9014

HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONs 27A and 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	**LON/00AC/LSC/2012/0822**
Premises:	**119A High Road, London N2 8AG**
Applicant:	**Ms C Wilkie**
Respondent:	**Mr A Ferdenzi**
Leasehold Valuation Tribunal:	**Mr M Martynski (Solicitor)** **Mr W R Shaw FRICS** **Mr O Miller BSc**
Those present taking part in the hearing:	**Ms C Wilke** **Mr A Ferdenzi** **Mr H Heuer (Managing Agent)**
Date of hearing:	**10 April 2013**

DECISION

Decision summary

1. The charge of £127.50 in respect of building works carried out in 2010 is payable by the Applicant.

2. The charge of £1209.00 in respect of building works is not payable by the Applicant.

3. The Respondent must pay to the Applicant the sum of £60.00 in respect of her costs of photocopying unnecessary documents. Payment is to be made within 28 days of the date of this decision.

4. An order is made pursuant to Section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs of these proceedings. Accordingly the Respondent may not add any of the costs of these proceedings to the Service Charge payable by the Applicant.

Background

5. The Applicant is the long leaseholder of flat A, 119A High Street, N2 ('the Flat'). The Flat is on the first floor of a terraced building containing a shop premises at ground floor level with flats on the first and second floors (flats A & B). The flats are accessed from the rear of the building.

6. Flat B is accessed via a flat roof to the rear door. The underside of that flat roof forms the ceiling of the kitchen of Flat A.

7. The freehold of the building is owned by the Respondent. The Respondent employs Mr Hans Heuer of Hunters Estate Agents to manage the building.

8. The Applicant's lease is dated 3 July 1990 and is for a term of 99 years from 25 March 1990.

9. The lease provides for a Service Charge year ending on 25th March. In general the lease obliges the tenant to pay two payments on account on 25th March and 29th September. The landlord is obliged to prepare an account each year for the Service Charge up to 25th March and to give the tenant details of that account within two months. The tenant is obliged to pay the landlord any balance due for the Service Charge for the year ending 25 March if the total amount due from the tenant for that year is more than the payments on account made by the tenant in that year. That balance must be paid within 21 days of the landlord's demand.

10. Under the terms of her lease, the Applicant is (with some exceptions which are not relevant to this decision) obligated to pay one-half of the costs of the maintenance and repair of the structure of the two upper floors of the building.

11. The Applicant's application is dated 10 October 2012. In that application the Applicant challenged the reasonableness and payability of just two Service Charges items for building works as follows:-

    - £127.50 for works carried out in 2010
    - £1209.00 for works carried out in 2012

The issues and the Tribunal's decisions

The 2010 Works

12. It was not until the hearing of the application itself that the Applicant had (to her satisfaction) an explanation as to exactly what works had been

done in respect of this charge. The Applicant had been under the impression that this charge was for works related to the ground floor shop. In fact, the Respondent explained, to everyone's satisfaction (with documentary evidence in support), that the works were to guttering and a downpipe at main roof level.

13. The Tribunal was shown an account dated 31 March 2011 which appeared as though it was an invoice/account for the year up to 25 March 2011. The Applicant denied having been sent this invoice/account until August 2011. It is not clear when, but at some point, the Applicant agreed that she had been sent a statement of rights and obligations in relation to Service Charges. That statement was, in some very minor respects, not in the prescribed statutory form but this did not affect the meaning and effect or validity of the notice.

14. There was no other challenge to this Service Charge item.

15. On balance therefore, the Tribunal concluded that the work in question was reasonably carried out at reasonable cost and that the sum in question had been demanded correctly and so is payable by the Applicant.

The 2012 works

16. This was a charge of £1209.00 for works to replace the flat roof above the Applicant's kitchen including the cost of the provision of a weather bar to the foot of the door leading to Flat B from the flat roof.

17. The Applicant said that she had complained that the flat roof had been leaking for many years. She had complained to the Respondent during that time but, she said, the Respondent had failed to repair the roof until 2012.

18. Works were carried out to the roof by the leaseholder of Flat B in 2011. Those works were the provision of an inappropriate felt covering. According to the Applicant however, this covering appears to have stopped the roof from leaking into her kitchen.

19. It was the Applicant's case that the leaseholder of Flat B had allowed a number of goods of various kinds to be placed and left on the flat roof and that accordingly the roof had been damaged and it was this damage that caused the leak to her flat and which made it necessary to replace the roof covering. She argued that, in these circumstances, it was not reasonable for the Respondent to have charged her for the replacement of the roof covering, that charge should have been made in its entirety to the leaseholder of Flat B.

