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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
LONDON PANEL

Landlord and Tenant Act 1985 sections 27A and 20C

LON/00AU/LSC /2010/0507

Premises:	**21 Beechcroft Court, Leigh Road, London N5 1SN**
Applicants:	**Mayor and Burgesses of the London Borough of Islington**
Respondent:	**Frederick George Wilkinson and Joan Florence Wilkinson**
Tribunal:	**Adrian Jack (Chairman), Stephen Mason FRICS, Jane Clark JP**

Procedural

1. By a claim form issued in the Northampton Bulk Issuing Centre under action number 0QK20067 the landlord sought to recover £3,987.31 in respect of service charges due in respect of major works in 2007-08. The tenants disputed the claim and it was transferred to the Clerkenwell and Shoreditch County Court. By order of 19th July 2010 District Judge Stary transferred the case to the Tribunal.

2. The Tribunal gave pre-trial directions on 7th September 2010 and these were substantially complied with.

3. The Tribunal heard the matter on 23rd November 2010. The landlord was represented by Ms Rubina Begum of their legal services. Mr McEntee, a surveyor, and Ms Jones, a quantity surveyor, both of John Rowan & Partners, surveyors, gave evidence on the landlord's behalf. Mr Wilkinson and Ms Wilkinson appeared on their own behalves.

26/11

The Law

4. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

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, improvement 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 of 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 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 provision 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 a leasehold valuation 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 a leasehold valuation tribunal for a determination whether 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,

do not have any knowledge of why this was necessary. Clearly, this treatment could be extended to the whole of the roof, though the lack of an upstand parapet would make it difficult to provide additional insulation. At this stage the minimum that is required is proper repair of various splits and slumps and solar reflective treatment to the entire unfelted surface."

12. Mr Wilkinson argued that the roof should have been replaced in 1993-1998, which was the five year period during which the service charges payable by him and his sister, as newly enfranchised tenants, were capped. In our judgment, this passage of the Landers report shows that the roof in 2000 was not past the end of its useful life. It was not incumbent on the landlord to have regard to the Wilkinsons' personal circumstances in deciding whether to carry out works or not. In our judgment, the landlord was entitled to ignore the fact that earlier replacement of the roof would have saved the Wilkinsons money. Even if the landlord was entitled to take that matter into account, in our judgment a reasonable landlord was justified in concluding that continuing patch repairs to the roof were appropriate rather than carrying out an expensive roof replacement five years before such a replacement was necessary.

13. The photographs we have seen show that roof had been deteriorating in the years leading up to the major works. This is only to be expected. The spot repairs appear to have been appropriate at the time they were done.

14. From 2006 onwards the landlord started to investigate repair or replacement of the roof. In July 2006 Garland Co UK Ltd, who are specialist providers of roofing materials, were instructed. They took four core samples from the roof which they found to be dry with the insulation intact. They noted that "the asphalt is coming to the end of its life and is [in] a state needing to be restored or replaced." They advised a flat overlay being installed.

15. In December 2006 Langley Roofing provided a report to John Rowan & Partners, the surveyors advising on the proposed major works. This report said:

"Core samples were taken at various points on the roof. The screed varied in its quality from pure aggregate with no cement to layers of sand over layer of cement. Each core sample taken varied, indicating that initial installation was not monitored. Also some areas were saturated at insulation level."

16. Langley advised on a tapered insulating system, although this was much more expensive that the Garland proposal of flat overlay.

17. In July 2007 IRT Surveys carried out a thermographic survey of the roof. This survey identified "several areas of temperature inconsistency indicative of trapped moisture, missing or damaged insulation or unknown structural features... [S]ome areas... do raise concern."

18. As part of the major works the landlord in fact followed the Langley system, however, due to the limitations of the consultation procedure which it had followed, the landlord only sought to recover the sum which would have been payable under the (much cheaper) Garland proposal.

19. If the landlord had sought to recover the full cost of the Langley proposal, the Tribunal would have had concerns as to whether the amount claimed was reasonable. However, since only the lower figure is sought, the Tribunal has no hesitation in concluding that that amount is reasonable.

20. On the evidence outlined above, the landlord cannot in our judgment be faulted for deciding that the time had come to replace the roof. The works carried out have been a success. There have been no further leaks and indeed the insulation is now, as Mr Wilkinson acknowledged, very much improved.

21. There is no evidence that any earlier failure to maintain the roof had hastened the deterioration in the roof's condition. No flat roof laid in 1968 is likely to last significantly more than 40 years.

22. Nor is there any evidence that the roof should have been repaired under a guarantee in 1993 (when the Wilkinsons exercised the right to buy). There is no evidence that there was any 25 year guarantee, or, if there was such a guarantee, that it would have covered works of repair or replacement in 1993, or, if the guarantee would have covered such works, that the guarantor was either still in existence or solvent.

23. Accordingly we disallow nothing in respect of the roof.

Scaffolding

24. There is evidence that the scaffolding was left up longer than necessary, however, the amount actually charged to these tenants under this head is £43,418.00 as opposed to the cost in fact incurred by the landlord of £78,390.09. The tenant has failed to convince us that the total for scaffolding should be reduced below £43,418.00, which was the figure allowed in the consultation documentation.

25. Accordingly we disallow nothing under this head.

Costs

26. The Tribunal has a discretion as to the fees paid to the Tribunal. These comprise an application fee of £15 (after giving credit for the Court fee paid to the County Court) and a hearing fee of £150, both paid by the landlord. In our judgment the landlord is the winner in this matter and it is right for us to order that the tenants reimburse the landlord for that sum of £165. The costs in the County Court are a matter for the County Court.

27. The Tribunal has the power to make an order under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord recovering its costs of the current proceedings from them through the service charge. The landlord indicated at the hearing that it did not intend to do so, so we make no order under section 20C.

DECISION

The Tribunal determines:

(i) that the service charges claimed in the current proceedings are payable in full;

(ii) that the tenants do pay the landlord £165 in respect of the fees payable to the Tribunal;

(iii)that there be no order under section 20C of the Landlord and Tenant Act 1985;

(iv)that this matter be transferred back to the Clerkenwell and Shoreditch County Court for final determination.

Adrian Jack

Adrian Jack, Chairman 26 November 2010