9268

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2012/0785**
Property	:	**160 Bracklyn Court, Wimbourne St, Hackney, London N1 7EJ**
Applicant	:	**London Borough of Hackney (Landlord)**
Representative	:	**Mr Jonathan Newman of Counsel**
Respondent	:	**Mr I. Adediran (Leaseholder)**
Representative	:	**In person**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 – Service charges (Court transfer) , and Section 20C**
Tribunal Members	:	**Mr L. W. G. Robson LLB (Hons)** **Mr P. Tobin FRICS** **Mrs J. Hawkins**
Date and venue of Hearing	:	**30th July 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**28th August 2013**

DECISION

Decisions of the Tribunal

(1) That the sum of £23,064.23 in respect of two items of major works (as shown in the Applicant's final accounts) is reasonable as demanded.

(2) The Tribunal made an order for reimbursement by the Respondent of the hearing fee of £150 paid by the Applicant under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

(3) The Tribunal made no order limiting the landlord's costs under Section 20C of the Landlord and Tenant Act 1985

(4) The Tribunal makes the other determinations as set out under the various headings in this decision.

(5) This case shall now be referred back to the Clerkenwell and Shoreditch County Court to decide upon costs in the County Court action and any other outstanding matters not within the Tribunal's jurisdiction.

The application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to the reasonableness of demands made on 17th May 2010 and 14th May 2012 relating to two items of major works payable pursuant to the terms of a lease (the Lease) dated 18th September 2000. The first demand relates to window replacement and roof works. The second demand relates to works on the communal TV aerials

2. This case was referred to the Tribunal by an order of District Judge Manners dated 22nd November 2012 at the Clerkenwell and Shoreditch County Court in case no. 2YL54315. The Tribunal's directions were given on 4th June 2013 after attempts to settle the matter had been unsuccessful.

3. The Applicant made a formal statement of case with relevant documents annexed. The estimated demands on which the Applicant sued in the County Court were £28,163.22 in respect of the first set of works, and £308.20 in respect of the second set of works, plus statutory interest and costs. The final account and demand for the first set of works was for a reduced figure of £22,756.33. The final account for the second set of works remained at £308.20. The Respondent did not fully comply with Directions. His statement in reply essentially dismissed the specific matters raised by the Applicant's statement of case, as he considered he had no time.

4. Extracts from the relevant legislation are attached as Appendix 1 below.

Hearing

5. Besides Mr Newman and the Respondent, Ms D Woode of Hackney Legal Services, Mr J Collyer (Project Manager) and Mr L. Austin (Major Works Officer) were present at the hearing.

6. At the start of the hearing the Tribunal confirmed the amounts now sought by the Applicant now that the final accounts for the works had been completed. These were: Replacement windows (reduced from the estimate sued upon) - £22,756.33; and Aerials - £308.20. The Respondent still disputed the first amount, but confirmed that he accepted the second amount.

7. The Tribunal then discussed the Respondent's statement of case with the parties to identify specific issues with which were within its jurisdiction. The Respondent had failed to attend two Pre-Trial Reviews held by the Tribunal. The Review held on 4th June 2013 in particular had been scheduled with the Respondent's declared work commitments in mind, but he did not attend. This was unfortunate, as he stated at the hearing that he had not understood what he was obliged to do to comply with the Directions. Regrettably the Defence to the County Court claim, and his statement of case for this application were in very general terms. The Defence referred at some length to the relationship between the parties, which had been difficult, but is not a matter that the Tribunal can deal with. The main three items raised in his Defence by the Respondent were;
   a) a request for a full breakdown of the work that was done "in terms of cost", and how the final figure was arrived at
   b) several specific items of damage to his property
   c) water damage to his property from the veranda above which was a potential insurance claim.
   Items b) and c) are not within the Tribunal's jurisdiction under Section 27A, as the Tribunal indicated at the hearing. In passing, the Tribunal notes that the parties agreed that the Applicant had remedied the items mentioned relating to item b).

