RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.27A Landlord &Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CH1/29UN/LSC/2010/0142

In the matter of 17 Adrian Square, Westgate On Sea
Kent, CT8 8SU

Applicants (Lessees): Mr. and Mrs. J Farrant (Flat1)
Mr. I Curd (Flat 2)
Mr. and Mrs. Sharman (Flat 3)
Mr. K Bowles (Flat 5)
Ms. J Havell (Flat 4)

Respondent (Landlord): Southern Land Securities c/o Hamilton King

Date of Application: 14th September 2010

Tribunal Members: Mr. S Lal LLM, Barrister (Legal Chairman)
Mr. R. Wilkey FRICS

Date of Hearing: 29th November 2010

Date of Decision: 30th November 2010

Application

1.The Applicants applied to the Tribunal by way of application received on 18th September 2010 under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine their liability to pay service charges in respect of 17 Adrian Square, Westgate On Sea, Kent, CT8 8S ("the property") for the years 2009/10 and 2010/11. Specifically the Applicants wished for a ruling as to the reasonableness of the insurance premiums as demanded under the terms of their lease and monies in respect of major works. The liability to pay has never been in dispute nor has the proportion due under the lease.

2. Directions were issued on 24th September 2010. Both parties to the proceedings were invited to send to the Tribunal written representations which include a Statement of Case which they have both done. These are referred to below.

The Law

3. The statutory provisions primarily relevant to applications of this nature are to be found in section 18, 19 and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract from each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes 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, improvements or insurance or the landlord's costs of management, and
b. the whole or part of which varies or may vary according to relevant costs."

"Relevant costs" are the cost or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.

1. Section 19 provides that :

"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 of works only if the services or works are of reasonable standard

and the amount payable shall be limited accordingly."

2. Subsections (1) and (2) of section 27A of the Act provide 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 to whom it is payable
b. the person by 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 Inspection

4.The members of the Tribunal inspected the property on 29th November 2010. It is a Victorian four storey house plus rooms in the roof, which has been converted into flats. The Tribunal were able to inspect the property both internally and externally. The common parts and exterior were in need of some improvement and the Tribunal observed damp in the interior of Flat 4, apparently this was true of the rear of the building.

Representation

5. Ms. Havell, Mrs, Sharman and Mr. Curd appeared in person and the Respondent was represented by Mrs. Debbie Tozen, a Property Manager.

The Issue

6. Since the exchange of the respective Statements of Case, the parties had moved closer together in terms of what now remained in dispute and indeed the Tribunal afforded the parties some time to continue those discussions on the morning of the hearing if such discussion would facilitate a narrowing of the issues.

7. Following that both parties confirmed to the Tribunal that the major works were no longer in issue because the Respondent had agreed to start the whole consultation process again.

8. The Applicant's confirmed that they no longer wished the Tribunal to determine the reasonableness of the insurance premium as this had been the subject of fruitful discussion and was close to being resolved on an amicable and mutually acceptable basis.

9. Both parties informed the Tribunal that the Respondent would supply a detailed breakdown of the service charges and indeed Mrs. Tozen confirmed that this would be done within 2 days of the hearing.

10. The only matter in dispute was the surveyors' fees for the aborted major works tender, the application fee and the S.20C Costs.

The Case for the Applicant

11. Ms. Havell submitted that the Applicants realised that they had to pay something for the works specification because it represented professional work done but thought that 5% of the total amount was unreasonable because the works quote itself had now been accepted by the Respondent as unreasonable, hence the offer to re-start the entire major works consultation process. She added that in any event the works specification was in standard form and indeed contained some inaccuracies in terms of the contractual terms listed therein.

12. In respect of the fee and s.20C costs she said that it was only because of the application to the LVT that the Respondent had started to engage and indeed but for the process of the LVT, the matter would not have settled in the way it had in respect of some of the issues.

The Case for the Respondent

13. Mrs. Tozen said that the surveyors' fee was a professional fee and that eventually if a lower final quotation was awarded, the surveyors costs would be lower and could be reconciled with the higher fee for the work quotation that had not been carried out.

14. She resisted the application for the hearing fee and s.20C Costs and pointed out to Ms. Havell being difficult in terms of communication.

The Tribunal's Decision

15. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in Plough Investments Ltds v Manchester City Council [1989] 1 EGLR 244 that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease.

16. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself. Ultimately it is for the court or tribunal to do decide on the basis of the evidence before it and exercising its own expertise. In that regard the LVT is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it.

17. The starting point for the Tribunal's analysis was the fact that the "expensive" works were no longer being pursued, indeed the Respondent had now offered to restart the whole tender process. In the circumstances the Tribunal were of the opinion that such proposed works could not be properly defended. In the circumstances the Tribunal holds that to ask 5% of the total price as reasonable surveyors' fees would also be unreasonable. The Tribunal were not satisfied that the process would eventually "sort itself out" by reference to a final lower charge. This would only work if the Respondent remained with the same surveyor; they were not obliged to so remain. Therefore the Tribunal holds that the current 5% of £28, 380 plus VAT would be unreasonable.

18. However the Tribunal does acknowledge that professional work has been carried out, the value of which will be realised in part when the work is eventually done. It was not prepared to accede to the lowest quote that the Applicants had obtained but did think in its own expert assessment that 5% of £20,000 plus VAT would be a reasonable sum in all the circumstances.

19. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicants have succeeded in respect of the majority of their submissions and the Tribunal is satisfied that the Respondent's did not really engage in the process until the application to the LVT. The Tribunal directs that no part of the Respondent's relevant cost incurred in the application shall be added to the service charges. The Tribunal further directs that the Respondents do pay the Applicants fee in respect of this application. The Tribunal makes no further order.

Chairman..

Date......30/11/10..................................