



Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
LANDLORD AND TENANT ACT 1985**

**LON/00BK/LSC/2009/0643**

**SECTION 27A LANDLORD AND TENANT ACT 1985**

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**Premises:** 95 Flintmill Crescent, London SE3 8LX

**Applicant:** Mr Khaled Shabib Mohamed

**Represented by:**

**Respondent:** Greenwich Council Home Ownership

**Present:**

**Tribunal:** Mrs N Dhanani LLB(Hons)  
Mr R A Potter FRICS

**Date of Hearing:** 10/12/09

**Date of Directions:** 13/10/09

Date of decision: 10<sup>th</sup> December 2009

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

**Background**

(a) The property which is the subject of this application is known as 95 Flintmill Crescent London SE3 8LX. It is a two bedroom maisonette. The application is made by the leaseholder and concerns a dispute as to the service charges for the repair/replacement of windows in the Building in which the property is situated.

(b) The lease requires the landlord to keep in repair the structure and exterior of the Property and the Building and the tenant to contribute towards the costs by way of a variable service charge.

(c) On 5<sup>th</sup> October 2009 the applicant applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine his liability to pay the service charge in respect of the capital works invoice 273055 for capital works carried out under the SRB 5 Contract for the renewal of windows and window boards/panels.

(d) The Section 20 Consultation for the works was carried out on the 25<sup>th</sup> April and the 27<sup>th</sup> August 2002. The Applicant returned an observation form informing the Respondents that the windows in the Property had been replaced.

(e) The capital works were carried out but none of the windows exclusively serving the Property were replaced, although communal windows in the Building were replaced.

(f) On the 31<sup>st</sup> March 2009 a final invoice for the sum of £ 3075.72 was sent to the Applicant in respect of the capital works (invoice 273055).

(g) The Applicant objected and reminded the Respondents that they had agreed not to make a charge for the windows in the Property as they did not require replacement. The Respondent agreed and sent the applicant a revised Itemised Breakdown of Final Property Costs dated 1<sup>st</sup> July 2009 Version 2 for the sum of £1899.41 (the Final Account).

(h) The Applicant contends that he should not be required to pay £1899.41 as he should only be required to pay a contribution towards the cost of the works in respect of the communal windows Building and so his contribution should be reduced to £139.00

### **Directions**

On the 13<sup>th</sup> October 2009 appropriate directions were issued by the LVT and as neither party had requested a hearing the case listed for a determination on the papers by the Tribunal in the week commencing the 7<sup>th</sup> December 2009. Directions have been followed by the parties.

### **Inspection**

The Directions issued did not provide for an inspection of the property and no request for an inspection was made by either party

### **Matters agreed**

It is agreed that the capital works in respect of the windows in the Building were required and that the Applicant is required to make a contribution towards the cost the capital works.

The Applicant agrees the deduction of £2154.32, but claims this amount should be deducted from the total estimated contribution (i.e. £3075.72) shown in the Section 20 Notice dated the 27<sup>th</sup> August 2002 and not the actual costs incurred in the sum of £4053.74.

The reasonableness of any of the items in the Final Account is not disputed.

### **Matters in dispute**

- (a) The amount of the Applicant's contribution towards the capital works.
- (b) The Applicant claims the deduction of £2154.32 should have been applied to the amount shown in the Section 20 Notice dated the 27<sup>th</sup> August 2002 as the Applicants total estimated contribution of £3075.72 and not the actual costs incurred in the sum of £4053.74.
- (c) The Applicant contends that he should not be required to pay a contribution towards the cost of the scaffolding and so his contribution should be reduced further by £782.88.

### **Evidence**

#### **Applicants Case**

The Applicant relies on the Section 20 Notice dated 27<sup>th</sup> August 2002 which states:

*" To calculate your contribution towards the works Greenwich uses Rateable Value of each property to apportion the costs of the works among the block.*

**Rateable Value of Property:**  $250 \times \pounds 50584.41$

**Total Rateable Value of Block:**  $4790 = \pounds 2640.10$

*Your contribution towards these works is therefore **£2640.10**. You will also be charged a supervision fee of 6.5% (£171.61) and an administration fee of 10% (£264.01) giving you a total estimated contribution of **£3,075.72**."*

The Applicant also relies on a letter dated the 29th September 2004 from the Respondent which states as follows:

*"...a survey of the windows is yet to be carried out at the end of this year. This will determine whether the windows in your block meet the requirements of Health & Safety and that current and future life cycles have been taken into account for replacement elements. Once this survey is carried out, if it is determined that the windows in your property do not need replacing, then there will be a zero charge for these works. However, if any communal windows are replaced in your block, then you will be liable to contribute towards these."*

#### Respondents Case

The substance of the Respondents case is having made a zero charge in respect of the windows to the Property the amount of £1899.41 is due from the Applicant in accordance with the terms of the Lease as per the Final Account.