8. The Defence also referred in general terms to non-receipt of "a letter of when they initially entered into the contract". At the hearing the Tribunal ascertained that the letter concerned was the Section 20 Notice relating to the larger item of major works dated 22nd July 2009. The Respondent's statement of case did not refer further to this matter, but seemed mainly directed towards the Respondent's ability to pay for the work, but at item 7 he generally challenged the reasonableness of the work without challenging any specific items, and provided very little documentary evidence in support of his case, (in breach of Paragraph 10 of the Tribunal's Directions). When asked about this, the Respondent stated that he had not understood what he had been asked to do. At the hearing he raised the following matters:
   a) non-receipt of the Section 20 Notice dated 22nd July 2013
   b) a downpipe near his property which should have been painted as part of the major works
   c) removal of asbestos from the roof, which he had not seen

d) CCTV on the scaffolding which he had not seen
e) independent evidence that the prices had been compared (in a letter to the Applicant dated 24th July 2013)
f) A reply he had made in 2011 to a Schedule of Works given to him by the Applicant at a meeting on 8th July 2011

9. The parties disagreed over items provided with the Respondent's statement of case. The Respondent considered that copies of 4 of his emails had been attached to his statement, dated 20th February 2013, 1st March 2013, 22nd March 2013 and 24th April 2013. The Tribunal noted that only those of 20th February and 1st March 2013 were in the bundle. Mr Newman stated that the email dated 22nd March 2013 had been received by his client on another occasion, but it had not known it was to be in the bundle. The Applicant had no information about the email dated 24th April 2013. The Respondent had supplied no copy of his reply to the Schedule provided on 8th July 2011, and the letter dated 24th July 2013 was after the bundle had been produced, thus clearly too late for consideration. The Tribunal noted that the 2 emails dated 20th February and 1st March 2013 in the bundle did not relate to matters within its jurisdiction, and decided that it was too late to allow the outstanding items to be added. The Respondent agreed that his main concern was about how the Applicant came to the figures it stated, and the work actually done.

10. Based on the above, the Tribunal concluded that it had clear jurisdiction to determine the following issues;
a) Validity of the Section 20 Notice dated 22nd July 2009
b) Whether the overall cost of the work was reasonable (the Respondent not having challenged particular items in time).

11. Additionally, the Tribunal allowed the specific items relating to the painting of the downpipe, asbestos removal, and CCTV cameras to be discussed. Although they were arguably not covered by the Defence, they were items with which the Applicant could deal at the hearing, based on the documents in the bundle, and its witnesses who were present. Airing these issues might assist the parties in the future.

12. The Respondent confirmed that he did not dispute the amount of £308.20 relating to the aerial works, nor the quality of the works generally, with the exception of the painting of the downpipe, and the items not seen, i.e. the asbestos removal and the CCTV. He only had evidence relating to the downpipe. The Tribunal notes that the Respondent raised no challenge to the Applicant's right to charge under the terms of the Lease.

Applicant's Case

13. Mr Newman called Mr Austin and Mr Collyer to be examined on their witness statements.

14. Mr Austin was an administrator. His job did not include looking at work on site. He explained the procedure for sending out Section 20 notices. Both sets of major works were done pursuant to a Qualifying Long Term Agreement. The details of that agreement and works on site were within

Mr Collyer's remit. All Section 20 Notices were sent by first class post for which proof of posting was obtained from the Post Office. To the best of his knowledge and belief the notice had been sent to the Respondent at the property. The Respondent had received the Section 20 Notice dated 23rd July 2010 for the aerial works sent there. An arrears letter was sent on 20th august 2010 relating to the window and roof works. And a further arrears letter on 9th September 2010. On 10th September 2010 there had been a telephone conversation between the Respondent and a member of staff, confirmed in the Respondent's letter of 24th September 2010. As a result a meeting took place on 25th October 2010 at which the main concerns were the costs of the works. Later another meeting was held with him on 1st July 2011. He was invited to complete a schedule of works listing his objections. The issue of the damage to the Respondent's property during the works was noted and subsequently this damage was repaired. Court proceedings started in 2012, but a further meeting was held on 8th February 2013 to try and settle the matter. At the first two meetings the Respondent had expressed himself to be satisfied with the work. The problem seemed to be payment. At no time during the first meeting had he raised the issue of non- receipt of the Section 20 Notice dated 22nd July 2009. If he had, the officer concerned, Abigail, would have certainly raised it with Mr Austin in her report of the meeting. She had not done so.

