FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AZ/LSC/2019/0446**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Basement Flat, 131a Shardeloes Road, London E14 6RT.**
Applicant	**:**	**Mr. Michael Gordon.**
Representative	**:**	**In person.**
Respondent	**:**	**The Mayor and Burgesses of the London Borough of Lewisham.**
Representative	**:**	**Mr. James Browne of Counsel.**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Ms. A. Hamilton-Farey** **Mr. S. Mason**
Venue	**:**	**Video Conference Hearing 14 September 2020.**
Date of decision	**:**	**21 September 2020**

DECISION

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Covid-19 pandemic: description of hearing.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE .A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we have been referred to are contained within two bundles, one from the applicant and one from the respondent. The contents of which have been noted by the tribunal. The order made is described below.

Background:

1. The applicant applies to the tribunal for a determination of his liability to pay a service charge amounting to £7,116.47. This sum was paid by his mortgage lender in default and following various demands from the respondent.

2. The applicant, Mr. Gordon, is a leaseholder under a long lease that he purchased in 2004 having exercised his Right to Buy. Mr. Gordon confirmed to the tribunal that he understood his liabilities for service charge and repairs had changed following the purchase. It appeared from the papers that the RTB had initially been denied because Mr. Gordon was in arrears. He cleared these arrears prior to the purchase but said that a disrepair application had been made in 1998 (prior to his purchase) relating to ill-fitting windows, blown plaster, some cracks to the kitchen, blown plaster to external elevation and boundary walls/external staircase in need of attention. On page 623, the lease clearly states that these items were 'Notified Defects' which would not be repaired at a cost to the leaseholder.

3. The lease also identified various improvements that could be carried out within the first five years of the lease, and in accordance with the legislation.

4. The tribunal issued directions on 9 January 2020, and were subsequently varied by Judge Carr on 20 January 2020, and required amongst other things that the parties exchange statements of case and reply, and each party would supply copies of documents in a bundle on which they wished to rely. The parties generally complied with these directions.

The issues between the Parties:

Mr. Gordon:

5. The dispute between the parties arises from a Decent Homes Contract entered into by the Respondent following an advertisement in relation

to a Long Term Agreement in OJEU[1]. This contract covered various buildings within the ownership of the respondent and has been the subject of previous tribunal proceedings. In particular that in LON/00AZ/LSC/2010/0129 [540] an application made by 24 leaseholders in the Borough ("the previous decision").

6. Mr. Gordon's case is basically that because he was not served with the requisite notices under S.20 Landlord and Tenant Act 1985 ("the Act") he has no liability for any costs in excess of the £250.00 threshold. He says that the letters exhibited to the tribunal have been 'concocted' for these proceedings.

7. Mr. Gordon also says that the major works were not disclosed to his solicitor as part of the purchase process, with the result that he was not aware of his liability. He said that the S.20 Notices/Letters exhibited in the respondent's bundle had been produced in 2017/2019 in response to demands for payment by the respondent, and the first time he had seen them was in 2019.

8. In addition, he says that the works were carried to a poor standard, that the original breakdown of costs produced to him was much higher than the amount now being sought, as was the second breakdown. He disputes liability for those works and says they were not carried out.

9. He accepted that he had not progressed matters, but said that he waited for the landlord to commence proceedings, but they did not do so, and approached his mortgagee. He says he dealt with the mortgagee to inform them of the dispute, but failed to respond to their letters, with the consequence that the mortgagee paid the amount demanded.

10. Mr. Gordon then commenced a complaint with the financial Ombudsman Service. They concluded that his mortgagee should not have paid the respondent, but they would not order a reimbursement until a tribunal or court had determined whether the amount was reasonable and payable by Mr. Gordon.

11. That determination resulted in the application to the tribunal.

12. Mr. Gordon accepted that he was issued with a demand in 2009, that the S.20 process had been properly undertaken (except that he had not received the letters), and that he had not taken any action in the matter, relying on the respondent taking action. For example he had not made any contact with the respondent between 2010 and 2016 regarding the matters in dispute.

The Respondents:

[1] OJEU – Official Journal of the European Union.

13. The respondents say that this matter has been difficult to answer because of the lack of contact by Mr. Gordon. The lateness of the application has meant that everyone who was involved in the contract has moved on, and that his application to the tribunal was made two years after the Ombudsman decision.

14. Mr. Browne, took us through the chronology of this matter. He said the respondents originally wrote to Mr. Gordon on 10 June 2004, shortly after he became a leaseholder, to tell him about the PFI Contract [668], this letter enclosed the Notice of Intention which broadly described the works [669]. Mr. Gordon denies receipt of this letter.

15. On 8 March 2007 the respondents sent a generic letter to all leaseholders giving an update on the PFI agreement.[671/2]. Mr. Gordon denies receipt of this letter.

