9585

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2013/0389**
Property	:	**107, 109, 113, 140 AND 142 Amina Way, Rouel Road Estate, London SE16 3UW**
Applicant	:	**Kenneth Bryan - flat 142** **Mr and Mrs Ward – flat 107** **Mr and Mrs Weinstein – flat 109** **Margaret Martin – flat 113** **Brian Hines - flat 140**
Representative	:	**Mr Bryan in person**
Respondent	:	**The London Borough of Southwark**
Representative	:	**Miss Bennett, income enforcement officer**
Type of Application	:	**Correction certificate**
Tribunal Member(s)	:	**Judge O'Sullivan** **Mr D Jagger** **Mr O Miller**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**7 February 2014**

DECISION

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As Chairman of the Tribunal, which decided the above-mentioned case, I hereby correct the errors and clarify the decision dated 11 January 2014 as follows:[1]

1. In paragraph 41, the window costs disallowed in respect of Flat 113 should be 70% and not 20% as stated.

2. The reference to Flat 113 in paragraph 40 should in fact be a reference to flats 107 and 109.

Name: S O'Sullivan **Date:** 7 February 2014

[1] Regulation 50 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

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Representative	:	**Mr Bryan in person**
Respondent	:	**The London Borough of Southwark**
Representative	:	**Miss Bennett, income enforcement officer**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge O'Sullivan** **Mr D Jagger** **Mr O Miller**
Date and venue of Hearing	:	**4-6 December 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**11 January 2014**

DECISION

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summary sheet which set out the estimated and final costs of the major works both on a block and individual basis for each of the Applicants. Finally the Respondent also produced copy invoices served on the Applicants by letters dated 28 November 2013 and 3 December 2013.

5. The tribunal heard that prior to the hearing issues had arisen in relation to the format of the schedule which had been exchanged between the parties. The Applicants were extremely unhappy that the Respondent had not adopted the form of schedule provided by the tribunal and there had been issues as to numbering and the way in which comments had been made. At the hearing therefore the tribunal worked from each parties' own schedule and this posed no particular problems.

6. In closing submissions the Applicants mentioned that the Respondent had threatened court action against two of the Applicants but was unable to confirm whether court proceedings had in fact been issued. In any event however it was confirmed by the Respondent that no point was taken on jurisdiction and the tribunal therefore accepted that it had jurisdiction to consider the application in respect of all the Applicants.

7. The Applicants each hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

Inspection

8. The tribunal inspected the property before the hearing on 4 December 2013 in the presence of Mr Bryan, one of the Applicants and Ms Bennett, Mr Orford and Mr Moore all for the Respondent.

9. The tribunal inspected the blocks and the windows to three of the flats (Numbers 142, 140 and 113). The properties form part of the Rouel Road Estate which was constructed between 1970-74. The estate comprises approximately 900 units in blocks between 2 and 5 floors high. The subject properties are "duplex maisonettes", two of which are approached via asphalt and tiled shared walkways.

10. The tribunal noted damaged and cracked tiles to the walkway. The surface of the walkways was seen to be uneven and weeds were already beginning to grow between the tiles. The tiles were poorly laid with some evidence of gapping and sloping surfaces.

11. Inspection of the window units in each of the properties revealed damage to the woodwork, gaps in the window frames, untreated woodwork and splits in the frames to the units. Fixing screws were not countersunk with some protruding some 10-12mm and plastic caps had

(vi) Whether the Respondent has made valid demands for payment in accordance with the terms of the lease

(vii) Whether the tribunal should make an order under section 20C

(viii) Whether the tribunal should order reimbursement of fees and/or make an order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002

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

External decorations £9,983.19

17. The Applicants say that the painting was carried out very poorly and that paint was seen to be flaking after only 6 months. They also say that the painting was not carried out to the correct specification and that the correct number of coats was not applied. In support however the Applicants could only rely on the oral evidence of Mr Bryan who said that he had observed the painting taking place and had spoken to one of the workmen. The alleged poor standard of the painting had not been shown to the tribunal on inspection and there was no documentary evidence contained in the bundle.

18. In response Ms Bennett submitted that there was no evidence to suggest the standard of paintwork had been poor and that the works had been signed off by the clerk of works as of a satisfactory standard. Mr Orford gave evidence that as the works had been carried out some 3-4 years previously he would expect the paintwork to be in its current condition in any event.

19. The tribunal allowed this item. It had no evidence of any poor paintwork or preparation dating from the time of the major works. It accepted that some deterioration would have occurred since the works were carried out almost 4 years ago.

Structural works - £17,476.47

20. The Applicants questioned this charge as they did not understand it. The tribunal heard that the original estimate had not contained this heading.

21. Mr Orford for the Respondent explained that the final account had contained new headings in some cases and a breakdown of the item described as structural works was provided as follows; concrete/brickwork repairs £5215.71, concrete/brickwork cleaning

with the insurers to agree a means of replacing the tiles without affecting the guarantee. This would involve the replacement of every tile. It was confirmed that the cost of those works would not be charged to the leaseholders. Although discussions were still taking place Mr Orford said that he hoped that these works would take place in 2014 when the works to the remaining block in the phased works would be taking place. It was confirmed that the replacement tiles would be 22mm in accordance with previous phases.

