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Residential Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985
Section 27A

Ref: LON/00BE/LSC/2005/0341

Property:	15A Belvoir Road, East Dulwich, London, SE22 0QY
Applicant:	Mr Aaron Victor Manser
Respondent:	London Borough of Southwark
Appearances:	Miss Robyn Murray (Home Ownership Department) Mrs Anne Blackburn (Southwark Building Design Services) Mr Paul Halpin (Southwark Building Design Services) for the Respondent
Date of Hearing:	30 March 2006
Members of Tribunal:	Mr S Shaw LLB (Hons) MCIArb Mrs J Davies FRICS Mrs A Moss
Date of Decision:	4th April 2006

DECISION

PRELIMINARY

1. This case involves an application by Mr Aaron Victor Manser ("the Applicant") in respect of the property at 15A Belvoir Road, East Dulwich, London, SE22 0QY ("the property"). The Applicant is the long leaseholder of the property, which property he purchased in March 2002. The property is owned by the London Borough of Southwark ("the Respondent"). During the summer of 2002, some external works of decoration, repair and maintenance were carried out, together with decoration of the common parts internally. The property comprises a terraced house converted into two flats. The Applicant's part of the property is on the ground and basement floors and consists of a three bedroom flat or maisonette. The upper part of the building is occupied by a tenant of the Respondent and is also a flat set out over two floors, on this occasion the first and second floors.

2. The particular works which are the subject matter of the application were, as indicated, carried out during the summer of 2002. However, the precise sum claimed by way of service charge was not finalised and demanded of the Applicant until 26 May 2005. By a service charge invoice of that date, the Respondent demanded the sum of £3,151.67. The Applicant considered that some was excessive; the first letter from him to the Respondent to this effect contained within the papers submitted to the Tribunal is a letter dated September 2005 (some four months later) to the Respondent, and when no accommodation was reached between the parties, the Applicant made his application to the Tribunal on 25 November 2005. Directions were given by the Tribunal on 23 January 2006 and the hearing took place before this Tribunal on 30 March 2006.

3. At the hearing, the Applicant represented himself whilst the Respondent was represented by Miss Robyn Murray of the Respondent's Home Ownership Department and Miss Anne Blackburn and Mr Paul Halpin, both of the Respondent's Building Design Services Department. The Members of the Tribunal were able to visit the property during the morning of 30 March 2006 and references so far as relevant will be made to that inspection in the analysis of the issues set out below.

ANALYSIS

4. The particular items of service charge challenged by the Applicant are set out in a letter dated 3 January 2006 at page 44 of the hearing bundle and in his application to the Tribunal at page 49 of that bundle. Some other matters were raised, without objection, at the hearing. The Respondent's answers to the matters raised are set out in its statement of case dated 3 February 2006 and in a witness statement made by Anne Blackburn dated 25 January 2006 which was expanded upon in oral evidence before the Tribunal. It is proposed to deal with each item and the respective evidence of the parties systematically below and to give the Tribunal's decision in respect of each challenged item.

THE ITEMS CHALLENGED, THE EVIDENCE AND THE FINDINGS OF THE TRIBUNAL

5. At page 29 of the hearing bundle is a costed specification or Schedule of Works which was served together with the Section 20 Notice served in this case on 25 February 2002. It is a feature of the case that the Applicant informed the Tribunal that he was unaware that these major works were to take place prior to his purchase of the property and indeed he only discovered the Section 20 Notice in a drawer in an item of furniture in the property after he had taken up residence. This is obviously unfortunate although there was no serious challenge to the effect that the Respondent had not complied with the Section 20 procedure with his predecessor in title, and indeed the relevant Section 20 Notice is contained in the bundle at page 20 coupled with the specification to which reference has been made. The Applicant has selected various items on the Specification of Works for challenge and, as indicated, these will be dealt with separately below.

6. The first matter challenged by him is a sum of £115 which is described in the schedule as being for "General Works". The Applicant put the Respondent to strict proof of what these "General Works" comprised. In the statement of Anne Blackburn, expanded upon in evidence, she repeated the description of works given in the specification and which include matters like the flushing through of rainwater pipes, gullies and gutters, temporary unclipping of cables and re-fixing on completion of works, cleaning of all glass on completion etc. It was not really the Applicant's case that these works were not carried out; certainly he gave no evidence to this effect, and in the scheme of things the Tribunal did not consider this an unreasonable charge for the works as described and therefore we find that this aspect of the charge was reasonable and reasonably incurred.

7. The next item challenged by the Applicant was a charge of £1,440 in respect of scaffolding said to have been erected for the purposes of the external works both at the front and the rear of the property. The Applicant's evidence was that no scaffolding was erected at the rear of the property at all. Whilst he accepted he was not present all day and every day during the course of these works, he told the Tribunal that his wife was present and at home during most of this time and that obviously he would have been able to see when he returned at the end of the working day whether or not there was scaffolding in place. He was quite adamant that there was no such scaffolding and that such work as was carried out at the rear was done from ladders. Mrs Blackburn told the Tribunal that scaffolding would have had to be erected at the rear in order to comply with Health and Safety provisions and had she known that there was no such scaffolding, she would have stopped the work. She accepted that she was at the time that these works were being carried out supervising works at well over 100 other Council properties which were part of the works programme, and that it was possible that she was unable to attend or, if she did attend, to gain access to the rear of the property. In the light of her frank evidence in this regard, it seemed to the Tribunal that the weight of the evidence was with the Applicant, and that he too was a frank witness. In the circumstances the Tribunal considers that an allowance

should be made in respect of 50% of the cost of scaffolding. The particular proportion of this cost which was charged to the Applicant was seven-twelfths calculated in accordance with the points system explained in the Respondent's Section 20 Notice at page 21 in the bundle. Accordingly the Applicant's proportion was £840 in respect of which a 50% allowance of £420 should be deducted.

8. The third item challenged was a charge of £100 for the easing and adjustment if necessary of sash cords, parting beads or other adjustments to the sash windows. In the event, it was conceded on behalf of the Respondent that no work was required or carried out in this regard and that an inspection fee of £100 was excessive. In the circumstances the Tribunal disallowed this figure and a credit in the sum of £100 should be given in respect of the overall charge.

9. A further item challenged by the Applicant at the hearing and alluded to in his letter of 3 January 2006 was an overall figure of £700 (the Applicant's contribution would have been £408.33) for "preliminaries". The explanation given by Mrs Blackburn for this was that these works were part of major works being carried out to various other properties in the vicinity of this particular property and that the charge was to cover items like the setting up of some form of work base or hut from which the workmen could work and store tools, equipment and materials. The Respondents did not come with that page of the specification which would have given more detail of these preliminaries and specifically the items to which they referred and it did seem, in the absence of any other evidence to the Tribunal, that the charge was a little on the high side; however the Applicant's lease indeed incorporates a requirement to pay charges for services provided not only in respect of his particular flat but other flats and premises in the building and on the estate, and the Tribunal did not consider the figure charged to be so high as to be outside the range for reasonableness – and therefore no deduction is made in this regard.

10. Similar comments can be made about the next item challenged by the Applicant which was charges of £229.77 and £265.63 made for supervision and management fees respectively. Again these fees seemed towards the upper end of the scale but we noted that they were calculated at rates of 10% and 8.65% respectively by reference to the cost of the works, which again are proportions not outside the usual range. Accordingly again no particular deduction is made in this regard.

11. The penultimate matter challenged by the Applicant was the charge of £2,160 made for external decorations. The Applicant works as a plasterer and has some knowledge of the building trade. He considered that this charge was too expensive but was otherwise unable to put any particular evidence before the Tribunal as to what a reasonable charge would have been for the works carried out. He had obtained no other estimates or quotations and conceded that it may have been sensible to do so. However, he generally argued that he had access to perfectly competent external decorators who could have done the job for about half the price.

12. The evidence from the Respondent in this regard was that it is not open to them to have work done by individual local contractors and that provisions governing their activities required them to seek estimates from approved contractors covered by relevant insurance policies and other regulatory checks. They argued that they had indeed obtained three independent estimates after having gone out to tender, and that they had done all that was reasonable in order to recover these charges. As to the quality of the work, the Applicant argued that it was not particularly well executed. On inspection the members of the Tribunal noted that there were areas in which the paint was bubbling and peeling off on the flank wall to the basement steps, and that there was peeling of paintwork over the main entrance porch. In addition, some of the paintwork and woodwork was defective to the back bathroom window and to the wooden door to the back addition store room. However, none of this was inconsistent with the reasonable execution of works in the summer of 2002, i.e. nearly four years ago. In the absence of any alternative evidence as to cost, and applying its own expertise, the Tribunal did not consider that the sum charged for the external decorations and repairs was unreasonable and considered that in the light of the procedure adopted, the charges were reasonably incurred.

13. The final item challenged by the Applicant was a small item of £30 for the overhaul of gutters at the property. In the light of the fact that it was accepted by the Respondent that it was possible that scaffolding was not erected at the rear of the property, it seems equally possible that the overhaul of the gutters at the rear of the property was either not carried out at all or was carried out to a poor standard. On balance therefore the Tribunal considered that the charge in this respect should be modified in order to take this matter into account to the extent of 50%, producing a reduction in the overall charge of £15.

CONCLUSION

14. For the reasons indicated above, the Tribunal directs that deductions be made from the overall charge in the sum of £420 relating to scaffolding, £100 in relation to the easing and adjusting of the sash windows and £15 in relation to gutter work. This produces a total of £535 by way of deduction leaving a balance from the original claim of £3,151.67 of £2,616.67. Accordingly the figure of £2,616.67 is that sum which the Tribunal finds to be reasonable in relation to the charges.

15. The Respondent indicated that it had no intention of making any claim in any subsequent service charge for its costs associated with its application and for the avoidance of doubt the Tribunal directs pursuant to Section 20C of the Landlord and Tenant Act 1985 that no such charge should be made.

Chairman: S Shaw S. Shaw.

Date: 4th April 2006

JG