

12086



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

**Case Reference** : **LON/00AZ/LSC/2016/0333**

**Property** : **133 Battersby Road, London SE6  
1SB**

**Applicants** : **Phoenix Community Housing  
Association (Bellingham &  
Downham) Limited**

**Representative** : **Mr Richard Parker**

**Respondent** : **Mr Abdulai Eyimah**

**Representative** : **In person**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Members** : **Judge N Hawkes  
Mr M C Taylor FRICS  
Mr P Clabburn**

**Date and venue of  
Hearing** : **15<sup>th</sup> December 2016, 10 Alfred  
Place, London WC1E 7LR**

**Date of Decision** : **22<sup>nd</sup> December 2016**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal makes a deduction of £4,893.81 from the sum claimed by the applicant in respect of Project Overheads and a deduction in the sum of £200 from the sum claimed by the applicant in respect of Internal Decoration but finds that the sums claimed by the applicant are otherwise reasonable and payable.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, by consent, so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

## **The application**

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the respondent in respect of the service charge years 2012/13 and 2013/14.
2. Proceedings were originally issued in the County Court Business Centre under Claim No.C5QZ56A4. The claim was transferred to the County Court at Bromley and then in turn transferred to this Tribunal, by order of District Judge Grosse on 25<sup>th</sup> August 2016.
3. The Tribunal issued Directions on 4th October 2016, leading up to a final hearing on 15th December 2016.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

5. The applicant was represented by Mr Parker who is a Leasehold Consultant Advisor and the respondent appeared in person at the hearing, accompanied by Ms Attoh.
6. After the time which had been provided for in the Tribunal Directions dated 4<sup>th</sup> October 2016 for the service of bundles, the respondent sought to file and serve a bundle of supplementary documents and, at the hearing, he sought to rely upon colour photographs which were not contained in either bundle.
7. The applicant did not object to the respondent's reliance upon these documents and the Tribunal gave the respondent permission to admit them in evidence notwithstanding the late service.

8. Ms Howard, a Project Manager, had prepared a witness statement in support of the applicant's case. However, during the course of the hearing, it became apparent that Mr Parker was best placed to respond to certain questions which were being asked by the respondent. The respondent's comments in the Scott Schedule were brief and the precise nature of the respondent's case is likely to have been unclear to the applicant when the witness statement was prepared.
9. In all the circumstances, the respondent did not object to Mr Parker giving evidence and the Tribunal heard oral evidence from both Ms Howard and Mr Parker.
10. Paragraph 2 of the Directions provides that the tenant shall send to the landlord a schedule setting out by reference to each service charge year the item and amount in dispute.
11. At the commencement of the hearing, the respondent informed the Tribunal that he wished to dispute certain items which he had not included in the Scott Schedule. Mr Parker submitted that the applicant would be prejudiced if the Tribunal allowed the respondent to introduce new additional matters because the applicant had only included documents relating to the items which had been disputed in the Scott Schedule in the hearing bundle.
12. A dispute then arose between the parties regarding the nature of the information which the applicant had disclosed in accordance with the Tribunal's initial direction for disclosure. The respondent asserted that his failure to include certain items in the Scott Schedule was a consequence of inadequate disclosure on the part of the applicant. Mr Parker disputed this.
13. The Tribunal decided that it would first hear from the respondent in respect of the additional disputed items before deciding whether or not the prejudice to the applicant was such that the disputed items should not form part of this determination. Having heard from the respondent, the Tribunal is satisfied that the applicant is not prejudiced by the inclusion of the additional items and has made the determinations in respect of these items which are set out below.

### **The background**

14. The property which is the subject of this application is a flat situated within a purpose built, three storey, ex-local authority block containing six flats. The applicant is the current freeholder of the block by virtue of a stock transfer from the London Borough of Lewisham
15. The Tribunal has been informed that, during the years 2012/13 and 2013/14, the applicant carried out major works to the block under a

qualifying long term agreement with Lakehouse. This application concerns the costs of those major works.

16. Photographs of the block were provided in the hearing bundle. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
17. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

### **The issues**

18. The relevant issues for determination are as follows:
  - (i) the reasonableness and payability of the disputed service charge items for the years 2012/13 and 2013/14;
  - (ii) whether an order under section 20C of the 1985 Act should be made;
  - (iii) whether an order for the reimbursement of application/hearing fees should be made.
19. Having heard evidence and submissions from the parties and having considered all of the documents which were referred to during the course of the hearing, the Tribunal has made determinations on the various issues as follows.

