8008

Case Numbers:
CHI/00HG/LIS/2012/0050
CHI/00HG/LBC/2012/0011

HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

PROPERTY: 38B Cambridge Road, Ford, Plymouth, PL2 1PU

Applicant: 38 Cambridge Road (Plymouth) Ltd

and

Respondent: Mr Gareth Dunn

In The Matter Of

Section 27A and 20C of the Landlord and Tenant Act 1985
Section 20ZA of the Landlord and Tenant Act 1985
Section 168(4) Commonhold and Leasehold Reform Act 2002

Landlord's application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985
Landlord's application for the determination of reasonableness of service charges for the years 2009 to 2012.
Landlord's application in relation to breach of covenant

Tribunal

Mr A Cresswell (Chairman)

Mr Mr W H Gater FRICS ACIArb

Dates of Hearing: 18 and 19 July 2012
Appearances: Mrs M Creek, solicitor for the Applicant
No appearance by the Respondent

Case Numbers:
CHI/00HG/LIS/2012/0050
CHI/00HG/LBC/2012/0011

DETERMINATION

The Application

1. On 19 July 2012, 38 Cambridge Road (Plymouth) Ltd, the owner of the freehold interest in Flat 38B, the Applicant landlord, made an application to the Leasehold Valuation Tribunal for the determination of an application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of works to the roof of the building 38 Cambridge Road.
2. On 26 April 2012, 38 Cambridge Road (Plymouth) Ltd, the owner of the freehold interest in Flat 38B, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of the service charge costs claimed by it, the landlord, for the years 2009 to 2012.
3. On 26 April 2012, 38 Cambridge Road (Plymouth) Ltd, the owner of the freehold interest in Flat 38B, made an application on behalf of the Applicant freeholder of the property to the Leasehold Valuation Tribunal for the determination of whether there has been a breach of covenant by the lessee, the Respondent.

Inspection and Description of Property

4. The Tribunal inspected the property on 18 July 2012 at 1000. Present at that time were Mr S A Saunders and Mrs M Creek. The property in question consists of a large mid-terrace house divided into 3 flats. The Tribunal inspected the exterior of the property and the ground floor flat and common areas. The Tribunal declined the opportunity to enter Flat 38B because the tenant was not present and the Tribunal did not have his authority to enter. We could, however, see into the flat as the door was wide open and we were also presented later with photographs of the interior. It was apparent that Flat 38B has been long unoccupied. We could see evidence of damp damage within the flat and the glass appeared to be coming away from the window frames in places. In the ground floor flat, 38A, immediately below flat 38B, we were shown an area beneath the bay window, where damage caused by the ingress of water had been repaired. We also noted that the roof appeared to have been renewed relatively recently. The outside of the building could not otherwise be described as in a good state of repair. We noted that internal decoration of common areas was in progress.

Summary Decision

5. Under Section 20ZA of the Landlord and Tenant Act 1985 (as amended), the Tribunal has jurisdiction to make a determination dispensing with all or any of the consultation requirements "if satisfied that it is reasonable to dispense with the requirements." The Tribunal has determined that the Landlord has demonstrated that it is reasonable to dispense with the requirements, and for that reason does make a determination dispensing with the formal consultation requirements.

6. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that the landlord has demonstrated that the charges in question were reasonably incurred, and so those charges are payable by the Respondent.
7. The Tribunal has determined that the Landlord has demonstrated that there has been a breach of covenant. The breaches found are in respect of the covenants relating to the Tenant's duty to pay ground rent, to pay the service charge and to keep flat 38B in good and substantial repair and condition.

Directions

8. Directions were issued on 4 May 2012. These directions provided for the matter to be heard at an oral hearing.
9. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
10. This determination is made in the light of the documentation submitted in response to those directions, the evidence of Mr Saunders and submissions made at the hearing.

The Law

11. The relevant law is set out in sections 18, 19 and 20 and 27ZA of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and in Section 168(1) and (2) Commonhold and Leasehold Reform Act 2002.

12. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

13. The relevant law is set out below:

    Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

    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,improvements 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 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 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 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 he 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 an 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 accordance with, the regulations is limited to the amount so prescribed or determined.

