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

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| **Case Reference** | : | **LON/00BE/LSC/2014/0309** |
| **Property** | : | **12a Graces Road, SE5 8PA** |
| **Applicant** | : | **Mr Tim Sneezum** |
| **Respondent** | : | **L.B. Southwark** |
| **Representatives** | : | **Mr Sneezum (Self Representing)**<br>**Mr J Egboche (Enforcement Officer for L.B. Southwark)** |
| **Type of Application** | : | **Payability of Service Charges** |
| **Tribunal** | : | **Mr M Martynski (Tribunal Judge)**<br>**Mr P Tobin FRICS MCIArb** |
| **Date and venue of Hearing** | : | **22 June 2015**<br>**10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **26 June 2015** |

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**DECISION**

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## DECISION SUMMARY

1. The tribunals decisions in summary are as follows:-

   (a) Only the sum of £250.00 is payable in respect of repairs carried out to the front steps of the Building in 2012

   (b) The costs of electrical testing are not payable

   (c) The Administration Fee of £72.95 for the Service Charge year ending 2014 is payable

   (d) If necessary, management charges should be recalculated on the correct figures and the appropriate credit given to the Applicant

   (e) The Respondent must pay to the Applicant his tribunal fees totalling £315.00 within 28 days of the date of this decision

   (f) An order is made in respect of the Respondent's costs of this application pursuant to section 20C Landlord and Tenant Act 1985 ('the Act')

   (g) No order is made in respect of the Applicant's other costs

## BACKGROUND

2. 12 Graces Road ('the Building") is a mid-terraced three-storey house probably dating from the Victorian era. The Applicant's flat, number 12a, is at the semi-basement level of the Building. The freehold interest in the Building is owned by the Respondent.

3. The Applicant's application is dated 9 June 2014. In that application the Applicant challenged the following Service Charges:-

   (a) Repair work to the front steps - £1,859.34
   (b) Electrical testing - £696.30
   (c) Management Charges for the Service Charge year ending 2014 - £208.04

4. A Case Management Hearing was held on 1 July 2014 and directions were given which defined the issues in dispute as:-

   (a) Repair work to the front steps - £1,859.34
   (b) Electrical testing - £696.30
   (c) Management Charges for the Service Charge year ending 2014 - £208.04
   (d) Whether any Estate Charges are payable

5. In his Statement of Case, the Applicant raised the following further issues:-

(a) The issue of a picket fence at the front of the Building
(b) Damage to the front wall of the Building following leaking from the gutter

No issue was taken by the Respondent that the further issues raised in the Statement of Case were not points mentioned in the original application or issues defined in the Case Management Hearing.

6. Prior to his application to this tribunal, the Applicant had made an application to the Respondent's own Arbitration Tribunal. That Tribunal had considered some of the matters now raised in this application. The proceedings in the Respondent's Tribunal are referred to in this decision where relevant.

## The issues – evidence and decisions

*Repairs to the front steps*

7. The steps in question run from street level up to the main front door of the Building (that door leads to the raised ground floor). The front door to the Applicant's flat is situated under these steps.

8. According to the Respondent's records, in or about October 2012, work was carried out to re-asphalt the steps and the top and bottom external landings.

9. According to the Applicant's statement, he had not received notification from the Respondent that the work was to be carried out.

10. The Respondent stated that the Applicant was served with notice regarding this work. Mr Duncan Stevenson, who had made a witness statement dated 26 May 2015, gave evidence to us at the hearing confirming that he had served a notice pursuant to section 20 of the Act. He produced a copy of the notice and a copy of a certificate of service of that notice. The notice is dated 17 October 2012. The certificate of service is dated 18 October 2012 and records that the notice was served the previous day by posting through the letterbox.

11. The notice was simply addressed to the Leaseholder and described the work and gave an estimated contribution to the costs of the work as £1002.92. The work was to be undertaken by Southwark Building Services with whom the Respondent had a long-term agreement. Therefore the only consultation requirement under section 20 of the Act in respect of this work was this initial notice.

12. The Applicant says that in the Autumn of 2013, his tenants in his flat informed him that the area over the front door, which is underneath the stairs and top external landing was damp and had been for some time.

13. The Applicant made a complaint regarding the steps to the Respondent's Arbitration Tribunal. In an interim decision dated 29 January 2014, that Tribunal records as follows;

> The Council accepted that the steps to the upper flat were leaking and stated that it would inspect and repair the leak within 4 weeks. [1]

The Tribunal decided that the Council should inspect and repair the steps at the front of the Building and ordered that the Council should do this within 28 days and at no cost to the leaseholders of either flat.

14. The steps were then re-asphalted some time after the decision referred to above.

15. As to service of the consultation notice, we do not consider that the notice in respect of this work was properly given to the Applicant. At the time in question it appears that it was known to the Respondent that the Applicant did not live in the flat and that he had a correspondence address in Oxfordshire.

16. We accept the Applicant's evidence that he did not receive a copy of the notice. This puts the burden of showing that the notice was properly given to the Applicant upon the Respondent.

17. Whilst the Respondent has proved that the notice was served at the flat, there is no proof that it was given to the Applicant or that this notice was brought or came to his attention. The notice was not addressed personally to the Applicant nor was a copy sent to his correspondence address.

18. It follows therefore that the costs payable by the Applicant in respect of this work is limited to £250 in the first instance. Following this, the next question is; given that the steps had to be re-asphalted in 2014, should the Applicant have to pay even this £250 if the work was not carried out to a reasonable standard?

