

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case number: CH1/00HG/LSC/2010/0006

Property: 4 Beaumont Road, Plymouth, Devon, PL4 9BJ

Applicant: Ms. L Parker

Respondents: Mr M Northcote

Represented by: Mr and Mrs L Northcote as Power of Attorney for the Respondent

Application: Application for a determination of liability to pay Service charges (Section 27A Landlord and Tenant Act 1985) (The Act) and an Application under section 20c of the Act for an order that the costs of the proceedings before the Tribunal may not be recovered as service charge.

Tribunal: Mr R Brown FRICS (Chairman)
Mr E Distin FRICS
Dr M James MA BA FRSA

DECISION

1. The Tribunal determine that the Applicant (Ms L Parker) is contractually liable under the lease of Flat 4a Beaumont road to pay the service charges demanded (2005-£1048.00 and 2009-£552.00) for works carried out to the roof in 2005 and 2009.
2. The Tribunal grants the Respondent dispensation from the requirement to serve notice under section 20 of the Act in respect of the roofing work carried out in 2005 and 2009.

REASONS FOR DECISION

Application and Background

1. The Application made by Ms. L Parker referred to above relates to a determination of the payability of service charges under Section 27A of the Act in respect of roofing repair works carried out in the service charge years 2005 and 2009.
3. The reasonableness of the cost and the standard of the works undertaken are not in dispute between the parties.
4. In order to assist it in reaching its decision the Tribunal sought additional information relating to the Freehold and leasehold titles of the property and in particular the First Floor Flat. Further Directions (No 2) were issued and the Respondent complied providing the following information
 - Office copy entries relating to the Freehold and leasehold title to the property.
 - Letter from Land Registry.
 - Copy of the current occupational tenancy.
5. The Applicant was offered the opportunity to comment on these documents by way of written submission however no submission was received within the time set by the Tribunal.
6. During the proceedings the Applicant withdrew her application for an order under section 20C of the Act.

The Law

7. The relevant law is set out in **Appendix 1** attached.

The Lease

8. Ms Parker holds the Ground Floor Flat by way of a long lease dated 12th April 1989 for a term of 99 years from the 12th April 1989.
9. Under clause 3(2) of the lease the lessee is required *'to pay the landlord on demand one half of the amount spent in carrying out the obligations in this lease to provide the services'*.
10. Under the Fourth Schedule (Services to be provided) paragraph 1: *'Repairing the roof, foundations and common parts of the building'*.

The Property and the Tribunal's Inspection

11. The Tribunal inspected the property on the 10th May 2010 in the presence of the parties.

12. The property comprises a 3 storey house converted into 2 self contained flats. A small group of similar units were built next to St Judes church and close to Beaumont Park, approx 1 mile to city centre. The 3-storey units are of traditional construction for the time of building and comprise self-contained ground floor with 2-storey self-contained unit above. There is a shared entrance off Beaumont Road.

The Hearing

13. A hearing was held after the inspection at the Valuation Tribunal Offices, Farrer House, 73 North Hill Plymouth PL4 8HB.

Applicant's Case

14. The Applicants case concerns whether or not she is liable under the lease to pay 1/2 the cost of repairs to the roof part of which comprise a roof terrace (2005) and part of which is roofing over the bay windows (2009) to the first floor. She had been advised by the Leasehold Advisory Service (LEASE) that these areas may not be common parts and that she may not be liable to contribute.
15. Further the Applicant does not believe the correct procedure for serving notice was followed under section 20 of the Act.
16. Further that it was not known that the work was necessary until work started on the external decorating. It could not therefore be classed as an emergency and therefore there was time to follow the correct procedure.
17. The Applicant, although she was unhappy with the appointment of DFR to carry out the work, believing she had an agreement with the Respondent not to employ this company, is not dissatisfied with the standard or cost of the work.

Respondents' Case

18. The Respondent says with regard to the garden roof (2005) that the mortgage survey advised that this roof would require repair. The work was carried out in 2005 to a reasonable standard.
19. The Respondent's acknowledge that the correct procedure was not followed under section 20 with regard to the 2005 works. However Miss Parker was consulted and raised no objection. She was given 2 quotations for the work and obtained her own quotation which was higher than the quote accepted (DFR £1748 plus VAT).
20. The Respondent did not seek to recover the cost of other work required to complete the job which increased the total invoice to £3,815.00.
21. Under the lease (clause 3(2) - quoted above) the Applicant is responsible for one half of the cost of these repairs.

