



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

Case reference : LON/00AM/LSC/2015/0284

Property : 86 Orwell Court, Pownall Road,
London E8 4PR

Applicant : London Borough of Hackney (the
landlord)

Representative : Ms Nettleship of Counsel instructed
by the In House Legal Team

Respondent : Mr Gianfranco Sinha
Mrs Lina Sinha (the tenants)

Representative : In person

Type of application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal members : Judge Evis Samupfonda
Mr Hugh Geddes

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 26 November 2015

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the total sum of £3,161.08 comprising of £2,863.51 in respect of the major external decorations works carried out in 2007/8 and £297.57 in respect of major works concerning the replacement of the door entry system to the Building in 2011 is payable by the Respondents.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Clerkenwell and Shoreditch County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the costs incurred for the major external decorations works carried out in 2007/8 and the costs incurred in respect of the major works concerning the replacement of the door entry system in 2011.
2. Proceedings were originally issued in the County Court Business Centre under claim no. B5QZ208Y. The claim was transferred to the Clerkenwell and Shoreditch County Court and then in turn transferred to this tribunal, by order of District Judge Manners dated 7 July 2015.

The hearing

3. The application was heard on 19 November 2015. At the hearing the Applicant was represented by Ms Nettleship of Counsel. Ms Ziaie-Fard, Paralegal, Ms Denise Hill, Electrical Services Manager, Mr Roy Coenye, Electrical Contracts Manager and Mr Gary Lane, Painting Manager for Hackney Homes accompanied her. The Respondents did not attend and were not represented.
4. The tribunal took great care to ensure that the Respondents had been given notice of these proceedings. The tribunal noted that they did not attend the case management conference (CMC) on 28 July 2015 but were aware of it. Ms Ziaie-Fard, who attended the CMC, informed the tribunal that the Respondents telephoned on that day and submitted a

letter for the tribunal's consideration. This tribunal delayed the start of the hearing whilst enquiries were made and a telephone call was made to the Respondents without success. Ms Nettleship submitted that the hearing should proceed in the Respondents' absence because they were aware of the date and they had submitted documentation in compliance with the directions.

5. The tribunal considered whether to proceed in the absence of the Respondents under Rule 34 of the Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rule 2013. It was satisfied that the Respondents had been notified of the hearing date by the directions dated 28 July 2015. In compliance with those directions, the Respondents submitted their documentary evidence and response to the application. The tribunal was satisfied that it would be in the interest of justice for the hearing to proceed in the Respondents' absence as the Applicant had attended with its witnesses and further more, given the nature and amount in dispute it would be disproportionate to adjourn the hearing to another date and the tribunal was not satisfied that to do so would secure the Respondents' attendance.

The background

6. The property which is the subject of this application is a 3 bedroom flat situated on the second and third floor of a maisonette in a four storey block on an estate of 297 units.
7. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Respondents hold a long lease of the property that requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The issues

9. At the start of the hearing the tribunal identified the relevant issues for determination as the payability and/or reasonableness of service charges for:
 - (i) The major works to the external decorations carried out in 2007/8.
 - (ii) The major works concerning the replacement of the door entry system carried out in 2011.

(iii) TV aerial

10. Having heard evidence and submissions from Ms Nettleship and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Major works - amount claimed £2,863.51

11. The Respondents did not attend the hearing. The nature of their objections were not clearly set out in the Defence to the County Court claim and neither were they set out much clearer in the documents provided in compliance with the tribunal's directions. Doing the best that it could, the tribunal understood that the basis for objecting to the costs incurred in respect of the major works was threefold; (i) that the work was not carried out to a reasonable standard "due to the substandard workmanship and planning of such work....namely substandard preparation of surfaces, incorrect paint chosen for application, incorrect and incomplete application of paint..." (ii) that there was over painting of the front elevation that resulted in the diminution in value of the Respondents' lease as it made flat "86 look smaller than flat 87" after the unsolicited over painting of [our] boundary in this regard". The Respondents provided photographs said to have been taken in 2012 in support of their contentions and (iii) the Respondents also challenged the reasonableness of the costs incurred and they provided evidence of alternative lower quotes they had obtained.
12. Mr Lane gave evidence on behalf of the Applicant on this issue. Mr Lane explained the contract procurement process. He also explained that it was his role as contractor (Hackney Homes) to oversee the work and to carry out a post inspection following the completion of the works. He told the tribunal that the contractor held an end of the contract road show and sent out tenant's satisfaction forms. He said that he could not recall receiving any responses or complaints about the work done at that stage from the Respondents. He viewed the photographs provided by the Respondents and commented that after 5 years it was unsurprising that some of the paintwork was peeling. He explained that oil based paint was used as recommended but occasionally trapped water in the masonry behind had resulted in the paint peeling. He rejected the Respondents' assertions that paint was applied without appropriate preparatory work because had that been the case, the painting would now be in appalling condition and in his view that was not the case. He added that in his view the quality of the work is holding up to the standard that he would have expected it to. With regards to the over painting, he explained that the contractors simply painted over existing paint which had been improperly applied by leaseholders to external brickwork in an effort to tidy it up. He could not comment on the boundary issue.

