FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/LSC/2019/0453**
Property	**:**	**24 Sussex Road, Harrow, HA14LX**
Applicant	**:**	**Navdeep Kaur Dhillon**
Respondent	**:**	**Anthony O'Connor**
Tribunal Members	**:**	**Tribunal Judge Shepherd** **Hugh Geddes** **Deputy Regional Tribunal Judge N Carr**
Date of Hearing	**:**	**24 March 2020**

DETERMINATION

(a) The tribunal determines pursuant to section 27A of the Landlord and Tenant Act 1985 that the service charges as set out in the reasons below are payable.

(b) The tribunal determines that the Applicant's total service charge liability for the period 2014 - 2019 is **£4573.36**

Application

1. By her application the Applicant Navdeep Kaur Dhillon seeks a determination of liability to pay and reasonableness of service charges pursuant to section 27 Landlord and Tenant Act 1985. The Respondent, Anthony O'Connor opposes the application. The service charges are challenged for the period 2014-2019. The total value of the dispute is £5762.64.

2. In summary the issues between the parties are the following:

   a) Recoverability of the service charges under the lease.

   b) Impact of s. 20B of the Landlord and Tenant Act 1985.

   c) Reasonableness of service charges.

   d) Consultation

   e) S. 20C of the 1985 Act

Background

3. The Respondent is the freehold owner of 24 Sussex Road. He occupies the Upper Maisonette. The Applicant occupies the Lower Maisonette. Under the lease dated 12th February 1965 the Applicant covenanted inter alia "*to pay and contribute to the Landlord on demand one equal half part of the costs and expenses incurred by the landlord from time to time in complying with the obligations of the Landlord under Clause 4(1)"* (Clause 2(15)) .

4. Under clause 4 (1) the landlord covenants *"whenever necessary to repair maintain renew redecorate and cleanse (i) the roofs (including the roof timbers and roof tiles or other covering above the same the roof gutters and rainwater pipes leading therefrom and the chimney stacks) and the foundation of the building and (ii) the main drain gas and water pipes electricity cables and wires in under or upon the building and enjoyed or used by the tenant in common with the landlord or owners or occupiers for the time being of the upper maisonette."*

5. The Applicant is also required to repair and keep in repair the demised premises (Clause 3(4)) as defined in Clause 2, which includes internal and external walls

of the building. Further the Applicant is required to paint the demised premises externally every three years (Clause 3 (11)). Finally, the Applicant is obliged to pay a due proportion of expenses incurred by the Respondent in making up, repairing, cleansing or lighting any passage ways paths and yards and any party wall fences or other structures and any easements and services used or to be used in common or any other act or thing done in or about the building for the benefit of the occupiers (Clause 3 (13)).

6. The Applicant produced a Scott Schedule which showed that she had been disputing service charges since 2014 (Page 27 of the bundle onwards). She offered around £900 that she said was due as service charge against the outstanding sum (according to the Respondent) of £5762.64. She had not yet paid over the £900. The works carried out by the Respondent ranged from roofing, fascia and guttering works ("the external works") to window cleaning and weeding. The Applicant had a variety of different challenges and reasons why she had not paid, in particular many of the works she said were caught by the time limit in s.20B of the Act, and the external works had not been properly consulted upon. Both were in effect technical challenges. The Applicant also challenged the cost of the external works (£3398.27) and produced a retrospective quote dated 9th January 2020 for £540 from E. Caldwell Roofing.

7. There was correspondence between the parties over a prolonged period which reinforced the fact that their relationship as landlord and tenant had broken down. During the hearing there was reference to some handwritten letters from the Respondent to the Applicant. These were not in the hearing bundle but were produced by the Applicant after the hearing so that the Tribunal could consider them before reaching a determination.

8. The Respondent produced a counter schedule which was difficult to read due to the size of the font. Nonetheless, the Respondents arguments were clarified at the hearing. He candidly accepted that he had failed to carry out proper consultation on relevant works and that certain demands were time barred under s.20B of the Act. He also accepted that the first time he had demanded sums formally from the Applicant was on 28th October 2019, when a demand

for £5762.64 was sent to the Applicant (Page 53). It is fair to say that there are a number of informal demands in the bundle, including a demand dated 1st May 2019 seeking £5897.18 (Page 67). In his evidence the Respondent said that he'd hoped to be able to deal with the matter informally without having to resort to the law. Eventually he had been advised to serve a formal demand in October 2019. The Applicant accepted the validity of that demand but challenged whether the sums were lawfully due.

The Law

Landlord and Tenant Act 1985

9. Section 19 of the Act limits service charges recoverable to the extent that they are reasonably incurred and the services and works are of a reasonable standard.

10. Section 20 defines the consultation requirements that have to be met for any qualifying works.

11. Section 20ZA gives the Tribunal the power to dispense with the consultation requirements for qualifying works. Following *Daejan Investments Ltd v Benson* [2013] UKSC 14 the focus of the Tribunal in making a dispensation decision is whether the Applicant has suffered any prejudice.

12. Section 20B of the Act states the following:

(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.

13. Under Section 20C of the Act a tenant can apply to the Tribunal for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by them.

