

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/45UG/LSC/2008/0060

BETWEEN:

MISS F DREWRY
MR M BAZIRE
MR R STEVENS

Applicants/Lessees

- and -

SLONEHALL LIMITED

Respondent/Lessor

PREMISES: Flats 1, 3 & 6
13 Junction Road
Burgess Hill
West Sussex
RH15 OHR ("the Premises")

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr R A Wilkey FRICS FICPD
Mrs J E S Herrington

HEARING: 17th October 2008

DETERMINATION AND REASONS

1. Application

- 1.1 On 5th June 2008 the Applicant Ms F Drewry made an application to the Tribunal on behalf of herself and Mr M Bazire under section 27A of the Landlord & Tenant Act 1985 ("the Act") for a determination as to the reasonableness of an interim service charge claimed by the Lessor for the year 2007/2008. The item in dispute was the sum of £20,000 sought to fund the cost of repair and re-decoration works to the block in which the Applicants' flats are situated.

1.2 Ms Drewry is the long lessee of Flat 1 and Mr Bazire the long lessee of Flat 6 at the Premises.

1.3 Mr Stevens of Flat 3 applied to the Tribunal to be added as a party to the proceedings. He wrote to the Tribunal indicating that he had other issues with the service charge demands but was advised by the Tribunal office that as those issues had not been included in the Application they could not be dealt with under that Application without the consent of all the parties. Consequently the Tribunal confined itself to the issue of the interim service charge item as set out in paragraph 1.1 above.

1.4 The Respondent filed and served its statement of case on 23rd September 2008. There was no statement of case from the Applicants in response but the Tribunal took the Applicants' statement of case to be that set out in the Application.

2. Inspection

2.1 The Tribunal inspected the property immediately before the hearing on 17th October 2008.

2.2 The Premises comprise six flats over and behind a ground floor retail unit. The front elevation of the building comprises rendering over brickwork. The render is badly cracked in places and the render is in need of decoration. Some of the window frames which were wooden had signs of rot to various degrees and were in need of being painted. Staining to the render on the front elevation showed evidence that the rainwater gutters and pipes were in need of attention. There was a tree growing out of one of the chimney stacks and the render on this stack required repair. Some tiles appeared to have been dislodged on the roof.

3. The hearing

3.1 Present at the hearing were Mrs Gill who was representing her daughter Ms Drewry and Mr Everett, solicitor for the Lessor. There was no appearance from Mr Bazire or Mr Stevens.

4. The evidence

4.1 Mrs Gill's case with regard to the demand for £20,000 by the Lessor to carry out repairs was as follows:-

a) She agreed that the works proposed to be carried out by the Lessor did need to be done.

b) She was not in a position to challenge the cost because, although she had tried to obtain alternative quotations she had not been successful in finding a firm who was interested in giving an estimate.

c) She considered it unfair that the Lessor should have neglected the building whilst it was in his ownership and let out on short-term tenancies but that shortly after selling the last of the flats on long leases he then proposed to have the work done largely at the expense of the long lessees.

d) These lessees were mainly first-time buyers with little money to spare and it was unfair for them to be faced with such a large bill all at once. The lessor should have been building up a sinking fund over several years so that the whole of the burden for these repairs would not then have fallen all at once on the current lessees.

e) She accepted that when her daughter bought her flat in August 2007 she had the benefit of a Home Buyer's Survey and she had a solicitor acting on her behalf. She accepted that the survey had shown that various items of repair and redecoration were going to need attention shortly and that those would be service charge items that she would be required to pay. The solicitor had asked about the Lessor's intentions with regard to future works and was told that a schedule of works for redecoration and repairs had been requested and that there was no reserve fund. Mrs Gill was not in a position to say what other flat owners had been told before they purchased their flats.

f) Mrs Gill was unclear as to what had happened to the sum of £500 which is stipulated in the lease to be the first amount of interim service charge which could be made under the lease before proper audited accounts could be produced after one full year's operation. It was explained to her that this £500 would have been taken into account when the first set

of audited accounts would have been produced in December 2005. She had also been confused by conflicting statements received from the managing agents as to how much it had been alleged her daughter still owed for the service charge year 2006/7. She had also been confused by statements on the one hand indicating that there was £1,000 in the reserve fund and other statements that there was nothing in the reserve fund.

- 4.2 The lessor's case was that the lease provides for an interim service charge to be made each year. After the first year of the lease when the interim service charge is stated to be £500 the interim service charge should be the same figure on the previous year's final account, paid in two instalments (June and December).
- 4.3 Mr Everett accepted that the interim service charge for 2007/8 which was applied for towards the end of 2007 had been incorrectly stated. It should not have included an element of £20,000 towards the reserve fund for future repairs because, strictly under the lease terms, it should only have been for the same amount as the final account for the year ending December 2006. The interim service charge which is the subject of this Application will therefore be withdrawn and will not include the £20,000 towards the reserve fund. It will be for £978.73 (one half of the amount of the previous year's final service charge).
- 4.4 As the item under challenge (the £20,000 provision for repair and redecoration) will be withdrawn from the interim service charge account the subject of the Application it might be said that there is nothing for the Tribunal to determine. However, it would be the intention of the Lessor to include such a provision in the final accounts for 2007/2008, so the same disputed figure will still be sought from the Lessees but at a later date. In those circumstances he accepted that the Tribunal may still wish to make a determination as to the reasonableness of the £20,000 being sought.
- 4.5 Mr Everett made it clear that Ms Drewry was fully paid up as far as ground rent and service charges were concerned as at December 2007, notwithstanding that she had been sent letters by the managing agents indicating to the contrary.
- 4.6 Mr Everett stated that as at December 2007 there was the sum of £1,000 standing to the credit of the reserve fund.