20. The Respondent stated (and the Tribunal accepts) that the flat roof covering, prior to 2012, was last replaced in 1997 following refurbishment after a fire at the building.

21. The evidence regarding the problems with the flat roof available to the Tribunal was as follows:-

(a) A letter and report dated 20 August 2011 from a Mr O'Connor at Ronnoco Building Services saying that the flat roof needed to be cleared to assess it properly and that the Astroturf laid on the roof "*doesn't look like its helping the situation*".

(b) A letter (possibly dated 31 August 2011) from a Mr Abie Doron of Abie Doran Limited Design-Build, saying that in his opinion, the way in which the decking had been laid on the flat roof has caused the water to pool.

(c) An estimate dated 19 December 2011 from G.A. English Building and decoration saying that the roof was not weatherproof having been repaired with garage felt and clout nails.

(d) A report dated 23 March 2012 of Mr Ian Russell (qualification unknown) of the Bowen Partnership (Chartered Surveyors) in which Mr Russell comments that a thin layer of inferior roofing felt had been laid over the roof surface and that the roof coverings were in poor condition. He referred to various splits to the vertical upstands to the surrounds of the roof and to the fact that lead cover flashings were loose and inadequately fitted. He further states; *There are clear gaps through which rainwater would readily enter the brickwork perimeter walls and will lead inevitably to internal damp penetration.*

(e) There is then an email dated 21 January 2013 from a Mr Hollyoake who is the contractor who carried out the work of replacing the roof covering in 2012. He writes this email in response to email from the Applicant in which she asks; "*.....if you felt that rubbish being placed on roof and wooden decking with nails, being left unattended for years would lead to water penetrating to ceiling below?*"
Mr Hollyoake's reply is; "*I do not think the "rubbish" on the roof would have caused your leaks.....there was no evidence to the exposed timber deck of water damage when the roof coverings were removed. In my opinion, the likely cause of the water penetration into your flat was probably due to a defective seal to the brickwork adjacent to the flat roof and around the door frame*".

(d) Photographs of the roof with various items on it.

22. It can be seen from the above summary of the evidence that there is no clear evidence that the reason that the roof covering required replacement was due to the actions of the occupants of Flat B. Accordingly it was reasonable for the Respondent to have considered that the Applicant should pay towards the cost of that replacement. It was not suggested by the Applicant that the work to the roof in 2012 was inadequate or that the cost of that work in itself was unreasonable.

costs of the provision of a weather board to the door of flat B (total cost £75.00 plus VAT) which was included with the costs of the works to the roof, are not payable by the Applicant. It appears that this door is an internal door, not suitable for use as an external door. If the door was fitted by the leaseholder of Flat B, then the costs of making that door weatherproof should be borne by Flat B and no-one else. If the door was fitted by the Respondent, the costs of making it weatherproof should be borne by the Respondent and not anyone else.

Costs

Penalty Costs

32. The Applicant made an application that the Respondent pay some of her photocopying costs of the hearing bundles that she had to prepare on the basis that many of the Respondent's documents (which she had to photocopy and put into a bundles) were either irrelevant to the issues in the case or were duplicates. The Applicant stated that she had sent an email to the Respondent pointing out that many of his documents were duplicates and seeking his permission to exclude the duplicates from the bundle. She did not get any response to this email. She made a list of approximately 77 documents received from the Respondent that were, she alleged, irrelevant. She had to copy these five times at a cost of 15p per copy. She sought the sum of £75.00 by way of costs.

33. The Tribunal agrees that many of the Respondent's documents were either irrelevant to the issues in the case or were duplicates. The Tribunal does not agree that all the documents listed by the Applicant as being irrelevant were actually irrelevant. However the Tribunal considers that it was unreasonable for the Respondent to include plainly irrelevant documents and duplicate documents and expect the Applicant to copy these at her expense. Further, it was unreasonable of the Respondent not to reply to the Applicant's email regarding duplicate documents. The Tribunal orders the Applicant to pay the Respondent the sum of £60.00, this takes into account the Tribunal's finding that not all the documents listed by the Applicant as being irrelevant were actually irrelevant.

Section 20C of the Act

34. The Tribunal has found very substantially in the Applicant's favour. Accordingly it is appropriate to make an order that none of the costs incurred by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Chairman: 

Mark Martynski

16 April 2013