Residential
Property
TRIBUNAL SERVICE

Case reference: LON/00AH/LSC/2009/0496

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON A MATTER TRANSFERRED TO THE TRIBUNAL UNDER PARAGRAPH 3 OF SCHEDULE 12 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002
(LANDLORD AND TENANT ACT 1985, SECTION 27A)

Property: **169 Grange Road, London SE25 6TG**

Claimant/applicant: Steloheath Limited

Defendant/respondent: Keith Morgan

Date heard: 5 November 2009

Appearances: Justin Greaves, director of the landlord, for the landlord

Keith Morgan

Tribunal: Margaret Wilson
Ian Holdsworth FRICS
Rosemary Turner JP

Date of decision: 16 November 2009

Background

1. This is a landlord's claim to recover arrears of service charges and ground rent, together with statutory interest and costs, from Keith Morgan ("the tenant") who holds a long lease of a lower ground floor flat in a converted three storey end of terrace house comprising three flats. The claim was transferred to the tribunal by an order of the Croydon County Court dated 28 July 2009. The tribunal's jurisdiction is derived from statute and we have no jurisdiction to determine issues relating to ground rent or statutory interest or to the costs of the county court proceedings.

2. The landlord's claim was for a total of £6298.82, including ground rent, together with interest and costs. The tenant entered a defence to the claim in which he denied liability to pay the sums claimed and counter-claimed the sum of £6759.81. The tribunal made pre-hearing directions for the service of statements and documents with which the landlord complied but the tenant did not. A hearing took place on 5 November 2009 at which the landlord was represented by Justin Greaves, a director, and the tenant appeared in person. We inspected the exterior of the property after the hearing in the presence of the tenant.

The lease

3. By clause 1 of the lease the flat demised includes *the foundations of the Building which are below the flat*. The tenant covenants by clause 4(i) to *keep the Flat (other than the parts comprised in and referred to in paragraphs 1(1) and 1(2) of the Fourth Schedule ...) including all walls and party walls the glass and frames of the windows and ceilings and floors and the interior faces of the walls thereof ... in good and substantial repair and condition.* By clause 4(ii)(a) he covenants to *pay and contribute by way of additional rent ... one third of all expenses (including reasonable management charges and interest paid by the Lessor on money borrowed for the purpose of discharging such expenses) incurred by the Lessor in complying with its covenants in relation to*

the Building as set out in the Fourth Schedule hereto And further that when any work of repair redecoration or renewal required by any of the said covenants is carried out by the Lessor itself the Lessor shall be entitled to charge as the expenses thereof its normal and reasonable charges (including profit) in respect of such work in the event of major works ... . The landlord's covenants in the fourth schedule are, summarised, by paragraph 1(1) *to maintain repair and renew ... the external parts of the building ... gas and water pipes and drains ... [and] boundary walls and fences;* and, by paragraph 1(2), *to maintain in proper repair and condition any passageways paths and other areas in and adjacent to the Building.* Also by the fourth schedule the landlord covenants to employ such persons as are necessary for the performance of the landlord's covenants and for the management of the building; to insure; and to keep proper books of account. There is no provision for the recovery of service charges in advance or for the accumulation of a reserve.

The statutory framework

4. The tribunal's jurisdiction in relation to service charges is set out in section 27A of the Landlord and Tenant Act 1985 ("the Act") by which it can determine whether a service charge is payable and, if it is, the amount which is payable. A "service charge" is defined by section 18(1) of the Act as *an amount payable by the 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.* Relevant costs are defined by section 18(2) and (3). By 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.*

The claim

5. The landlord's claim in respect of service charges, as explained by Mr Greaves in the landlord's statement of case, was for the following sums:

i. one third of the cost of repairs amounting to £155 in all (supported by invoices E1 and E2 in the landlord's bundle), namely £51.67;

ii. managing agent's fees for the year to 30 June 2008, £150 plus VAT, namely £176.25;

iii. one third of the insurance premium of £529.20 payable on 6 August 2008 (supported by invoice G), namely £176.40;

iv. one third of the cost of £12,270 plus £2076 VAT for major works to refurbish and redecorate the exterior of the building carried out between October 2008 and January 2009 (supported by invoices H1 – 4), namely £4932;

v. one third of the managing agent's fee for supervising and managing the major works, based on 12% of cost, namely £508.66 plus VAT of £76.30, or £584.96.