28. Ms Bennett confirmed that the walkway has a 20 year guarantee and that the cost of repairs would not be a future service charge item.

Balcony and walkways – the tribunal's decision

29. The tribunal disallowed 50% of the costs.

30. On inspection the tribunal had noted that the condition of the tiles on the walkway was extremely poor. It noted from the DVD evidence that this had been the position from 2011 shortly after the works took place. The leaseholders have suffered major inconvenience and worry in relation to the condition of the walkway and the ongoing problems. It was accepted by the Respondent that complete replacement of the tiles was necessary. The tribunal notes that this matter is currently under discussion with the insurers. We are however concerned that despite problems being obvious from the outset a solution has yet to be put in place. We were also of the view that communications with the leaseholders have been extremely poor. Despite the Respondent being fully aware of the problem this has not been formally acknowledged until late in the day in the comments in the schedule.

Windows £239,169

31. The Applicants say that the windows are of a very poor standard with dents in the wood and lumps missing from the frames. The joints are said to be poorly finished and the windows jam constantly. It is said that the windows were not measured and fitted according to the specification and that this is confirmed by the gaps seen between the frames and brickwork, some windows having gaps of between 30 mm to 40 mm with no insulation in the gaps.

32. Mr Bryan informed the tribunal that he had allowed representatives of the landlord into his flat on 18 occasions and had had one of the windows replaced 3 times but it still remained unsatisfactory. He had now lost confidence in the ability of the Respondent to repair the windows to a satisfactory standard.

33. A representative from the Respondent inspected the windows on 25 October 2011 and by letter dated 4 November 2011 contained in the

40. The tribunal did not have exact costings for each individual window so we necessarily took a broadbrush approach in our determination. In addition the various Applicants' complaints differed with, for example, Mr Hines only complaining about one window and Mr Bryan being unhappy with the majority of his windows. Although we had no direct evidence of the condition of the windows to Flat 113 we considered the defects to be common across each flat and accepted that there were at least some difficulties with the windows in that property.

41. The tribunal disallowed the window costs as follows;

Flat 140 – 20 % disallowed

Flat 142 - 70% disallowed

Flat 107 – 70% disallowed

Flat 109 – 70% disallowed

Flat 113 – 20% disallowed

42. We would mention that we considered the overall design of the windows seen to be extremely poor. The Respondent may wish to reconsider this aspect of the specification in relation to the future phases of this project.

Doors £112,841.68

43. The Applicants say that there are issues with the doors all over the estate. It is said that when it rains the doors jam and the locks are difficult to operate. Mr Bryan informed the tribunal that his door had been changed on three occasions. However the Applicants had not produced any evidence in support in the bundles and did not point out any problems with the doors on inspection.

44. In response the Respondent says that no major issues have been pointed out to it in relation to the doors. It is also said that as they are wooden there will be some natural movement.

Doors – the tribunal's decision

45. The tribunal allowed the cost of the doors in full.

46. It had no evidence that there were any issues with the doors and this had not been pointed out on inspection.

55. The Respondent explained that this was a standard cost which covered the contractor's cost of site set-up, welfare and resident liaison, contract management and site office supplies.

56. The Applicants were satisfied with the explanation and confirmed that they did not wish to challenge this cost.

Administration charge

57. The administration charge was charged at 4%.

58. The Applicants challenged the administration fee on the basis of what they said had been a very poorly administered contract. The tribunal heard that there had been huge problems with the billing, to such an extent that the final account had been sent to them in draft form and they had subsequently found numerous and substantial errors. The Applicants felt that they had had to be far too involved in the contract but had they not then there would have been an overcharge. The tribunal heard that there had been a vast amount of correspondence and a long delay in the final account being issued. The Applicants did accept that some valid work had been carried out under this heading however, they accepted that they had been validly consulted. They suggested that a reduction of 50% should be made.

59. The tribunal heard that pursuant to the lease the Respondent is entitled to charge an administration fee of 10%. However it was heard to operate a sliding scale based on the size of the project and in this case had charged 4%. This was heard to cover all of the Home Ownership's charges in relation to the major works including the consultation under section 20, the calculation and billing of invoices of the estimated and actual charges and the provision of a point of contact for the leaseholders.

60. Although there had been issues in preparing the final account Ms Bennett submitted that the Respondent had fully responded to all queries and had fulfilled their duties. She therefore argued that no reduction should be made.

Administration charge – the tribunal's decision

61. The tribunal allowed the administration charge at 2% of the adjusted cost of the works.

62. We had a great deal of sympathy for the leaseholders. The major contract had been very poorly administered. The original estimates had been heard to contain a number of errors as they included categories of works which did not apply to their blocks. The tribunal does not consider it acceptable that it was for the leaseholders to have to spend a

69. In response the landlord says that the walkway on the estate is classed as private land and its maintenance is therefore covered by the Housing Revenue Account rather than the General Fund. It relies on schedule 3 clause 6(2) of the lease further to which it may adopt any reasonable method of ascertaining the said costs and expenses set out in the Third Schedule. The major works programme split the walkway costs across the packages, thus it says the whole estate contributes to the walkways. The Respondent also submitted that this practice of apportionment had been adopted on the previous phased works.

