

10644



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

Case Reference : **LON/00AGLSC/2014/0579**

Property : **61B Bartholomew Road London NW5
2AH**

Applicant : **Mr & Mrs M Keegan**

:

Respondent : **London Borough of Camden**

:

Type of Application : **Section 27A and s20C Landlord and
Tenant Act 1985**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mrs L Hart
Ms S Coughlin MCIEH**

**Date and venue of paper
consideration** : **3 March 2015
10 Alfred Place London WC1E 7LR**

Date of Decision : **3 March 2015**

DECISION

The Tribunal declares that the Applicants are liable to pay to the Respondent the sum of £8,626.12 in relation to service charges demanded by the Respondent in respect of major works carried out in service charge year 2013- 2014.
The Tribunal makes an order under s20C Landlord and Tenant Act 1985.

REASONS

1 The Applicants are the tenants of the property situate and known as 61B Bartholomew Road London NW5 2AH (the property) which is a raised ground

floor flat in the end of terrace Victorian building (the building) known as 61 Bartholomew Road London NW5 2AH . The Respondent is the landlord of the building and of other property in the locality.

2 The Applicants filed an application with the Tribunal on 3 November 2014 in which they challenged the Respondent's service charge demand for sums for major works incurred in 2013 and one additional item in the service charge year ending 31 March 2014 relating to repairs to a boundary wall. The latter item has been resolved between the parties and the Tribunal is not required to adjudicate upon it. Directions were issued by the Tribunal on 21 November 2014.

3 The matter came before a Tribunal on 3 March 2015 as a paper consideration and neither party was present but the Tribunal considered all the papers submitted to it by both parties.

4 The Applicants' claim is based on s27 Landlord and Tenant Act 1985, relating to the payability of and reasonableness of service charges as between landlord and tenant. Such a matter falls within the jurisdiction of the tribunal.

5 The Applicants do not challenge the fact that they are liable under the terms of their lease to pay for major works as part of their service charge. Neither do they contest the proportion which has been charged to them nor the validity of the Respondent's consultation process. Their argument rests largely upon the contention that the sums invoiced by the Respondent were excessive.

6 The Tribunal was of the opinion that an inspection of the property would not assist since the contested works had already been completed.

7 The position between the respective parties as at the date of the paper determination is set out on the attached Scott Schedule (prepared by the Applicants and not contested by the Respondent). The Respondent had served a statement in reply to the Applicants' statement of case but had not responded to the Applicants' Scott Schedule. The items on the attached Schedule are sequentially discussed below. The breakdown of costs for each item to which the Tribunal referred in its consideration is found on pages 48-49 of the Tribunal bundle.

8 **Scaffolding:** The Applicants contended that the scaffolding erected by the Respondent was more substantial and more complex than necessary. They did not give reasons for this and their alternative calculation of the amount required was not a like for like calculation with which the Respondent's own calculation could easily be compared. No alternative quotation was provided by the Applicants. In the absence of oral evidence the Tribunal accepts the figures provided by the Respondent for the provision of scaffolding save that it disallows the sum of £900 charged for a design drawing the need for which and cost of which has not been explained by the Respondent.

9 **Roof:** The Applicants asserted that the costs invoiced for renewing guttering fascia and soffits were excessive and that the roof repairs were not effective because further repairs were required at a later date. The Applicants also maintained that the gutters had merely been cleaned and not replaced but provided no evidence to support that contention. Similarly, they provided no evidence (by way of alternative quotations or expert report, survey or witness statement) as to why the costs charged by the Respondent for these items were excessive. The Tribunal accepts that further roof repairs have been carried out since the major works were completed but, in the absence of evidence that the additional work was necessitated by ineffective or faulty workmanship during the major works cycle, cannot attribute fault to the Respondents for the further round of repairs to the roof of the building and additional costs thereby incurred. The Tribunal finds that the sum of £769.03 (being the Applicants' share of the total cost) demanded by the Respondent in respect of roof repairs is therefore payable in full.

10 **Windows:** The Applicants asserted that the costs invoiced for repairs to windows were excessive but they provided no evidence (by way of alternative quotations or expert opinion) as to why the costs charged by the Respondent for these items were excessive. In the absence of such evidence the Tribunal accepts the figures provided by the Respondent for the window repairs were reasonable and are therefore payable in full by the Applicants.

11 External Concrete repairs and redecorations: The Applicants asserted that the costs invoiced for these items were excessive but they provided no evidence (by way of alternative quotations or expert opinion) as to why the costs charged by the Respondent for these items were excessive. In the absence of such evidence the Tribunal accepts the figures provided by the Respondent for these repairs were reasonable and are therefore payable in full by the Applicants.

12 Communal Decorations: The Respondent in its Reply (paragraphs 22-24) has conceded this item (£515.06) which is therefore not payable by the Applicants.

13 Fees and running costs/overheads: The Applicants asserted that the costs invoiced for fees running costs and overheads were excessive but they provided no evidence (by way of alternative quotations or expert opinion) as to why the costs charged by the Respondent for these items were excessive. The items charged under this head appear to be normal in type and reasonable in amount for the type of contract involved. However, there is in the papers before the Tribunal considerable evidence that the Respondent was both slow to respond to the Applicant's queries and not forthcoming in their responses (eg by not completing a Scott Schedule, failing to deal with the missing ironwork). The Tribunal also considers that the amount charged by the contractor for overheads was excessive given the limited nature of the contract. For these reasons the Tribunal finds that the charges made by the Respondent under this heading are unreasonable and are to be reduced by 50% so that the amount payable by the Applicants under this head is £881.17.

