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Eastern Rent Assessment Panel
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REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL
Landlord & Tenant Act 1985 Sections 27A and 20C

Premises: 28 Littlebury Court, Basildon, Essex SS13 1RG
Our ref: CAM/22UB/LSC/2005/0065

Hearing: 24 April 2006

Applicants: Littlebury Court Residents Association Ltd
Managing Agents: Charterhouse Property Management of Hadleigh
Respondent: Ms Janice Archer

Members of Tribunal: Mr G M Jones - Chairman
Mr F W James FRICS
Mr Anthony J Jackson JP

Present at Hearing: -

For Applicants: Mr R Sallis (Counsel)
Instructed by: Symons & Gay, Solicitors of Romford
Mr Desmond Cross
Mr Stephen Mason (both of Charterhouse PM)

For Respondent: Respondent in Person
Mr Steven Kelly (witness)

ORDER

1. It is hereby declared that the only sum due and owing from the Respondent to the Applicants in respect of the sums claimed in case number 5RM08396 in the Southend County Court as at 24 April 2006 was the sum of £60.00.
2. Accordingly judgment is hereby entered for the Applicants in the sum of £60.00, credit to be given for any payments made since 24 April 2006.
3. Unless the Applicants shall within 14 days from the date hereof file at the Tribunal Office and serve upon the Respondent written representations to the contrary together with copies of all documents to be relied upon it shall be ordered under section 20C of the Landlord & Tenant Act 1985 the Tribunal orders that that the Applicants shall not be entitled to include in any service charge statement for Littlebury Court any of the costs of case number 5RM08396 aforesaid or of this Application and, in default of such representations, such order shall take effect on the 15th day from the date hereof.
4. In the event written representations in relation to costs are filed and served under paragraph 3 above the Respondent shall be entitled, if so advised, to submit written representations within a further 14 days and the Tribunal shall, unless either party requests an oral hearing, determine the issue of costs on the basis of written representations without a hearing.



Geraint M Jones MA LLM (Cantab)
Chairman
5 June 2006

0. BACKGROUND

The Property

- 0.1 The property in question is a one bedroom first floor flat in a local authority development dating from 1985 and comprising two blocks of flats together with a terrace of small houses. The block of flats which includes No 28 is of brick and tile construction and the roof structure includes "T" shaped sections connected by sloping valleys designed to collect and carry away rainwater. The block appears generally to be in sound structural condition and in a reasonable state of decorative and other repair. Upon inspection, the Tribunal members were able to see the valley which caused the current dispute – but only from ground level. The Members also saw evidence of replastering and redecoration inside the flat in the area directly below the valley.

The Lease

- 0.2 The lease dated 29 May 1997 and granted to Ms Archer by Basildon District Council is for a term of 125 years from 1 April 1985 at a modest ground rent. The tenant covenanted to maintain and repair the demised premises, which included the windows, window frames, doors and door frames of the flat. The Manager (the Residents Association) covenanted to maintain, repair etc. the structure of the building and the common parts, the costs to be recovered from tenants through a service charge. The tenant agreed to pay one twelfth of the annual service charge as certified by auditors. The accounting year runs from 1 April. Payments are to be made half-yearly in advance, on the basis of estimated costs, and then squared up with the actual costs by a balancing payment once accounts are completed after the year end.

The Service Charges and the Residents Association

- 0.3 The service charges in question apply only to the flats – but it appears that the Residents Association includes also the house owners, who enjoy shared use of the grounds. Not surprisingly, there is some conflict of interests. The Residents Association has not functioned well, owing to lack of interest. At present, there is only one director, Mrs Smart. It is from her that the managing agents receive instructions. Solicitors Symons & Gay are company secretary.

1. THE DISPUTE

- 1.1 The history of the dispute began in November 2000, when leaks developed above the bay window of the living room in Flat 28 and in the roof valley above the bedroom. Ms Archer paid for emergency roof repairs which, it now appears, were only of a temporary nature. These repairs were carried out by AB Services, who submitted two invoices. The first, dated 12 November 2000 was for £110.00 and related to the repair and refitting of storm damaged lead flashing over the bay window. The second dated 22 November 2000 was for £145.00 and apparently related to the same work and also to the repair of a crack in the lead flashing in the valley. Ultimately, it appears, Charterhouse accepted responsibility for the cost of these repairs.
- 1.2 In November 2002 further leaks developed in the same locations. A further emergency repair was carried out to the lead flashing above the bay window by Mr Blowers, instructed by Ms Archer, at a cost of £145.00. Ms Archer reclaimed £140.00 (mistakenly understating the cost by £5.00) and Charterhouse agreed to accept responsibility for that sum, which was covered by insurance. However, in addition, Ms Archer commissioned Mr Blowers to carry out a further repair to the valley at a cost of £580.00. Charterhouse refused to accept responsibility for this

sum.

