SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00MS/LSC/2007/0075

Applications under Section 20C and 27A of the Landlord and Tenant Act 1985

Re: Flat 4, Barkshire Court, Hulse Road, Southampton

Applicants	Chris Osborne & Janette Kemish
Respondents	Bananabliss Limited & Miss Valerie Gurney

Date of Application	8th August 2007	
Date of Inspection	30th November 2007	
Date of Hearing	30th November 2007	
Venue	Independent Tribunal Service, The Barrack Block, Southampton	
Appearances for the Applicants	The Applicants in person	
Appearances for the Respondents	Mr Paul Denford, Denfords Property Management, for Bananabliss Limited; Miss V Gurney, in person	
Members of the Leasehold Valuation Tribunal:		
	M J Greenleaves P D Turner-Powell FRICS Miss T A Clark	Lawyer Chairman Valuer Member Lawyer Member
Date of Tribunal's Decision:	7th December 2007	

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that the following item of service charge ("the service charge"), namely re-roofing costs in the accounting year to 29th September 2007 totalling £1,538.60 is reasonable and payable by the Applicants in respect of Flat 4, Barkshire Court, Hulse Road, Southampton (the Flat).
2. The Tribunal makes no Order under Section 20C of the Landlord and Tenant Act 1985.

Reasons

Introduction

3. This is an application made by the Applicants under Section 27A of the Landlord and Tenant Act 1985 (the Act) to determine, in respect of the Flat, whether certain service charges relating to re-roofing carried out in the accounting year to 29th September 2007 are reasonable.
4. The Respondent Miss Gurney had applied to the Tribunal to be joined as a party to the proceedings as a Respondent. The Tribunal had agreed.
5. The other Respondent, Bananabliss Limited, did not itself take a part in the proceedings, the issues largely relating to the management of Denford Property Management ("Denfords") who had accepted appointment as manager of Barkshire Court (the Property) on 1st May 2006

Inspection

6. On 30th November 2007 the Tribunal inspected the Property in the presence of the Applicants.
7. The Property is situated along an unmade road from Hulse Road on a corner site. It is built of brick under a flat felt roof, comprising 9 flats on three floors. There is a separate block of garages fronting on to a gravelled access. The frontage is laid to grass.
8. It was not possible to inspect the roof itself, but otherwise the Property was in rather poor condition as regards fascias, rainwater goods and window frames. The Tribunal was able to inspect the interior of the roof skylight the structure of which was to some extent out of line and there were no protruding nails.

Hearing

9. The hearing of the matter took place on 30th November 2007.
10. The issues to be determined by the Tribunal were whether the service charge was reasonably incurred and was of a reasonable sum. The Applicants had, in their application and supporting submissions, posed various other questions and issues. The Tribunal explained to them that they were generally beyond the jurisdiction of the Tribunal to determine or related to other charges, e.g. gardening, which were outside the scope of their application.
11. The Tribunal heard evidence from the parties, their submissions and considered all the case papers and further documents submitted. The Tribunal had a copy of documents in respect of the Applicants' title to the Flat. The effect of these is that the Flat had originally been sublet by a lease dated 8th May 1970 (the 1970 lease). By Deed dated 2nd October 2001 the 1970 lease had been surrendered and a new one granted for a term of 131 years from 29th September 1969 on terms, so far as material to the issues in this case, contained in the 1970 lease.

12. In summary, those terms are that the Applicants would pay one-ninth of the cost to the Landlord of keeping in good and substantial repair and condition the roof and other parts of the Property.

13. The relevant undisputed facts, were that:

    a. The Property had been under the management of KBM Management (KBM) when in December 2005 part of the roof had been repaired, by way of replacing decking and re-felting, by Willow Roofing & Building Co (Willow). Their invoice is dated 10th February 2006 for £2,460 plus VAT. They had stripped about 12m² of decking, re-boarded and re-felted about 30m².

    b. On 1st May 2006 Denfords took over the management of the Property with little information about its history.

    c. On 15th May 2006 KBM wrote a letter to Denfords in which they state "Willow Roofing repaired part of the roof in December 2005.".

    d. On 15th June 2006 Denfords wrote, in reply to an enquiry from the Applicants conveyancers of 14th June 2006, "... that we do not anticipate any major expenditure within the next 12 months will impact on service charge."

    e. The Applicants purchased the Flat in July 2006.

    f. Some minor roof repairs were carried out in August and September 2006.

    g. In May 2007 the old part of the roof created severe problems resulting in internal damage to several flats. Denfords wrote to all flat owners on 18th May 2007 about that, stating they had had builders trying to patch the roof but that replacement was needed urgently; that they were obtaining estimates.

