THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00ML/LIS/2007/0005

Property: 37 Milner Road, Brighton, East Sussex, BN2 4BS

Between:

Ms Victoria Hills
("the Applicant")

and

Mr Nigel Robinson & Mrs Tracy Robinson
("the Respondents")

Members of the Tribunal: Mr J.B. Tarling, MCMI, Lawyer/Chairman
Mr. A. O. Mackay, FRICS
Ms J.Morris

Date of Hearing: 24th April 2007

Date of the Decision: 11th May 2007

THE DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL

1. **The Tribunal determines under Section 20ZA of the Landlord and Tenant 1985 Act ("the 1985 Act") that dispensation from all of the consultation provisions of Section 20 of the 1985 Act shall be granted.**
2. **In accordance with its powers under Section 27A of the 1985 Act the Tribunal determines that the following amounts of Service Charge for the year ended 25th March 2006 are payable by the Respondents to the Applicant:**
   (a) The sum of £683.76 for the cost of repairs to the Firewalls
   (b) The sum of £387.37 for the cost of decorations and repairs to the rear wall of the building and the repairs to the guttering.
3. **Such amounts of service charge shall be payable by the Respondents to the Applicant forthwith. They shall be paid in full and not by instalments.**

REASONS FOR THE TRIBUNAL'S DECISION

Background to the Application

1. In November 2006 the Applicant commenced proceedings against the Respondents in the Brighton County Court under Claim number 6BN06217 for non-payment of Ground Rent and Service Charges. On 23rd January 2007 the Brighton County Court transferred the matter to the Leasehold Valuation Tribunal under the provisions of Paragraph 3 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.
2. The matters that are within the jurisdiction of the Leasehold Valuation Tribunal to determine are limited to those listed within Section 27A of the

Landlord and Tenant act 1985, namely the determination as to whether a service charge is payable and if it is

(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.

3. The Tribunal gave Direction on 31st January 2007 requiring the parties to file and exchange bundles of relevant correspondence and other documents, and that the matter be dealt with at an oral Hearing. Arrangements were also made for the Tribunal to inspect the property immediately before the hearing.

The matters within the Tribunal jurisdiction

4. After exchange of documents it became clear that the matters before the Tribunal were limited to:
   (a) The cost of repairs to the Firewalls at roof level
   (b) The cost of repairs and decorations to the rear wall and guttering
   (c) The cost of repairs to the timber stairs at the rear of No. 37.

Other matters in respect of Ground Rent and the costs of the County Court proceedings were outside the jurisdiction of the Tribunal and are referred back to the County Court.

The Leases

5. The Applicant included within her bundle of documents a copy of the Lease of the Ground Floor Flat No. 39. Shortly before the Hearing the Respondents produced a copy of their Lease of the First Floor Flat No. 37. The service charge provisions in both Leases were similar and confirmed that the two Flats shared equally the cost of repairs and decorations to the main structure, and roof etc. The Third Schedule to the Leases set out the items of repair and decoration and other arrangements for the service charges. However it became clear to the Tribunal that the timber stairs at the rear of the First Floor Flat No. 37 were included within the demise of the First Floor Flat. This meant that they were the sole responsibility of the Lessee and were not part of the Common Parts within the meaning of the service charge provisions of the two Leases. This was brought to the attention of the parties at the Hearing and the Applicant and the Respondents agreed that those stairs were not the responsibility of the service charge provisions and as such the Applicant withdrew her claim for payment of the half-share of the money that had been spent of the repairs and decorations to those stairs.

6. Amongst the papers before the Tribunal was a Report dated 8th March 2006 from Peter Overill Associates made by J.H. Donovan, BSc, MRICS and prepared on behalf of the Respondents which set out the Respondent's position so far as the claim for the repairs was concerned. In respect of the outstanding matters they commented as follows:

   (a) Repairs to the Firewalls.

