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MAN/35UG/LSC/2006/0013

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

NORTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

DECISION

LANDLORD AND TENANT ACT 1985 SECTION 27A (1) & (3) & SECTION 20
LANDLORD AND TENANT ACT 1985 SECTION 20C

Applicant:	Sandra Downing
Respondent:	Shenstone Properties Ltd. Agents: Hadrian Property Management Co Ltd
Property:	42 Glendale Avenue, Stakeford, Choppington NE62 5AN
Date of Hearing:	19 September 2006
Venue:	Ashington Town Hall, Ashington
Tribunal Members:	A Robertson Chairman J N Morris Mrs A Paterson

1. The Application

1.1 Ms Sandra Downing applied under Section 27 of the Landlord and Tenant Act 1985 (the Act) for determination of liability to pay service charges in respect of 42 Glendale Avenue, Stakeford, Choppington (the Property).

1.2 She applied also for an order under Section 20(c) of the Act that the Respondent's costs in connection with the property shall not be recoverable.

2. The Hearing

2.1 At the hearing the Applicant was present and spoke for herself.

2.2 The Respondents were represented by Alan Espley, solicitor, and also present were David Veal of Hadrian Property Management and Raymond Mansel of Shenstone Properties.

3. The Property

3.1 The Tribunal members inspected the property internally and externally before the hearing. They also inspected the outside of other flats within the building, of which the subject property forms part.

3.2 No 42 Glendale Avenue is a small ground floor flat in a two-storey block of six flats (Nos 42 – 52 Glendale Avenue). The accommodation comprises a small hall, living room, bedroom, kitchen and bathroom. Access is from a common area to the rear. There is a first floor external balcony giving access to the upper flats. There are shared gardens to the front.

3.3 The flats were built in the early 1960s and are of traditional construction with cavity walls, outer leaf brick, and pitched tiled roof. There is no gas to the property but all other mains services are present.

3.4 The windows to the flats, save those which have been replaced with upvc double glazing, are single glazed in timber. There was some rot present in some windows. Clearly the work which is the subject of the consultation exercise referred to below has not yet taken place.

4. The Lease

4.1 The original lease is dated 22 February 1962 and is between William Leech (Holdings) Ltd (the Landlord) and Ronald Stanley and Joan Claproth (the Lessee), and is for a term of 99 years from 1 March 1960 at a fixed annual rent of £6.00 per annum.

4.2 The lease also provides that the Lessee shall pay an annual maintenance charge (initially £6.00) to meet a one-sixth part of (a) costs and expenses to be paid or incurred by the Landlord under Clause 5 of the Lease, (b) costs and expenses of any agents employed for the management of the block, (c) sums paid by the Landlord in respect of insurance and (d) sums paid by the Landlord in respect of electricity ..... for external lighting.

4.3 Clause 5 of the Lease sets out covenants of the Landlord. Included in these is an obligation to keep in good repair the main walls, structure and roof.

4.4 A proviso in Clause 1 of the Lease enables the Landlord (on giving three months prior written notice) to vary the maintenance charge, taking into account any past deficiency and any future expenditure.

4.5 Under Clause 3(3) of the Lease the Lessee covenants to keep the interior and the glass in the windows ..... clean and in good repair.

4.6 Following her purchase of the flat in 2003 the Applicant surrendered the original Lease and took a new lease for a term of 125 years from 25 December 2001 at a ground rent of £31.00, doubling every 25 years. The new lease incorporated the covenants and provisions of the original Lease.

6.6 The Applicant claims not to have received Hadrian's letters of 14 December 2005 and 14 February 2006, and first learned of these proposed works in their letter of 3 May 2006.

6.7 The Applicant is asking the Tribunal to determine that the responsibility for window replacement is, by virtue of the lease, that of the Lessees and that in any event she was not appropriately consulted under Section 20 of the Act, and that her service charge should be limited accordingly.

6.8 The Respondents argue that whilst the Lease could not be described as a perfect document, the responsibility of the Lessee to keep "the glass in the windows" clean and in good repair suggest that the frames must be the Landlord's responsibility and that the Clause 5 obligation to keep in good repair the main walls and structure would give further support to this view.

6.9 Regarding the Section 20 consultation, the Landlord followed their standard procedure, sent standard letters, forms and estimates to each of their Lessees by standard post, and received letters of comment from some of them.

6.10 In response to questions from the Tribunal, the Landlord said the replacement windows were ordered following complaints from some of the Lessees and that to merely patch and repair existing timber frames would be to "throw good money after bad".

