

**DECISION AND STATEMENT REASONS OF THE RESIDENTIAL PROPERTY TRIBUNAL
SERVICE**

LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL

Case Number: CAM/00MC/LSC/2009/0089

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER
S27A AND S20C OF THE LANDLORD AND TENANT ACT 1985 (the Act)**

Applicant: Ms L McDermott

Respondent: Hamilton King

Premises: 22a George Street, Reading, Berkshire, RG1 7NT (the Property)

Date of Application: 3rd September 2009

Tribunal: Mrs H C Bowers MRICS
Mr J J Sims LLM
Mr A K Kapur

DECISION

The Tribunal determine that the total cost for the work to the whole building of £13,603.76, is a reasonable sum to be incurred for the works that are specified in the Schedule of Works. The full reasons for this decision are set out below.

STATEMENT OF REASONS

The Application:

1. On 3rd September 2009 the Applicant applied for a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (the "1985 Act") for a determination of the reasonableness and liability to pay service charges in respect of the Property to be incurred in the service charge year 2009 – 2010.
2. In addition there is an application by the Applicant pursuant to section 20C of the 1985 Act for the Tribunal to prevent a landlord from recovering any costs in relation to the initial applications to be recovered as part of the service charge.

The Tribunal's jurisdiction:

3. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine liability to pay service charges,

together with the consultation requirements imposed on landlords. The relevant sections are set out below (adopting the numbering of the Act).

18. Meaning of 'service charge' and 'relevant costs'

- (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*
 - (a) *Which is payable , directly or indirectly, for services, repairs, maintenance, improvements¹ or insurance or the landlord's costs of management, and*
 - (b) *The whole or part of which varies or may vary according to the relevant costs.*
- (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*
- (3) *For this purpose –*
 - (a) *"costs" includes overheads, and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*

19. Limitation of service charges: reasonableness

- (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*
 - (a) *only to the extent that they are reasonable incurred, and*
 - (b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard ;*

and the amount payable shall be limited accordingly.
- (2) *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.*

20. Limitation of service charges: consultation requirements

- (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with*

¹ 'Improvements' were added to the definition of 'service charge' by the Commonhold & Leasehold Reform Act 2002

subsection (6) or (7) (or both) unless the consultation requirements have been either –

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed the appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement –

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
- (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State, and the regulations may make provision for either or both of the following to be an appropriate amount –

- (a) an amount prescribed by, or determined in accordance with, the regulations, and
- (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

20C. Limitation of service charges: costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a ... leasehold valuation tribunal ... are not to be regarded as relevant costs to be

- taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*
- (2) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

27A. Liability to pay service charges: jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-*
- (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.*

The Lease:

4. The Tribunal were provided with a copy of the lease for the property. The lease is dated 4th October 2002 and the original parties to the lease were Southern Investment Services Limited as the Lessor and Dennis Van Leeuwenkamp as the Lessee. The lease is for a term of 99 years from 24th June 2002 at an initial ground rent of £100 per annum.
5. In clause 2.3 of the lease, the tenant covenants to pay the Interim Charge and the Service Charge as set out in Schedule 7 of the lease.
6. Clause 5 of the lease provides that the landlord is to provide the services as set out in Part Two of Schedule 7. Part Two of Schedule 7 requires the landlord to repair, renew, maintain, inspect and clean the roof, main structure and foundations of the building. There are provisions that the outside of the building is to be decorated whenever reasonably necessary and in any event at least every five years.
7. Paragraph 16 of Schedule 7 allows the landlord to maintain a reserve fund to accumulate funds in advance of any major items of work to the building.

Hearing

8. Neither party requested a hearing and having had consideration to the application that was submitted and given the circumstances of the Applicant, the Tribunal determined that this matter could be dealt with on the basis of the papers submitted by both parties.
9. Both parties submitted detailed, written representations which were considered at some length by the Tribunal. These reasons give a summary of the points raised by both parties.

Inspection

10. There was no listing for an inspection of the property. However, the Tribunal took the opportunity to make a brief external inspection of the front facade of the subject property on 11th February 2010.
11. The subject property is an inner terrace house of painted brick and slate roof construction. The property has accommodation on basement, ground, first and second floors. It was noted that there were a number of steps up to the ground floor front door. There was a small open area around the front bay to the basement floor that was accessed by external steps. There were metal railings to the front open area. It was noted that the front windows were replacement UPVc window units.
12. The external decorations did not appear to be in a bad condition, but re-decoration to the property appeared to be last carried out some years previously. The steps and walls at the front of the property appeared to be in the need of some render, paving and brick repairs and redecoration. It was noted that there were some weeds and a general tidying up of the property was necessary.

Applicant's Case

13. The Applicant explained that she had received a demand from Hamilton King Management Ltd seeking a sum of £4,220.78 in advance of work that was to be carried out to the above property.
14. In correspondence, the Applicant acknowledged that the Respondent had complied with the section 20 consultation requirements and that this was an issue as to whether the proposed charges were a reasonable sum for the work to be undertaken. However, the Applicant also stated that the observations of the leaseholders had not been taken into account in the process.
15. The Applicant challenged the accuracy of the quotations received by the Respondent on the basis that £5,300 had been included in both quotations for provisional sums and contingencies.
16. The Applicant had obtained a quotation from Hiller Fox dated 3rd August 2009 for the external decoration work to the property at a total cost of £2,647 plus VAT. There was also a quotation from Trademark Construction Services Limited that was dated 30th July 2009 for a figure of £3,500.
17. The Applicant made a number of criticisms, namely: that as the exterior was in reasonable condition that the proposed work was not necessary and that the Respondent had not ascertained the condition of the property and whether the works were necessary and had not taken photographs; the Respondent had only obtained two quotations; the Respondent had not explained the discrepancy between the estimates provided under the tender system and the estimates provided by the Applicant; the Respondent had failed to indicate whether the firms that had submitted tenders had been independent; that the costs of the surveyor was excessive and an unnecessary expense; the surveyor and the Respondent have a fee based on a percentage of the estimates, so it would be beneficial to them that the estimates were high; the Respondent had failed to implement

the sinking fund provision; that there had been previous cases against the respondent and the freeholder that suggested a history of overcharging.

