130602

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2018/0259**
Property	:	**64 Scylla Road, London SE15 3PS**
Applicant	:	**London Borough of Southwark**
Representative	:	**Miss Jennifer Dawn, Enforcement Officer accompanied by Mrs Sharon Shadbolt, Project Manager and Miss Sonia Foster, Capital Works Consultant Officer Mr Gerald Tibbenaum Construction Manager with A&E Elkins Limited Mr Craig Hattley of Calfordseaden LLP Mr Jonathan Hutton also of Calfordseaden LLP**
Respondent	:	**Mrs Jean Rook**
Representative	:	**Mr P Rook, accompanied by Mr T Rook and Mr M Rook**
Type of Application	:	**Application for a determination under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton Mr H Geddes RIBA MRTPI Mr L G Packer**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 22nd October 2018**
Date of Decision	:	**7th November 2018**

DECISION

DECISION

1. **The Tribunal determines that the Respondent is liable to the Applicants in respect of the major works, details of which are set out below in the sum of £2,250.21.**
2. **The Tribunal makes an order pursuant to section 20C of the Landlord and Tenant Act 1985 (the Act) so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.**
3. **The Tribunal makes no other orders for costs for reimbursement of fees.**

APPLICATION

1. By an order dated 12th June 2018 made in the County Court at Horsham, proceedings commenced by the Applicant, the London Borough of Southwark (the Council) against Mrs Jean Rosemary Rook (the Respondent) were transferred to the Tribunal for determination.

2. In the County Court the claim was in the sum of £5,636.19 of which some £5,215.09 related to a major works contract. The other items in dispute in the County Court were not matters that we needed to concern ourselves with as the Respondent accepted a liability in respect of same.

3. It is worth recording for reasons which we will refer to in due course, that on 31st October 2017 the Council entered judgment in default against the Respondent in the sum of £6,386.79. That judgment was set aside and the case transferred to us for determination.

4. Directions were issued on 17th July 2018 listing the matters to be considered and seeking confirmation from the Council as to the final sum now in dispute. The directions have been complied with. We did not inspect the subject property, it being considered unnecessary in the light of the subject matter of the dispute.

5. At the hearing, Miss Dawn for the Council confirmed with us the sum now outstanding in respect of the major works was £2,250.21, apparently not a matter in dispute. In the defence there had been an admission that £1,500 was the sum to be paid.

6. In these proceedings the Council have filed statement of case dated 28th August 2018, the contents of which we noted. We were referred to the terms of the lease and the liability in respect thereof. Reference was also made to the consultation process which led to the works which are the subject of this dispute. Briefly it appears that in January of 2010 a consultation process was carried out which led to a qualifying long term agreement being entered into between the Council and A&E Elkins Limited. Under the terms of this agreement, a section 3 Notice of Intention was sent to all leaseholders on 27th January 2015. This indicated that the Council was proposing to carry out electrical works and front entrance door renewal although we are not aware that this latter item of work was undertaken. This dispute relates to the electrical works. They are in respect of lateral mains works/replacement and renewal and were in respect of a number of properties of

which the Respondent's forms but one. It was said in the Notice of Intention that the works were necessary because the communal and landlord cables were original, undersized and inadequate for modern consumption. It was also said there were insufficient earthing cabling connections as well as a degree of disrepair. The recommendation given to the Council was that the installation required renewal and this it is said had been verified by one of the Council's senior electrical engineers. The estimated cost in this notice including professional charges was £5,595.75.

7. On 28th July 2017 a draft final account notice was sent to the Respondent indicating that the total liability was £2,432.14 and that although an estimated contribution of £5,587.34 had been sought, this had not been paid. It was this non-payment which gave rise to the proceedings before the County Court at Horsham.

ISSUES

8. The issue in this case is whether or not the works were required, not so much whether the costs, now reduced as they are, were in issue. In support of the Council we heard from Mrs Sharon Shadbolt, Mr Craig Hattley, Mr Gerald Tibbenaum, Mr Jonathan Hutton and finally Miss Sonia Foster. Their witness statements were in the bundle and it does not seem to us that it is necessary to recount in any detail that which they said in those statements, they being common to both sides.