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.
(2) In section 20 and this section—
"qualifying works" means works on a building or any other premises,
(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
(5) Regulations under subsection (4) may in particular include provision requiring the landlord—
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
(6) Regulations under section 20 or this section—
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.
(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

14. Section 168(1) and (2) Commonhold and Leasehold Reform Act 2002 provide that a landlord may not serve a notice under Section 146 Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless it has been finally determined, on an application to the Leasehold Valuation Tribunal under Section 168(4) of the 2002 Act that the breach has occurred.
15. A determination under Section 168(4) does not require the Tribunal to consider any issue relating to the forfeiture other than the question of whether a breach has occurred. The Tribunal's jurisdiction is limited to that question and cannot encompass claims outside that question, nor can it encompass a counterclaim by the Respondent; an application under Section 168(4) can be made only by a landlord.

Ownership

16. 38 Cambridge Road (Plymouth) Ltd is the owner of the freehold of 38 Cambridge Road.

The Respondent's Lease

17. The Respondent holds Flat 38B under the terms of a lease dated 30 November 1984, which was made between William Herbert Grigg as lessor and Elizabeth Mary O'Shea as lessee.
The demise is set out in the First Schedule to the lease. The demised property is described as: "ALL THAT flat being on the top floor of the

building including the westward half of the main courtyard and the whole or such parts (as the case may be) of the internal walls plaster work ceilings floors windows window frames balconies doors cisterns pipes wires ducts and gutters referred to in clause 3(1)(c) hereof as repairable by the Lessee and excluding such parts of the structure and of the pipes drains cables and wires thereof and therein as are referred to in clause 5(6)(i) and (ii) as repairable by the Lessor."

Clause 3(1) of the lease: The Lessee hereby covenants with the Lessor that the Lessee and all persons deriving title under him will during the currency of the term granted (a) pay the said rents at the time and in the manner aforesaid without any deductions except as aforesaid and whether such rents shall be legally demanded or not (b) pay all rates assessments charges impositions and outgoings which may at any time be assessed charged or imposed upon the demised premises or any part thereof or the owner or occupier in respect thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged levied or imposed in respect of the building without apportionment to pay the proper proportion (calculated on the same basis as the further and additional rent thirdly mentioned in sub-clause (4) of clause 4 hereof) of such rates taxes assessments charges impositions and outgoings attributable to the demised premises.

Clause 3(1)(c)(i): The Lessee hereby covenants with the Lessor that the Lessee and all persons deriving title under him will during the currency of the term granted maintain uphold and keep the interior of the demised premises and every part thereof in good and substantial repair and condition throughout the term hereby granted (damage by fire or any other risk insured against by the Lessor in pursuance of clause 5(2) hereof excepted) AND IT IS HEREBY AGREED AND DECLARED that without prejudice to the generality of the foregoing there is included in this covenant as repairable by the Lessee (including replacement whenever such shall be necessary) all the internal walls wholly within the demised premises and which do not form part of the main structure of the building and all the interior plaster work of walls within the demised premises forming part of the main structure of the building or separating the demised premises from the common parts of the building or any of the other flats and the windows window frames and doors belonging to the demised premises and the balconies thereto (if any) and the drains cisterns pipes wires ducts and gutters used exclusively for the purpose of the demised premises and the ceilings of the demised premises but excluding the structure to which the same are attached and the floors of the demised premises but excluding the structure upon which such floors are laid.

Clause 4(4) pay to the Lessor without any deduction by way of further and additional rent <u>FIRSTLY</u> a sum equal to one third of the total expenses and outgoings incurred by the Lessor in connection with

maintaining repairing redecorating and lighting the entrance hall passages landings and staircases within the building and SECONDLY a sum equal to one third of the aggregate of the expenses and outgoings incurred by the Lessor in the repair and maintenance and renewal and insurance of the building and the other heads of expenditure as the same are set out in the Fifth Schedule hereto such further and additional rent (hereinafter called "the service charge")

THE FIFTH SCHEDULE

(expenses and outgoings and other heads of expenditure of the Lessor of which the Lessee is to pay a proportionate part by way of service charge)