    h. Denfords obtained estimates from Willow and Botley Roofing Limited (Botley). (Botley's is dated 30th May 2007). It was only then that Willow informed Denfords that when carrying out the work in December 2005 they had informed KBM that re-roofing of the rest of the roof was also required.

    i. Willow's estimate for re-felting was £7,600 plus VAT and Botley's was £7,485 plus VAT.

    j. On 4th June 2007 Denfords commenced the statutory consultation procedure. However, particularly because of concerns expressed by the Fire Brigade, Denfords decided to apply to the Tribunal for dispensation of consultation requirements under Section 20ZA of the Act to enable the necessary work to be done as a matter of urgency. They made the application on 26th June 2007; it was heard on 10th July and the written decision was dated 20th July 2007. The Tribunal granted the dispensation sought. However, as the Willow and Botley estimates provided only for the cost of re-felting and there could be substantial additional cost if any re-decking was found to be needed, the Tribunal recommended Denfords obtain a further estimate perhaps on a cost per square metre basis.

    k. Denfords obtained an updated quotation from Botley which is dated 12th July 2007. It provides for re-decking costs at two different rates depending on the decking material used for the existing roof: if it is chipboard it would be £20 per m²; if it is woodwool slab it would be £30 per m². the roofing work would be guaranteed for 10 years.

    l. The work was carried out by Botley. Their invoice dated 2nd August 2007 shows a total cost of £13,847.38 inc VAT. It also shows, by reference to "complete with insulation in the void" that they had used the £30 per m² method.

    m. On the basis of Botley's original estimate, the Applicants received a request from Denfords for a payment on account of the work of £998.75. They were credited with a refund of £86.82 and then debited with a further £626.67 for defective decking. The total roofing costs claimed from them are therefore £1,538.60

14. Submissions and evidence.

15. The Applicants' case

a. Concerning the information received prior to purchase that no major expenditure was anticipated in the next 12 months, they said they weren't aware of what other tenants paid for service charge, they hadn't purchased property before and were on a tight budget such that they couldn't afford major expense. They felt they had been misled by that statement and they were surprised that nothing had been mentioned as some re-roofing had been done previously.

b. In relation to the cost of recent re-roofing:

   i. The work ought to have been done earlier and this might have saved the additional costs or re-decking in particular. They relied on the fact of what Willow had apparently said in December 2005; that Denfords were aware of that work on receiving BKM's letter of 15th May 2006; that Denfords ought to have had a survey carried out then; that instead of the patching work in August and September 2006 a reputable builder would then have said that re-roofing would have been required then.

   ii. As a result of those failures to take action earlier, costs have gone up and they had paid for repairs in the meantime.

   iii. They hadn't had information early enough to enable them to get their own estimates since May 2007

   iv. The skylight had been damaged by use of overlong nails. They had now been removed and the damage patched, but the structure of the skylight had moved and therefore damaged. This should be taken into account in deciding whether the work had been done to a reasonable standard.

   v. They considered therefore that they should not have to pay towards the re-decking but should pay something towards the re-felting.

16. The Respondents' case

a. Miss Gurney said that she had contacted Denfords with a view to them taking over the management because of the problems there had been with BKM. She had wanted to be joined as a party to the proceedings to support Mr Denford's work as the manager of the Property. She said that when the Applicants bought their flat their Surveyor should have advised them to budget for future expense. She was concerned that if the Applicants did not pay their share, the other flat owners would have to do so.

b. Mr Denford said:

   i. When they agreed to take over the management on 1st May 2006, they were not provided with much information, so they would have to build up information over a period of time. They had taken on the management on a "day one" basis which meant they initially had to get day to day management up and running.

   ii. He had not been aware of Willow's views (from December 2005) about replacement until mentioned in May 2007 and had not been told by the roof repairers in August and September 2006 anything about the general condition of the roof. He said he was not a roofer so only if they had been aware earlier of the condition of the roof would the work have been done earlier. He understood from Willow that when they expressed their view to KBM about the need for replacement of the rest of the roof as well, that KBM had said they wouldn't then do it as they didn't think the flat owners would pay for it.

   iii. After the last Tribunal he had not gone back to Willow for a further estimate.

iv. He did not think the re-roofing costs would have been less if it had been done before; Botley thought that the required work resulted from long term damage.

v. Regarding the 2006 patching work, he said that he would always try to rpair a roof first as in many cases that was effective and significant costs could be saved.

Consideration

17. The Tribunal considered all of the case papers, the evidence and submissions received, its inspection and also took into account its own expert knowledge and experience in coming to its conclusions in this case.