9. Miss Shadbolt confirmed that she was the contract manager delivering the scheme. It has to be said that much of her evidence to us was outside that which was set out in her statement. Reference was made to a feasibility report which had apparently considered a number of matters, although such report was not included within the papers before us.

10. Mr Hattley, who then gave evidence, confirmed his role with Calfordseaden as an electrical consultant. The arrangements leading to the works appeared to be that the Council instructed A&E Elkins (AE) under the Council's '*Warm, Dry and Safe Policy*' to review the housing stock in accordance with that policy. A&E then arranged for Grout Electrical to conduct a visual survey and to report what they had seen. This was, it seems, reviewed by Calfordseaden in February of 2015 after the original notice of intention had been issued. We were taken to the Calfordseaden review and the recommendations contained therein. In respect of the subject property block under lateral mains, it says as follows *"The existing installation consists 2 No single core PVC cables running to each property. During the survey it was noted that the installation was reliant on the metal conduit buried within the building fabric to act as a CPC/earth path. Over the time the metal conduit being used as a CPC/earth can degrade. Although the connection may be passable at this inspection, it cannot be relied upon that it will be sufficient for the next inspection and should be considered for replacement."* The report then goes on to refer to the main "tail" in the service head described as VIR, which had a reputation, so it is said, for perishing and cracking if moved or interrupted, further insulation can fall off leaving the live and neutral conductors bare, causing faults. The report went on to indicate that

at this stage, that is to say that at the time of this report in February of 2015, a full periodic inspection of a lateral main would be appropriate.

11. In his evidence to us Mr Hattley indicated that a partial replacement may not be suitable. He could not say that the earth path was sufficient and would last five years. He stated that the conduits referred to in the Grout report show there are elements of disrepair. Looking at the total works those that were visible showed signs requiring works to be done. Asked whether there was an alternative he said it would be possible to do nothing but his view is that he would have recommended more and more frequent testing perhaps every 6 to 12 months going forward and that given the impossibility of checking some items, the surface lateral mains which were installed was a reasonable way forward.

12. He confirmed that no contract had been awarded at the time of the section 20 notice in January of 2015. The intention was to serve the notice and then to review and to consider the appropriate way forward. In an email of 13th March 2015 to the Council he confirmed that he had visited the communal electrical installation. He stated that due to the condition of the installation Calfordseaden, would still recommend replacement of the landlord's installation from the main service head to the flat's isolators due to the age of the equipment and the condition of the installation. It is we understand agreed that the electrics in this building are the original and accordingly the wiring and associated equipment could be more than 50 years old.

13. Asked by Mr Rook whether the distribution board needed replacement, he confirmed that he considered it was substandard and it would be prudent to replace it. He did confirm, however, that readings in a report prepared, it would seem by BCS and dated 23rd February 2015, showed that the readings for the subject property were acceptable. However, Mr Hattley was satisfied from the visible inspection and the age of the electrics that changing the distribution board was a reasonable step to undertake. Certainly, in a guidance booklet published by the Chartered Institute of Building Services Engineers the apparent life span of the electrics was a minimum of 25 years and a maximum of 40 years. We note that it was accepted by the Respondent that the replacement of the VIR which forms a small part of the claim was not in dispute. We were also referred at page 380 of the bundle to an email by Mr Chris Fink, the testing manager of BCS Limited which confirmed the recommendation was to "re-wire the laterals." On the question of the distribution board, he also said the following *"The existing DB is 40+ years old and does not contain series 7 fuses nor can it be upgraded. We therefore recommend installing a Ryefield board as per LBS spec."*

14. After Mr Hattley came Mr Tibbenaum. He confirmed he was not involved in the day to day running of the project. We noted all that was said in his witness statement. He was of the view it was common to have surveys and investigations both before and after the section 20 notice.

15. Mr Hutton then gave evidence. He confirmed that Calfordseaden was involved in the review of the costs having studied the rates and prices allowed for in the QLTA although he had not himself undertaken a review.

16. Asked about the cost of EDF he said that this related to the connection to the National Grid. EDF he said had an absolute right to be involved and would not let other people work on their equipment. Apparently the Calfordseaden fee for this project was not under challenge.

