RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL & LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/29UL/LSC/2009/0059**
Property:	**8A Wear Bay Crescent Folkestone Kent CT19 6AX**
Applicants:	**Mrs. J. E. Gautam and Mrs. J.A.R. Clark**
Respondent:	**Mr. S. Haslam**
Date of Hearing:	**14th July 2009**
Members of the Tribunal:	**Mr. R. Norman (Chairman) Mr. N.I. Robinson FRICS Ms L. Farrier**
Date decision issued:	

RE: 8A WEAR BAY CRESCENT, FOLKESTONE, KENT, CT19 6AX

Background

1. No. 8 Wear Bay Crescent comprises a first floor flat and a ground floor flat. Mr. Haslam ("the Respondent") is the freeholder of the building and holds a lease of the ground floor flat. Mrs. Gautam and Mrs. Clark ("the Applicants") are the lessees of the first floor flat No. 8A Wear Bay Crescent ("the subject property").

2. The Applicants have made an application under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of liability to pay service charges. There is also an application for the making of an order under Section 20C of the 1985 Act that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. By the wording

of that application it appeared that the Applicants were also making an application for costs. The Respondent has also made an application for costs.

Inspection

3. On 14th July 2009, in the presence of Mrs. Gautam and Mr. and Mrs. Haslam the Tribunal inspected the exterior of No. 8 Wear Bay Crescent.

4. We were told that:
(a) work had been carried out to the roof,
(b) timber fascias and soffits had been replaced or overclad with plastic,
(c) cast iron guttering had been replaced with plastic guttering,
(d) some cast iron downpipes had been retained and painted while others had been replaced with plastic piping,
(e) the render, the entrance door and porch and some external wood had been painted,
(f) the first floor front bay window frame had been repaired and sealed and that all the window frames had been sealed,
(g) hinges on the garden gate had been replaced and
(h) new stopcocks had been fitted.

5. Our inspection was from ground level and we did not inspect the roof void. We could see:
(a) evidence that the ridge and hip tiles on the roof had been pointed,
(b) that timber fascias and soffits had been replaced or overclad with plastic,
(c) that the downpipes were a mixture of plastic and painted cast iron and that additional clips were required to secure some of the downpipes to the wall of the building,
(d) that the render, the entrance door and porch and some external wood had been painted but noted that the paint on the render appeared to be thin,
(e) that there appeared to be mastic below the cill of the first floor bay window but the Respondent was unable to point out any evidence of sealant to other windows,
(f) that on the garden gate there were three T hinges which appeared to be reasonably new.

6. We went inside the building and were shown two stopcocks fitted to the pipework in a cupboard under the stairs in the ground floor flat. They appeared to be new and we were told that one stopcock served the ground floor flat and that the other served the first floor flat. We could see that the entrance hall was common to both flats and that the front entrance door was the only communal door; all other doors being individual to each flat.

Hearing

7. The hearing on 14th July 2009 was attended by the parties and Mrs. Haslam.

8. A Pre-Trial Review held on 13th May 2009 had been attended by the Applicants. A letter had been received from the Respondent. He did not ask for an adjournment of the Pre Trial Review but explained that he could not attend and asked that the

proceedings move to a hearing as soon as possible and preferably before 18th July 2009. This was because he had commitments in connection with the organisation of the Special Olympics. Time limits were set with this in mind. Directions were given and were sent to the parties. Notes were included with the directions as to a number of matters including the possible effects of failure to comply with the directions. The notes stated that failure without reasonable excuse to comply with those directions may at the least result in delay, and in some cases may cause the Tribunal (after having heard the parties upon the point) to order one party to pay costs to another and/or to refuse to allow parties to rely on evidence that was not produced at the time when those directions required them to do so.

9. One of those directions required the Respondent by 3rd June 2009 to provide to the Tribunal and to the Applicants a statement of case setting out:

(a) The details of service charges of £6,882.75 claimed, the work done and the consultation procedure which had been carried out in relation to the work together with copies of all notices, specifications, tenders and other relevant documents.

(b) The details of the insurance claim in respect of earthquake damage including any offers or settlements made, used to offset any costs being claimed together with any relevant documents.

10. The Respondent did not comply with that direction. The Tribunal received from him on 9th July 2009 (and additional papers on 10th July 2009) a response and it only partially dealt with the matters required to be dealt with. The Tribunal had to consider how the case should proceed having regard to the Respondent's failure to comply with the directions.