### **External decorations**

20. The applicant claims the sum of £725 in respect of external decorations. It was the applicant's case that the work which was carried out included painting the soffits and the cast iron pipework but that it did not include repainting areas on the balconies which had been previously painted by individual tenants. Accordingly, the Tribunal has approached the matter on the basis that the sum claimed by the applicant under this heading does not include any charge for the cost of repainting the relevant sections of the balconies ("the balcony areas").
21. The respondent asserts that the balcony areas should have been repainted. However, this is not a matter before the Tribunal because there is no sum claimed for the painting of the balcony areas to potentially be reduced in this determination. The Tribunal notes that it would have been preferable for the applicant to have explained more

clearly to the leaseholders what was and was not included in the major works.

22. There was a dispute of fact between the parties regarding whether or not the entirety of the cast iron pipework was in fact repainted. On balance, the Tribunal prefers the applicant's evidence on this point and finds that it is more probable than not that the disputed work was carried out.
23. The respondent has provided no alternative quotations and the Tribunal finds that the sum claimed is within the reasonable range of charges for the work which it has found was undertaken.
24. Accordingly, the Tribunal finds that the sum of £725 is reasonable and payable under this heading.

### **Internal Decorations**

25. The applicant claims the sum of £5,733.04 in respect of internal decorations. The respondent's case is that the work in question was not carried out to a reasonable standard because the floor coverings are rising. He provided helpful colour photographs showing the defects.
26. The applicant contends that the work was carried out to a reasonable standard on the basis that the work was signed off by the applicant's clerk of works and the applicant was "happy with the work" at the time when it was completed.
27. The Tribunal accepts the respondent's evidence and prefers the respondent's case in respect of the condition of the floor coverings. The Tribunal was informed that the floor coverings were fitted in the year 2012/13 and the Tribunal accepts the respondent's argument that, if the work had been carried out to a reasonable standard, the floor covering should still be in a reasonable condition. The Tribunal notes that the raised areas of floor covering constitute a trip hazard.
28. However, the cost of remedying the defective areas by securing the raised areas of floor covering is likely to be low. Neither party has provided any quotations for the remedial work and, doing its best on the limited evidence available, the Tribunal makes a deduction in the sum of £200 and finds that the sum of £5,533.04 is reasonable and payable under this heading.

### **Structure and Fabric Repairs**

29. The applicant claims the sum of £32,699.58 in respect of structure and fabric repairs. The structural work which was carried out included fitting new balconies.
30. It is the respondent's case that glass balconies were promised (rather than the steel framing and cladding balconies which were actually provided) and that that there are inconsistencies between the prices charged to the leaseholders of different blocks for structure and fabric repairs when the balconies are identical.
31. Mr Parker did not accept that glass balconies had been promised. He stated that the charge for structure and fabric repairs to each block includes not only the cost of fitting the new balconies but also other work including repointing and render repairs, the extent of which varies from block to block.
32. The respondent has provided no alternative quotations for the provision of new balconies of the type which were fitted by the applicant and the Tribunal finds that the sum claimed falls within the reasonable range for the provision of balconies of this type.
33. Accordingly, the Tribunal finds that the sum of £32,699.58 is reasonable and payable under this heading.

### **Roof repairs**

34. The applicant claims the sum of £12,678.03 in respect of roof repairs. The respondent's case is that the work in question was not required and that the work was not carried out to a reasonable standard. Colour photographs were provided. He also stated in general terms that the sum charged is too high.
35. It is common ground that, prior to the stock transfer from the London Borough of Lewisham, there was a lengthy period during which no substantial works of repair and maintenance were carried out.
36. The Tribunal finds that it is likely on the balance of probability that the work which was carried out was required and that Tribunal is satisfied, on the evidence available, that the work was carried out to reasonable standard. No alternative quotations have been provided and the Tribunal finds that the sum claimed falls within the reasonable range of charges for the work which was undertaken.
37. Accordingly, the Tribunal finds that the sum of £12,678.03 is reasonable and payable under this heading.

### **External Plumbing**

38. The applicant claims the sum of £3,155.20 in respect of external plumbing. It is the applicant's case that the PVC rainwater pipes and guttering were fully replaced but not the soil stacks. The respondent disputes that all of this work had been carried out and he states in general terms that the charge is too high.
39. The Tribunal finds on the balance of probabilities that the work in question was carried out. No alternative quotations have been provided and the Tribunal finds that the sum claimed falls within the reasonable range of charges for the work which was undertaken.
40. Accordingly, the Tribunal finds that the sum of £3,155.20 is reasonable and payable under this heading.