The tribunal's decision

13. The tribunal determines that the amount payable in respect of the major works is £2,863.51.

Reasons for the tribunal's decision

14. Without the benefit of professional evidence to demonstrate that the Applicant did not prepare the works in accordance with the material and workmanship clauses of the contract, the tribunal could not be satisfied that the work was carried out to a poor standard. The tribunal accepted that there were signs of deterioration from the photographs. The Respondents' photographs were taken some 5 years after the works had been carried out which, in the tribunal's view could not demonstrate the standard or quality of work carried out in 2007. Therefore the tribunal could not conclude that any breakdown in the works was due to substandard work having been carried out by the Applicant.
15. With regards to the over painting of the front elevation, the tribunal accepted Mr Lane's evidence that the brickwork had not been originally painted by the Applicant. However the Applicant's contractors repainted it during the course of the major works in order to keep it looking tidy. Mr Lane said that whoever had painted it originally might not have accurately observed the boundary. The tribunal understood that the Respondents' challenge on this issue was that the over painting reduced the size and value of their property. The tribunal concluded that it did not have jurisdiction to make a determination on this issue, as it was not a service charge dispute.
16. With regards to the question as to whether the costs had been reasonably incurred, the tribunal considered the alternative quotes provided by the Respondents. The Respondents stated that they had "sourced quotations for carrying out equivalent works to our flat at this present time in August 2015. " As such, the tribunal could place little weight on the value of the quotes in assisting the tribunal to determine the reasonableness of the costs incurred by the Applicant in 2007/08. The Respondent's alternative quotes were not obtained on a like for like basis. The Applicant is required to comply with various statutory requirements as to the choice of contractors used and must use approved suppliers. The quotes obtained by the Applicant were based on a contract for work to be undertaken on 297 flats in a block as opposed to 1 flat. The tribunal noted that the Respondents did not propose the alternative contractors or make any observations, as they

would have been entitled to do so following the service of the s20 Notice dated 19 February 2007. Therefore in the absence of contra evidence the tribunal was satisfied that the costs incurred were reasonable in amount and are payable.

17. Replacement of door entry system- £297.57

18. The tribunal understood that the Respondents challenged this item on the basis that the Applicant failed to respond to their request to deactivate key fobs which they had lost, the automatic door activator was not replaced with like for like and the intercom system plastic handset was replaced unnecessarily with an identical unit.

19. The tribunal heard evidence from Ms Hill on this issue. She confirmed that the replacement of the entry system was commenced in 2010 and comprised: the replacement of the original wooden door with a new steel door; a new digital door system and new handsets associated with the new door entry systems. She said that she was unable to confirm whether or not the previous door had an automatic door activator but she could say that its replacement did not. She could not comment on the fobs issue as this was dealt with elsewhere. She explained that whilst the handsets may have appeared similar, they were replaced as part of the package of works and the warranty would have been ineffective had the original handsets been retained.

The tribunal's decision

20. The tribunal determined that the amount payable in respect of the replacement door entry system is £297.57.

Reasons for the tribunal's decision

21. The tribunal did not have jurisdiction to make a determination on the failure to deactivate the fobs as and when requested by the Respondents, as this was not a dispute about the service charge. The tribunal could not discern any argument that was raised as to the reasonableness or liability to pay in respect of the fobs.

22. With regards to the failure to replace the door with like for like and to ensure that it has automatic closure that is disability friendly, the tribunal determined that there was no obligation under the terms of the lease for the Applicant to replace with like for like. Furthermore it was clear that the replacement was motivated by concerns for security. We had no reason to doubt Miss Hill's evidence that the current doors complied with the requirements of the Disability Discrimination Act.

23. With regards to the handsets, the tribunal was informed that these were replaced as part of the comprehensive new system. The tribunal

considered that the cost incurred was reasonable as it accepted the explanation that it was necessary to replace the handsets as part of the complete new entry door system and in order for the warranty to be effective.

24. With regards to the TV aerial, the Respondents stated that they did not receive this service and were not charged for it. This was confirmed by Ms Nettleship. Therefore as there was no dispute concerning the service charge, the tribunal was not required to make a determination.
25. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Clerkenwell and Shoreditch County Court.

Name: Judge Evis Samupfonda **Date:** 26 November 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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 it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]