11. We heard evidence from the Respondent in which he explained that he had received the directions in good time and had given them to his legal advisor Mr. Chad-Smith of MCM Associates. Both the Respondent and Mr. Chad-Smith had thought that the Respondent had to provide his papers in July for the hearing on 14th July. He accepted that the responsibility was his and apologised. We pointed out that even if he thought he had until 3rd July 2009 to produce a statement of case, he was still late as his papers were not received until Thursday 9th and Friday 10th July 2009 with the hearing listed for the following Tuesday the 14th July 2009. He had read the directions but had not read the notes explaining the possible effects of non compliance. He considered that it could be seen that work had been done in accordance with the Strutt & Parker survey obtained as a result of the earlier hearing before the Leasehold Valuation Tribunal and the cost had been halved because the earthquake had caused damage which was covered by insurance. A lot of work had been done.

12. Mrs. Gautam's evidence was that the papers which the Respondent had produced were in response to the papers she had produced. They were not a statement of case and that summed up his behaviour. There had been no communication or consultation. She

had received four letters from him since the last Leasehold Valuation Tribunal hearing. Only two referred to the work and not in detail.

13. The Respondent explained that over the last 12 to 18 months he had been preparing for the Special Olympics and that for the last 3 months he had been working solidly on this charitable work. He felt that that work was more important than this.

14. The Tribunal considered the matter and came to the conclusion that the evidence produced by the Respondent, although produced late and incomplete, should be allowed to be part of his case but the possibility of awarding costs against the Respondent would be considered. This was announced to the parties and the hearing continued.

15. We asked the Respondent to point out to us where in the papers he had supplied were the details required to be dealt with by the directions. We asked him where were the notices required to be served as part of the consultation procedure under Section 20 of the 1985 Act and the Regulations and where were the estimates for the work.

16. The Respondent considered that the specification for the work was the work which the Strutt and Parker survey showed needed to be done. The only other document was the estimate from Graham Builders. The copy of that estimate provided to the Tribunal was undated but the Respondent stated it was given in March or April 2008. After the earthquake in April 2007 it had been necessary to allow 12 months for settlement of the building to take place. He had obtained estimates for the work from six builders, had compared them and had narrowed them down to two. Graham Builders also dealt with the repairs to the render for the insurance claim. It made sense to do both together. The two estimates were sent to the insurance company and the Respondent was given the choice of which one to accept. There was not much difference between the two estimates. The Respondent considered that Graham Builders had enough workmen to complete the work. The other estimate was about £200 more. The Respondent accepted the estimate from Graham Builders. They knew when the work was to be done and in April 2008 he gave them permission to go ahead in July 2008 and the work was done. The insurance claim covered work to the chimney, the render, painting and internal works. There were large cracks inside the ground floor flat. The insurers would only agree to patching the render but paid for the scaffolding. In an email produced by the Respondent the scope of the work was set out. Included in the scope of the work was "Remove existing chimney stack and rebuild. Check and make good roof tiles and ridge tiles were required. (Cost tba)". The Respondent explained that the builders wanted to replace the whole roof but that was not done. Clearly the insurers were not going to pay for all the work. The Respondent had no written correspondence with the insurers. He just negotiated with them by telephone.

17. We reminded the Respondent of the hearing before the Leasehold Valuation Tribunal on 8th November 2006. In that decision it was noted that because instructions had been given for the surveyor from Strutt and Parker to carry out a survey of the whole property there were items included in the survey which could not be charged to the service charges and were works which were the responsibility of the Applicants or the

Respondent themselves and it was clear to the parties which items came within that description. It was further noted that the parties agreed that a specification for the work which could be charged to the service charges should be prepared and that Section 20 of the 1985 Act and The Service Charges (Consultation Requirements) (England) Regulations 2003 should be complied with. The Respondent was aware of this because he referred to these matters in his statement. The Respondent stated that the only copy estimate which he had sent to the Applicants was the estimate from Graham Builders. That estimate included work which could not be included in the service charges and he had not sent a copy of that estimate until about January or February 2009. The account he had sent a couple of months later. He had received the account in March 2009. This was a very different account from that given in his statement in which he stated that he had obtained a full quote for the works to be undertaken that were chargeable to the service charge and had provided a copy of this to the Applicants in August 2007. The quote he was referring to was document 2 in annex 1 to his statement which was the quote from Graham Builders. Interim payments had been made earlier and the insurers had paid 50% of the cost of the insurance work (£5,500) before the builders started and £5,816.41 when work was completed. The payment included VAT. The Respondent had paid the balance of £12,750 including VAT less the insurance payments made.

