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DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

REF: LON/00BE/LIS/2006/0147

SECTION 27A LANDLORD and TENANT ACT 1985

4 ST. MATTHEWS HOUSE, PHELP STREET, LONDON SE17

MR ALOM SHAHA **Applicant**

LONDON BOROUGH OF SOUTHWARK **Respondent**

Date of hearing: 15 March 2007

Date of decision: 20 March 2007

Tribunal: Mr M.A. Martynski - Solicitor
Mr L. Jarero BSc FRICS
Mr C. Gowman MCIEH MCMI BSc

Present: Ms C. Loren (Southwark Home Ownership)
Mrs B. Longley (Southwark Home Ownership)
Mr E. Emakpose (Southwark Investment Programme Manager)
Mr I. Chapman (Southwark Building Design)
Mr A. Shaha

Summary of decision

1. The service charge of £10,921.13 was reasonably incurred by the Respondent and is payable by the Applicant.

Background

2. The Applicant's property ('the Property') is part of a block ('the Block') containing 29 flats. The Property is a maisonette on the ground and first floors. Some of the other properties in the block are held on long leaseholds having been bought

under the Right to Buy legislation, some are occupied by secure tenants of the Respondent.

3. The dispute in this matter arises out of major works that were carried out to the Block in 2003/4.

4. In or about 1995, the Applicant's predecessor in title was given permission by the Respondent to replace the windows in the Property. As a result, U.P.V.C. windows were installed. The Applicant purchased the Property in 1998.

5. In 2003 the Respondent decided to replace all the windows and front entrance doors to the Block. Most flats in the Block had their original windows and doors which were at the end of their useful life. As well as deciding to replace windows and doors, other decoration and associated repair work was decided upon by the Respondent.

6. The long leaseholders were sent a letter dated 1 September 2003 setting out in general terms the work to be done and giving details of the estimates received. The letter stated that it was intended to instruct the contractor who had submitted the lowest tender to do the work. The letter went on to give a breakdown of charges for the Block and the version of the letter sent to the Applicant stated that the cost of his share of the work would amount to £10,921.13. As to the description of the works in particular, the letter stated;

> *"The work will involve various external repairs, redecorating and complete renewal of windows/balcony doors."*

7. Mr I. Chapman from Southwark Building Design externally inspected the block in or about January 2004. His notes from his inspection stated as follows;

> *"Mr Shaha. Does not want to keep windows. White Pvcu windows consists of double glazed units side hung casements with fixed light and fanlight over - look ok"*

As to the statement in Mr Chapman's notes "*Does not want to keep windows*", this was not a statement made directly to Mr Chapman. Mr Chapman believed that he was told this by someone at the local neighbourhood office. The Applicant could not remember making such a statement nor could he recall if, at this time, he had expressed any view on the replacement of his windows.

8. Later in January 2004 there was an instruction to the contractors to omit windows in respect of the Flat from the contract. A deduction was made from the contract cost in respect of the fact that the windows for the Flat and for some other flats were not being replaced.

9. The Respondent had no record of the Applicant being told that it had been decided not to replace his windows.

10. The Applicant recalled being asked if he wanted his front entrance door to be replaced to which he replied that he would.

11. Work on the estate where the Block is situated started in late 2003. It was believed by the parties that the work to the Block itself was done in 2004.

12. By an invoice dated 17 June 2004, the Applicant's share of the cost of the works was demanded of him in the sum of £10,921.13.

13. It was only after the Applicant got the invoice and after the work had been completed to the Block that he raised an issue with the Respondent that his windows had not been replaced. In response to the Respondent's explanation that his windows had been inspected from the outside and that they did not appear to need renewal, the Applicant stated that the defects to his windows were only apparent from the interior of the Flat. It was agreed that the Respondent had offered to inspect the windows of the Flat from the inside and that this offer had not been taken up by the Applicant.

14. As to the defects to his windows, the Applicant described these as follows;

- a non-visible gap around window in one of the large bedrooms at the front of the property which allowed a draught to penetrate
- some mould growth underneath the window in the above room
- a missing handle to the only opening window in the bathroom resulting in that window not being able to be closed
- a missing handle to one of the opening windows in the rear bedroom resulting in that window not being able to be opened

15. The Respondent's view of the matter was that the disrepair to the Applicant's windows would mean that the windows would have been repaired, not replaced. The Respondent's case was that it would not have been reasonable for other leaseholders to pay for the replacement of the Applicant's windows if they only needed repair.