Apportionment – the tribunal's decision

70. We accept that the Respondent is entitled to adopt any reasonable method of ascertaining the costs pursuant to the lease. We considered the method of apportionment adopted to be reasonable. The walkway serves the block and it is noted that this method of apportionment has been adopted across the phased works.

Section 20B

71. The Applicants say that the Respondent is out of time under section 20B in relation to the first 8 payments under the contract. The Applicants set out their case at page 11 of the bundle.

72. The Respondent says that it erred on the side of caution in serving notice under section 20B. This was because the final account was less than the estimated account. In this regard it relies on the authority of *Gilje v Charlesgrove Investments Ltd [2003] EWHC 1284 CH; [2004] HLR 1; [2004] ALL ER 91.*

73. Undated notices under section 20B were served in or around June 2012. A notice dated 9 July 2012 was sent to the Applicants and on 10 July 2012 a response was made to observations made by the Applicants to the undated notice. The landlord says that the letters provided to the Applicants sufficiently warned them to set aside provision for the major works well in advance of the final demand for payment after costs had been incurred.

74. Both parties relied on the decision in the *London Borough of Brent v Shulem B Association Ltd [2011] EWHC 1663 (Ch).* The Respondent says that Shulem B requires the landlord to state the costs it has incurred and that the landlord should err on the side of caution. A figure should therefore be included in the section 20B notice which it is felt is sufficient to enable the recovery of actual costs once the precise costs are known. It is submitted that it is clear that where the actual costs are less than the amount set out in the section 20B notice the landlord has satisfied the provisions of section 20B.

Application under s.20C and refund of fees

81. At the end of the hearing, the Applicants made an application for a refund of the fees that they had paid in respect of the application and hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the sum of £200 within 28 days of the date of this decision.

82. In the application form and at the hearing, the Applicants also applied for an order under section 20C of the 1985 Act. The landlord consented to the order being made under section 20C. The tribunal therefore determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Paragraph 10 Schedule 12

83. The Applicants also applied for an order for costs of upto £500 under paragraph 10 schedule 12 to the Commonhold and Leasehold Reform Act 2002. The Applicants asked for an order in the sum of £336.60 which represented the cost of printing of the bundles and the purchase of binders and so on.

Name: Sonya O'Sullivan **Date:** 11 January 2014

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[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

(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—

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) The application shall be made—
   (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
   (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
   (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
   (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
   (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the 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 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
   (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
   (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
   (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
   (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Windows - Flats 107, 109, 113	£69, 876. 00	We have already stated all the serious problems we have with the windows on the Applicants Statements of Case. We feel this work should be 50% reduced.	Please refer to comments made against statement of case. Access has only been provided to deal with issues of mechanisms that were defective, access has not been provided to deal with any aesthetic repairs or indeed for any full replacement the council may deem necessary. The main contractor remains on stand by to correct any defects to the Landlord's satisfaction	We still have no information on the schedule but disagree with the comments made about the windows. We still feel this work should be reduced by 50%	Percentage disallowed - see decision
Doors	£112, 841. 68	All over the Estate tenants are having problems with there door. When it rains the doors jam, and there are problems with the locks.	Please refer to comments made against statement of case. There are no major issues reported to us by either residents or our repairs team in respect of the doors on this contract. These are wooden fire and security rated door sets and as with any wooden product there will be some natural movement throughout their lifespan.	We still have no information on the schedule but disagree with the comments made about these doors they are causing problems all over the estate	Allowed- see decision
Bonds	£2, 590.26	We do not know what this cost is, It was not part of the estimated costs.	Bond is required as part of the contract. This is a performance bond that the contractor is obliged to take out to provide insurance against failure to complete the contract. It is common opractice to require insurance against eg a company ceasing to trade.	We still dont know what this cost is for. Telling us it is part of the contract does not help at all.	No longer challenged
Scaffolding	£16, 724.73	We were charged within this cost for alarms to be fitted to the scaffolding, there were no alarms fitted to any scaffolding.	Alarms were installed to the scaffolding at various locations. The Respondent is not aware of any burglaries as a result of the scaffolding being erected.	There were several burglaries while these work were carried out. There was no Scaffolding alarms anywhere on this contract but we were charged for it.	Disallowed - see decision
Preliminaries	£32, 576.88	We have asked the council what this cost is for, but we have never been given the information. We need the Council to justify the figure.	As above. The preliminaries cover the contractors costs for site set up, welfare, resident liaison, contract management and site office supplies and consumables.	All the information given on the Respondents Schedule is totally incorrect, it does not refer to the Preliminaries at all. We still need to know what this cost of £32,500 is for.	No longer challnged

1) Chargeable under lease?
2) Reasonable in amount / standard?
3) Correctly demanded?