14. Finally under s27A of the Act an application may be made to 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.

Works caught by section 20B

15. The informal demand sent to the Applicant on 1st May 2019 (Page 67) met the requirements of s 20B (2). The Respondent was told the likely amount and that she was going to have to contribute to the works. In actual fact, the formal demand was for less. Accordingly, the excluded works are those carried out 18 months before 1st May 2019 i.e. all works up to 30th November 2017. This excluded from consideration the following:

Roof works: £120

Maintenance of front 2014 : £90

Maintenance of Front 2015: £90

Maintenance of Front 2016: £90

Sound insulation: £250

Solicitors letter :£200

Buildings Insurance: £311.60

The works not excluded by section 20B

16. The Tribunal intends to deal with each item in the Applicant's schedule from page 33 onwards.

Maintain front of house (£150) (page 33 and 39)

17. It was not suggested by the Applicant that this work was not done neither did she challenge the quality of the work. She challenged her area of responsibility. Under the lease the Respondent is entitled to charge a due proportion for keeping clean passageways paths and yards and any easements. It is accepted by the Tribunal that the Applicant should only pay 1/6 of the total cost which properly reflects the extent of the easement. This amounts to **£25**

Buildings insurance (£ 669.74) (Page 33 and 39)

18. The Applicant accepts that she should pay her contribution of half of the amount namely **£ 334.87**

Front of house works – Block Paving /Fence (page 34)

19. The Applicant challenged the extent of her contribution (she said it should be only 50% of the access as with the general maintenance above). She also said the paving

breached the DPC and did not comply with Building Regulations. She produced no independent expert evidence to verify this. She also challenged the fact that the Respondent had not consulted her before doing the works.

20. There is an email at page 191 from Helen Hall at Harrow Council which confirms building control approval was not required. The Tribunal are satisfied from the photographs that the quality of the work appears sound. Dispensation for the lack of consultation is given.

21. In a handwritten letter dated 28th September 2018 the Respondent asked the Applicant to produce quotes for the paving work. She did not do so. In any event the Tribunal does not consider that she suffered any prejudice from not being consulted. As with the general maintenance the Applicant should be liable for 1/6 of the cost which amounts to **£330.**

Walls (*£1943.35*) (page 35)

22. The Applicant objected to paying for the cost of decoration works carried out by the Respondent because she said it was the leaseholder's responsibility. She said she hadn't been given three months' notice in accordance with the lease and had not received confirmation that Ivy had been removed. She also challenged the cost of the work (without any alternative quotes). She offered £44.90.

23. The lease required the Applicant to decorate externally every three years (Clause 3(11)). In default the landlord can serve three months' notice requiring the work to be carried out and if it is not carried out notice of his intention to carry it out (Clause 3(6)). Correspondence from the Respondent's solicitors effectively gave this notice, stating that the Applicant was required to carry out the decoration works (see letter dated 12/10/17 at page 108). The Applicant responded to this correspondence accepting that decoration was required but requiring the Respondent to remove the overgrowth in the front garden before the works would take place. She also asked what colour should be used (page 219). The Respondent wrote hand-written letters requiring the Applicant to comply with the lease and threatening that work would be carried out in default: see letters dated 26/9/18; 28/9/18;23/10/18 and 29/10/18.

24. The Tribunal considers that the Respondent was entitled to carry out the works in default and that the sums incurred were reasonable. The Applicant had a responsibility to redecorate, and if that included preparation of the walls by the removal of vegetation she should have done that. Accordingly, the full cost of the work is due: **£1943.35**

Roof, fascia and soffit etc (£3398.27) (Page 36)

25. The Applicant challenges these external works on the basis that she obtained a cheaper retrospective quote and that consultation had not taken place. During the hearing she extended this challenge by alleging that the Respondent's costs of the work were inflated and indeed dishonest. The labour time-sheets are at page 71 of the Respondent's bundle. The Tribunal does not accept such a serious allegation and there was no evidence to support it.

26. The Tribunal gives dispensation for the Respondent's failure to consult. The Applicant did not suffer prejudice. She has sought to rely on an unrealistic quotation retrospectively but there is no evidence that she would have sought quotes at the relevant time despite the fact that she clearly had knowledge of the legislation.

27. Further, the retrospective quote from E. Caldwell is vague and unrealistic. The cost of the works was reasonable. Accordingly, the Tribunal finds that the Applicant is liable to pay 50% of the cost of the work: **£1699.14.**

Cleaning of windows and gas meter (£68.16) (Page 36)

28. The Tribunal considers that a contribution of **£15** is reasonable for the cleaning of windows and no sums are due for the gas meter.

Administration (£1576) (page 37)

29. The Tribunal has no doubt that the Respondent has spent a lot of time on the management of the premises and dealing with the Applicant. Nevertheless, he failed to produce any invoices for his administration costs and therefore these are not allowed. The Tribunal will allow the costs of planning permission **(£226**). The cost of £100 for the handwritten letters is not allowed.

Conclusion

30. The Applicant's total liability is therefore **£4573.36**

Judge Shepherd

24th March 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case. The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit. The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).