The cost was the same as other blocks, and this could be seen at pages 410 and 425 of the bundle. Also Mr Hemmes would be able to see the final account and see this item.
22. The Tribunal decided that the estimated cost of the scaffolding was reasonable in the light of the evidence submitted.
- f) Professional Fee for Contract Administration
23. Mr Hemmes believed that the level of fee was too high for the actual quality of the supervision which he believed had taken place. Ms Sorbjan in answer to questions confirmed that SBS was an "in-house" organisation, but it had tendered for the work along with outside organisations.
24. The Tribunal noted that the matters complained of again related to the nature of the administration work actually done, rather than the estimate. The Tribunal considered that the fee of 8.65% was well within the range it would

have expected for this type of work. The Tribunal decided that the fee was reasonable as an estimated cost.

### **Costs and Fees**


#### **Section 20C**

25. Ms Sorbjan stated that the Respondent would not seek to recover the costs of the application through the service charge. Following that statement, the Tribunal formally made an order under Section 20C to limit to nil the landlord's costs of these proceedings being added to the service charge.

#### **Reimbursement of Fees (Para 9)**

26. Mr Hemmes submitted that if he had been able to obtain the required information from the Respondent he would not have had to make the application. The Respondent needed to be called to account for the way the work was done.
27. Ms Sorbjan submitted that the Applicant had no need to come to the Tribunal. She referred us to various items of correspondence in the bundle. The Applicant had not come to view documents when they were specifically made available, and had not replied to letters. She submitted that the Respondent's application was premature.
28. The Tribunal considered that the Applicant had been premature in his application, given that his complaints mostly concerned work carried out, rather than the estimates, and he had not taken advantage of opportunities to view information. The Tribunal decided to make no order for reimbursement of his fees.

Signed: .....

  
Lancelot W.G. Robson  
Chairman

Date: 2nd April 2010

### **Appendix**

#### **Landlord & Tenant Act 1985 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 would be payable, and*
- e) the manner in which it would be payable*

*(4) – (7).....*

### **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 leasehold valuation tribunal, or the Lands 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).....*

*(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances.”*

### **Commonhold and Leasehold Reform Act 2002 Schedule 12**

#### **Paragraph 9**

*“(1) Procedure regulations may include provision requiring the payment of fees in respect of an application or transfer of proceedings, or oral hearing by, a leasehold valuation tribunal in a case under-*

- (a) The 1985 Act (service charges and appointment of managers)*
- (b) – (e) .....*

*(2) Procedure regulations may empower a leasehold valuation tribunal to require a party to proceedings to reimburse any other party to the proceedings the whole or any part of any fees paid by him*

*(3) The fees payable fees payable.....shall not exceed-*  
*(a) £500....”*