14 The item for **replacement of non-matching window sill iron work** overlaps with item 11 above. The Tribunal has no jurisdiction to order payment of compensation to a tenant for the non-replacement by the landlord of an item which under the terms of the lease is attached to the structure of the building and is thus the landlord's responsibility to maintain.

15 Notification of works to roof : This item relates to separate roof repairs carried out subsequent to the main major works contract. This item overlaps with item 9 above but does not form part of the application before the Tribunal which therefore lacks jurisdiction to adjudicate on it at the present time.

16 The Applicants made an application under **s20C Landlord and Tenant Act 1985**. In view of the Respondent's conduct of these proceedings (no Scott Schedule, no witness statements, dilatory responses to the Applicant, issuing multiple invoices for £250) the Tribunal considers that it is appropriate in this case to make an order under this section.

17 The Law

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 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—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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 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 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.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,

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

Judge F J Silverman as Chairman

Date 3 March

2015

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

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Disputed Costs for Better Homes Work Undertaken on Property by Camden Council								
Case Reference: LON/00AG/LSC/2014/0579								
Property: 61b Bartholomew Road, London NW5 2AH								
Section of Statement of Case Document	Cost invoiced (building)	Flat B portion of Cost	Paragraph Ref in Statement of Case	Applicant's Comments	Applicant's Fair Cost Estimate	Flat B portion of Applicant's Fair Cost Estimate	Camden Council Comments	Tribunal Comments / Use
Scaffolding	£8,273.62	£2,368.36	10, 11	Scaffolding area required has been over-calculated. The scaffolding erected was more substantial and complex than necessary.	£4,136.81	£1,184.18	N/A - Camden did not return the Scott Schedule	
Roof	£2,686.53	£769.03	12, 14	Costs invoiced for renewing guttering, fascia and soffit are excessive.	£0.00	£0.00	N/A - Camden did not return the Scott Schedule	
			13, 14	The roof repairs were not effective and further repairs are now required.			N/A - Camden did not return the Scott Schedule	
Windows	£13,764.46	£3,940.14	16, 17, 18, 19	Costs invoiced for repairing the windows are excessive.	£6,882.23	£1,970.07	N/A - Camden did not return the Scott Schedule	
External Concrete Repairs & Redecorations	£5,475.60	£1,567.42	20	Costs invoiced for external concrete repairs and redecorations are excessive.	£2,737.80	£783.71	N/A - Camden did not return the Scott Schedule	
Communal Decorations	£1,799.29	£515.06	21, 22, 23, 24, 25	Costs invoiced for communal decorations are excessive.	£899.65	£257.53	N/A - Camden did not return the Scott Schedule <u>Per "Respondent's Statement in Reply" the Respondent agrees to forgo charges included in Communal Decorations.</u>	
Fees and Running Costs / Overheads	£6,156.57	£1,762.34	27, 28	Costs invoiced for fees and running costs / overheads are excessive.	£1,484.25	£424.87	N/A - Camden did not return the Scott Schedule	

Information Coming to Light since Circulation of Original Statement of Case								
Section of Statement of Case Document	Cost invoiced (building)	Flat B portion of Cost	Paragraph Ref in Statement of Case	Applicant's Comments	Applicant's Fair Cost Estimate	Flat B portion of Applicant's Fair Cost Estimate	Camden Council Comments	Tribunal Comments / Use
Request for Tribunal Ruling on Roof Work - Fix Leak Existing at Time of Better Homes Work								
Replacement of non-matching window sill iron work	n/a	n/a	23, 24	Iron work has been replaced with incorrect, non-matching, out of place iron railing. Applicant requests that the Tribunal rules amount be deducted to allow applicant to replace iron work themselves.	n/a	£1,000.00	N/A - info came to light after Scott Schedule submitted to Camden Council.	
Request for Tribunal Ruling on Roof Works to Fix Leak Existing at Time of Better Homes Work								
Notification of Works to Roof	£1,870.00	£700.00	13	Estimate of costs (before overheads and indirect costs) to fix roof leak which was actually evident at the time of the better homes work. Applicant requests that the Tribunal rules that the tenant (Applicant) is not charged for this additional work which should have been resolved during the better homes work.	n/a	n/a	N/A - info came to light after Scott Schedule submitted to Camden Council.	

Adjusted Overall Invoice Amount Sought								
Overall / Total	£38,342.06	£10,975.60	30, 31, 32	Per individual elements above, costs were allowed to escalate, and applicant is being passed on excessive costs.	£16,326.73	£4,673.60 - £1,000.00 £3,673.60	N/A - Camden did not return the Scott Schedule	
				Information to which applicant was entitled was not provided - leaving applicant no alternative but to pursue Tribunal resolution route.			N/A - Camden did not return the Scott Schedule	
				Applicant requests that the Tribunal rules amount be deducted (circa £1,000) to allow applicant to replace iron work themselves.			N/A - info came to light after Scott Schedule submitted to Camden Council	