18. The Applicant explained that the Respondent had offered a waiver for the works to be cancelled, but stated that this had been withdrawn. It is stated that all four leaseholders in the building object to the works.
19. The Applicant also raised a number of points in respect of the purchase of the freehold interest of the building and a change to the management company.

Respondent's Case

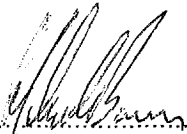
20. The Respondent provided details of the chronology of this case and supporting documentation in respect of the section 20 consultation.
21. It is submitted that the works are necessary for the landlord to comply with their covenants under the terms of the lease. The section 20 consultation had been carried out and there had not been any nominations for a contractor to be included in the tender process, there been no observations other than the leaseholders did not authorise for the work to be carried out and although there had been a copy of the schedule of works sent to each of the leaseholders, no observations were received in respect of this point.
22. The Respondent had written to all the leaseholders on 28th July 2009 enclosing a reply form for the work to be cancelled and confirming that the freeholder would not be held responsible for works not being carried out under the covenants in the lease. The reply forms were to be received by 7th August 2009, but only two of the four forms were received by that date.
23. The Respondent provided a copy of the Schedule of Work that was for an extensive external refurbishment and re-decoration of the exterior of the property. Detailed in that document to be sent out to the potential contractors included provisional sums for the following items: £500 for replacing any defective, missing or displaced roof tiles; £1,000 for any repair work required to the flat roof covering to the bay window on the front elevation; £300 for any necessary repair work to any leaking sections of the rainwater goods; £500 for minor repairs and re-pointing to the chimney. There was also a sum of £3,000 as a contingency figure for these works.
24. There is a letter from the respondent to the leaseholders that was dated 12th May 2009 and this indicated that two companies submitted estimates for the work set out in the Schedule of Works. The first estimate was from Planet Construction (London) Ltd for the sum of £11,832 plus VAT, the second estimate was from Honeywood Contacts Ltd for the sum of £13,930 plus VAT. A third company had been approached but had not submitted a tender for the works.
25. In a letter from the Respondent to the leaseholders dated 10th July 2009, it is indicated that Planet Construction (London) Ltd would be selected for the project and that to the cost of £11,832 the following would be added: a sum of 10% (£1,183) would be added for Chartered Surveyors fees; VAT of £1,952.28; an administration fee of 10% (£1,301.52)

plus VAT of £195.22, gives a total sum of £16,464.22 to be recovered from the four leaseholders.

Decision

26. It was noted that the Applicant had stated in correspondence that the section 20 consultation process was not disputed. Therefore this aspect was not considered by the Tribunal.
27. Regarding the two estimates provided by the Applicant, we noted that these estimates had been made without reference to the Schedule of Works. The extent of the proposed re-decoration in the two estimates appears to be of a significantly smaller scale of work than those proposed by the Schedule of Works and as such these estimates were not a truly comparable reference to the full specification of works that were proposed.
28. The Tribunal were not provided with a copy of the initial surveyor's report indicating the necessity of the works. However from a brief external inspection the Tribunal noted that some refurbishment and re-decoration works to the exterior of the property would be desirable. It was noted that the works stated in the Schedule of Works are quite extensive, but would appear to fulfil landlord's obligations under the provisions of the lease and as such it is reasonable that the landlord should proceed with the stated works.
29. In respect of the cost of the proposed work, it is the opinion of the Tribunal that a contingency sum of £3,000 for a contract of this nature and size appears excessive. We are of the opinion that a more appropriate figure should be £1,000. The effect of this would be to reduce the price of the main contract to £9,832. The 10% fee for the Chartered Surveyor would then become £983.20 and VAT on this sum would be £1,892.66. We are also of the opinion that as this contract is relatively straightforward and that there are only four leaseholders involved then a 10% administration fee on this type of contract would be excessive. The Tribunal is of the opinion that an appropriate level of administration fee for this case would be no more than 5% (£762.47 plus VAT of £133.43). This totals to a sum of £13,603.76. It is the opinion of the Tribunal that a sum of £13,603.76 would be a reasonable sum for work to be incurred in line with the Schedule of Works that has been produced. The Applicant's share of those costs is as set out in the terms of the lease. It should be noted that this matter would still be open to the parties if there is an indication that once the works have been completed that the works have not been carried out to a reasonable standard.
30. The Tribunal have no jurisdiction to consider the proposal to cancel the works on the basis that the leaseholders would sign a waiver in respect of any claim against the landlord. The Applicant also raised an issue in respect of the purchase of the freehold interest in the building and a change of the management company. The Tribunal considers that both of these issues are outside the scope of the current application.
31. The Applicant made an application for the Tribunal to make a section 20C Order of the Act. No representations were made by either party on this point. In the opinion of the Tribunal the Applicant has not been entirely successful in this application as although some elements of the proposed costs appear excessive, the Respondents were within their rights to proceed with the work and the extent of the specification did not appear to

be excessive. Accordingly the Tribunal do not make an Order under section 20C. However the Tribunal note that any costs that do arise should be relatively minimal given the submissions by the Respondent.

Chairman 

Date 19-3-10

Helen C Bowers