19. We consider that the Applicant should pay the £250. Although the steps had to be re-asphalted less than two years after the initial work, the Applicant did derive some limited benefit for the work after it was done. We have kept in mind that, as a result of the Respondent's Arbitration Tribunal decision in January 2014, the Applicant did not have to pay anything towards the re-asphalting.

20. Finally on this issue, we have to add that in another decision made by the Respondent's Arbitration Tribunal, the costs payable by the Respondent for the first set of asphalting were in any event limited by that Tribunal to £1002.92 (that being the estimated cost in the section 20 notice). This therefore reduced the cost to the Applicant to £856.42. For reasons unknown, the Respondent's disrepair team told the

[1] Paragraph 10 of the decision

leasehold team that this cost was to be reduced by a further £480 as a result of compensation, this reduced the cost to £376.42. The actual charge applied by the Respondent was £287. It arrived at this figure, we think, by applying the £250 statutory limit (for non-service of the consultation notice) and then adding to that the management overheads for the work. None of this is clear. We do not consider that overheads can be added where the statutory limit of £250 applies.

21. We have to further add that the Applicant complains that the steps are leaking again. There is no up to date evidence regarding this. Mr Leverton, a Surveyor employed by the Respondent, inspected the steps after they were asphalted for a second time in 2014. He made a witness statement dated 5 June 2015 and gave evidence to the tribunal at the hearing. He was of the view that the problems with damp in the Applicant's flat under the steps is not necessarily attributable to the steps; there may be leaking from the steps of the neighbouring building (not owned by the Respondent) or the damp may be attributable to the former leaking from the front gutter of the Building.

22. There is no decision that we can make on this issue as there is no charge for the re-asphalting of the steps.

*Electrical testing*

23. According to the Respondent, the electrical system at the flat was tested in or about September of 2012. The Respondent produced photographs of the meters which had allegedly been tested.

24. The Applicant denied that this work had been carried out. He said that the flat was vacant at the time and was in the course of being re-wired. There was no electrical system to test (proof of this was supplied by way of test certificates dated December 2012 and a Council Tax exemption application and other various documents). The Respondent's photographs were of the upper flat, not his. As the flat was empty at the time, the Respondent could not gain access to the flat without contacting the Applicant - he was not contacted. It was agreed that no section 20 notice had been served in respect of this work.

25. Mr Egboche for the Respondent suggested that the electrical testing might have been done externally only. There was however no evidence that this was the case, or that this was the Respondent's stated case. In any event, apart from one lamp by the door of the Applicant's flat, there was nothing to test externally.

26. Quite clearly on the balance of probability, on the evidence before us, there was no electrical testing of the Applicant's flat and accordingly the charge in respect of that is not payable.

*Fence*

27. A picket fence was erected at the front of the Building in or about January 2013. All charges for this fence have been credited so there is no charge for the work to the Applicant.

28. However, the Applicant complained there should be a reduction in the Respondent's management charge as this work was managed so poorly.

29. Despite the fact that a picket fence was specified originally, the fence that was first erected was not picket style. That fence was removed and replaced with the current fence which is of the correct specification. The Applicant alleges that this fence has not been erected properly as the end post of the fence is not properly secure.

30. We do not consider that there should be any reduction in the management fee for this year which is £72.95. The management fee is for the administration of the Service Charge account, it is not for the management of works. The management fee for the administration of works is added, separately, to the fee for those works. We consider that the management fee for the administration of the Service Charge account is a basic fee for a basic job. The problems that occur with the Service Charge appear to be attributable to other factors (poor workmanship for example) which do not bear directly on the administration of the account.

31. The management charge is based on a percentage of the Service Charge costs for any one Service Charge year. It appears that some of the management charges have been calculated on incorrect Service Charge figures. If necessary, management charges should be recalculated on the correct figures and the appropriate credit given to the Applicant.

*Damage to the front wall*

32. The decorations to the front wall of the Building were spoiled by a leaking gutter. The Applicant's lease states that the Respondent will periodically paint the outside parts of the Building with two coats of paint. The Applicant stated that only one coat of paint was applied when the wall was made good after the leak.

33. We do not feel able to make any order regarding this complaint, there is no charge as yet in respect of the work and we are unclear as to whether it is suggested that only one coat has proved to be insufficient.

*Estate Charges*

34. It was agreed that the Applicant, under the terms of his lease, was not liable to pay Estate Charges and that all such charges should be removed from his account.

## Costs and fees

*Fees*

35. The Applicant requested that we make an order that the Respondent pay to him the sum of £315.00, that being the amount that the Applicant has paid in the way of tribunal fees.

36. The Applicant has been partially successful in his application. It is clear that the Applicant had to make and pursue the application to get the reductions in the Service Charge that we have ordered. It is therefore right that the fees that he has paid for the application be refunded to him. This should be done within 28 days from the date of this decision.

*Costs*

37. The Applicant further applied for an order that the Respondent pay his costs in preparing the application and for damage caused to his flat.

38. We have the power to order that one party to proceedings pays to the other party some of all of that party's costs of the proceedings. We can only exercise this power if we consider that a party has behaved unreasonably in relation to the application. The Applicant argued that the Respondent was late in preparing a bundle for the final hearing. The Respondent said this was because it received a statement from the Applicant with numerous references in it to documents that were not appended to the statement.

39. We do not consider that there is any clear evidence that the Respondent has acted so unreasonably as to justify an award of costs against it.

40. We do not have the power to award compensation for damage to property in this case.

*Costs – section 20C of the Act*

41. For the same reasons that we have ordered the payment of fees to the Applicant, we make an order that none of the costs incurred, or to be incurred, by the Respondent in connection with this application are to be added to the Service Charge payable by the Applicant.

**Mark Martynski, Tribunal Judge**
**26 June 2015**