15. Mr Collyer explained the procedures for supervising the works. The Applicant had a Clerk of Works who inspected works to ensure they were satisfactory. Companies doing specialist works leading to a guarantee would also have a member of staff on site. The Applicant also retained a Quantity Surveyor for this block to check that the work conformed with the contract. At the tribunal's request, for the benefit of the Respondent, Mr Collyer also explained how a Qualifying Long Term Agreement was entered into, and how it operated. Such agreements were intended to save costs, and were required by the government. The contracts had to be advertised in the Official Journal of the European Communities. The Work was tendered for against a schedule rates. The rates were tested by an independent company on behalf of the Applicant. It was not possible for a leaseholder to nominate a contractor, but nevertheless the Applicant was paying a substantial part of the costs and also wanted value for money. He wished to correct a factual point made by the Respondent. The reference to CCTV in the specification for the works related to inspection of the drains, not to provide security for scaffolding. He had attended one of the meetings with the Respondent who had eventually declared himself satisfied with the works. He had suggested that certain roof works had not been done. However there had been a Certificate of Completion which signalled that all works had been substantially completed. Relating to the downpipe, Mr Collyer said he had inspected it, and it was a gas pipe. He agreed that the decoration was a bit rougher than others, but if it had not been done at all it would have been much worse. He also gave evidence of the Applicant's procedure for inspecting and deciding if work was necessary. This had been done professionally, and it had been advised of the work necessary.

16. Mr Newman made a number of submissions on relevant legislation and case law, as well as the Lease. However the Tribunal has not found it necessary to refer to them in any detail, in view of the very basic case made by the Respondent. Mr Newman also challenged the Respondent as to whether he had in fact complained the costs were too high in his Defence and statement, or merely queried them.

Respondent's Case

17. Mr Adediran stated that he was a science teacher. He did not ignore documents sent to him. When he got the account he had contacted Hackney. At the first meeting with a staff member, Abigail, he had been kept waiting for half an hour. He had said that the figures were too high for the work he had seen carried out. Abigail had mentioned payment plans. Afterwards he had emailed Mr Austin asking for further explanation and they had subsequently met. Mr Austin had asked him to write out his comments on a piece of paper. He had written a great deal, but no one came back to him. He had raised the issue of damage to his property, and had been referred to another department. Later he had another letter complaining about non-payment. He objected to the tone of these letters. Another meeting had been held with the Project Manager. He had asked for the figures to be explained. They tried to explain but when he had asked for comparisons, they had not given any. He felt he had been given no choice, although he did not agree with the figures. He had tried to get a loan but his bank had turned him down. He considered that the Applicant had not considered his inability to pay. He did not dispute the work done. In reply to questions he agreed that he now understood about the Qualifying Long Term Agreement procedures, but had only discovered about that at the hearing. He agreed that he had received the Section 20 Notice relating to the aerial works. He had not agreed, as stated by Hackney, with the works. He had said they were too high. He agreed that Mr Collyer had gone through the list of works with him. When challenged that he had not raised the question of whether the costs were too high before, he stated that he had done so the week prior to the hearing. He did not agree that he had not made it clear that the costs were too high in his Defence and statement. He had made it clear he could not afford it. He had paid nothing towards the accounts as the Council had not allowed him to do so. He did not understand about the CCTV. He agreed that he had not attempted to get an alternative quote for the windows. He said there was nothing wrong with the old windows.