- 1.3 This sum of £580.00 is really the source of the current dispute. Charterhouse say that the insurers repudiated liability because Ms Archer delayed in drawing the matter to their attention. Ms Archer says she contacted the insurers, who refused to deal with her, as she was not the policy holder. She informed Charterhouse of this by telephone. Ms Archer then withheld £580.00 from her service charge payments. This led to the imposition of late payment charges and other administrative charges in the service charge periods commencing 1 April 2004, 1 October 2004 and 1 April 2005. Ms Archer refused to pay these charges.
- 1.4 On 24 June 2005 Symons & Gay issued proceedings against Ms Archer in the Romford County Court under case number 5RM08396, claiming £1,028.53 plus court fee plus legal costs, as set out in the Particulars of Claim. The sum claimed comprised £810.00 service charge arrears plus interest of £30.28 (at 4% above Barclays Bank base rate) and solicitors' costs prior to action of £188.25. On 20 July 2005 the case was transferred to Southend County Court. On 14 September 2005 District Judge Dudley transferred the claim to the LVT under CPR PD50 paragraph 15 and ordered that the costs should be costs in the case. No doubt he was mindful of the limitation on the recovery of party and party costs on the small claims track under CPR Part 45.
- 1.5 There is a minor issue as regards a sum of £75.00, Ms Archer's contribution towards "bricks and mortar" insurance. As it happens, Ms Archer had mistakenly overpaid by £15.00, so the shortfall under this head is £60.00, which Ms Archer agrees she is liable to pay, now that the matter has been explained to her. She initially queried it because the description in the service charge statement had not appeared in previous statements.

2. THE ISSUES

- 2.1 The issues in the case are quite straightforward. Is the Residents Association liable to reimburse Ms Archer for the cost of roof repairs? Were the late payment and administrative charges recoverable under the terms of the lease and, if so, were they incurred and incurred reasonably? Are the interest charges and other costs recoverable from Ms Archer?
- 2.2 Fortunately, Mr Blowers took photographs of the valley before and after he repaired it. It is accordingly common ground that a further repair was needed and that Mr Blowers carried out an effective repair at the reasonable cost of £580.00, which Ms Archer paid him.

3. THE EVIDENCE

- 3.1 The facts were not significantly in dispute. The Applicant was not really able to dispute Ms Archer's account of her dealings with the insurers. A letter dated 25 August 2004 shows that the insurers refused to accept liability because they were not satisfied that the repair was caused by storm damage and thus did not accept that it fell within the ambit of the policy. The letter refers to late notification of the claim and the fact that repairs had already been completed.
- 3.2 The principal factual issue which the Tribunal had to consider was whether the disrepair in the valley was caused by storm damage (which would be covered by insurance) or by inadequate design and/or fair wear and tear (which would not be so covered). In the event the repair was not covered by insurance, Ms Archer's dealings (or lack of dealings) with or in relation to the

insurers would be irrelevant.

- 3.3 The other factual issue, depending mainly upon the Tribunal's expert assessment, was whether the late payment charges and administrative charges were reasonable. The Applicants contended that it was reasonable to charge £15.00 (recently increased to £25.00) for a reminder letter and £50.00 (the actual cost) for a solicitor's letter.
- 3.4 As it turned out, it was not necessary for the Tribunal to make any finding on this issue. However, the Tribunal considers it proper to comment that, in the absence of any detailed explanation (which was not relevant to the dispute) the management and administrative charges for the property generally appear high. An additional charge of £15.00 (let alone £25.00) for printing off and posting a standard letter seems surprisingly high. Maybe a solicitor's letter does cost £50.00; but it is doubtful whether any such letters were a reasonable recourse on the facts of this case.

4. THE LAW

Service Charges

- 4.1 Under **section 18 of the 1985 Act** (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.
- 4.2 Under **section 27A** the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also 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 so, the amount which would be payable.
- ##### Costs generally
- 4.3 The Tribunal has no general power to award inter-party costs, though a limited power now exists to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal as part of the service charge.
- 4.4 However, under **section 20C** of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case *Tenants of Langford Court -v- Doren Ltd* in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice.
- 4.5 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of

application and hearing fees.