1. *The expense of maintaining repairing redecorating and renewing amending cleaning and repointing repairing graining varnishing whitening or colouring the building and all parts thereof and all the appurtenances apparatus and other things thereto belonging and more particularly described in clause 5(6) hereof*
2. *The cost of insuring and keeping insured through the term hereby granted the building and all parts thereof and the fixtures and fittings therein and all the appurtenances apparatus and other things thereto belonging and more particularly described in clause 5(2) hereof and also against third party risks and such other risks (if any) by way of comprehensive insurance as the Lessor shall determine including two years loss of rent and architects and surveyors fees*
3. *The cost of decorating the exterior of the building in accordance with clause 5(7) hereof*
4. *All charges assessments and other outgoings (if any) payable by the Lessor in respect of all parts of the building (other than income tax)*
5. *The cost of keeping any parts of the building not specifically referred to in this Schedule in good repair and condition*
6. *The fees of the managing agents for the Lessor for the collection of the rents of the flats in the building and for the general management thereof*
7. *All fees and costs incurred in respect of the annual certificate and of accounts kept and of audits made for the purpose thereof*
8. *The cost of taking all steps deemed desirable or expedient by the Lessor for complying with making representations against or otherwise contesting the incidence or the provision of any legislation or orders or statutory requirements thereunder concerning town planning public health highways street drainage or other matters relating to or alleged to relate to the building and for which the Lessee is not liable hereunder*

CONSULTATION REQUIREMENTS

18. The Respondent had left the building in early 2009. On 15 January 2009, water began to pour from the Respondent's flat through the ceiling of the middle flat, 38A, occupied by Miss C Summers. Damage was caused to her

property. The Respondent was reported as a missing person. On 25 July 2009, the police told the Applicant that the Respondent had been contacted and had confirmed that he was alive and well and residing in Derby; the police supplied the Applicant with a forwarding address.

19. It had been the intention of Mr Saunders, Miss Summers and the Respondent to purchase the freehold of the building together. Following the departure of the Respondent, and in the absence of any contact from him or knowledge of any address for him, the Applicant company, the shares of which are owned by Mr Saunders and Miss Summers, purchased the freehold on 7 May 2009.
20. The Applicant, during September 2009, sought and obtained four estimates for essential works required to make the building watertight.
21. On 22 November 2009, the Applicant (Mr Saunders) wrote to the Respondent at the Derby address and informed him of the change of ownership in the freehold, informed him of the sums due by him in respect of service charge, pointed out that repairs were required and gave detail of the work required to remedy the ingress of water. The letter told the Respondent that the Applicant was in the process of obtaining quotations for the renewal of the roof and that instructions would be given for this work to go ahead, with the cost being split equally between the three leaseholders by way of service charge. He was told that he would be informed once a satisfactory quote was obtained. He was also told about a structural problem with the rear bay, where water ingress had caused damage and where there was a danger of collapse of the bay and told that the cost of remedial work would also be raised as a service charge. Mr Saunders pointed out that the delay in informing the Respondent arose from not knowing his address.
22. On 23 April 2010, the Applicant wrote to the Respondent enclosing details of the proposed roof repairs and again pointing out that service charges were outstanding.
23. The quotation from the builder selected, Mr Mike Cross, was the lowest of the four quotations and the Applicant had taken steps so as to gauge the reputations of the various firms providing quotations. On 29 April 2010, the selected builder commenced repairs. The cost of the building work, which included a new roof and bitumen treatment to the bay, was some £3570, which we find, having seen for ourselves the completed work, is a reasonable cost.
24. Further internal works were required to the ceiling in the hallway, which had been damaged by the ingress of water. The Tribunal saw photographs of this damage. This work was completed by Dae's Plastering at a cost of £270, which appeared to us to be entirely reasonable for the work involved. Although the sum involved would call for consultation under Section 20 of the 1985 Act, the Applicant is seeking to recover only £90 from each of the tenants, so that a consideration of dispensation in relation to the consultation requirements would be otiose.
25. The Tribunal determined that the dispensation requested by the Applicant in respect of the major works be granted. In reaching that decision, we took account of the fact that the Respondent was an absent tenant, who had given no forwarding address and who appeared to have abandoned his property. The Applicant had made efforts to trace the Respondent and had given him relevant information, being notice of the damage and ingress of

water, notice that quotations were being sought and notice when a quotation had been selected, together with details of the quotation selected. We also took account of the fact that this was work which was clearly necessary so as to maintain the integrity of the building, that the Applicant had obtained four quotations, had selected the lowest of the four quotations and had made enquiries as to the reputation of those submitting quotations.