16. On 2 October 2007 a Notice under Schedule 3 of Section 20 was sent to the leaseholder at the flat. This described the works to be carried out in more detail and enclosed the first estimate of costs (£16,673.46) [673/4]. In accordance with the legislation the Notice informed the leaseholders that they could make observations no later than 3 November 2007.

17. Following on from this the respondent sent Mr. Gordon an 'actual charge' schedule (15,827.83, which was capped at £10,000) [676].

18. On 26 April 2018, the respondent wrote to Mr. Gordon to inform him that, having carried out a fire risk assessment, his front door might not meet the current standards, and requested that he replace the door. They requested confirmation by 25 May 2018 that the door had been replaced. It should be noted that the front door to his flat opens onto the garden and not to any internal area.

19. On 18 September 2009, Mr. Gordon replied to the respondents, that he had no knowledge of the major works; that there was general degradation of the property; the invoices were generic; an no account had been produced, and finally that the financial burden on him did not truly represent the works that had been carried out.

20. On 2 October 2009, the respondent replied to say that if there were issues with the major works, then Mr. Gordon should make an appointment with the contractors and they would investigate.

21. Higgins, the main contractor wrote to Mr. Gordon on 28 September 2010, to confirm that they would return to the property and carry out any necessary works.

22. It appears that Mr. Gordon made a verbal agreement to pay £150.00per month in addition to his usual service charge to the landlord [710]. Mr. Gordon denies that he made such an arrangement.

23. In December 2010, [711], Mr. Gordon again wrote to the respondent to complain that the works had not been done satisfactorily and attached photographs to support his statement. In this document, he says that the poor exterior works have resulted in damp penetration to his flat, that has not been rectified by the respondent.

24. On 16 December 2010, Ms. Genevieve Macklin, head of strategic house from Higgins, wrote to Mr. Gordon to note his comments, and to also confirm that all works had been carried out in accordance with the specification.

25. Having previously issued two estimates of cost, the respondent then issued a statement of account for £7,116.47 [537].

26. This was further reduced in relation to an Upper Tribunal appeal decision (following the previous decision) by £118.44, leaving £6998.03 outstanding. [580].

27. In addition, the tribunal has been supplied with copies of the letters from Mr. Gordon's mortgagee, and his breakdown of the dispute/statements.

28. At the end of his cross-examination, Mr. Browne gave Mr. Gordon four options regarding the S.20 Notices. These were:

    a. The letters were not sent;
    b. The letters were sent but did not arrive;
    c. The letters were sent, arrived but were either forgotten or thrown away by mistake;
    d. The letters arrived and were within the knowledge of Mr. Gordon.
    e. In his summary, Mr. Brown relied on either (c) or (d). Mr. Gordon disagreed.

29. We have noted the comments of the parties and have taken them into consideration when reaching our decision.

<u>Decisions of the tribunal</u>

(1) The tribunal determines that the sum of £7,622.36 (major works, plus general service charge) is reasonable and payable by the Applicant.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The tribunal does not make an order the respondent shall refund the applicant's fees of making this application.

<u>Reasons for the tribunal's decision</u>

1. The tribunal is not persuaded that every letter relating to the S.20 consultation process was either not sent or received by the applicant. On balance, and taking into consideration the previous decision of the tribunal, where the leaseholders agreed that the S.20 process had been complied with, we determine that letters were sent to the applicant and received, but that he was either not living at the property at that time (having admitted to subletting at some time), or that he did not acknowledge the importance of the letters and disposed of them.

2. We are persuaded that the respondent did carry out the consultation process properly and in accordance with the relevant regulations and legislation.

3. The tribunal is not persuaded that the works were carried out to a poor standard. The applicant confirmed that he was inconvenienced by the scaffolding, but accepted that it might have been necessary to use it, had works to guttering or soffits been required. The applicant waited an unreasonable period of time from the works having been completed on the house, before contacting either the landlord or contractor and we are persuaded that he contacted the respondent only as a result of the application for payment. From the evidence provided to us, we find that the main contractor returned to the property and attended to those items which were on the specification.

4. The tribunal has noted that Mr. Gordon has spent much of his case disputing items for which he has not been charged. He may have been confused by the three different schedules of costs, but had the opportunity to deal with the final demand for a considerable period of time prior to the respondent seeking payment from his mortgagee.

5. Finally, we note that this application has taken a considerable amount of time to progress. Mr. Gordon has not dealt with the dispute in a timely manner, allowing instead for matters to lie dormant until the respondent took action with the mortgagee. However, it took a further two years for him to make an application to this tribunal after the Ombudsman determined his complaint, and we find this to be an unreasonable delay.

6. Having made a determination that the S.20 process was complied with, we find the amount claimed by the respondent to be payable.

<u>Application under s.20C and refund of fees</u>

7. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing[2]. Having heard the submissions from the parties and taking

[2] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

8. At the hearing, the applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal declines to make such an Order.

Name: Aileen Hamilton-Farey **Date:** 21 September 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).