18. Issues.

a. Were the Applicants misled at the time of their purchase? When Denfords, who had of course only just taken over management with limited information, informed the Applicants' conveyancers that no major work was anticipated within the following 12 months, they had not inspected the roof or had an inspection of the roof carried out, but did know that significant work had been carried out in December 2005. They did not know of Willow's views at this time. While it is not within the Tribunal's jurisdiction to determine this issue and its consequences, it does appear to the Tribunal that the information given in their letter of 16th June 2006 was given without taking into account the fact that they had limited information on which to make the statement and that it was at least unwise to make such a statement without checking the actual state of the roof. However, whatever the position about that, the Tribunal found that Denfords' actions at that time did not affect the issues before the Tribunal under Section 27A of the Act.

b. Was it reasonable to carry out the work in 2007? The Tribunal was completely satisfied on the evidence of events in May 2007, Botley's estimate and the Fire Brigade's view, that all of the re-roofing work carried out was required.

c. Was the work in 2007 carried out to a reasonable standard? The Tribunal noted that the nails in the skylight had been removed and did not find that the alignment of the skylight structure had necessarily been caused by Botley. In any event, the issue for the Tribunal was whether the work had been carried out to a reasonable standard - not necessarily a high or perfect standard. The Tribunal did not find that either of these concerns about the skylight affected its finding that the work had been carried out to a reasonable standard. Further, as regards the efficacy of the work itself, the Tribunal noted that it made the roof weatherproof, there having been substantial heavy recent rainfall and that Botley guarantees the work for 10 years. Accordingly the Tribunal found the work had been carried out to a reasonable standard.

d. Did the delay in carrying out the work result in increased damage to the decking between December 2005 and May 2007 such that the cost of the work increased over that period?

i. The Tribunal noted in particular the undisputed evidence of Willow's expressed view in December 2005 that the rest of the roof also needed replacing. That is an opinion from specialist roofers and there is no reason to doubt it. Willow's had re-decked $12m^2$ out of $30m^2$ and re-felted in December 2005 and bearing in mind the roof was at least 15 years old by then it is very probable, in the Tribunal's expert view, that much if not all of the remainder of the roof, at that time, needed re-decking and re-felting.

ii. The Tribunal noted that the rate of charge by Botley was, if anything, lower than the rate charged by Willow in its invoice of 10th February 2006. That is on the basis that Botley properly carried out the re-decking work at the rate of $30m^2$. On that point the Tribunal considered that it was probable at the time of construction of the Property that it would have been constructed with

woodwool slab and that Willow had to carry out their work on that basis; that that was why Botley would have had to carry out their work in the same way to avoid any mismatch of work which could affect the integrity of the entire roof.

iii. Accordingly the Tribunal found that if in any way there was delay in carrying out the re-decking and re-felting, it did not cause extra work being required in 2007 and no additional expense. In relation to the patching repairs in 2006, the Tribunal found that it was not unreasonable to carry out that work rather than re-roofing then even though at that time Denfords knew of the history of the roof from Willow. Those costs were therefore not deductible from the Botley costs in determining the extent of the costs recoverable as service charge.

e. Was the cost of the work done by Botley reasonable? The Tribunal noted that the original 2007 estimates from Willow and Botley were very similar for re-felting. Taking into account also its own knowledge and experience, the Tribunal was satisfied that that element of the cost was reasonable. The Tribunal did not have comparable costings from Willow for the re-decking: Mr Denford had not asked them for that. However, relying on the cost of Willow's work in December 2005 and also using its own knowledge and experience, the Tribunal also found that the rate of £30 per m^2 used by Botley was reasonable

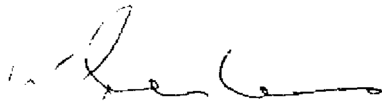
19. Limitation of Costs

20. The Applicants sought an Order preventing the Respondents' costs of this application being recovered from the Applicants by way of service charge.

21. The Tribunal found that there was no provision in the Applicants' lease which was sufficiently widely drawn to enable the Respondent to recover their costs in connection with the proceedings from the Applicants. Accordingly, although the Tribunal would not necessarily have done so otherwise, no Order would be made

22. The Tribunal made its decisions accordingly.

Dated 7th December 2007



A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor

SOUTHERN RENT ASSESSMENT PANEL
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Members of the Leasehold Valuation Tribunal:		
	M J Greenleaves P D Turner-Powell FRICS Miss T A Clark	Lawyer Chairman Valuer Member Lawyer Member
Date of Tribunal's Decision:	7th December 2007	

Decision on the Applicants' application for leave to appeal the decision of the Tribunal dated 7th December 2007