The issues

16. The Applicant was satisfied that the work in question to the Block had been reasonably carried out (subject to one issue about builder's mess which is dealt with below). The Applicant did not have an issue with the cost of the work carried out. The Applicant's disputes were listed in his application as:-

(a) Is the charge fair?

(b) Why was I offered a new door but no new windows (my windows were never examined from the inside – two are damaged)

(c) Was the saving made in not replacing my windows taken into account in the final cost of the works?

The Tribunal's decisions

17. In considering the fairness of the charge and the point of the non-replacement of the windows, the Tribunal looked at a number of issues. First, it considered the consultation letter dated 1 September 2003. That letter, in describing the work proposed, referred to complete replacement of windows. As set out above, the Applicant's windows were not replaced. A decision was made not to replace them and this decision was not communicated to the Applicant.

18. Despite the Respondent's failings in not telling the Applicant that his windows were not to be replaced, the Tribunal found that there was ultimately no unfairness to the Respondent. It is a fact that, even if the Respondent had known about the defects

to the Respondent's windows at the time, those windows would at best have been repaired, not replaced. A deduction had been made in respect of the non-replacement. The Tribunal considered the fact that the consultation letter specified complete replacement of windows did not invalidate that letter and the consultation process. The works that were to be done had to necessarily be described in general terms. The fact that the Applicant was not told in the consultation letter or prior to the works being completed that his windows would not be replaced did not result in any loss to the Applicant. The fact that the Applicant's windows have not yet been repaired is due to the fact that he has not yet arranged for the Respondent to inspect the windows internally.

19. Second, the Tribunal looked at the Applicant's lease and the provisions in that for payment of service charges. The service charge year is defined in the lease as being from 1st April to 31st March. The lease states that prior to each service charge year, the Applicant is to be given an estimate of service charges to be paid in the following year. The Applicant then has to pay those estimated service charges on account in the following April, July, October and January. The lease goes on to state that accounts are to be prepared after the service charge year end and supplied to the Applicant with a statement as to whether, after taking into account his contributions made on account of the service charge, he is in credit or debit. If there is a debit he has to pay the amount of that debit within one month.

20. The way in which the Respondent demanded the sum of £10,921.13 did not at first sight appear to sit comfortably with the provisions of the lease. However Ms Loren on behalf of the Respondent stated that the Applicant should treat the invoice of June 2004 in the sum of £10,921.13 as the estimate of service charges for major works for the year 2005. The sum due was then payable in accordance with the lease by instalments in April, July and October 2005 and January 2006. The Tribunal agrees that the demand can be treated in this way.

21. Third, the Tribunal considered the way in which the Respondent apportioned the costs of the major works between the various flats in the Block. The lease gives the Respondent some discretion over this. The Respondent apportioned the costs based on the amount of rooms in each property. They calculated that there were 154 rooms in the block. The total cost of the works to the Block was divided by 154 to arrive at an initial figure. The Respondent then considered that there were 5 rooms in the Property and multiplied the initial figure by 5 to arrive at the figure of £10,291. In fact the Respondent had made a mistake. There were more than 5 rooms in the Property and the costs charged to the Applicant should have been more. The Tribunal considered that the method of apportionment of costs adopted by the Respondent was fair and reasonable.

22. As to the third question raised by the Applicant - was the saving made in not replacing my windows taken into account in the final cost of the works? – that question was answered during the course of the hearing and is dealt with in paragraph 8 above.

23. Finally, the Applicant raised a concern that, once the works had been completed, a great deal of mess had been left in his front and back gardens. He had had to spend a weekend clearing up this mess. This mess should have been cleared by

the builders. However the Applicant stated that he had not told the Respondent about this mess and so it is difficult to see how the Respondent can be blamed for not having ensured that this mess was cleared up.

Costs – Section 20C Landlord and Tenant Act 1985

24. The Respondent does not seek to add the costs of proceedings before the Tribunal to service charges. In this knowledge the Applicant made no application under section 20C

Mark Martynski
Chairman
20 March 2007