   "It is understood that the second estimate relates to works subsequently found to be necessary, primarily the re-rendering of the fire walls to the rear pitch of the roof of the property, although it is not clear why these works were not previously identified as being necessary. Again formal consultation should have been undertaken, by clearly was not. The second

estimate (dated 3rd February 2006) refers to hacking off and re-rendering to "both fire walls". Whilst this it not fully explained, and it would have been advisable to have adder "rear", the level of cost implies no more than the work undertaken.

Turning to the quality of the work, I was obviously not able to inspect the high level works at close quarters as the scaffolding had been removed prior to my inspection. From ground level no serious inadequacies were noted to the work to the fire walls and chimney, although the finish to the east fire wall is slightly inconsistent and the render has not been fully replaced to the bottom end of the fire wall where some cracking was noted."

(b) Repairs/decorations to rear wall and guttering.

"I believe that you have justifiable concerns in respect of the repairs and decoration to the ... painting of the rear elevation walls. The Specification allowed for 2 No. coats of an oil-based emulsion to the walls following render repairs. Whilst I cannot determine the extent or nature of the render repairs, I noted that some cracks remain in the render finish below the paint and will be likely to deteriorate. The paint itself is very patchy in finish and does not give an indication of having had 2 full coats. It has also been applied without full care, with areas missed below the soil pipe, for example.

7. Inspection

The Tribunal inspected the property on 24th April 2007 and with the benefit of the Report from Peter Overill Associates dated 8th March 2006 they compared the comments contained in the Report with what they observed at the Inspection. In respect of the matters remaining in dispute the Tribunal could see from ground level that repairs had been carried out to the two firewalls on the rear slope of the roof of the building. Those repairs appeared to have been new rendering. It was not possible to see from ground level the quality of extent of the new render, except to say that such new rendering had been carried out.

In respect of the repairs to the rear wall and guttering, the rear wall had indeed been decorated with masonry paint and the guttering appeared to be new plastic guttering. At the time of the inspection the weather was fine and it was not possible to say whether or not the gutters leaked. There were one or two patches where the masonry paint that were indeed patchy, but the general impression overall was that cosmetically, the standard and quality of work was acceptable.

Although the liability to contribute to the costs of the repairs to the staircase was no longer a matter for the Tribunal, the Tribunal noted in passing, and mentioned to the parties at the Hearing, the apparently dangerous condition of some of the stair treads. Some rotting of the timbers could be seen and the parties were advised to consider taking urgent advice regarding future repairs. This was particularly concerning as the Respondents had young children in occupation.

8. Section 20ZA Application

Among the papers that had been produced following the Tribunal's Directions, the matter of failure to comply with the consultation provisions of Section 20 of the Landlord and Tenant Act 1985 had been raised by the Respondents. As a result, the Applicant had made an application under the

provisions of Section 20ZA of the 1985 for dispensation of all or any of the consultation provisions contained in Section 20 of the 1985 Act. That Application was before the Tribunal at the Hearing, and both parties made their representations in respect of their respective positions.

9. Hearing

The Applicant Ms Hills outlined the position and went through the history of the matter as set out in the bundle of documents that was before the Tribunal. There were exchanges of correspondence between the parties as well as a meeting when the scope of the proposed works was discussed. The Applicant had obtained two quotations for the initial works. These were as follows:

(a) Stannard Building and Maintenance dated 26th November 2005 £834.74

(b)P. Eason, Painter and decorator dated 21st November 2005 £1,109.55

On 9th December 2005 the Applicant had sent copies of the two Estimates to the Respondents and invited their comments. The Respondents replied by letter dated 6th January 2006. To some extent the reply was ambiguous. The letter did not say they agreed with the proposed works, nor did it say that they did not agree. The Respondents did say in that letter *"The gable end and fire wall are both in need of repair..."* The Applicant replied to the Respondents letter on 11th January 2006 and explained the sharing of the maintenance costs and expanded on what works were proposed. The Applicant explained in that letter *"Dampness in my kitchen is due to water entering the building via a crack in the wall of your flat. Do you want to pay for the repair of this wall yourself? Or would you rather share the cost, just because it is not causing you any bother does not mean that you can ignore it. This is not aesthetic work, but necessary work to stop the ingress of damp, as is all exterior decoration."*

The Applicant offered to get estimates for the repair to the fire wall. That letter made it clear that the Applicant expected the Respondents to share the costs of these repairs equally with the Applicant. The work was carried out in February 2006.

