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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : 24 Lovelace Avenue,  
Southend-on-Sea,  
Essex SS1 2QU

**Applicant** : Westleigh Properties Ltd.

**Respondents** : (1) Miss. E. Henderson  
(2) Ms. Belynda Adams

**Case number** : CAM/00KF/LSC/2007/0042

**Date of Application** : 20<sup>th</sup> June 2007

**Type of Application** : Determination of reasonableness and  
payability of service charges (Sections  
19 and 27A Landlord & Tenant Act 1985  
("the 1985 Act"))

**The Tribunal** : Bruce Edgington (Lawyer Chair)  
Roland Thomas MRICS

**Date of Decision** : 30<sup>th</sup> October 2007

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**DECISION**

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1. A reasonable amount to claim from the tenants is £6,500 for the purpose of Section 19(2) of the 1985 Act on account of the cost of 'the works' which the Applicant intends to undertake at the property which include:-  
  
Clean out, repair and decorate all exterior pipes, gutters etc.,  
Repair timber on all elevations to include front balcony  
Clean PVCu window frames  
Repair front path and all fencing  
Repair defects in flat roof and rear porch  
Repair cills, lintels, string courses, mullions and mouldings  
Completely re-decorate exterior
2. For the purposes of Section 27A(3) of the 1985 Act such amount is payable by the tenant Respondents in equal shares.

3. All other express or implied applications including the request to determine whether the Applicant has complied with the consultation requirements of Section 20 of the 1985 Act are dismissed.

## **Reasons**

### **Introduction**

4. The Applicant landlord wants to undertake substantial repairs and redecoration of the structure and exterior of the property.
5. In 2005 a letter was written to the tenants giving them first notification of such work. Specifications were prepared and tenders received. The Applicant decided to accept one of the tenders and wrote to each tenant stating that the total cost for the project is £13,084.80.
6. This application was then made for the Tribunal to decide whether this amount was reasonable and payable. No details of the proposed works were given. It was said that the works would not be started until the Tribunal's decision was received and that the Tribunal could deal with the matter by paper determination without an oral hearing.
7. Various directions were made by the Tribunal on the 7<sup>th</sup> August 2007 for the filing of evidence. On the 28<sup>th</sup> August 2007 the Tribunal decided that this matter could be dealt with on the basis of an inspection and then written evidence without a hearing. A letter was written to the parties saying that the Tribunal intended to deal with this matter by way of paper determination after 29<sup>th</sup> October and giving any party the opportunity to request an oral hearing. No request for a hearing has been received.
8. No relevant representations have been received from the Respondents.

### **The Law**

9. Section 19(2) of the 1985 Act says:-  
*"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"*
10. Section 27A gives jurisdiction to decide by whom such service charges are actually payable.
11. The Tribunal has been shown a copy of the Lease of the lower floor flat which is for 199 years from 18<sup>th</sup> November 1982 at a modest ground rent.
12. The Lease provides for the Applicant to maintain repair and decorate the structure, foundations, roof, passageways and all pipes, gutters etc.

used by both tenants and to recover (Clause 3(2)) 50% of the service charges from each of the 2 tenants.

13. There is no formal provision for certification of any service charge demand and nothing to prevent the landlord requesting payment of the cost of such works in advance of the works being undertaken.

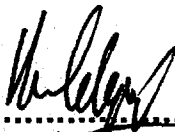
#### **The Inspection**

14. The members of the Tribunal inspected the front of the property only from the ground. They could not gain access to the rear. They found the property to be a mid-terraced house built at the turn of the 20<sup>th</sup> century of rendered solid brick construction under a slate roof. The roof still had some life in it.
15. Within the limitations of an inspection of the front of the property only, the Tribunal's view is that the general condition of the property was satisfactory considering its age. The inspection identified several matters of a general maintenance/cosmetic nature which would benefit from attention. The structure appeared to be basically sound without any major repairs being obvious. Having said that, it would obviously be wise to provide a reserve fund to deal with the replacement of the roof which will be needed in the not too distant future.

#### **Conclusions**

16. In her written evidence to the Tribunal, Ms. Lorraine Scott of BLR Property Management, the Applicant's agents, says that she requests a determination pursuant to Section 27A(3) of the 1985 Act and says that "the Applicant understands that this would include consideration of whether the Section 20 consultation process has been complied with."
17. It is not said where this understanding came from. The Tribunal's view is that the 1985 Act only provides for a consideration of the consultation requirements of Section 20 after a demand has been sent out for the cost of works already undertaken. Then, and only then, is the Tribunal considering whether the cost of works is reasonable. If such reasonable cost is over the 'trigger' limits in the Regulations, the Tribunal then goes on to consider whether the consultation requirements have been adhered to or whether they can or should be dispensed with.
18. The Tribunal draws on the wording of Section 20 which refers expressly to relevant costs having been "*incurred*" (past tense).
19. As to the remainder of the application, it should be remembered that this is not, and cannot be, an application to determine the reasonableness of the cost and standard of works undertaken. The Tribunal was only able to undertake an observation of the property from the ground. It has no means of knowing what access was given to or what information was available to the person who prepared the specification in readiness for the tender exercise.

20. What it can say is that the same company has been chosen to undertake the work as has been chosen to undertake similar work to another 5 of the Applicant's properties in the location which were seen by the Tribunal on the same day as this property. Economies of scale and proximity must be obtainable. For example, any scaffolding needed for this property can be transferred to the next property when it is finished with, ensuring continuity of use etc.
21. The Applicant appears to be wanting the tenants to pay for the whole tender price in advance without any assurance as to when the works are likely to start. The Tribunal can understand this to a certain extent but the question to be decided by the Tribunal is whether this is reasonable. For the following reasons the Tribunal considers that it is reasonable to obtain approximately half the monies in advance:-
- (a) The tenants are expected to pay in advance when they do not know when the works are due to start. The Applicant will therefore have the benefit of the money until completion of the works. The evidence as to the Applicant's ability to progress matters is that there has been substantial delay since the tender exercise.
  - (b) There is no explanation as to why the Applicant has not built up a reserve fund to meet this sort of expenditure which is fairly predictable.
  - (c) It appeared to the Tribunal that the way in which the specification has been prepared is on the basis that much of the work set out is put there in case it is needed and as allowances rather than definite expenditure. There also appears to be duplication of items e.g. repairs to several different items prior to decoration which would, of course, be one exercise. Thus there are likely to be considerable savings possible.
  - (d) It has been suggested that the surveyors referred to in the costings may not be independent of the landlord or the agents and the justification for their fees will have to be examined



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**Bruce Edgington**  
Chair  
01.11.07