17. We then heard from Sonia Foster who had calculated the final account. She took us through the documents in the bundle in particular page 356 which showed the final account for the Block 60 to 82 Scylla Road. She told us that she checked the payment certificates and had produced page 356, which was the chargeable costs in respect of the electrical works, the non-chargeable costs relating to tenanted properties being shown separately. She confirmed that the costs which were re-chargeable were dealt with on a straight one twelfth basis. She explained also the apportionment of the preliminaries and we were told by Mr Rook that there was no longer a challenge to the preliminary costs.

18. There was, however, still a challenge to the apportionment on the basis that it was felt that the banding that applied had not been apportioned correctly and instead should have been on an individual flat basis rather than within a band of 11 to 20 flats. Mr Hutton responded to this pointing out that applying the band meant that the total cost applicable to 11 to 20 flats was less than it would have been for the 1 to 10 band and therefore the use of the banding made the works slightly cheaper from the Respondent's point of view.

19. After lunch we heard from Mr Rook, who is the brother-in-law of the Respondent. Mr Rook is an expert in the field of electrical matters but we could not accept him as an independent witness because of the clear familial tie. He told us that he had attended a site visit on 27th May 2015 with a number of other people and had created inspection notes of the visit, which he had provided to the Council. He relied on those notes at the hearing. We do however, record that the minutes of this meeting were not agreed by the Council and other attendees and on 27th May 2015 Mrs Shadbolt wrote to Mr Rook challenging a number of matters.

20. In addition to the evidence that Mr Rook gave us at the hearing, he had also provided two statements, one dated 28th March 2018 and a follow-up dated 11th September 2018. Further, he had assisted the Respondent in a detailed defence to the claim filed in the County Court, which formed part of the papers in this matter. He had also assisted, if not prepared, a statement in reply to the Applicant's statement of case. We read these documents and noted all that was said.

21. In evidence to us, he confirmed that in his opinion the installations were in good order and did not require the work claimed by the Council, although he accepted that the VIR cables should be changed. He said there was nothing to indicate that the distribution board was anything other than perfectly acceptable as were the fuses, which he considered would be replaceable. He indicated that as far as he was aware, there was no evidence of any problems with the electrical supply to the flats in the block. He did accept that the wiring was dated, probably the original, making it in excess of 50 years old

22. Some photographs, which had been taken at the time of the inspection, did show some areas of rust but in his professional view these were not a problem. The PVC cables seemed to be perfectly acceptable and in any event did not in reality rot. They could overheat but there was no indication of this. He was also surprised that if there was a recommendation to change these electrics no such recommendation was put forward in respect of the external lighting for which there was more likely to be a need to review. The concern that he expressed on behalf of Mrs Rook was the lack of evidence to support the Council's view that the works were required.

23. There was some confusion over the date of the Grout report which he considered may not have been prepared until after the section 20 consultation. He also raised certain issues on Mr Hattley's evidence although Mr Hattley was not questioned on these matters whilst he was giving evidence.

24. His view was that the steel conduits do not erode when they are bedded in concrete and although reference was made to the Chartered Institute of Building Service Engineers, the guidance in his view was not really to this case. He could see "no earthly reason" why there should have been a replacement. He was also critical of the Council who he considered had not undertaken five-yearly inspections of the electrics. He did not consider either that there was difficulty in replacing the fuses, which he thought were still available. His view was that the existing distribution unit would last another five years, at least.

25. Asked by the Tribunal why he considered the Council would be undertaking these works if they were not required, he indicated that he believed that A&E and Calfordseaden saw profit in pursuing the works and wanted to maximise the profits.

26. He was asked certain questions in cross examination by Miss Dawn. He confirmed that he did not have the qualifications of a quantity surveyor but with the qualifications he had he was frequently requested to review costings for mechanical and electrical works. When the question of his minutes of the meeting were challenged, he told us that he had taken notes and photographs and had typed the minutes up within five days of the meeting which had been emailed to all concerned. He confirmed that although he denied seeing an email from Calfordseaden's building surveyor Mr Tunc Doru, which we referred to earlier, (see comments of Mr Fink) he did not consider this would have made any difference to his opinion. He was of the view electrical conduits in concrete will not decline.

27. There was some discussion then as to whether or not there was any challenge to the section 20 consultation process but after some consideration Mr Rook confirmed that there would be no such challenge. In submission Mr Rook junior, that is to say Mrs Rook's son, confirmed that what they had wanted to do was to establish whether the works were required. It seemed to them that there was no survey or report undertaken before the works appeared to be commissioned and that no extensive testing had been undertaken. Had that been undertaken, then it would have shown there was no fault and although it was appreciated the wiring was old, it was not reasonable to replace it. There was no evidence of past failings and the inspection conducted by his uncle did not show that there were

any faults present. He also reminded us that the Council had pursued his parents for what they considered to be the wrong amount of money.

28. In response Miss Dawn told us that the proceedings had been based on a breach of the lease by the Respondents in not paying the estimated costs when demanded. We were referred to the clauses of the lease in this regard and there was further confirmation that the sum sought was only £2,250.21. There was, therefore, no question as to whether or not this was a reasonable estimate as we could now deal with the actual costs.

29. She was asked about the judgment that was entered on 31st October 2017 some three months after the letter was sent in July confirming that the costs had been substantially reduced. The response was that the major works demand was sent in February of 2016 based on the original figure and that the Respondent had failed to honour her obligations under the terms of the lease to pay same. Accordingly although at the time the judgment was entered the Council knew the sum was substantially reduced they nonetheless entered judgment on the full amount originally claimed. Miss Dawn confirmed that the contract had started in March 2015 and finished in October of 2015.

30. On additional matters she confirmed that there was no objection by the Council to an application under section 20C of the Act which had been made by the Respondent. There was no application for the refund of fees and no application for costs made by either party.

FINDINGS

31. In reaching our decision in this case, we have reviewed the written evidence provided in the bundle before the hearing and considered the oral evidence given to us by the various witnesses at the hearing. We have also considered the submissions made by Mr Rook and Miss Dawn.

32. There are criticisms that can be levelled at the Council. At the time of issuing the schedule 3 notice the cost of estimated works upon which a demand was made were not far short of £6,000. Subsequent to the service of this notice it appears that further investigation was undertaken but the costs demanded were still not reduced.

33. The final account was produced in July of 2017 reducing those costs to just under £2,500. It is surprising, therefore, that the initial consultation notice was so far removed from the final costs.

34. The question we have to answer is was it reasonable to undertake the electrical works for which the Respondent is being asked to pay. In this regard there appeared to be uncontested evidence that this was the original wiring and electrical equipment which would be some 50 to 60 years old. The Council has an obligation to its leaseholders to ensure that the services are in good order and reasonably up to date. Investigation was undertaken and they have reports from professionals indicating that it is appropriate for them to undertake the works which they did. It does not, we find, matter that some of this evidence in support may have been gathered after the original notice was sent out. It would perhaps

be better practice to obtain the information beforehand as if the estimated demand had been closer to the actual figures who is to say whether these proceedings would have arisen.

35. Mr Rook senior has a different opinion to the Council as to the need for these works. However, that is all it is and with no disrespect to Mr Rook the opinions put forward by the Council in our findings carry weight. A number of experts have reviewed the position and decided that the works were required. It is therefore something of a balancing act. In our view applying the provisions of section 19 of the Act it seems to us that it is reasonable for the local authority to conclude that these works were required: 'A stitch in time saves nine' and that as a result we are satisfied that the costs were reasonably incurred. We therefore find that the local authority's claim for £2,250.21 is correct and that this sum should be paid within the next 28 days.

36. We record the fact that the Council has no objection to the section 20C application. We think that that is appropriate given the sum originally claimed in the County Court and the amount which has been adjudged by us to be due and owing. Accordingly we make an order under the provisions of s20C of the Act.

37. We cannot, however, let one matter pass without comment and that is the default judgment entered into by the Council on 31st October 2017. We heard all that was said by Miss Dawn that this judgment was entered on the basis that there was a breach of the lease by the Respondent in that she had not paid the demand based on the estimated figures set out in the schedule 3 notice in January of 2015. With respect to the Council, that cannot be right. By 28th July 2017 they knew that the sum which was owed by the Respondent was substantially reduced. Indeed, there is an intention to issue a credit of in excess of £3,000. We cannot, therefore, accept that it was reasonable on the part of the Council to proceed to enter judgment in default in the sum of £6,386.79. As it happens, that is a matter which was resolved by that judgment being set aside and the case being referred to this Tribunal for review.

Judge: Andrew Dutton

A A Dutton

Date: 7th November 2018

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 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 to 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 (ie 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.