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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

FINAL DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AG/LSC/2011/0623
Premises:	18, 20, 22 and 35 Beaumont Walk, London NW3 4SW
Applicant(s):	Ms W Meakin (No 18); Ms S Killick (No 20); Mr L Warden (No 22); and Mr N Goldsmith (No 35)
Representative:	Mr Goldsmith acting as speaker, Ms Meakin also present
Respondent(s):	London Borough of Camden
Representative:	Ms R Patel, court officer
Date of final decision:	25th June 2012
Leasehold Valuation Tribunal:	Mr Adrian Jack, Mr N Martindale FRICS, and Mr C Piarroux JP

Procedural

1. This matter was originally before the Tribunal on 16th January 2012. The Tribunal in its interim determination of 31st January 2012 determined the recoverability of costs of respect of major works carried out in 2008-09. Further major works were carried out in 2010-11, but the final account for those works was not yet available, so the Tribunal adjourned that part of the case to 25th June 2012 and gave directions.

2. The parties substantially complied with the directions given by the Tribunal, but, although final accounts had been prepared and agreed with the contractor, the final accounts for the 2010-11 works were still subject to audit. The parties were, however, happy to have the items in dispute determined by the Tribunal, subject to final audit.

3. The Tribunal refers to its interim decision for the background, inspection and law. The representation of the parties was the same on 25th June 2012 as at the earlier hearing. At the current hearing, Mr Goldsmith and Ms Meakin attended. Ms Patel had in attendance on the landlord's behalf, Mr Ireland, a consultation; Mr Burton, the project manager; and Mr Rutter, the final account officer.

The £250 cap

4. On a number of items an issue arose as to how the restriction of £250 on the recoverability of service charges should be applied. The position is that the 2010-11 were substantial major works. In the course of the works, however, variations were introduced. Some of these meant that the cost of works increased. No further section 20 consultation was carried out and no section 20ZA application was made. The tenants argued that all of these increases should be aggregated, so that the total amount they could be charged in respect of the increased cost of works was £250.

5. The landlord disagreed and submitted that the £250 cap should be applied to individual heads of work. The landlord conceded that, if the works were substantially the same (say different stretches of wall), then the increased costs of those works should be aggregated, but that if the works were different in nature then there should be no aggregation, so that the landlord would be entitled to more than one £250 cap. Neither side cited any authorities to the Tribunal.

6. In our judgment, as we said in our interim decision, it is a matter of fact and degree whether works stand to be considered together for the £250 cap. We thus deal discretely with the individual items where costs have increased below.

The disputed items and decision on those items

7. The parties prepared a Scott Schedule setting out the items of dispute. The Scott Schedule appears at pages 24 to 51 of the bundle.

8. The landlord accepted that the following items were non-rechargable: estate works items 7, 22, 27, 32, 33, 34 and 52; block D works items 32 and 38; and block G works items 91, 92 and 93. The landlord also conceded on block G works item 71 that there was only one balcony roof renewed, not two, so that £2,000 stood to be disallowed. This was agreed by the tenants.

9. The tenants conceded that the following items, which they had originally challenged in the Scott Schedule, were recoverable: block D works items 18, 22, 21, 24, 29, 30, 107, 108, 119, 128, 140, 141, 229, 231, 232, 251, 290, 296, 303, 312-315 and 327-331; block G works in the preamble the 35 per cent "contractor's tender adjustment" and item 104.

10. Item 163 on the estate works concerned slabs laid with poetry engraved on them. The sum of £5,720 was agreed by the parties, but subject to the fact that these items were still under the defects liability period and there were said to be works which needed to be done to rectify a number of defects.

11. On item 85 of the estate works, it was agreed that 50 per cent of the £6,233.89 for tarmac repairs should be rechargeable.

12. The following items remained in contention and the Tribunal adjudicates on them as follows.

13. On estate works items 184 and 186, the tenants accepted that the installation of satellite dishes and cabling was in principle recoverable, but said that the £250 limit should apply. The total cost across the estate was £3,450.35 for the satellite dishes and £3,760 for laying cables below ground, of which the tenants' proportion was between 1.90 per cent and 3.50 per cent. In itself this was below £250 (save for Ms Meakin), but the tenants sought to argue that the cost should be aggregated with the other items below, so as produce capping. In our judgment the works here are quite different in their nature to the other items with which the tenants say the cost should be aggregated. The landlord is thus, in our judgment, entitled to a separate £250 figure for these works. Accordingly nothing is disallowed, save in respect of Ms Meaking, where her contribution of 3.50 per cent would be £252.35. In her case we disallow £2.35.

14. On block D item 279, the tenants challenged the cost of £180, comprising £5 per window for tightening 36 screws. They suggested that the contractor should have done this work for nothing. In our judgment the contractor was entitled to charge for this extra work. The figures are not excessive when one thinks of the effort needed to get into individual flats to carry out the work. We disallow nothing.