10. On 16th February 2006 the Applicant wrote to the Respondents enclosing copies of the two final Invoices from the contractor, Stannard, and requested payment of the half-share of the total balance namely £791.13. A further letter was written by the Applicant to the respondents on 21st February 2006 requesting payment of the balance due from them of £821.13. There was subsequent correspondence between the parties in which the respondents made various complaints about the standard of workmanship. The Respondents then obtained the Report from Peter Overill Associates dated 8th March 2006 and sent a copy to the Applicant. The Applicant then consulted solicitors and finally the Applicant issued County Court proceedings claiming payment.

11. The Respondents complaints

The Respondents made a number of complaints in addition to those contained in their Report from Peter Overill Associates. They complained that the rain was falling off the roof behind the new guttering and was running down the freshly painted walls. The Applicant replied by letter dated 20th February 2006 to say that "the contractor had replaced the felt

between the tiles and roof so hopefully the problem is now rectified." Other complaints were made regarding the standard of workmanship of the repairs and decorations to the stairs and also the quality of the paintwork on the rear wall. The Respondents then took legal advice and were advised that the Applicant had failed to comply with the consultation provisions of Section 20 of the 1985 Act.

12. The Tribunal's consideration

Following the conclusion of the Hearing the Tribunal retired to consider its decision in respect of the remaining matters in dispute. Firstly it turned its mind to the Application under section 20ZA of the 1985 Act for dispensation of the consultation provisions of Section 20 of the 1985 Act. The Tribunal reviewed those provisions and reminded itself of the requirements. They are set out in detail in the Service Charges (Consultation Requirements)(England) Regulations 2003. In summary they require every Landlord who is proposing qualifying works to which Section 20 applies where the Tenant will be expected to contribute over £250, to carry out the following consultation:

(a) Serve a Notice of Intention describing the proposed works. That Notice must state the reasons for the works and invite written observations.
(b) The landlord should seek Estimates from a nominated contractor of a single Lessee
(c) There must be a statement setting out the estimated cost from at least two of the estimates with an associated notice inviting further comment on the estimates.
(d) The Landlord must have regard to written observations and give reasons for selecting the nominated contractor.

13. The Tribunal reviewed the evidence it had read and heard and noted the Applicant's claim that she had done everything possible to consult with the Respondents before the work was carried out. There was certainly evidence that there was considerable correspondence between the parties before the work was carried out. The Applicant had obtained two independent Estimates and had supplied copies of those Estimates to the Respondents for their comments. The Respondents had not made it clear that they objected to the work, nor did they prevent the work being carried out. The contractor would have had to enter the Respondent's Flat while the work was being carried out, but nothing was done to prevent the work being completed. In the beginning there was clearly a friendly relationship between the parties, who were neighbours.

14. After reviewing all the evidence the Tribunal decided it would be unfair to refuse the Applicant's application under section 20ZA for dispensation of the consultation requirements. She had performed most of the prerequisites required by the Consultation Regulations and in all the circumstances she should be given the benefit of the doubt. The Tribunal concluded that the Respondents were well aware of the work that was to be carried out and if they had made their objections clear at the outset, a lot of unnecessary problems could have been avoided. The Applicant was now aware of the statutory requirements and would no doubt be careful in future to comply fully with the detail of the Consultation Regulations. For these reasons the Tribunal decided to grant the Application for dispensation under Section 20ZA of the 1985 Act.