#### The Lease

The Lease was originally granted under the Right To Buy and is dated 26<sup>th</sup> February 1990 and made between The Mayor and Burgess of the London Borough of Greenwich (1) and Denis Colverson and Julia Colverson (2). The Lease was assigned to the Applicant on the 29<sup>th</sup> October 2001.

The demise of the Property is set out in the First Schedule to the Lease and specifically excludes the windows from the demise:

*“ EXCEPT AND RESERVING from the demise the main structural parts of the Building including the roof foundations and external parts (but not the glass of the windows of the said flat...”*

The Lessee covenanted with the Respondent under clause 6(e) of the Lease

*“(e) If and whenever the council shall make any improvement affecting the Flat or the Estate or any part thereof the Lessee shall upon service of a written demand pay to the Council a fair proportion of the cost of the improvement based on a comparison of the rateable values of the Flat at the time with the rateable value of all other dwellings comprised in the Estate and affected by the improvement”*

The Respondent covenanted with the Lessee under clause 7(b) as follows:

*“That the Council will keep in repair 9 including decorative repair) the structure and exterior of the Flat and the Building .....and will make good any defects affecting the structure ....”*

Part 1 of the Sixth Schedule to the Lease defines the Service charge in relation to the Building and Estate as follows:

*“.. in any financial year ( 1<sup>st</sup> April to 31<sup>st</sup> March ) shall be the aggregate of the following expenses in relation to the Building or the Estate incurred or provided for by the Council in that year*

*(a) the cost of complying with the Council’s covenant in clauses 7(b) and (c) of this Lease Provided That the costs of making good structural defects in any part of the Building shall be included only if either:-*

*(i) the defect is identified in Part 111 of this schedule, or*

*(ii) the Council does not become aware of the defect during the next 10 years after the execution of the Lease.....*

*(d)the administrative and labour costs of managing the Building and the Estate including the costs of employing and paying professional men agents*

*contractors or employees in and about the performance of any of the said covenants"*

Part 111 of the Sixth Schedule lists the repair /renewal of defects in the windows as a structural defect in the Building.

### **The law**

**Section 20** of the Act provides:

" (1) Where this section applies to any qualifying works or 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 or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and 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 on carrying out the works or under the agreement.

**Section 27A(1)** of the Act provides that:

"(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."

### **The Tribunal's decision**

The Tribunal having considered the evidence is satisfied that under the terms of the Lease the Applicant is liable to pay a service charge contribution towards the cost of

the works for the replacement and renewal of the windows in the Property and the Building as well as the supervision, administration and management fees as set out in the Itemised Breakdown of Final Property Costs Version No1 amounting to a total of £4053.74.

The reasonableness of any of the items in the Final Account is not disputed and the Tribunal have not been asked to consider the reasonableness of the works or the actual costs incurred.

However since the Respondent have agreed to make a zero charge in respect of the windows the amount of the Applicants service charge contribution for the works should be reduced accordingly and the Supervision, Administration and Management fees should be charged on the reduced contribution for the works. The Applicant is liable for a service charge contribution towards the cost of the communal windows and scaffolding as set out in the Final Account in the sum of £1899.41.

The Tribunal notes the Applicant's contention that the total amount of the service charge is limited to a maximum of £3075.72 as stated in the Section 20 Notice. However the Section 20 Notice stated that £3075.72 was the total **estimated** contribution and this was subject to the proviso included in the Section 20 Notice as follows:

***"Please note this letter is not an invoice.***

*If the work proceeds, you will be charged your estimated contribution, due to be issued in **October 2002**. When the final account is available your contribution will be adjusted accordingly."*

The Applicant does not dispute the Respondents claim that the Section 20 consultation requirements have been complied with in respect of the works. On the evidence the Tribunal is satisfied that the scope of the works did not exceed the works specified in the Section 20 Notice and thus the service charge is not limited to a maximum of due to a failure to comply with the Section 20 consultation requirements.

The Tribunal does not accept the Applicants argument that the Service charge contribution should be limited to the total estimated contribution set out in the Section 20 Notice. Accordingly the Tribunal finds, that the Applicant is liable to pay to the Respondent the sum of £1899.41, which is in accordance with the terms of clause 6(e) of the Lease and was due and payable upon the service of the written demand dated the 1<sup>st</sup> July 2009.

**CHAIRMAN Mrs N Dhanani LLB (Hons)**

**DATE 10 December 2009**