1. The Tribunal finds that the application discloses no grounds and accordingly refuses leave to appeal

Reasons

2. By letter dated 13th December 2007, the Applicants applied to the Tribunal for leave to appeal the decision made by the Tribunal dated 7th December 2007.
3. The original application was made by the Applicants under Section 27A of the Landlord and Tenant Act 1985 (the Act) under which the Tribunal has jurisdiction only to determine issues as to payability of a service charge which is defined in section 19 to the Act as being payable only to the extent that it is reasonably incurred and the work is of a reasonable standard.
4. The points made in support of their application for leave may be summarised as follows:
    a. Denfords Property Management (DPM) are not shown as a Respondent in the decision.
    b. Mrs Gurney was allowed to attend the Tribunal
    c. The Tribunal incorrectly quoted the date of hearing as 30th November 2007 when it in fact took place on 29th November.
    d. Minor roof repairs are stated to have been carried out in August and September while DPM accounts say September and October

e. At paragraph 15a) the Tribunal had noted incorrectly that the Applicants stated they did not know what service charges other tenants paid when it should have been a reference instead to ground rent other tenants paid; that if they had known about major expenditure planned they could have acted appropriately.

f. At paragraph 15b)(i) the Tribunal noted "They relied on the fact of what Willow had apparently said in December 2005" when the Applicants say they actually said DPM were aware that the roof needed replacing when paying the invoice in May 2006.

g. Concerning 15b)(ii) the Applicants say they had not actually paid for any costs in the meantime contrary to the Tribunal's note .

h. In respect of 16a) the Tribunal noted that Miss Gurney said that when the Applicants bought their flat their Surveyor should have advised them to budget for future expense". The Applicants state "this was not discussed and our solicitor enquired about major expenditure as highlighted in the case fact file evidence"

i. At 16b)(ii) the Tribunal recorded Mr Denford's evidence about what Willow said to KBM and the latter's reaction. The Applicants say this was not discussed and does not appear in correspondence or evidence for the case notes. They further say, in effect, that DPM were legally required to replace the roof urgently.

j. The Tribunal's comment at 18a) as to the wisdom or otherwise of DPM making a statement in May 2006: the Applicants ask therefore why DPM did make that statement.

k. Concerning 18d)(i) where the Tribunal expresses the view much if not all of the remainder of the roof, at that time, needed re-decking and re-felting, the Applicants ask why then DPM did not replace the roof in 2006 referring to various other surrounding circumstances.

l. The Applicants then refer to the lack of reference by the Tribunal to the absence of various documents and other matters.

5. The Tribunal's observations on the above grounds (using the same paragraph lettering):

a. The Tribunal believes it to be correct procedure to refer to the Landlord as Respondent as being liable under covenant in the leases for any breach of the landlord's obligations. This is not a ground for appeal.

b. Any person having an interest in the outcome of the Tribunal proceedings is able to apply to be joined as a party to the proceedings and to be heard at the hearing. The Tribunal acceded to her request to be joined as she, like any other lessee, clearly had an interest in the proceedings. As such she was entitled to be heard at the hearing. This is not a ground for appeal.

c. The Tribunal apologies to all parties for incorrectly stating the hearing date, but this is not a ground for appeal.

d. The Tribunal's note accords both with the evidence in writing from DPM (at page 4) and the invoices of DMD Builders which respectively are dated 30th August for work on 7th August and 30th September for work on 15th September. This is not a ground for appeal.

e. The Tribunal's note reflects the evidence at the hearing. If the Applicants actually referred to ground rent, it was not relevant to the application. Whether it referred to service charge or ground rent, it was not relevant to the Tribunal's limited jurisdiction under Section 27A of the Act. This is not a ground for appeal.

f. The Tribunal's note accords with the evidence and the Applicants will note that the comment on which they rely was noted by the Tribunal in the next part of the sentence. This is not a ground for appeal.

g. The Tribunal's note accords with the evidence at the hearing, but whether or not the Applicants had paid any costs is not relevant to the issues to be decided under Section 27A of the Act. This is not a ground for appeal.

h. The note reflects Miss Gurney's evidence and is not in conflict with the Applicants' point that their solicitor did enquire about major expenditure. That last point is dealt with in the Tribunal's decision at paragraphs 13d, 15a and 18a. This is not a ground for appeal.

i. The Tribunal is satisfied that the note reflects the evidence given by Mr Denford at the hearing. This is not a ground for appeal.

j. This is not an issue over which the Tribunal has any jurisdiction. It is not a ground for appeal.

k. DPM's reasons are recorded at 16b)(ii) of the decision. This is not a ground for appeal.

l. The questions asked by the Tribunal on these matters were intended to obtain a complete picture of the circumstances surrounding the management of the property. However, none of them affect the issues to be determined under Section 27A of the Act. This is not a ground for appeal

6. The Tribunal refused the application for leave to appeal accordingly.

Dated 7th January 2008

(signed)

M J GREENLEAVES

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor