



Residential  
Property  
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: CHI/00ML/LSC/2009/0164**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT  
ACT 1985**

Address: 35 Eaton Place, Brighton, East Sussex, BN2 1EG

Applicant: Mrs Ann Hayes

Respondent: Ms Samantha Kinder-Niven

Date of Transfer: 14 October 2009

Inspection: 7 July 2010

Hearing: 7 July 2010

Appearances

Applicant

Mrs A. Hayes Freeholder

Mr R J Everest Representative

Respondent

Ms S. Kinder-Niven Leaseholder

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Lady Davies FRICS

Mrs J E S Herrington

## DECISION

### *Introduction*

1. On 23 July 2009 the Applicant issued a claim against the Respondent in the Brighton County Court for service charge arrears for the year 2009 in the sum of £898.98. On 30 July 2009 the Respondent served a Defence alleging that the Applicant had not carried out statutory consultation under section 20 of the Landlord and Tenant Act 1985 (as amended) ("the Act") regarding various maintenance costs. She also claimed a set off for various matters pleaded in the Defence for the financial loss she alleges she incurred as a consequence of the standard of maintenance and repair works carried out in 2009. The Respondent did not counterclaim for her loss. By an order dated 14 October 2009 made by District Judge Fawcett, the proceedings were transferred to the Tribunal.
  
2. The Respondent is the present long leaseholder of the premises known as 35A Eaton Place, Brighton, BN2 1EG which she holds under a lease dated 18 April 1977 for a term of 99 years from the same date ("the lease"). The subject flat is one of three flats in a converted terraced house and is located on the ground floor. The Applicant is the freeholder.
  
3. By clause 4 of the lease, the lessee covenanted to pay on the twenty-fifth day of March in each year a proportion of the annual maintenance cost, being those costs incurred by the lessor either under clauses 4 or 5 of the lease. It was common ground that the service charges in issue recoverable as relevant service charge expenditure under the terms of the lease. It was also common ground that the Respondent's contractual liability to contribute towards that this expenditure is one third. For these reasons, it is not necessary to set out the terms of the lease that give rise to this liability.
  
4. The maintenance account prepared by the Applicant setting out the total service charge expenditure incurred for the year ended 25 March 2009 (as amended) is dated 30 March 2009. The total expenditure incurred for that year was £3,788.75, which included expenditure of £3,460.50 for roof repairs.

Of this figure, the Respondent challenged the sum of £1,574.50, being the cost of roof repairs carried out during 2008 ("the roof repairs"). The Respondent did not challenge any of the other heads of expenditure for 2009. As stated above, the Respondent claimed a set off for her financial loss arising from the roof repairs. However, the Tribunal ruled that it did not have jurisdiction in this matter to deal with any set off claimed by the Respondent and because she had not counterclaimed for her loss in the County Court proceedings, the Tribunal could not refer this matter back to be determined. In the event that she wished to pursue this loss, the Respondent would have to commence separate proceedings in the County Court.

### ***The Relevant Law***

5. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

*"(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."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

6. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

*"(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 reasonably incurred, and*
  - (b) where they are incurred on the provision of services or the carrying out works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly."*

### *Decision*

7. The hearing in this matter took place on 7 July 2010 following an inspection of the subject flat. The Applicant attended the hearing and was represented by Mr Everest who, amongst other things, has a property background. The Respondent appeared in person.
8. The primary challenge made by the Respondent to the cost of £1,574.50 for the roof repairs carried out in 2008 was that the Applicant had failed to carry out statutory consultation under section 20 of the Act prior to the work being carried out. This was admitted by the Applicant at the hearing. She explained that the work had to be carried out urgently and could not be delayed further by also having to carry out statutory consultation. Furthermore, she asserted that the Respondent was abroad at the time.
9. The Tribunal explained to the Applicant that statutory consultation under section 20 was mandatory unless and until a Tribunal had granted dispensation, upon application, under section 20ZA of the Act. The duty to consult arose when a lessee's potential service charge liability exceeded £250 for "qualifying works" such as the roof repairs in this instance. Consultation had to be carried out in accordance with the Service Charges (Consultation Requirements) (England) Regulations 2003. In default thereof, a landlord could only recover a maximum contribution of £250 unless a retrospective application was made to dispense under section 20ZA. The Applicant told the Tribunal that she was not going to make such an application. Accordingly, the Tribunal found that the maximum contribution the Applicant could recover in relation to the roof works was £250 from each lessee.
10. The Respondent initially sought to argue that her liability for the roof repairs should be less than £250 on the basis that the standard of the work had not been reasonable. However, she later withdrew this challenge.

11. Accordingly, the Tribunal determined that the Respondent's service charge liability for the year ended 25 March 2009 was:

Insurance	£329.54
Management Fees	£150
Repairs (not challenged)	£1,886
Roof Repairs (s.20 cap)	£750
Accountancy	£178.25
<b>Total</b>	<b>£3,293.79</b>

**Applicant's one third share is £1,097.93 (excluding any payments on account already made).**

*Section 20C & Fees*

12. The Respondent had made an application under section 20C of the Act for an order that the Applicant be disentitled from recovering, through the service charge account, all or part of any costs she may have incurred in the proceedings before the Tribunal. The Tribunal has a discretion to make an order when it is just and equitable to do so. In the event that the Applicant wishes to pursue any costs incurred in the County Court, this matter is remitted back for this determination to be made.
13. The sum disallowed by the Tribunal for the roof works was £824.50 and largely represented the sum claimed by the Applicant in the County Court. The Respondent had, in effect, defeated the claim. Therefore, the Tribunal concluded that it would not be just or equitable for the Applicant to recover the costs she had incurred here and made an order preventing her from doing so. For the same reasons, the Tribunal makes no order requiring the Respondent to reimburse the Applicant the hearing fee of £150.

Dated the 13 day of September 2010

CHAIRMAN.....*J. Mohabir*

Mr I Mohabir LLB (Hons)