### **Bin Stores**

41. The applicant claims the sum of £5,394.99 in respect of the provision of new bin stores. The respondent accepts that the work was carried out to a reasonable standard but believes that a resident at Scarlett Road has paid the sum of £2,000 for an identical bin store.
42. The Tribunal was presented with evidence to show that the estimated costs of the bin stores at both the respondent's block and at Scarlett Road was £2,000. The Tribunal was also presented with documentary evidence showing the final amount paid by the resident of Scarlett Road for a programme of works but with no breakdown showing the actual charge for the bin stores.
43. The respondent stated the resident of Scarlett Road had personally informed him that the final charge for the bin stores at Scarlet Road was £2,000. However, she did not give oral evidence to the Tribunal and, accordingly, her evidence was not tested in cross-examination. Mr Parker gave oral evidence that the actual charge for the bin stores at Scarlett Road was identical to the charge for the bin stores at the respondent's block.
44. In any event, the respondent has not provided any alternative quotations for the provision of new bin stores of the type which were provided by the applicant. The Tribunal notes that the previous bin store was a brick enclosure and that the installation work would have included the demolition of the brick enclosure, clearance and the creation of a new base.
45. The Tribunal finds that the sum claimed falls within the reasonable range of charges for the work which was undertaken. Accordingly, the

Tribunal finds that the sum of £5,394.99 is reasonable and payable under this heading.

### **Television Reception Upgrade**

46. The applicant claims the sum of £1,500 for the provision of a communal television aerial. After Mr Parker had explained how this figure had been arrived at, the respondent did not dispute it and the Tribunal considers that the charge is reasonable.
47. Accordingly, the sum of £1,500 is reasonable and payable under this heading.

### **Project Overheads**

48. The respondent claims the sum of £13,928.53 in respect of project overheads. This figure represents 18.5% of the total cost of the major works. The respondent challenged this sum on the basis that he had initially been informed that the overheads were 12% and no explanation has been given for the increase, notwithstanding that this was expressly raised in a detailed letter written to the applicant by the respondent's former solicitor to which there has been no reply.
49. The Tribunal was concerned by the lack of any response to the solicitor's letter and notes that a response could have narrowed the issues and might possibly have led to the resolution of this dispute. Mr Parker accepted that the respondent should have replied to this letter (sending the reply directly to the respondent as requested in a subsequent email) and he was unable to explain why there had been no response to this correspondence.
50. The Tribunal accepts the respondent's evidence on this point. Further, Mr Parker agreed that the contractual rate was initially 12%. Mr Parker was unable to provide any satisfactory explanation as to why the applicant had subsequently agreed to vary the contract to increase the sum payable in respect of overheads.
51. The Tribunal accepts the respondent's submissions and finds that sum claimed by the applicant under this heading is unreasonable. The Tribunal finds that the sum of £9,034.72 (representing 12% of the total cost of the works) is reasonable and payable and that a deduction of £4,893.81 therefore falls to be made under this heading.

### **Matters which were not included in the Scott Schedule**

52. Following discussions between the parties, the applicant withdrew a claim in the sum of £68.89 in respect of rainwater goods.

53. The respondent disputes a sum claimed by the applicant in respect of communal doors on the basis that the sum charged to the leaseholders of another block for the communal doors to that block appears to be much lower. There was no detailed evidence before the Tribunal regarding whether or not there are any differences between the two blocks.
54. The respondent did not provide any alternative quotations to demonstrate the market rate for the provision of such doors is lower than the sum charged and the Tribunal finds that the sum claimed in respect of the communal doors is reasonable and payable.
55. The respondent also argued that the scaffolding costs were unreasonably high but did not provide any alternative quotations. The Tribunal finds that the sum claimed in respect of scaffolding was reasonable and payable.

#### **Application under s.20C and refund of fees**

56. At the end of the hearing, the respondent agreed that an order under section 20C of the 1985 Act may be made by consent in order that the respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. Accordingly, the Tribunal makes an order under section 20C of the 1985 Act.
57. At the end of the hearing, the applicant did not to seek any order for the reimbursement of application and/or hearing fees. Accordingly, the Tribunal makes no such order.

**Name:** Judge N Hawkes

**Date:** 22<sup>nd</sup> December 2016

#### **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the

reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## Appendix of relevant legislation

### 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 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.