Decision

18. The Tribunal considered all the submissions and evidence carefully. The Applicant had put forward a reasonable case. The problem with all the Respondent's challenges was that there was insufficient particularisation of the points of objection in time for the matter to be considered, and almost no relevant evidence. Parties must take the time to put forward specific items which trouble them, rather than put forward issues in very vague general terms. To do otherwise will adversely affect their case. However the Tribunal decided that Mr

Newman's submission that the Respondent had not put in issue that the costs were too high was not borne out by the facts. For example, paragraph 6 of the Respondent's statement refers to the demands as "your indiscriminate huge bill", and in paragraph 7; " I can categorically state that you have not reasonably incurred this debt... If it is reasonable, people are no fools; they will pay without any problem". He also referred to his good payment record relating to "normal" service charges (which was not challenged by the Applicant). Whatever the other shortcomings of his Defence and statement of case, it was also clear from many other statements in those documents and the surrounding correspondence that he found the charges were very high, and wanted them reduced. While he had made much of the high cost of the work against and his very limited means to pay, this should not distract from his basic stated concerns.

19. The Tribunal was satisfied on the balance of probabilities that the Section 20 procedure had been validly followed in relation to the Section 20 Notice dated 22nd July 2009. The notice itself had no obvious defects. The Applicant had produced evidence of a reasonably sound system for serving such notices, and that other correspondence sent in the same way had reached the Respondent. The Respondent's case was founded on his bare assertion that he had not received the Section 20 Notice, which was not enough.

20. At the hearing the Respondent appeared to accept that the Qualifying Long Term Agreement procedures were intended to protect the interests of leaseholders, but then in final submissions raised the question of lack of independence of the Applicant's staff once more. Again, he had put forward no specific item, except a general complaint about the cost of the new windows in reply to a question. The Tribunal thus decided that the Applicant had given evidence of a robust system of costs control in compliance with legislation. Further it had given credible evidence of the procedure followed in deciding if the works were necessary. The Applicant had also provided satisfactory evidence as to how the costs were apportioned to the Respondent's property. The Tribunal thus decided that the major works in dispute were undertaken reasonably, were reasonable in quality, and that the costs were reasonable in amount.

21. The Tribunal considered that the Respondent had misunderstood the CCTV item. Inspecting the drains with CCTV equipment prior to major works was reasonable, and prudent. The Tribunal thus decided that those costs were reasonable.

22. The matter of the downpipe was less clear. Even from photographs produced at the hearing, it was clear that the pipe looked different to others on the building. Nevertheless, in the end the Tribunal accepted that on the balance of probabilities the work had been done, although to a basic standard.

23. As to the asbestos removal, the Respondent stated that he had not been able to inspect the work. Against that, a Certificate of Completion of all the Works had been issued, after inspection by several professionals acting on behalf of the Applicant. On the balance of probabilities the Tribunal decided that the work had been done, and to a reasonable standard.

Costs

24. The Respondent had initially made no Section 20C application to limit the landlord's costs of the Application being added to the service charge. At the hearing the issue of costs was discussed, and the Tribunal outlined the various costs options open to the parties. The Applicant made an application of reimbursement of the £150 hearing fee paid to the Tribunal. The Respondent made an application under Section 20C to limit the landlord's costs of the application to the Tribunal being added to the service charge. The Tribunal noted that the Applicant had been completely successful in the application. The Tribunal also considered that the Applicant had made genuine attempts to address the Respondent's concerns, and least some of those concerns were misguided. The Respondent had also failed to comply with Directions, leading to a much longer hearing than should have been necessary. Although the Respondent was a lay person, he had not helped himself by failing to attend Directions hearings, and there was no evidence that he had attempted in any other way to find out what he needed to do to comply with Directions. As a result the Applicant had been put to great expense. The Tribunal decided to grant the Applicant's application under Regulation 9 for reimbursement by the Respondent of the £150 hearing fee paid by the Applicant. It also decided to make no order under Section 20C.

Chairman: L. W. G. Robson LLB (Hons)
Tribunal Judge

Signed: Lancelot Robson
Dated: 29th August 2013

Appendix 1

Landlord & Tenant Act 1985

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 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, 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 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are 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 a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).