15. On block D items 361 and 362, the position is that the specification originally provided for the replacement of the old plastic cold water header tanks. In the course of the works, it was suggested that fibreglass tanks would be better in withstanding the heat underneath the roof of the block. The additional cost was £1,225.35. It was only this additional cost which the tenants challenged. They said it should be aggregated with other works and in any event stood to be capped. In our judgment this work was wholly different in its nature to the other works, so aggregation should not occur. Nonethless on an individual basis, the cost of this item to two individual tenants exceeded £250. Ms Meaking would have been liable to an additional £362.33, so her liability is capped at £250. Likewise Mr Warden would have been liable to £273.99, so his liability is also capped at £250. Ms Killick would only be liable to £196.30, which is below the cap. (For the avoidance of doubt the appropriate percentage of the £1,806.00, which was the original cost quoted for a replacement plastic tank, is recoverable in addition.)

16. On block G items 104 to 107 concern the wood stain treatment of the windows. The tenants conceded item 104, which was the original cost of the staining put in the original specification. They challenged items 105 to 107 on the basis of the £250 cap, both on aggregation and individually. For the reasons we have already given, we do not accept that these items should be aggregated with other items for the purposes of the cap. They are of a wholly different nature. However, the cost of these three items is £2,471. Mr Goldsmith's proportion of that is 25.55 per cent, or £631.34, which exceeds the cap. His liability for items 104 to 107 is thus limited to £250. (Again for the avoidance of doubt he is also liable for his share of item 103.)

17. On block G items 149 and 150 are for tanks as block D items 361 and 362. The same submissions and decision applies. The additional cost of the fibreglass was £1,225.35, of which Mr Goldsmith's percentage was 25.55 or £313.08. We accordingly disallow £63.08.

18. An additional item on which we are asked to adjudicate is the cost of supervision fees. In its consultation the landlord indicated that it intended to charge 5 per cent supervision fees and 10 per cent management fees. In the draft final accounts, the landlord is seeking to recover 13.77 per cent supervision fees and 10 per cent management fees. The increase from 5 to 13.77 per cent in the supervision fees was explained to us as a consequence of including the fees of the clerk of works. The landlord said that it had not included any element of this cost in the consultation documentation, because, the landlord said, "it was variable".

19. In our judgment the landlord was perfectly well placed to include an estimated figure for the cost of the clerk of works. The increased cost is in our judgment subject to the £250 cap. We therefore allow the 5 per cent, but limit the recoverability of the balance of 8.77 per cent to £250 per tenant.

20. The contractor requested various extension of time. These were the subject of hard bargaining between the contractor and Camden and resulted in the

making of three certificates granting extensions of time, pages 12, 13 and 14 of the bundle. All are dated 26th April 2011. The tenants were given section 20B notices on 19th July 2011 (page 182 of the bundle). This in our judgment was well in time, even if a section 20B notice was required. (Since the effect of the granting of an extension is to reduce the penalty charges a contractor is liable to pay, it may be doubtful whether section 20B applies at all.)

Costs

21. As regards the fees payable to the Tribunal, the Tribunal has a discretion as to who should pay these. The fees comprise an application fee of £350 and a hearing fee of £150. In our judgment both in relation to the first set of major works and the second set, both sides have had a measure of success. The fairest option in our judgment is to split these costs evenly between the party. It follows that the landlord shall reimburse the tenants £250.

22. The tenants applied for an order under section 20C of the Landlord and Tenant Act 1985 preventing the landlord from recovering its costs of the current application from any of the tenants on the estate. In our judgment given the mixed success of both sides, there is insufficient reason to interfere with the landlord's contractual rights. Accordingly we refuse the section 20C application.

23. There were no other applications in respect of costs.

DETERMINATION

(a) **The landlord is entitled to recover in respect of the major works in 2010-11 the sums set out in the Scott Schedule with the modifications set out above.**

(b) **The landlord shall pay the tenants jointly £250 in respect of the fees payable to the Tribunal**

(c) **The tenants' application for an order under section 20C of the Landlord and Tenant Act 1985 is refused.**

Adrian Jack

Adrian Jack, Chairman 25th June 2012

ANNEX: The law

The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

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, improvement 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 of 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 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 provision 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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charges were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charges as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 27A

(1) An application may be made to a leasehold valuation 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 a leasehold valuation tribunal for a determination whether 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."

Sections 47 and 48 of the Landlord and Tenant Act 1987 require a landlord to give his name and address and to give an address for the service of notices by the tenant on him. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 requires a landlord to serve a summary of tenants' rights and obligations with any demand for service charges on pain of irrecoverability of the service charges demanded.