18. The Respondent referred to an estimate obtained by Mrs. Clark from Peter Kemp but that was dated 23rd August 2005 and included work which, as a result of the earthquake was funded by the insurers. That estimate was therefore irrelevant.

19. The Respondent stated that he knew he should have sent estimates to the Applicants but he had written to them and they knew that works were due in July.

20. We took the parties through the Service Charges (Consultation Requirements) (England) Regulations 2003 pointing out the consultation requirements.

21. The Respondent accepted that he had not complied with the consultation requirements but he considered that the application to the Leasehold Valuation Tribunal should never have been made.

22. We drew the Respondent's attention to Section 21B of the 1985 Act which had been inserted by the Commonhold and Leasehold Reform Act 2002. Subsection (1) provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Subsection (3) provides that a tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand. Subsection (4) provides that where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it. We were provided with no evidence that section 21B had been complied with.

23. We considered the evidence which we had received and announced our decision. The Respondent had not complied with the consultation requirements required by law

and which he had agreed at the previous Leasehold Valuation Tribunal hearing on 8th November 2006 he would comply with and he had not made an application to dispense with any of those requirements. The result was that he could claim only £250 from the Applicants in respect of the works for which he was claiming £6,882.75. Also because he had not complied with Section 21B of the 1985 Act the Applicants were entitled to withhold payment of that sum of £250 until they received a demand for service charges which did comply with section 21B.

24. We read out to the parties the relevant parts of Section 20C of the 1985 Act so that the parties were clear as to the meaning of an order under that Section. We then asked the parties to address us as to the question of the making of an order under Section 20C of the 1985 Act, costs and reimbursement of fees.

25. The Respondent stated that he was happy not to claim under the service charges for any costs in relation to these proceedings. However, as he was going to lose just under £7,000 he was not happy to pay any fees. He had not brought these proceedings and the Applicants had no intention of paying.

26. Mrs. Gautam stated that the Respondent should have sent estimates to her and her mother and he knew that. This was the second tribunal they had had to come to. They had spent £6,000 in legal fees but it was hard to break down the legal fees in relation to this application. There had been the time spent by her and her mother and they had produced evidence on a timely basis. A Section 20C order and reimbursement of fees was requested.

27. After the parties had left the hearing we considered the matters which were still to be decided and came to the following conclusions:

(a) We make no order as to the payment of costs by either party to the other.

(b) Under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 we require the Respondent to reimburse the Applicants the fees of £350 paid by them in respect of the proceedings. That sum to be payable within 28 days of the date of issue of this decision.

(c) We make an order under Section 20C of the 1985 Act that all the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

28. We came to those conclusions for the following reasons:

(a) The Respondent as a landlord is obliged to comply with the law and in this case that meant carrying out the consultation requirements in relation to the works. He accepted that he had not done so. Neither had he applied to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements. Had he not

known of the consultation requirements that would not have assisted him but in this case he was unable to try to advance even that as an excuse because at the previous Leasehold Valuation Tribunal hearing on 8th November 2006 he agreed that a specification for the work which could be charged to the service charges should be prepared and that Section 20 of the 1985 Act and The Service Charges (Consultation Requirements) (England) Regulations 2003 should be complied with. This he had failed to do. In this way the Respondent brought the situation upon himself and the Applicants were justified in making this application.

(b) The Respondent also failed without reasonable excuse to comply with the directions issued at the Pre Trial Review.

(c) We had no evidence from the Applicants of the costs attributable to this application but we did know that they had paid fees of £350 and considered that the justice of the situation would be met by requiring the Respondent to reimburse the Applicants the fees of £350.

(d) As to the application for an order under Section 20C of the 1985 Act, we found that it was just and equitable in the circumstances to make such an order because the Applicants were justified in bringing these proceedings to clarify the position and the Respondent had not complied with the directions given at the Pre-Trial Review. We noted that the Respondent stated that he would not claim under the service charges for any costs in relation to these proceedings but decided for the sake of clarity to make an order.

R. Norman
Chairman