5. CONCLUSIONS

- 5.1 The Tribunal found Mr Blowers' photographs (the provenance of which was not in dispute) extremely helpful. These showed that the original defect in the valley was a transverse crack in the lead. The repair of November 2000 was effected by covering the crack with bitumen tape and painting over with bitumen sealant. In the judgment of the Tribunal, this was clearly a temporary repair. It is not surprising that it was failing by November 2004. Notes on the back of the photographs indicate that Mr Blowers considered the cause of the crack to be a design fault. The leadwork had been fixed on either side with nails at close intervals along the whole of this length. This arrangement made inadequate provision for expansion and contraction along the length of the valley. The solution was to remove most of the fixings and insert an expansion gusset at the site of the crack (which happened to be about halfway down the valley).
- 5.2 There was no expert evidence before the Tribunal on this issue. The Tribunal, using the expertise of its members, concluded that, on the balance of probabilities, the crack (and hence the leak) was caused by a design fault and that Mr Blowers' solution was a reasonable method of remedying the fault. The "after" photographs showed that the job was neatly and competently done in the manner described on the backs of the photographs. The leak has not recurred since.
- 5.3 The Tribunal could not imagine any means by which the crack shown in photograph 5 could have been caused by storm damage. It follows that the repair was not, in any event, within the ambit of the insurance policy. In the judgment of the Tribunal, this would or should have become obvious to Charterhouse had they made reasonable inquiries of Mr Blowers who was, after all, the only person who could provide them with reliable information as regards the crucial facts. Had the managing agents made such enquiries, they ought reasonably to have accepted responsibility for the November 2004 repair.
- 5.4 There was thus no reasonable ground for issuing late payment reminders or instructing solicitors to write letters to Ms Archer. Moreover, the only dispute between the parties would have related to the £60.00 for bricks and mortar insurance, which Ms Archer would, as the Tribunal finds, have paid once the unfamiliar description was explained to her. The County Court action should never have been commenced and the matter should never have come before this Tribunal.
- 5.5 Accordingly, the Tribunal finds that the only sum due and owing by Ms Archer to the Applicants by way of service charges as at 24 June 2005 (and as at 24 April 2006) was the sum of £60.00, which Ms Archer is liable to pay (if she has not already paid it). For the avoidance of doubt, the Tribunal finds that Ms Archer is not liable to pay anything at all in respect of late payment reminders or solicitors letters relating the disputed charges.

Costs

- 5.6 This Tribunal takes the view that it has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. An obvious injustice would occur if a successful tenant respondent (or indeed her fellow tenants) were obliged to contribute to the legal costs of the unsuccessful manager applicant or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. A wide variety of other circumstances

may occur and the section permits the Tribunal to make appropriate orders on the facts of each case.

- 5.7 However, in this case there is the added complication that the manager is Littlebury Residents Association Ltd, a company owned by the residents and intended to be run on a non-profit-making basis. If it has incurred costs which are not recoverable from any individual tenant or group of tenants, these must be recovered from the shareholders, who are the residents. The effect would in many cases be much the same, whether or not this was done through the service charge. However, in this case, the shareholders include house owners who are not subject to the service charge.
- 5.8 The Tribunal notes that the company was responsible for incurring the costs which, as the Tribunal finds, were unreasonably incurred. Not only was it unreasonable to take legal action against the Respondent, it was, in the judgment of the Tribunal, disproportionate to employ the services of Counsel in this very simple case. The Tribunal notes that, on the evidence before the Tribunal, the responsibility for taking inappropriate steps and thereby incurring those costs appears clearly to lie with Charterhouse.
- 5.9 Overall, on the information available to date, the Tribunal concludes that it would be just and equitable in the circumstances of the case to order that the Applicants should be disentitled from treating their costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to Littlebury Court. This conclusion is subject to any "Calderbank" offers or other relevant correspondence the Applicants may submit to the Tribunal within 14 days from publication of this Decision. The Applicants have permission within the same period to submit written representations in relation to costs. If no such representations are received within that period, the provisional costs order shall take effect.
- 5.10 In the view of the Tribunal, the Applicants should be ordered to pay the Respondent's costs of case number 5RM08396 in Southend County Court, such costs to be assessed on the scale applicable to the small claims track if not agreed. However, the Tribunal has no power to make an order in relation to those costs, which can be dealt with only by the County Court.



Geraint M Jones MA LLM (Cantab)
Chairman
5 June 2006