

9455



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

**Case Reference** : **BIR/00CN/LIS/2013/0021**

**Property** : **Flat 2, 106 Tedbury Crescent,  
Erdington, Birmingham B23 5NG**

**Applicant** : **Trudi Maybury**

**Representative** : **None**

**Respondent** : **Birmingham City Council**

**Representative** : **Ms Kiteley, Solicitor**

**Type of Application** : **Application for a determination of  
liability to pay and reasonableness of  
services charges under sections 19  
and 27A of the Landlord and Tenant  
Act 1985**

**Tribunal Members** : **Judge C J Goodall LLB MBA  
Mr D Satchwell FRICS  
Mr N Wint BSC (HONS), ACI Arb,  
FRICS**

**Date and venue of  
Hearing** : **17 October 2013 at Priory Court,  
Bull St Birmingham B4 6AF**

**Date of Decision** : **29 OCT 2013**

---

**DECISION**

---

© CROWN COPYRIGHT 2013

## **Background**

1. On about 17 November 2011, Mrs Maybury (“the Applicant”) received a letter from Birmingham City Council (“the Respondent”) telling her that she owed them £1,211.50 in service charges. The invoice accompanying the letter said the cost was for work on the roof, soffits and fascias of her property plus repairs and scaffolding. The Applicant has not paid this invoice as she says the work has not been done. She tried to persuade the Respondent this was the case, but to no avail, and so she has brought this case to ask the Tribunal to decide whether this bill is payable.
2. The Tribunal heard this case on 17 October 2013 at the Tribunal Hearing Suite in Birmingham. The hearing was preceded by an inspection, attended by the Applicant, the Tribunal, and Mr Thomas Taplin and Mrs Karen Nicholls for the Respondent. At the hearing the Respondent was represented by Mrs Kiteley, a solicitor from the Respondent’s in-house legal department.

## **The Property**

3. 106 Tedbury Crescent is a semi-detached two storey property of traditional brick construction with tiled roof, built in 1929. It was converted into two flats (one lower storey, one upper storey) in about 1975. There is a small single floor extension at the rear of the property. The Applicant is the leasehold owner of the upper flat, by virtue of a lease dated 11 November 1996 for a term of 125 years, which is a right to buy lease under the Housing Act 1985.
4. At the inspection, the Tribunal noted that the soffits and fascias were in PVCu, which appeared to overclad the previous materials. The guttering around three sides of the property was plastic with one plastic downpipe serving the rear extension. There is a partly rendered surface at first floor level on the front elevation. All windows are in PVCu. There is a side path with a gate, which is painted with a wood stain. There are two downpipes on the side elevation which are painted cast iron for the lower section of approximately two metres and plastic above.

## **The scope of the works covered by the invoice**

5. It was the Respondent’s case that the following works had been carried for which the sum of £1,211.50 was payable:

Replacement of guttering  
Replacement of soffits and fascias  
Painting of a small canopy over the front access doors for the flats  
Painting of the rendered area on the front elevation  
Staining of the side gate  
Painting of the lower section of the downpipes  
Repairs (not specified)

6. The cost of these works alone was claimed as £597.22. In addition to the cost of those works, the Respondent claimed the cost of scaffolding to carry out the works (£329.20), and on-costs of 18.882% (amounting to £174.93) and a 10% management charge under the lease (£110.13) totalling £1211.48 which was rounded up to £1,211.50.
7. On 15 October 2013, the Respondent informed the Tribunal that it conceded that the costs of repairs and painting were not recoverable from the Applicant. The only repairs now claimed were for the guttering and the soffits and fascias. This resulted in a reduction in the amount claimed for works of £205.87, a reduction in the on-cost of £38.87, and a reduction in the management fee of £24.47. The total reductions were therefore £269.21, making the amount due £942.27.
8. At the commencement of the hearing, the Respondent said that the amount initially claimed for the scaffolding had been incorrectly calculated. The correct figure should be £312.50, not £329.20. This resulted in the claim now being for £391.35 for cost of the gutters, soffits and fascias, £312.50 for the scaffolding, on-costs of £132.90 and a management fee of £83.67. The new total was £920.42.

### **The law**

9. Section 19(1) of the Landlord and Tenant Act 1985 Act (“the Act”) provides that:

“Relevant costs shall be taken into account in determining the amount of the service charge payable for a period –

- (a) Only to the extent that they are reasonably incurred, and
- (b) Where they are incurred on the provision of services and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.”

### **The Applicant’s case**

10. The Applicant said that the soffits fascias and guttering were replaced in 2001. At that time she said her windows were also replaced with PVCu windows. She produced a letter from the Respondent, who despite her Right to Buy purchase remained responsible for repair of the exterior structure, dated 7 February 2001 confirming the report of a repair request relating to “Front elevation repair timber window frame”. The letter said an inspector would visit to find out what repair was needed.
11. The Applicant also had a further document dated 14 February 2001 which appears to be a report of a visit by a Mr Carter to look at the repair which had been requested. There are three items specified on the report, being:

Renew fascia etc  
Vent to roof Reg 7  
Clean out gutter throughout

12. The Applicant recalled that works were carried out in 2001, and she said that the windows, soffits and fascias, and guttering were replaced at about that time. She gave an account of the scaffolding system used. She said a two tower system was employed with planks placed between the towers to span the area requiring work. She said she thought the works might have been to do with her purchase, as defects at the property had been identified by her surveyor. She was not entirely sure though on that point, though she was sure that the works had been carried out in about 2001.
13. The Applicant produced a photograph taken on 29 August 2006 of the front of her house. She said she took it then because she had had the front gates replaced and took the photo to show the work. The Tribunal was shown the Applicant's computer with the photo dated 29 August 2006. The photo appeared to show that the soffits fascias and guttering were PVCu. The Respondent did not challenge the date or accuracy of the photo.
14. The Applicant said she had no recollection of works being carried out either in 2008 or in 2010. She said she had been away a fair bit in 2010 as her sister had been ill. But she never noticed during that time that any works had been carried out, or that her house had been scaffolded.

#### **The Respondent's case in relation to the date of the works**

15. The Respondent's bundle of documents showed that works might have been carried out to the property on two occasions. On 24 January 2008, a section 20 consultation notice was sent to the Applicant informing her of proposed works which were described in general terms being "as appropriate per property, installation of PVCu double glazed windows, replacement of gutters, rainwater pipes, soffits and fascias, painting / repair of remaining timbers and masonry, erection and dismantling of scaffold."
16. There is a handover sheet suggesting that painting works were carried out in about April 2008. The cost of these works, of course, are no longer claimed by the Respondent (see para 7 above).
17. The second occasion when the Respondent says works were carried out is in 2010. Again, a s20 consultation notice in very similar terms to the 2008 notice was sent to the Applicant (though she has no recollection of receiving it) on 26 January 2010. Then, it is said that works were carried out on about 24<sup>th</sup> or 25<sup>th</sup> June in that year. This is evidenced by a handover sheet. This is a Birmingham City Council document. It is completed by a main contractor, which is Tomlinsons, who had been appointed as a long term contractor for the provision of building works to the Respondent's housing stock. Tomlinson's appear to have sub-contracted the work at the property to Bowater, who have described the work by referring to materials presumably supplied, being "cappit", "vented soffit", "gutter" and

“downpipe”. A “start date” of 24 June 2010 is given with a “handover date” of 5 July 2010. The sheet is signed as inspected by “MW”. Mr Taplin, the Respondent’s Contract Team Manager, said this would have been an employee of Tomlinson, and he does not know to whom it refers. There is a box in which the words “not inspected” are printed. Mr Taplin said this would be marked in some way if the Respondent had not inspected the works, and the box is not marked. The Respondent does not routinely inspect on every handover sheet. There is then a signature box in which the words “I confirm handover” are printed, with a space for a signature. This box is signed. Mr Taplin recognised the signature as that of Mr David A Smith, who worked for the Respondent at that time.

18. When questioned by the Tribunal, Mr Taplin accepted that he could not categorically state that Mr Smith had carried out an inspection. The paperwork suggested he had, but there was no other corroboration of that. Mr Smith no longer works for the Respondent and no attempt had been made to ask him about the matter for this case. No evidence was adduced from the main contractor or the sub-contractors who are said to have actually carried out the works.
19. Mr Taplin said that the nature of the existing soffits and fascias were consistent with them having been fitted recently, as the PVCu has maintained a shine and the black guttering looks clean. He did however accept that the soffits and fascias in the 2006 photo were PVCu. He did not dispute that the photo was taken in 2006. Mr Taplin also accepted when questioned by the Tribunal that the front upper storey window shown in the 2006 photo appeared to be of the type that would have been installed by the Respondent in the late 1990’s or early 2000’s.
20. Mr Taplin was asked by Mrs Kiteley whether the soffits fascias and guttering should have been replaced again in 2010 if the Tribunal accept that they were replaced in 2001. He said he thought that after nine years, it would have been sensible to do so, and that as he believed they had in fact been replaced in 2010, the amended invoice was payable.