6. In addition the landlord claimed legal costs of £352.50, said to be solicitors' charges of £300 plus VAT incurred for advice to the landlord in relation to the recovery from the tenant of service charges based on costs incurred prior to this dispute. It is however clear that these sums are not service charges within the meaning of section 18 of the Act (and, indeed, if they were, the tenant would be liable to pay only one third of the amount). We are satisfied that we have no jurisdiction to determine the amount payable for this item. The landlord also claims insurance premiums and managing agents' fees due for a period since the claim was made in the county court, but as these matters were not remitted to us by the county court we cannot deal with them in the present proceedings.

The dispute

7. Of the list given above, the only items which the tenant disputed related to items (i), (iv) and (v).

8. In relation to item (i), he denied that he was liable to contribute to a charge of £75 for re-connecting a hopper head and waste pipe because he was not convinced that the work was carried out. We accept Mr Greaves's evidence that the cost was incurred, related to the property in question, and that the work was necessary. Because this cost had not been identified by the tenant as an issue prior to the hearing we were not surprised that Mr Greaves was unable to give a detailed account of the works carried out. We find that the tenant is liable to £51.67 in respect of general repairs.

9. In relation to items (iv) and (v), Mr Greaves said that the building had become very dilapidated over the years and the works were long overdue. The landlord had carried out the statutory consultation process before the contract was let and had obtained quotations not only from two contractors whom the landlord had selected but also from a contractor nominated by one of the leaseholders, whose quotation was higher than that of the contractor selected by the landlord. He said that he had instructed the contractors as to the work required but had not provided them with a written specification; he was however satisfied that he made it clear, verbally, to each of the contractors who quoted for the works exactly what was required, and that each of them had quoted for the same works. He said that the contractor whose quotation was accepted had been regularly employed by the landlord and generally provided a good service. He said that the works were carried out between October 2008 and January 2009 and that he had personally supervised them, visiting the site at least four or five times in the course of the work. He said that he had trained as a surveyor but did not practise as such and he was a suitable person to supervise the works. He had visited the site at least once a week while the works were being carried out and, although in the early stages of the contract he was not satisfied with the standard of preparation, such defects as he had seen had all been put right and he

considered that the finished work was of a reasonable standard for the price. He said that he accepted that there were some areas of loose pebble dash rendering on the flank wall but that the contractors had done more repairs to it than they had allowed for in the price and the finish was now reasonably good. He said that the scaffolding had been of a satisfactory standard, and that while it had been in position for longer than he would have liked, there had been no cost consequence for the leaseholders.

10. The tenant said that he did not consider that the standard of the work was satisfactory and that he believed that the cost was therefore too high, although it would have been reasonable if the standard had been better. He said that the scaffold had been hazardous and had blocked his windows and rear exits, that the workers had been untidy and had blocked a drain with cement débris. He believed that the overall cost of the works, given the standard, would be about half the amount charged.

11. We were able to inspect the three elevations which had been decorated and were satisfied that the standard of the works was satisfactory and that the cost was reasonable. The finish was not perfect: in particular the painted finish to the rendering on the flank wall was uneven in places, and possibly more could have been done to repair and fill the render to the window reveals, but on the whole we were satisfied with the standard. We were also satisfied that the works had been supervised to an acceptable standard and justified a supervision fee based on 12% of their cost.

The counterclaim

12. The tenant said that he had been obliged to spend about £20,000 on his flat because of the landlord's past neglect of the building which had caused damp penetration which had damaged his flat. He said that he had been obliged to instal a damp proof course, a new kitchen, new windows and new doors. He had no invoices or other documents to support the claim, and was unable to give particulars of the items which formed his counterclaim for

£6759.81. Questioned by Mr Greaves, he agreed that he had received a local authority grant of £17,000 towards the cost of the works and that he himself had contributed only £2500.

13. Although we accept that in principle a counterclaim for disrepair may be set off against a liability to pay service charges (*Continental Property Ventures Inc v White*, (LRX/60/2005)) we are not satisfied on the evidence that the tenant has established his counterclaim. He provided no supporting evidence that the landlord's breaches of covenant caused the damage to his flat, and no invoices or other documents to show that his losses were as he claimed. The windows and interior of the flat, and probably the external doors, are his responsibility under his lease. In all these circumstances we reject his claim.

Determination

14. Accordingly we are satisfied that the tenant is, and was at the date of the claim, liable to pay to the landlord the following service charges:

i.	Repairs	£155
ii	Managing agents' fees	£176.25
iii.	Insurance premium	£176.40
iv.	Major works	£4932
v.	Supervision fees for major works	£584.96

Total **£6024.61**

CHAIRMAN..

DATE........16 March 2009