THE SERVICE CHARGE

26. **8 April 2009 to 25 June 2009**
The Applicant withdrew this claim.

27. **24 June 2009 to 25 December 2009**
The Applicant claimed £43.53 for insurance.
The Respondent has not responded in any way to these proceedings.
The Tribunal found this to be a reasonable charge payable by the Respondent. The Tribunal was satisfied that the Applicant had served notice of all of the service charges upon the Respondent.

28. **26 December 2009 to 23 June 2010**
The Applicant claimed £43.53 for insurance and £206.47 as a contribution towards the major works, a total of £250.
The Respondent has not responded in any way to these proceedings.
The Tribunal found this to be a reasonable charge payable by the Respondent. The contribution for the Respondent to the major works, which we have referred to above, is a sum total of £1280 (£3570 for roofing and other work + £270 for plaster work divided by 3).

29. **24 June 2010 to 25 December 2010**
The Applicant claimed £44.53 for insurance and £205.47 as a contribution towards the major works, a total of £250.
The Respondent has not responded in any way to these proceedings.
The Tribunal found this to be a reasonable charge payable by the Respondent for the reasons given above.

30. **26 December 2010 to 23 June 2011**
The Applicant claimed £44.53 for insurance and £205.47 as a contribution towards the major works, a total of £250.
The Respondent has not responded in any way to these proceedings.
The Tribunal found this to be a reasonable charge payable by the Respondent for the reasons given above.

31. **24 June 2011 to 25 December 2011**
The Applicant claimed £50.90 for insurance and £199.10 as a contribution towards the major works, a total of £250.
The Respondent has not responded in any way to these proceedings.
The Tribunal found this to be a reasonable charge payable by the Respondent for the reasons given above.

32. **26 December 2011 to 23 June 2012**
The Applicant claimed £50.90 for insurance and £90 as a contribution towards the cost of redecoration works (a cost of £270 – see our comments above about the fruitlessness of considering lack of consultation) to common parts during that period and £40 as a contribution towards the £120 cost of unblocking drains at the property, a total of £180.90.
The Respondent has not responded in any way to these proceedings.
The Tribunal found this to be a reasonable charge payable by the Respondent for the reasons given above and because we found the costs of redecorating for the common parts and unblocking of the drains entirely reasonable.

33. **24 June 2012 to 25 December 2012**
The Applicant claimed £50.90 for insurance.
The Respondent has not responded in any way to these proceedings.
The Tribunal found this to be a reasonable charge payable by the Respondent for the reasons given above.

BREACH OF COVENANT

34. The Tribunal finds it clear from examination of the lease that the Respondent is required to pay a ground rent, to pay a service charge and to keep the interior of his own flat in good and substantial repair and condition in accordance with Clauses 3(1)(a), 3(1)(b) and 4(4), and 3(1)(c)(i) respectively. It is apparent from what we have already found that this Respondent left his flat in early 2009, since when he has not responded to any correspondence from the Applicant and since when he has not paid any ground rent and has not paid any service charge, notwithstanding demands from the Applicant on numerous occasions for both ground rent and service charges. Our own inspection of the building did not involve entry to the Respondent's flat, but we could see into the flat from the corridor and we saw photographs of the interior. It was clear from the photographs and from what we ourselves observed that the Respondent's property is in a woeful state of repair. We could see substantial water damage and damp as well as structural damage to the windows. It was equally apparent that nobody had been resident within the flat for a substantial period. We accept the unchallenged evidence of Mr Saunders as to his own findings and the measures he has taken to date to persuade the Respondent to comply with the tenant's covenants for payments in the lease. That being the case, and on the basis of our own observations, we have concluded that there has been a breach by the Respondent of the covenants to pay ground rent and service charges and to repair in Clauses 3(1)(a), 3(1)(b) and 4(4), and 3(1)(c)(i) of the lease respectively.

General

35. The Tribunal has corrected some arithmetical errors evident within the submissions made to it on the second day of the Hearing.
36. The Tribunal advised the Applicant more closely to study the terms of the lease so that difficulties with future service charge demands could be reduced.

Signed

Andrew Cresswell (Chairman)

Date - 27 July 2012

A member of the Southern Leasehold Valuation Tribunal

Appointed by the Lord Chancellor