7. The Law

7.1 Section 27A of the Act provides that an application may be made to a Leasehold Valuation Tribunal for a determination as to whether a service charge is payable.

7.2 Section 19 of the Act states

(1) Relevant costs shall be taken into account .....

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of service 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.

(2) Where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

7.3 Section 20 of the Act (as amended by the Commonhold and Leasehold Reform Act 2002) limits the payment of service charges in respect of qualifying works unless consultation requirements have been either complied with or dispensed with.

7.4 Section 20C of the Act allows a tenant to make application to the Tribunal prohibiting the costs incurred by the Landlord in connection with the proceedings to be regarded as relevant costs in determining the amount of any service charge payable by the tenant.

8. The Decision

8.1 The Tribunal first considered whether the Lease permitted the Landlord to replace existing timber windows with upvc double glazed replacement windows.

8.2 Clause 5 of the Lease requires the Landlord to keep in good repair the main walls and structure. The Tribunal are satisfied that this obligation extends to the window frames, particularly as Clause 3(3) requires the Lessee to keep only "the glass" in the windows in good repair.

8.3 The Tribunal accept that as a result of recent changes in standards of insulation (where replacement windows must be double glazed unless alternative improvements in thermal efficiency can be made) and recent case law, it is now possible to interpret an obligation to repair as a requirement to replace, and therefore "improve".

8.4 However, replacement windows are not the Landlord's first option in the event of defective windows, and the Tribunal is of the view that the replacement of timber windows might only be permitted under Clause 5 of the Lease when the timber windows are in such poor condition that their "repair" as required is no longer viable. The Landlord is unable to recover costs of replacing windows simply to reduce maintenance costs in future years, or because some Lessees request it, unless the existing windows are beyond repair.

8.5 From their own observations the Tribunal are of the view that few, if any, of the remaining timber windows are in that advanced state of decay. No evidence was put regarding the condition of the existing timber windows to support the need to replace them.

8.6 It is therefore determined that insofar as the work identified in the consultation process, that is the improvements proposed to be carried out and which are the subject of the estimate of £6461, the costs would not be reasonably incurred and are not recoverable.

8.7 Clearly, the Applicant was of the view that the frames of her own flat, No 42, were sufficiently poor as to require replacement, and given that all the flats are of a similar age it is not unreasonable to suppose that other flats will have window frames sufficiently deteriorated as to justify their replacement in the foreseeable future. Perhaps, depending on precise aspect, some windows will deteriorate quicker than others.

8.8 Not having inspected the timber frames, the replacement of which gave rise to the service charge in September 2005, the Tribunal are reluctant to find that such work was excessive, and therefore determine that the costs thereof were reasonably incurred and properly payable.

8.9 The Applicant repeatedly stated that she was unaware of the Respondent's letter to her solicitors setting out the Landlord's view of the meaning of the Lease regarding replacement windows, and that her actions would have been different had she seen that letter sooner. Whilst the Tribunal sympathise with her situation, her ignorance of this letter cannot affect the interpretation of the Lease and the Respondent cannot be held responsible for this situation.

8.10 Given the findings of the Tribunal on the proposed works they do not propose to adjudicate on whether there was adequate Section 20 consultation.

8.11 Regarding the Section 20C application, the Tribunal do not consider it unreasonable for the Landlord to respond to the application and defend service charge costs. It is inappropriate to make an Order under Section 20C limiting the right to include these costs in the service charge to the extent the Lease permits and the application is refused.

8.12 To summarise, the Tribunal determine:-

i) The service charge for the year to September 2005 is properly payable.

ii) That element of the service charge relating to replacement windows in the September 2006 service charge is not payable.

iii) No findings are made on the Section 20 consultation.

iv) No Section 20C Order is made.

Signed ..... Date 24 October 2006
Chairman A Robertson

By Section 175 of the Commonhold and Leasehold Reform Act 2002 a party to these proceedings before the Leasehold Valuation Tribunal (LVT) may appeal to the Lands Tribunal from the decision of the LVT.

In order to appeal a party must obtain permission so to do. An application for permission must first be made to the LVT within 21 days of the LVT decision being sent to that party. Any application for extension of that 21 day period must state the reasons and be made before the expiry of the period (Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (S.I.2003 No 2099) regulations 20 and 24).

If permission to appeal is refused by the LVT an application for permission may be made to the Lands Tribunal within 28 days of that refusal (The Lands Tribunal Rules 1996 (S.I.1996 No 1022) as amended).