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Residential
Property
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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON 00AL/LSC/2013/0167

Premises: 18B Ulundi Road London SE3 7UG

Applicant(s): Patricia Farren

Representative: In Person

Respondent(s): Royal Borough of Greenwich

Representative: Greenwich Home Ownership Services

**Leasehold Valuation
Tribunal:** P I Leighton LLB
C Gowman BSc MCIEH

Date of decision: 12th June 2013

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Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1517.67 is payable by the Applicant/ in respect of the service charges for redecoration for the year 2012
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (3) The Tribunal makes no order, in respect of the reimbursement of the Tribunal fees paid by the Applicant

The application

1. The Applicant by application dated 8th March 2013 seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge year 2012 for decoration works to the property at 18B Ulundi Road London SE3 7UG ("the property")
2. Directions were given on 12th March and the case was allocated for a paper determination and came before the tribunal for consideration and determination on 3rd June 2013
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The property which is the subject of this application is a maisonette on the first and second floors of a 3 storey house with its own separate front door and shared use of rear garden. The ground floor flat is occupied by a tenant of the respondent.
5. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicant holds a long lease of 125 years on the property from 19th March 1990 and which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below where appropriate.
7. The Applicant is liable to pay service charges under the provisions of clause 6 and the Sixth and Seventh Schedules of the lease. Payment is in proportion to the rateable value of the property and the Applicant is due to pay 271/453 of the total service charges for the building.

8. On 28 September 2010 the Respondent sent the Applicant and a number of other leaseholders in different properties a statutory notice in accordance with schedule 3 Of the Service Charges (Consultation Requirements) (England) Regulations 2003)"the regulations") giving notice that various works would be undertaken to their properties
9. On page 2 of the notice under the heading "description of works" a general outline of the proposed works was set out under various headings. These included "scaffolding, window renewals and any associated works, window repairs and associated works, communal windows, roof works and any associated elements, repairs to walls new rainwater goods/repairs and decorations to rainwater goods, external decorations, mechanical extract fans (optional for leasehold properties where windows are being replaced)"
10. An opportunity was given for representations to be made by the leaseholders and the Applicant made representations which were received on 20th Octcoer 2010. The Respondent gave consideration to the observations and a letter dated 16th November was sent. Thereafter an estimated invoice was sent to the applicant, on 28th October 2010 which included in addition to the requirements of schedule 3, a breakdown of costs to the block and the property
11. That schedule shows the estimated costs for the block at £23,518 92 and sets out items of work to be carried out. The schedule does not contain any reference to external decoration. The Applicant's share of the costs of the works is estimated as £15,898.90. the final invoice was £17,416.57 and the amount outstanding on the Applicant's account is £1517.67
12. The Applicant challenges the validity of the respondent's final account charge for the external redecoration on the basis that it was not specified in the schedule 3 notice an estimated charge. The respondent states that this is the only challenge made, although in reply the applicant indicates that she also challenges the necessity for the works and the standard of works.
13. The tribunal proposes, however, to limit its determination based on the challenge to the compliance with the consultation regulations as this was the only item within the original application
14. The Applicant complains that she was unaware that the Respondent was proposing to carry out external decorations since no reference was made to this in the leases schedule she states that she had no opportunity to object to the redecoration works because they had already started before she was aware of them.
15. The Respondent states that she was given notification that the external redecorations were part of the overall programme and that that was sufficient consultation for the purposes of the regulations.

16. The Respondent also states that the notice given in September 2010 was not a final notice based on "qualifying works undertaken under a qualifying long-term agreement".
17. "Qualifying works" are works where the leaseholder is likely to be charged more than £250 and a qualifying long-term agreement is an agreement which remains in force for more than 12 months
18. The Respondent contends that the works were necessary and that the cost was reasonable. The Applicant maintains that the works were not necessary because she had painted the front and rear doors of her property in the recent past. She further states that had she been given notice she would have objected to the redecoration works on the basis that they were unnecessary.
19. The Respondent further contended that the applicant had suffered no prejudice and made reference to the recent decision of the Supreme Court in **Daejan Investments Limited –v- Benson (2013 UKSC 14)**

The issues

20. The relevant issues for determination are as follows:
 - (i) The payability and/or reasonableness of service charges for [the year 2012 relating to external redecoration of the building for which the Applicant is liable to contribute under the terms of the lease
 - (ii) Whether the Respondent carried out a proper consultation in respect of the external decoration works in accordance with the Service Charges (Consultation Requirements) Regulations 2003
 - (iii) Whether the Applicant suffered any prejudice by the alleged failure to consult her in accordance with the said regulations
21. Having read the statements of case and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's decision

22. The Tribunal determines that the amount payable in respect of the external decorations works is £1517.68 and that there has been no breach of the Regulations

Reasons for the Tribunal's decision

23. Regulation 7(3) of the 2003 Regulations provides that where a contract for qualifying works is subject to a qualifying long term agreement the provisions of Schedule 3 apply
24. Schedule 3 provides
- (1)The landlord shall give notice in writing of his intention to carry out qualifying works
- (a) to each tenant and
(b) where a recognised tenants association represents some or all of the tenants in an association
- (2) The notice shall –
- (a) describe in general terms the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected
25. It is clear from the regulations that the Respondent is only obliged to specify the general scope of the works. The tribunal has considerable sympathy for the Applicant in that she obviously did not realise that the decorations were to be included but because the Respondent has given sufficient detail under the description of works she is taken to have been informed.
26. This is obviously a problem in cases such as this where the local authority undertakes a major contract for a large number of properties which are all to be undertaken by the same contractors. It is plain that not all properties will require exactly the same works and if any amendment were made to the regulations in future it ought to provide that in such contracts the local authority should specify which works do not actually apply to the leaseholder's property. Otherwise it must be assumed that all the works set out in the general description will apply
27. The Applicant maintains that this is a harsh provision and that the failure to notify her of the decoration works prevented her from making representations that he works wren to necessary. However as the Respondent states any representations could not have prevented the decoration works going ahead because of the nature of the contract.