### **The Tribunals deliberations**

21. The heart of this case is whether the soffits, fascias and guttering were replaced in 2001. If so, there is a subsidiary question of whether they were also replaced in 2010 and if so whether it was reasonable to replace them again at that time.
22. The Tribunal found the Applicant to be a credible and reliable witness. Her story was backed by supporting evidence in the form of the two 2001 documents she produced and the 2006 photo. Her recollection of the scaffolding methodology lent credibility to the account, particularly as Mr Taplin ruled out the use of a two tower system in 2010 for health and safety reasons, and the Tribunal considered that any other method apart from a two tower system would be extremely difficult to utilise at this property because of the narrow side-passage and the rear extension. The Applicant’s evidence of the 2001 works was not seriously challenged by the

Respondent; indeed the Respondent elected not to conduct any cross-examination.

23. The Applicant's story is also consistent with Mr Taplin's acceptance that the window of the Applicant's front room appeared to be the type that was being fitted by the Respondent at about the time the Applicant says the window was fitted. This lends further credibility to the Applicant's evidence. There was no doubt that the window is PVCu. Windows are the responsibility of the Respondent under the lease. The Respondent has no record of installing the window, yet it has undoubtedly been installed, and according to the Applicant's evidence, not by her. It seems most likely to the Tribunal that it was installed in about 2001 and that the records of that installation have been lost.
24. The Tribunal finds on the balance of the evidence that the guttering, soffits and fascias were replaced with PVCu fittings in 2001.
25. Was any work carried out in 2010? The evidence is finely balanced. There is no witness from the Respondent who can confirm that it was. There is a document, in the form of a handover sheet, suggesting works were carried out, and it appears that the Respondent has certainly paid for that work. On the other hand, the Applicant has no recollection of this work, and the 2006 photo looks remarkably similar to the existing state of the property, which is shown in a photo taken by the Applicant on the hearing date and presented in evidence. Mr Taplin suggested there were differences, but the Tribunal considers that the two photos were taken at slightly different angles and in different light and the extremely minor differences are explained by that.
26. In the end, it is not necessary for the Tribunal to make a finding about the 2010 works. On balance it is doubtful that the works were undertaken. But if they were, the Tribunal considers that they would have been unreasonably incurred, within the meaning of section 19(1)(a) of the Act. PVCu materials last much longer than nine years and the Tribunal considers that it was unnecessary to replace them after only that time.
27. Mrs Kiteley reminded the Tribunal of the Lands Tribunal cases of *Auger v LB Camden (LRX/81/2007)* and of *A2 Housing Group v Spencer Taylor & Others (LRX/36/2006)*. Neither of these cases are authority for the proposition that unnecessary works have to be paid for by a leaseholder. They are addressing a related issue of whether a long term partnering organisation is the appropriate organisation to carry out works. The Tribunal does not consider that these cases assist the Respondent.
28. There were some subsidiary issues. Firstly, the Applicant disputed service of the 2010 consultation notice as she says she did not receive it. Secondly, she says that the invoices she subsequently received, and the comments of the Respondent's inspector, who visited her in December 2012, might together be taken as a waiver of the invoice. In the light of the primary finding of the Tribunal, it is not necessary to determine these issues.

29. The Applicant requested that the Tribunal make an order under section 20C of the Act preventing the Respondent claiming any of its costs of defending these proceedings from the Applicant under the service charge provisions in the lease. The Applicant also applied to the Tribunal for reimbursement of the fee of £250 paid to the Tribunal for these proceedings. The Tribunal considered that it was just to make both orders bearing in mind its view of the outcome of the case itself.

### **Summary of the Decision**

30. The Tribunal determines that the Respondent's invoice addressed to the Applicant and dated 8 November 2011 relating to works at the Property and claiming the sum of £1,211.50 is not payable.
31. The Tribunal makes an order under section 20C of the Act to the effect that none of the Respondent's costs of these proceedings are recoverable from the Applicant under the service charge provisions of her lease.
32. The Tribunal orders that the Applicant's fee of £250 for the bringing of these proceedings shall be repaid by the Respondent to the Applicant within 14 days.

### **Appeal**

33. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C J Goodall

Date **29 OCT 2013**