4.7 The consultation procedure laid down in Section 20 of the Act had been complied with in respect of the proposed works of repair and redecoration. No representations had been received from lessees. The lowest quote was £15,339.63 from Smart Construction (Sussex) Limited. To that figure would have to be added 10% for professional fees for supervision of the works and there would likely be a further fee to ensure compliance with the Health & Safety regulations. In the circumstances the sum of £20,000 (£21,000 if the amount already in the reserve fund is included) is a reasonable sum to seek to provide a cushion for unforeseen eventualities.

4.8 The lessees have all signed up to the covenants in the lease on acquiring their properties which Ms Drewry at least has done in the knowledge that such works were going to be carried out in the near future for which there was little or no provision hitherto.

5. The lease

5.1 By Clause 4.2 of the lease the lessee covenants to pay the service charge and by Clause 3.1 it is stated that the service charge is calculated in accordance with the Fourth Schedule of the lease.

5.2 By the Fourth Schedule the lessee is required to pay 12.5% of the service costs by way of a "final service charge" each year. The service costs are those specified in this Schedule being the amount the landlord spends in carrying out the obligations imposed on him during the lease. Those obligations are set out in the Sixth Schedule and include the cost of "repairing maintaining and cleaning" the structure of the building and "decorating the outside of the building including the windows and window frames."

5.3 The Fourth Schedule also provides that an interim service charge is payable by the lessees on the service charge payment dates in each year. This is a payment on account of the final service charge and is to be £500 until the landlord gives the tenant the first service charge statement. After that it is stated to be one-half of the final service charge on the latest service charge statement.

6. The law

6.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (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
- (e) the manner in which it is payable.

6.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

6.3 The consultation provisions are contained in The Service Charges (Consultation Requirements) (England) Regulations 2003. These are detailed and comprehensive and it is not proposed to reproduce them in these reasons.

7. The determination

7.1 The Tribunal determined that it was reasonable for the Respondent to plan to carry out the work set out in the Specification of Works for which tenders had been received.

7.2 The Tribunal considered that the price quoted by Smart Construction (Sussex) Ltd in the sum of £15,339.63 including VAT was a reasonable price for the said works and a 10% supervision fee in addition would be reasonable. It was noted that this price was stated in April 2008 to hold good for one year. The Tribunal noted that the consultation provisions

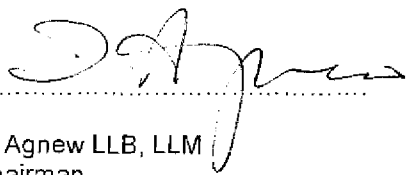
of Section 20 of the Act had been complied with by the managing agents and that no representations had been received from the residential lessees.

- 7.3 The Tribunal determined that it would be reasonable for the Respondent to seek a payment on account of the cost of the works from the lessees. The lease gives the Respondent the ability to do this. The Tribunal decided that it would be reasonable for the sum of £20,000 to be added to the existing sum of £1,000 in the reserve fund to enable the Respondent to pay for the works. 25% of this sum would be contributed by the Respondent itself as owner of the ground floor retail unit and 75% by the residential lessees.
- 7.4 Whilst it might well have been prudent for the Respondent to have made provision for the cost of the works by seeking contributions from the lessees over a number of years so that the residential lessees would not have to find all or almost all of the cost in one year there was nothing in the lease obliging the Respondent to do so. The harsh reality is that the residential lessees have all signed up to this lease and it was incumbent upon them to make sure that they were going to be able to meet the costs that they were likely to face with regard to the state of repair and decoration of their building in accordance with the covenants and service charge provisions of the lease. The Tribunal had no information as to Mr Bazire or Mr Stevens' position when they purchased their leases because they did not supply the Tribunal with the information but certainly Ms Drewry had a Home Buyer's survey carried out and this expressly stated that various repairs and redecoration would be required to be carried out soon and that this would fall to the service charge for which she was liable to contribute 12.5%. Furthermore, she instructed a solicitor to advise her on the purchase. The solicitor asked all the right questions and was told that repairs and redecoration were being put in hand and that there was no reserve fund to meet the costs. The Tribunal had to assume that this information was passed on to Ms Drewry. If so, she proceeded to purchase her flat in the full knowledge that there would be a call upon her shortly to contribute to the cost of the necessary work. The Tribunal could not agree with Mrs Gill therefore that, in those circumstances, it was not fair to expect her daughter to

have to pay the contribution which would shortly be sought towards the cost of the said repairs and redecoration. The Tribunal was not able to take into account the personal circumstances of the lessees or the fact that they may be first time buyers on low incomes.

7.5 The Tribunal noted that as the lease had not strictly been followed by the managing agents when the interim service charge was sent out shortly before the end of 2007 that demand would be cancelled and recalculated based on one-half of the figure in the certified accounts for the year ended December 2006. The charge for the cost of the proposed works would appear in the certified accounts for the year ended December 2008 and so would be demanded early in 2009. Some lessees had already paid their contribution.

Dated this 24th day of October 2008



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D. Agnew LLB, LLM
Chairman