

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property
TRIBUNAL SERVICE**

S.27A Landlord & Tenant Act 1985(as amended) ("the Act")

Case Number:	C111/00M1/LSC/2009/0015
Property:	18 Ashington Court Whitehawk Way Brighton East Sussex BN2 5HD
Applicant/Landlord:	Brighton & Hove City Council
Respondent/Leaseholder:	Joanna Beryl Chambers
Appearances for the Applicant:	1) Simon Allison, Counsel 2) Dave Arthur, 'Right to Buy' Officer for the Council 3) Ken Warren, Building Surveyor for the Council
Date of Inspection /Hearing	17th April 2009
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr R Wilkey FRICS (Valuer Member) Ms Jayam Dalal (Lay Member)
Date of the Tribunal's Decision:	22nd April 2009

THE APPLICATION

1. This application was for a determination pursuant to Section 27A of the Act of the respondent's liability to pay service charge for a window replacement contract invoiced in the service charge year ending the 31st March 2005.

DECISION IN SUMMARY

2. The tribunal orders, for the reasons set out below, that the respondent pay to the applicant within twenty eight days of the date of this decision, the sum of £1,790.92 being the balance of service charge owed by her for the replacement of the windows to the Property in 2004/ 2005.

JURISDICTION

Section 27A of the 1985 Act

3. The tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard. The tribunal therefore also determines the reasonableness of the charges.

THE LEASE

4. The tribunal had a copy of the lease relating to the property which is dated the 24th September 1990 and is for a term of years from the 24th September 1990 expiring on the 4th December 2113 at a ground rent of £10 per year.
5. Under clause 3.2 of the lease the applicant covenants to keep in repair amongst other things, 'the structure and exterior of the demised premises (including the windows and window frames but excluding the glass therein) and the building and to make good any defects effecting the structure.
6. The provisions relating to the calculation and payment of the service charge are to be found in the Fourth Schedule of the lease. Paragraph 10 provides for the tenant to pay the interim service charge and the service charge at the times and in the manner provided in the Fifth Schedule. The Fifth Schedule sets out the tenant's share of the service charge, which is based on the rateable value of the flat as a proportion of the rateable values of all the flats in the block. The Sixth Schedule sets out the items to which the tenant is to contribute by way of service charge, which includes amongst other things the window replacement cost.

INSPECTION

7. The tribunal inspected the Property before the hearing in the presence of the parties and their representatives. Ashington Court is a three storey corner block, built in the mid 1970s with brick elevations under a pitched roof covered with synthetic slates. It is the northern most of two similar blocks which are linked at roof level. The subject flat is one of nine units which fronts onto Whitehawk Way, Brighton, East Sussex and is on the second floor.
8. The tribunal examined the windows of the subject flat, from inside and formed the opinion that the installation and quality of the windows were both of an acceptable standard. There was no evidence of damp and the selection of windows, which were tested, opened and closed without difficulty. Most, but not all of the windows could be cleaned from the outside. No obvious significant defects were noticed on the day of inspection.
9. The tribunal also inspected the outside of the block from ground floor level. The tribunal's attention was drawn to a flashing at the rear of the property which was lifting very slightly. However, generally the flashing to the building appeared satisfactory.

PRELIMINARYS / ISSUES IN DISPUTE

10. This case had been transferred to the tribunal by order of the Brighton County Court dated the 22nd January 2009.
11. At the hearing the tribunal established that the only matter in dispute over which it had jurisdiction related to the installation of new UPVC windows in 2005.
12. Both parties had set out their respective positions in their statements of case and both parties had prepared and submitted a bundle of evidence.

THE APPLICANT'S CASE

13. Mr Allison commenced his evidence by giving a brief chronology of events. In 2003 the Council decided to replace all of the windows in Ashington Court as they were approaching the end of their useful life. In December 2003 the Council commenced the statutory consultation procedure in relation to the replacement of the existing aluminum sliding sash windows. In September 2004 the Council served the respondent with a statement of estimates, which confirmed the details of five contractors estimates. At the end of the consultation procedure the council accepted the lowest tender and commissioned the work, which was substantially completed in January 2006. Following completion of the work the council submitted a service charge demand to the respondent in accordance with the terms of the lease for £3,796.07
14. Mr Allison accepted that initially there had been a number of snagging items relating to the windows but all matters, which the council considered to be unsatisfactory, were in due course remedied at no cost to the leaseholders.

15. The respondent complained about the works and the costs of works sometime after completion and her complaints were dealt with through the applicant's three-stage dispute process. A number of visits had been made to the flat by the council representatives and remedial work carried out.
16. In 2006 the respondent widened the dispute to raise issues about the sound proofing qualities of the new windows. In addition the respondent raised further issues about unsatisfactory work to the common parts of the block. These issues included the allegation that the external lead flashing had not been properly dressed. Mr Allison informed the tribunal that it was accepted that in some areas the flashing had lifted slightly. However, the council had detected no water ingress and as a result it had been decided by the council that the remedial work would be carried out to the flashing as part of a planned maintenance cycle at a later date i.e. it would be dealt with when other maintenance to the building required the erection of scaffolding. This was due to the fact that in order to carry out these works scaffolding would be needed, and to do it in isolation would not justify the additional costs to do the works. Furthermore Mr Allison added that these works in actual fact related to the adjoining block and not to the Respondent's block.
17. More recently the Respondent had raised yet further issues about other flats having the benefit of self-cleaning glass. She felt that she too should have self-cleaning glass at no extra cost. In addition the Respondent had raised complaints about the rusting of screws and fixings.
18. Mr Allison accepted that additional work had to be carried out to the windows both to the respondent's flat and to the block after the initial installation was completed. However, all of this remedial work had been undertaken at no cost to the respondent. Furthermore all work to the windows had been carried out using materials and standards, which complied with British Standards at the time.
19. Mr Allison contended that the Council had properly carried out the consultation procedure in relation to the windows; it had gone out to competitive tender, accepted the lowest quotation and had undertaken the work to a satisfactory standard and that the sums charged to the respondent for the work were reasonable. In these circumstances Mr Allison invited the tribunal to make an order that the balance remaining outstanding from the respondent for the windows namely £1,790.92 be paid by the respondent forthwith.
20. Mr Allison further added that the original critical windows were in a very poor condition and the replacement windows put in place were much better than the old windows they replaced.
21. In conclusion Mr Allison said that none of the other lessees had complained about the works to the windows, and all of them had paid the outstanding sums in relation to these works except for the Respondent.

THE RESPONDENT'S CASE

22. Miss Chambers commenced her evidence by stating that the reason she had not initiated her complaints immediately after the work had been completed was because there had been no final inspection and she did not realize that work had finished. She felt that a final

inspection should have been carried out and the council should have been more proactive in dealing with the snagging items. As it was the council only reacted when she herself raised the issues.

23. She was not satisfied that the council had a satisfactory procedure for overseeing the contracts and she felt that the council was prepared to put up with shoddy repair work which showed that there was no system for checking value for money prior to paying contractors. For these reasons she felt that the surveyors supervision fee of 7% of the contract price was not reasonable. She requested a reduction.
24. Miss Chambers also contended that in other blocks more modern technology had been used, namely self-cleaning glass and also stainless steel fixings which did not rust. She felt that these technologies should be installed in her own block at no additional charge.
25. When asked by the tribunal what a reasonable cost for the windows as installed should be she contended that £2,000 was a reasonable price to pay and indeed she had already paid this to the council. She told the tribunal that in 2003 she had obtained a quotation to have her own windows replaced for this sum. Unfortunately she had not retained a copy of the estimate. In summary she did not think that the work carried out to her windows was worth the money, which she was being asked to pay.

SECTION 20C APPLICATION

26. The tribunal noted that because the application had been referred from the Brighton County Court it did not have before it a Section 20C Application in respect of costs. However, at the hearing Mr Allison confirmed that as a further concession to the respondent it was not the council's intention to charge any part of its costs in relation to the Leasehold Valuation Tribunal application to a future service charge account. In these circumstances it was not necessary for the tribunal to consider how a proposed application under section 20c of the act should be dealt with.

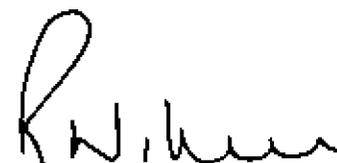
THE TRIBUNAL'S DELIBERATIONS

27. Having carefully evaluated all the evidence presented to it, the tribunal does not consider that the Respondent has made out a sustainable case for a reduction in her liability to pay her due proportion of the service charge for the window replacement programme.
28. She has made no challenge to the contractual basis on which the charges have been levied. The council has provided documentary evidence, which demonstrates that they complied with the statutory consultation procedure before the work was commissioned. They accepted the lowest quotation having gone out to competitive tender and then had the work carried out below budget.
29. It is common ground that there were initially snagging items and that some of the work was initially found to be substandard. However, the applicant arranged for the remedial work to be carried out at no cost to the respondent.
30. On the day of inspection the windows appeared to be of satisfactory quality and with no obvious material defects. Certainly there was no evidence of water penetration and the

quality of the windows and the installation seemed acceptable bearing in mind the charge to the leaseholders.

31. The tribunal accepted the respondent's contention that the flashings in parts of the building are lifting. However, there was no indication that this lifting has caused any damage to the interior of the building or to the fabric of the building. The window quality is reasonable although not of the highest standard but the tribunal accepts that a balance has to be struck between the quality of construction and the cost to a leaseholder. The tribunal believes that in this case that balance has been achieved. The tribunal also considers that the work has been carried out to a reasonable standard using reasonable materials, which the tribunal was told complied with British Standards at the time of installation.
32. The tribunal also considers that the applicant has obtained reasonable value for money. Drawing on its collective knowledge and expertise the tribunal is satisfied the sum charged to the respondent is in line with market rates for a flat of this size in its geographical location. It is noteworthy that the applicant went out to competitive tender and obtained five estimates and accepted the lowest figure.
33. The respondent has also challenged the supervision fee at 7% of the overall cost of work. She pointed out that very few inspections were made by the consultant and there was an inadequate hand over procedure. The tribunal does not uphold this allegation. The tribunal routinely sees percentages of between 9% and 12% of the contract sum which is in line with the Royal Institution of Chartered Surveyors scale of fees. There was no evidence presented to the tribunal which suggested that the surveyor had fallen short in his duties, which involved a great deal more than solely site inspections. In its written submissions the Applicant put forward a well reasoned and detailed defence in support of the supervision fee of 7% and these submissions are accepted by the tribunal which upholds the charges passed down to the Respondent in this respect.
34. Therefore for the reasons stated above the tribunal orders that the respondent pay to the applicant within twenty eight days of the date of this decision the sum of £1,790.92 being the amount outstanding by way of service charge in respect of the major works contract carried out in 2005.

Chairman



R.T.A. Wilson

Dated 22nd April 2009