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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

Case No. CHI/00HN/LSC/2012/0053

**REASONS**

**Application :** Section 27A of the Landlord and Tenant Act 1985 as amended ("the 1985 Act")

**Applicant/Landlord :** Tyrell Investments Inc

**Respondent/Leaseholders :** Mr M Miller and Miss D Staples (Flat 1), Mr P Blake (Flat 2), Mr B A Scroggs (Flat 3), Mr M Pitman (Flat 4), Miss A J Beard (Flat 5)

**Building :** 2 Campbell Road, Bournemouth, Dorset, BH1 4EP

**Flats :** The flats in the Building

**Date of Application :** 12 April 2012

**Dates of Directions :** 23 April 2012

**Date of Hearing :** considered by the Tribunal on 23 July 2012 without a hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended, and in accordance with directions given by the Tribunal

**Members of the Tribunal :** Mr P R Boardman MA LLB (Chairman), and Mr K M Lyons FRICS

**Date of Tribunal's Reasons :** 23 July 2012

**Introduction**

1. This application by the Applicant/Landlord was as follows:
  - a. the Building was a 3-storey, semi-detached house built in about 1900, and converted into 5 Flats in about 1989, as shown on a photograph attached to the application
  - b. the service charges to be considered by the Tribunal were 2012/2013 internal and external redecorations
  - c. the Applicant/Landlord wished to establish the reasonableness of costs as the Applicant/Landlord would be paying for the work in advance
  - d. the consultation procedure under section 20 of the 1985 Act had been started
  - e. a tender analysis dated 20 February 2012 by John I Hill, contract administrator, confirmed that all tenders fully complied with his specification, recommended

acceptance of the tender received from Howards Building Refurbishment Company, and set out the tenders as follows :

|                        | Howards     | Symes       | Charlies    | Murphy      |
|------------------------|-------------|-------------|-------------|-------------|
| external redecorations | 1775        | 2150        | 2140        | 2302        |
| internal redecorations | 889         | 1180        | 1280        | 1225        |
| contingency sum        | <u>1000</u> | <u>1000</u> | <u>1000</u> | <u>1000</u> |
| total                  | 3664        | 4330        | 4420        | 4527        |

2. The Tribunal's directions provided for :
  - a. the Applicant/Landlord to serve a written statement of case and any additional documents by 25 May 2012
  - b. the Respondent/Leaseholders to serve a statement of case and any other documents relevant to matters in issue by 22 June 2012
3. The Applicant/Landlord served a statement of case and accompanying papers on 8 May 2012. The Tribunal has received no response from any of the Respondent/Leaseholders
4. Neither party has requested an oral hearing

#### **Documents**

5. The documents before the Tribunal are those mentioned in these reasons

#### **Inspection**

6. The Tribunal has not inspected the Building in the light of the issues in this case and in view of the full description of the Building, including the photograph, in the papers before the Tribunal

#### **The lease**

7. The only lease copied for the Tribunal is the lease of Flat 3 dated 7 March 1990. For the purposes of these reasons the Tribunal has assumed that the leases of the other Flats are in materially the same terms
8. The material parts of the lease of Flat 3 are as follows :

##### ***Clause 2 : Lessee's covenants***

- 2 *The Lessee hereby covenants with the Lessor to observe and perform the covenants contained in the Fourth Schedule hereto*

##### ***Clause 3 : Lessor's covenants***

- 3 *The Lessor hereby covenants with the Lessee to observe and perform the covenants contained in the Fifth Schedule hereto*

***Fourth Schedule : Lessee's covenants***

- (iii) .....to pay to the Lessor on demand a one fifth share :  
(a) of the actual costs incurred by the Lessor in performing the covenants on the part of the Lessor contained in clause 3 and clauses (i) (ii) (iii) (v) and (vi) of the Fifth Schedule hereto .....

***Fifth Schedule : Lessor's covenants***

- (i) at all times during the term:  
  
(B) to keep properly cleaned carpeted decorated and lit the common entrance halls and stairways  
  
(ii) as often as shall be reasonably necessary and at least once every five years paint all outside parts of the Building usually painted

**Statement of case on behalf of the Applicant/Landlord**

9. Mrs Mary-Anne Fenton, major works co-ordinator of Napier Management Services Limited, stated that they were requesting a decision of reasonableness of costs with regard to external and internal redecorations
10. The last external decorations had been completed on 3 September 2007. External redecorations were accordingly now due again. A surveyor had drawn up a specification, and gone out to tender
11. Notice 1 of the section 20 procedure had been sent to all the Respondent/Leaseholders on 2 May 2012, with the consultation period ending on 7 June 2012
12. The documents attached to the statement of case were as follows :
- a. the lease of Flat 3 dated 7 March 1990
  - b. the photograph of the Building
  - c. a certificate by John I Hill, contract administrator, of practical completion of minor repairs and exterior decorations at the Building dated 3 September 2007
  - d. an invitation by John I Hill dated 18 January 2012 to Howards to quote
  - e. a specification by John I Hill dated 18 January 2012
  - f. the tender analysis by John I Hill
  - g. the quotations by Howards, Symes, Charles, and Murphy
  - h. an undated carpet replacement specification for the Building
  - i. an estimate dated 19 March 2012 from Kimbers (Southern) Ltd to Napier Management Services Limited to replace the internal communal carpets :
    - with nosings and plywood sub-floor : £1405.53 plus VAT