The Tribunal's decision

28. If the Tribunal had determined that had there been a breach of the regulations there would have been some prejudice but possibly insufficient to prevent the tribunal granting dispensation. Since there is no application for dispensation it and since this is a paper determination without the benefit of hearing detailed argument the Tribunal considers it is unnecessary to determine this question

Reasons for the Tribunal's decision

29. If the Applicant had established that there was a breach it is likely that she would have established some prejudice as she has established that when she has made representations in the past the Council have paid attention to them and sometimes made changes to the programme
30. The tribunal agrees with the Respondent that the ability for her to prepare to meet the costs is not a relevant head of prejudice as she was given the approximate cost of the works as estimated, but if she was able to establish that the works themselves were not necessary it would be.
31. In order to determine that question the tribunal would require to receive a good deal more evidence on the state of the building, the work which the Applicant herself had done, whether the contract was capable of being changed and whether it would have been necessary to carry out some redecoration works other than to her front and rear doors and what it would have cost.
32. Such an inquiry would in the view of the tribunal justify an oral hearing to give each party the opportunity to explore those matters and to make further submissions. It would also probably require an inspection of the building.
33. However in the light of the finding above it is not necessary for the tribunal to make any findings in this regard.

Application under s.20C and refund of fees

34. In the application, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders/ does not order the Respondent to refund any fees paid by the Applicant[
35. In the application form/ in the Applicant/ Respondent applied for an order under section 20C of the 1985. Having read the submissions from the parties and taking into account the determinations above, the Tribunal makes no order under section 20C of the 1985 Act, if it is the intention of the respondent to add the costs to the service charge account it should notify the Applicant of the amount involved. The tribunal is of the opinion that the figure (if any) should be fairly modest having regard to the fact that this is a paper application.

Peter Leighton

Chairman:
Date 12th
June 2013



Appendix of relevant legislation

Landlord and Tenant Act 1985

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, improvements 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 for 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 or later 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 provisions 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 20

This section applies to any qualifying works all qualifying long-term agreement the relevant contributions of tenants are limited in accordance with subsection (6 or (7) (or both) unless the consultation requirements have been either

- (a) Complied with in relation to the works or agreement or
- (b) Dispensed with in relation to the works of agreement by (all appeal from) a leasehold valuation tribunal

(2) in this section open quotes relevant contribution" in relation to a tenant at any works or agreement is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred in carrying out the works or under the agreement

(3) This section applies to qualifying works if relevant costs incurred in carrying out the works exceed an appropriate amount

For the purposes of these provisions the relevant amounts are £250 in relation to qualifying works and £100 in relation to qualifying long term agreements

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, if 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) Has been agreed or admitted by the Tenant,
 - (b) Has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement, to which the Tenant is a party,
 - (c) Has been the subject of determination by a court, or
 - (d) Has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge 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 charge 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 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) In the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (As) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) In the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) In the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) In the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Service Charges (Consultation Requirements) (England) Regulations 2003

7 (1) subject to paragraph (5) where qualifying works are the subject (whether alone or with other matters) of a qualifying long-term agreement to which section 20 applies the consultation requirements for the purposes of this section and section 20 said a as regards those works are the requirements specified in Schedule 3

(3) This paragraph applies where:

(a) under an agreement entered into by or on behalf of the landlord or a superior landlord before the coming into force of these regulations qualifying works are carried out at any time on or after the date that falls two months after the date on which these regulations come into force or

(b) Under an agreement for a term of more than 12 months entered into by or on behalf of the landlord or a superior landlord qualifying works for which public notice has been given before the date on which these regulations come into force and carried out at any time on or after the date

(4) except in a case to which paragraph (three) applies and subject to paragraph (5) where qualifying works are not the subject of a qualifying long-term agreement to which section 20 applies the consultation requirements for the purposes of that section and section 20 Z 30 as regards those works

(a) In a case where public notice of those works is required to be given are those specified in part one of schedule 4

(b) In any other case are those specified in part 2 of that Schedule?

SCHEDULE 3
CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS UNDER
QUALIFYING LONG-TERM AGREEMENTS AND AGREEMENT TO WHICH
REGULATION 7 (3) APPLIES

Notice of Intention

- (1) The landlord shall give notice in writing of his intention to carry out qualifying works
- (a) to each tenant and
- (b) where a recognised tenants association represents some or all of the tenants in an association
- (2) The notice shall –

(a) describe in general terms the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected

(b) state the landlord's reasons for considering it necessary to carry out the proposed works

(c) Contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works

(d) Invite the making in writing of observations in relation to the proposed works all the landlord is estimated expenditure and the

(e) specify

(f) the address to which such observations may be sent

(g) that they must be delivered within the relevant period

and

(h) the date on which the relevant period ends