22. With regard to the work carried out in 2009. This work became apparent when the Respondent and his father undertook planned external decorating. The Respondent acknowledges that the notice procedure was not followed and seeks dispensation.
23. Work commenced in June 2009 and after scaffolding had been erected wood rot was found in the front flat roof. DFR were called in as they were available immediately. It was impossible for them to provide a full quote because it was not possible to assess the extent of the work until the woodwork was fully exposed.
24. During the course of the work the Respondents liaised with Miss Parker and kept her fully informed.
25. The total cost of the work was:
- | | |
|------------------------------|----------------|
| 1. Scaffolding | £900.00 |
| 2. Douglas Flat Roofing | £1,104.00 |
| 3. Ace Iron Works (railings) | £786.00 |
| 4. Paint | <u>£162.79</u> |
| 5. Total | £2,952.79 |
26. The Respondent seeks only to recover one half of the cost of the roofing works namely £552.00 and paint.
27. Due to the nature of the work consultation was not appropriate. This would have led to considerable damage to the property and the repairs could be carried whilst the scaffolding was in place thus saving the cost of re-scaffolding at a later stage.

Tribunal's Deliberations

28. Other issues are raised by the parties however these issues were not considered by the Tribunal as they did not form part of the Application or do not fall within the Tribunal's jurisdiction (trespass).
29. The initial question for the Tribunal to determine was whether or not the Applicant as lessee of the Ground Floor Flat had a liability under her lease for the cost of repairs to the roof. In order to consider this question the Tribunal sought additional information from the Respondents namely:
- Land Registry office copy entries
 - Lease (if one existed) for the First Floor Flat.
 - Occupational tenancy of the First Floor Flat.
30. As directed these documents were supplied to the Tribunal. According to the office copy entries there is no separate lease of the First Floor Flat. The Tribunal concluded it is part of the Freehold title and not subject to a separate long lease.

31. The purpose of considering these documents was for the Tribunal to identify whether or not the roofs in question were part of the demise of the First Floor Flat and thus (possibly) excluded from the contractual liability to contribute towards the cost of repairs to the roofs under Schedule 4.
32. The Tribunal concluded that although the lease is not particularly well drawn there is a contractual liability on the Applicant as lessee of the Ground Floor Flat to contribute to the cost of roof repairs.
33. The next question for the Tribunal to determine is whether or not the Respondent has failed in his statutory liability to consult under section 20 of the Act.
34. By his own admission the Respondent has failed to consult strictly in accordance with the statutory regime although the Tribunal note that informal consultation did in fact take place in respect of both sets of work.
35. Under section 20ZA of the Act the Tribunal has jurisdiction to dispense with the formal requirements of section 20 to serve notice *'if satisfied that it is reasonable to do dispense with the requirements'*.
36. The Tribunal are aware that in cases such as this where there are only a small number of flats it is unlikely that a qualified managing agent can be employed (both on grounds of economy and practicality) and a Landlord will in endeavour to manage the property himself.
37. In this case the Tribunal find there is no evidence that the Respondent (Landlord) has done anything other than attempt to manage the property to the best of his ability for the benefit of the property as whole.
38. The Tribunal find that in both cases that although the formal procedure was not followed consultation had taken place. In respect of the 2005 works before the work commenced and in respect of the 2009 works as soon the problem was exposed.
39. The Tribunal determines that in respect of the 2005 work it is reasonable to grant dispensation.
40. In respect of the 2009 works there is the added dimension to consider, namely that the work could not have been foreseen until scaffolding was erected and stripping back the paint commenced.
41. Taking all these matters into account the Tribunal determines in respect of the 2009 works that it is reasonable to grant dispensation.

Robert Brown
Robert Brown
Chairman

Dated.....

Appendix 1- The Law

Landlord and Tenant Act 1985

Section 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable

Section 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 court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.
- (2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Lands Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) 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.

20ZA Consultation requirements: supplementary

- (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.