- with no nosings and no floor preparation : £697.90 plus VAT
- j. a letter dated 2 May 2012 from Napier Management Services Limited to Mr Miller and Miss Staples of Flat 1 stating that internal and external decorations and minor repairs were now due, enclosing "Notice 1 which explains your rights under s20 of the Landlord and Tenant Act which you should take time to read", and stating that they would be invoiced after the work had been completed as part of their service charge
- k. a "notice of intention to carry out qualifying works" dated 2 May 2012 and headed "section 20 in accordance with Landlord and Tenant Act 1985", addressed to all leaseholders of the Building and stating that :
  - it was the intention of the Applicant/Landlord to carry out "internal and external redecoration and minor repairs
  - a description of the works to be carried out might be inspected, by appointment, at the Fordingbridge office of Napier Management Services Limited
  - the works were necessary because the Building was in poor decorative order and required redecoration to ensure that a good overall standard of decoration was maintained, and because works had to be undertaken in accordance with the lease
  - inviting written observations "within the consultation period of 30 days from the date of this notice. The consultation period will end on 7 June 2012"
  - also inviting them "to propose, within 30 days from the date of this notice the name of a person from whom we should try to obtain an estimate for the carrying out of the proposed works"

### **The Tribunal's findings**

13. Having considered all the evidence before it in the round, the Tribunal finds that :

- a. in relation to exterior decoration :
  - the Applicant/Landlord is liable to redecorate whenever reasonably necessary, and at least once every 5 years : paragraph (iii) of the Fifth Schedule to the lease
  - according to Mr Hill's completion certificate, the last exterior decoration was completed in September 2007
  - the Tribunal therefore accepts that decoration of the exterior of the Building should be carried out again in about September 2012
- a. in relation to interior decoration :
  - the Applicant/Landlord is liable to keep the common entrance halls and stairways properly decorated : paragraph (iii) of the Fifth Schedule to the lease
  - although neither party has requested the Tribunal to inspect the Building, the Applicant/Landlord has stated in the notice dated 2 May 2012 under section 20 of the 1985 Act that the Building is in poor decorative state, and the Tribunal has received no submissions to the contrary from any of the Respondent/Leaseholders
  - the Tribunal therefore accepts that it is now proper for the Applicant/Landlord to carry out interior decoration of the common parts again
- b. in relation to the proposed costs :
  - the specification appears to the Tribunal to be reasonable
  - the Applicant/Landlord has obtained four quotations, and has chosen the cheapest

- the cost of the cheapest quotation, namely the quotation from Howard, is in the opinion of the Tribunal, drawing on its knowledge and expertise in these matters, a reasonable sum for the works involved
  - in relation to the contingency sum of £1000 :
    - the sum appears at first glance to be proportionately rather high in comparison with the specified sums for decorations
    - however, the specification dated 18 January 2012 required, reasonably, as the Tribunal finds, the provision of a contingency sum for unforeseen works, and, if any unforeseen works were to arise, the Applicant/Landlord and the Respondent/Leaseholders could each make a further application to the Tribunal for an order under section 27A of the 1985 Act if they respectively had concerns about whether it was reasonable to carry out those works, whether those works had been carried out to a reasonable standard, and whether their cost was reasonable
- c. in relation to the recovery by the Applicant/Landlord of the costs of external and internal decoration works from the Respondent/Leaseholders :
- the Respondent/Leaseholders are liable pay on demand a one-fifth share : paragraph (iii)(a) of the Fourth Schedule to the lease
  - the costs exceed the limit referred to in section 20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”)
  - the liability of the Respondent/Leaseholders to pay their one-fifth share would accordingly be limited, unless the Applicant/Landlord complied with the consultation procedure set out in the 2003 Regulations
  - that procedure is in several stages
  - the notice dated 2 May 2012 complies with the requirements in the 2003 Regulations for the Applicant/Landlord to give notice in writing of its intention to carry out the works
  - although the only evidence before the Tribunal of service of the notice is the letter dated 2 May 2012 from Napier Management Services Limited to Mr Miller and Miss Staples of Flat 1, the Tribunal assumes that the Applicant/Landlord has also served notice on the other Respondent/Leaseholders if the Applicant/Landlord wishes its recovery of the proposed costs from the other Respondent/Leaseholders not to be limited by section 20 of the 1985 Act
  - the Applicant/Landlord will no doubt wish to comply with the remaining requirements of the 2003 Regulations if the Applicant/Landlord wishes its recovery of the proposed costs from the Respondent/Leaseholders not to be limited by section 20 of the 1985 Act
- d. in relation to the undated carpet replacement specification for the Building and the estimate dated 19 March 2012 from Kimbers (Southern) Ltd :
- there is no mention of carpets in the specification of external and internal decoration works dated 18 January 2012, the quotations by Howards, Symes, Charlies, and Murphy, the application to the Tribunal, the statement of case, or the notice under section 20 of the 1985 Act
  - although the section 20 notice includes a reference to “minor repairs” :
    - those words, by their ordinary and natural meaning, are not apt to describe the replacement of carpets

- the specification dated 18 January 2012 also used the words “minor repairs” in its heading, but did not mention carpets in the body of the document
- there is no indication in the papers before the Tribunal that the undated carpet replacement specification for the Building and the estimate dated 19 March 2012 from Kimbers (Southern) Ltd have been served on any of the Respondent/Leaseholders
- there is no indication in the papers before the Tribunal whether the Applicant/Landlord is proposing to obtain any other estimates, or to proceed with the works on the basis of nosing and plywood sub-floor (in which case the estimate dated 19 March 2012 from Kimbers (Southern) Ltd indicates that the cost will exceed the limit referred to in section 20 of the 1985 Act) or on the basis of no nosing or floor preparation
- the Tribunal accordingly is unable to make any findings in relation to carpet replacement

Dated 23 July 2012



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor