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Residential  
Property  
TRIBUNAL SERVICE

**IN THE LEASEHOLD VALUATION TRIBUNAL  
LANDLORD AND TENANT ACT 1985 – SECTION 27A  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

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**Ref: LON/00BE/LSC/2006/0034**

**Property:** 16 Don Phelan Close, London, SE5 7AZ

**Applicant:** London Borough of Southwark

**Respondent:** Mrs Atlin Gwendolyn Blair

**Appearances:** Miss A Sharma  
Miss R Murray (Home Ownership Unit)  
Mr E Butters (Housing Department)  
Mr A Whymark (Building Design Services Department)

For the Applicant

**Date of Hearing:** 25 April 2006

**Tribunal Members:** Mr S Shaw LLB (Hons) MCI Arb  
Mr F L Coffey FRICS  
Mrs A Moss

**Date of Decision:** 4<sup>th</sup> May 2006

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## DECISION

### BACKGROUND

1. By Lease dated 25 March 1985, the London Borough of Southwark ("the Applicant") let to Mrs Atlin Gwendolyn Blair ("the Respondent") the flat at 16 Don Phelan Close, SE5 ("the property") for a term of 125 years from the date of that Lease. The property is one of 25 flats in the same block of flats, which block is itself part of the Applicant's D'Eynsford Estate ("the Estate").
2. By virtue of Clause 4(2) of the Lease, the Applicant covenants with the Respondent:  

*"to keep in repair the structure and exterior of the building (including drains gutters and external pipes) and to make good any defect affecting that structure"*
3. "The building" is defined in the recitals of the Lease as "1 to 25 Don Phelan Close". By virtue of Clause 2(3) and paragraphs 6 and 7 of Schedule 3 to the Lease, the Applicant is entitled to claim back costs so expended (together with costs of supervision and management) by way of service charge.
4. During 1999, various works of external decoration were carried out on the Estate of which the property forms part and in due course a sum of £1,550.93 was demanded by the Applicant from the Respondent in respect of these works. Subsequently, some further works were carried out involving substantial repair and replacement works to the drainage and sewerage system affecting the building, and the Estate upon which it is situate. This attracted a further charge of £655.54 by way of contribution towards the works from the Respondent.
5. The charges were challenged as being excessive on behalf of the Applicant and remained unpaid. Accordingly proceedings were instituted in the Lambeth County Court by the Applicant in August 2005. In a handwritten Defence received on 5 September 2005, the Respondent challenged the external decoration costs on the basis that her flat has only one external balcony door and four windows, and challenged the cost of the drainage works as being excessive for her as a senior citizen when she was

already paying annual service charges of £1,318.52. On the request of the Applicant and by order of the Court dated 21 December 2005, the matter was transferred to this Tribunal for determination of the reasonableness of the disputed service charges. Directions were given on 10 February 2006. The matter was allocated to the fast track, and the matter came before this Tribunal on 26 April 2006 for determination.

### **THE HEARING**

6. At the Hearing the Applicant's case was presented by Miss A Sharma. The Tribunal also heard evidence from Mr A Whymark in relation to the works of decoration and from Mr E Butters in relation to the drainage works. Both of these gentlemen had previously prepared and signed written statements, which were contained within the bundle of documents prepared by the Applicant in accordance with the Tribunal's directions. The Respondent had not complied with the direction to prepare a statement of case, had submitted no documents, nor did she appear before the Tribunal either in person or by way of representation.
7. It is proposed to review the evidence in relation to the two separate heads of claim in relation to the service charges, briefly to analyse this evidence and to give the Tribunal's determination upon the matters respectively.

### **EXTERNAL DECORATIONS**

8. The relevant Section 20 Notice in respect of these works (commencing at page 27 in the bundle) demonstrates that estimates were sought and obtained from seven different contractors and that ultimately the Applicant accepted the tender of the least expensive contractor, namely Cablesheer Limited. The Rechargeable Block Cost referable to the building of which the property forms part was £33,686.58 (see pages 123 and 90 of the bundle). At page 91 of the bundle, a breakdown of how that figure has been calculated has been extrapolated from the tender documents and primary invoices by the Applicant. The Tribunal heard evidence from Mr A Whymark who is a senior building surveyor employed by the Applicant and who was the contract administrator for the external decorations contract. His evidence appears at page 106 in the bundle and was supplemented by oral evidence before the Tribunal. He confirmed to the Tribunal that was nothing especially remarkable about the level of charges set out at page 91 in the bundle and that he had inspected the building both

before and after completion of the works. He indicated to the Tribunal that no work had been done upon the property by the Applicant for at least 7 years and that all of this work was necessary so far as he was concerned, and satisfactorily carried out, not only from his point of view but also to the satisfaction of a clerk of works who would meticulously have checked the standard of work before any completion certificate was signed.

9. Given the explanation and scope of the works, none of the figures set out in the breakdown of the costs seemed especially remarkable to the Tribunal. There was an absence of any evidence from or on behalf of the Respondent, whether of a general or specific kind. No alternative quotations or estimates were submitted and no particularised challenged made in relation to specific works other than the general contention in the form of the Defence served in the County Court proceedings, to the effect that the charges made were "*excessive*". It would appear that this contention was based upon the misapprehension that the charges made were exclusively in relation to works carried out to the Respondent's own property, whereas, of course, her service charge obligation is to pay a contribution towards the costs incurred in relation to the building of which her property forms part. The Applicant is entitled to calculate the charge payable by the Respondent in such a way as to produce a fair proportion of the costs and expenses incurred, and in this regard the Lease provides that it may adopt any reasonable method of ascertaining that proportion and may adopt different methods in relation to different items of cost and expenses (see paragraph 6 of Schedule 3 to the Lease).
10. On this occasion, as is not unusual in respect of Council properties, the calculation has been carried out by reference to a points system, based on the number of rooms or units in the building and in the particular property. The number of rooms or units in the building is 144 and the number of units in the property is 6. Accordingly the overall cost of £33,686.58 has been divided by 144 and multiplied by 6 in order to produce the £1,550.93 contribution. It seems to the Tribunal that this is a reasonable approach and for the reasons indicated above, the finding of the Tribunal is that these costs were reasonably incurred and carried out to a reasonable standard on the evidence before the Tribunal.

## DRAINAGE COSTS

11. Statutory Notices of Intent served under Section 20 of the 1985 Act, as amended by Section 151 of the Leasehold and Commonhold Reform Act 2003, were served upon the Applicant on 30 October 2003 and 19 March 2004. These works were to be excavation and underground drainage repair and replacement works, together with works to the gullies, manhole covers, interceptors and other drainage-related repairs on the Estate. The Tribunal heard evidence from Mr Ted Butters who was the contract administrator in respect of this work and who has been employed by the Applicant since 1982. Prior to that time he had been a plumber and subsequently a foreman for a total period of 19 years. There had been many complaints about drainage problems on the Estate and he had been engaged to investigate numerous drainage blockages, infestation by rats, and problems with gutters and rainwater pipes to various of the garages and private balconies. A CCTV survey of the underground drainage was carried out; in addition a large private sewer running through the Estate was surveyed.
  
12. It was discovered that a number of interceptors fitted within the system (and often located in private rear gardens) had been the cause of many of the blockages. Mr Butters sets out in his statement (to which there has been no response from the Applicant) the detailed works which were in the event carried out, and concludes that the works were necessary to eliminate the vermin infestation and to minimise the risk of frequent blockages in the underground drainage system, for the benefit of all residents and leaseholders on the Estate. As indicated, his evidence was expanded orally before the Tribunal. The detailed breakdown of the costs referable to the building of which the property forms part, and the other buildings or blocks on the Estate, can be found in a document at page 41 of the bundle and which details the work specifically referable to the building and other works carried out on the Estate, which were also to the benefit of the properties generally on the Estate. Since there are 25 properties in the building, the particular cost referable to the building (£312.96) has been divided by 25 to produce the Respondent's contribution. The work carried out to the other blocks and elsewhere on the Estate which is also of benefit to the building, involves 356 properties and accordingly the overall cost in that regard was again divided by 356 in order to produce the Respondent's contribution. To these two

figures professional fees at 8.65% and a management fee at 10% were added. In the event there were some slight reductions in the overall final agreed account which can be seen itemised at a schedule at page 150 in the bundle, with the result that the amount claimed from the Respondent in respect of these drainage costs is £504.09 rather than the £655.54 originally claimed.

13. Once again, no evidence or submissions from the Respondent were put before the Tribunal at the hearing (other than some generalised correspondence) to challenge these sums, which were confirmed in evidence before the Tribunal and by way of detailed documentation as already referred to. In the circumstances, and upon the evidence before the Tribunal, the Tribunal concluded that the sum claimed in this regard is again reasonable in terms of quantum and that the costs were reasonably incurred, and carried out to a reasonable standard.

### **CONCLUSION**

14. For the reasons indicated above, the Tribunal concludes that the charges in the sum of £1,550.93 in respect of external decorations and £504.09 in respect of drainage works (totalling £2,055.02) are sums which are reasonable in terms of quantum and are charges which have been reasonably incurred; further on the evidence before the Tribunal, the works were carried out to a reasonable standard. The only further comment the Tribunal would make is that from correspondence emanating from "Age Concern" and solicitors instructed by the Respondent, it appears that she had misunderstood the basis upon which she was being requested to pay these charges and in such correspondence was seeking clarification. Although an arithmetical explanation was provided to her, it does seem to the Tribunal that some personal contact whether by telephone or in person with this Respondent (who is an elderly lady) may have assisted in avoiding the necessity to institute court proceedings, and ultimately to embark on the hearing before the Tribunal. These observations were expressed to the Applicant at the hearing and were taken on board by Miss Sharma (who presented the Applicant's case with great clarity) on behalf of the Applicant. Given the Respondent's circumstances, it may be that the Applicant will be able to consider some possible indulgence to the Respondent in terms of quantum of recovery and/or time to pay. Miss Sharma indicated on behalf of the Applicant that there was no intention on the part of the Applicant to seek to recover the costs of, or associated

with, these proceedings from the Respondent in the context of any additional or further service charge.

Legal Chairman: S Shaw

A handwritten signature in black ink, appearing to read "S. Shaw". The signature is written in a cursive style with a period at the end.

Date: 4<sup>th</sup> May 2006