Consideration of the two Invoices

15. The Tribunal then went on to consider the liability to pay and the reasonableness of the amounts which the Applicant was claiming against the Respondents. The first relevant Invoice was dated 3rd February 2006 from Stannard. This related to the work to the fire walls. The Tribunal reviewed the evidence as to the Respondents objections to this item and could find nothing to persuade them that this amount was unreasonable incurred. Indeed the Report from the Respondents own Surveyor had said *"the level of cost implies no more than the work undertaken."* The Tribunal interpreted this as indicated a level of agreement with the amount being charged for this item. It was clear from the Tribunal's inspection that some work had been undertaken and the Respondents had clearly received the benefit of this work. In the absence of any evidence to discredit this amount the Tribunal concluded that the amount charged for the work done was fair and reasonable. This Invoice amounted to £1,517.52. and included within that Invoice was an item *"To supply and fit 4 X new timbers for stair landing"* As the parties and the Tribunal had established that the cost of all works to the stairs were not service charge items, some allowance had to be made to reduce this amount by removing the cost of the works to the stairs. Using its knowledge and experience as an Expert Tribunal, the Tribunal decided that the correct amount to be deducted was £150.00. This reduced the Invoice from £1,517.52 to £1,367.52. The Respondents were responsible for a half-share of this amount in accordance with the provisions of the Leases and they were therefore liable to pay to the Applicant the sum of £683.76

16. The second Invoice from Stannards was dated 26th November 2005 for the sum of £974.74. This was in respect of the repairs and decorations to the rear wall and fascias and guttering. The Tribunal reviewed the comments from the Respondents Surveyor and also what they had seen from their Inspection. Whilst there were some fading parts of the paintwork, they agreed with the Applicant that this was because the wall had not been painted before and the absorbtion of the paint may have been patchy. There was indeed a very small area under the pipework that had not been painted, but this was considered to be *de minimis*. So far as the guttering was concerned, it appeared to have been fixed in a proper and workmanlike manner, and the contractor had attended to the Respondents original complaints by altering the roof felt. Generally speaking, the work which had been done appeared to be of a reasonable standard for the price quoted and this would be allowed in full. This Invoice also included the cost of certain works to the stairs namely *"To remove damaged timber to external stairs and replace with new. To rub down and varnish all stairs. To add timber supports under main platform as instructed"*. Again, as the parties and the Tribunal had established that the cost of all works to the stairs were not service charge items, some allowance had to be made to reduce this amount by removing the cost of the works to the stairs. After consideration and using its expert knowledge and experience as an Expert Tribunal, the Tribunal considered that this work, which was probably very labour-intensive, and including the materials use would be in the region of £200. By deducting the sum of £200 from the Invoice of £974.74, this was

reduced to £774.74. The Respondents were liable for a half-share of this amount as provided by the terms of the Leases and they therefore were liable to pay the sum of £387.37 to the Applicant.

17. Manner and date of payment
Sub-Sections (1) (d) and (e) of Section 27A of the 1985 Act give power to the Tribunal to decide the manner and date of payment of amounts of service charge. The general rule is that these should follow the wording of the Lease. Clause 2 (21)(2)(b) of the Lease refers to the calculation of the annual service charge costs "*on or as soon as possible after the 25th day of March in each year...*" "*and if the Lessees's share of such annual costs ...shall fall short of the aggregate of the sums paid by him on account of his contribution the Lessee shall forthwith pay to the Lessor the amount of such shortfall.*" In view of this wording, the Tribunal determines that the amounts of service charge hereby determined shall be payable by the Respondents to the Applicant forthwith. The Lease does not provide for the amounts of service charge to be paid by instalments, so the payments shall be paid in full and not by instalments.

Dated this 11th day of May 2007

J.B. Tarling

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John B. Tarling,MCMI Lawyer/Chairman
A member of the Panel appointed by the Lord Chancellor