8086.

HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/29UQ/LIS/2012/0011

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

Applicant:	Mr C Kingsley-Smith
Respondent:	Mr M Stickler
Property:	Basement Flat, 30A Lansdowne Road, Tunbridge Wells, Kent, TN1 2NL
Date of Hearing:	3 May 2012

Appearances
Applicant
Mr C Kingsley-Smith Leaseholder

Respondent
Mr M Stickler Freeholder

Leasehold Valuation Tribunal
Mr I Mohabir LLB (Hons)
Mr A G Johns MA
Miss C Harbridge FRICS

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of his liability to pay and/or the reasonableness of various service charges for each of the years from 2006/07 to 2011/12 respectively.

2. The Applicant is the present long leaseholder of the Basement Flat, 30A Landsdowne Road, Tunbridge Wells, Kent, TN1 2NL ("the property"). The Applicant initially held the property pursuant to a lease dated 6 April 1981 granted by Terence William Searle and Rosemary Valerie Searle to Adrienne Blessing Strawson for a term of 99 years from 25 December 1980. However, the he was subsequently granted a lease extension dated 21 November 1994 by the then freeholder, Mr Brian Day, for a term of 125 years from the same date ("the lease").

3. The adjacent one third of the rear garden and a car parking space to the front of the building were also demised to the Applicant under a separate lease, also for the same term. The complaint made by the Applicant was that the lawyers did not "tidy" this lease thereby leaving communal rights to those grounds and his continued contribution towards their upkeep.

4. The Respondent is the present freeholder, having acquired that interest in November 1999.

5. The property is described as being a 2-bedroom self-contained basement garden flat in a semi-detached house, which has also been converted into 8 further one bedroom flats.

6. The heads of service charge expenditure challenged by the Applicant, which is the same for each of the relevant years is the management fee. The challenge was made on the basis that the costs incurred are not reasonable.

7. The Applicant separately challenged the cost of exterior redecorations carried out in 2011 on the basis that he had no contractual liability to pay the costs.

8. Although initially challenged, the Applicant agreed that the insurance premiums and gardening costs claimed by the Respondent in each year were reasonable.

The Law

9. The substantive law in relation to the determination regarding the service charges 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. Where the reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

Hearing and Decision

10. The hearing in this matter took place on 3 May 2012 following an inspection of the property earlier that morning. Both the Applicant and the Respondent appeared in person.

External Redecorations

11. The facts in relation to this issue were a matter of common ground. It seems that on or about 2001, the parties entered into a verbal agreement that the external render should be painted, for which the Applicant paid a

one third contribution of the total cost of £6,189.13, being the contractual rate set out in the lease. Apparently, neither party gave consideration to cost of future redecoration of the external render and how it would be met.

12. No further external redecorations were carried out until the summer of 2011 and the Respondent then demanded the sum of £2,078.35 from the Applicant, being his contractual one third of the actual expenditure incurred of £5,585. This included the sum of £4000 for decorating £1,300 for scaffolding, £220 for gutter repairs and £65 for cleaning of windows. An additional sum of £176.67 was charged by the Appellant as an administrative fee for managing the contract, which included carrying out statutory consultation in relation to the works.

13. The Appellant's primary submission in relation to this expenditure was that he had no contractual liability under the terms of the lease to pay any contribution by way of a service charge. He accepted that the cost of redecorating the woodwork to the windows of the property was recoverable. He contended that the lease did not contain any express provision that obliged the Respondent to redecorate the render and for him to pay a contribution for the cost of so doing. Alternatively, the painting of the render amounted to an improvement, the cost of which was also not contractually recoverable. He argued that his contribution of one third for the external redecorations carried out in 2001 was under a separate collateral agreement to do so, which fell outside the terms of the lease. In the alternative, if the Tribunal found against him, the Appellant submitted that a contribution of one third towards the cost was not reasonable because, for example, he should not have to contribute towards the cost of scaffolding to the upper floors when his flat was located on the lower ground floor.

14. The Respondent's bare submission was that the lease makes the landlord responsible for the maintenance of the building and the lease obliged the

Applicant to pay a one third contribution towards any costs so incurred. He said that he had assumed that the Applicant would pay a one third contribution for the cost of these redecorations, having done so in 2001.

15. By clause 5(6) of the lease, the lessor covenanted, *inter alia*, with the lessee to *"decorate the exterior of the building in the manner in which the same is at the time of this demise decorated or as near thereto as circumstances permit"*.

16. The Tribunal narrowly construed clause 5(6) to mean that the lessor can only recover the cost of decorating the exterior in the same manner at the time the lease was granted. At that time the exterior render of the building had not been painted. In the Tribunal's judgement, the agreement in 2001 to paint the exterior render, and for the Applicant to contribute one third of the cost, was limited to that single event and nothing else. It was a collateral agreement between the parties and did not vary the terms of the lease. It was, therefore, not necessary for the Tribunal to go on to consider if the painting of the render amounted to an improvement and whether costs incurred thereby were recoverable under the lease.

17. The Tribunal, therefore, found that the Applicant was not contractually liable under the lease to contribute towards the cost of painting the external render, but that he was liable to pay one third of one half of the cost of re-painting the remaining surfaces (£2,000) which were previously painted.

18. The Tribunal found that the Applicant was liable to pay a one third contribution to one half of the cost of the scaffolding. In that regard, in the view of the Tribunal it was reasonable to use scaffolding. In electing scaffolding over alternative means of establishing a suitable place of work (ladders etc), the Respondent had exercised reasonable and appropriate caution and care, as well as practical judgement. But the Tribunal was

also of the view that the cost of the scaffolding should be shared between landlord and tenant. The scaffolding was used for both landlord's works (painting the external render) and recoverable works (painting other surfaces). It would not be reasonable, in the view of the Tribunal, to treat the whole cost as a service charge item.

The Tribunal, therefore, found this element of the overall expenditure had been reasonably incurred.

19. As to the cost of repairing the guttering and cleaning the windows, the Tribunal concluded that these costs fell squarely with clauses 5(4) and (5) of the lease and were recoverable by the Respondent. The Applicant did not challenge the reasonableness of these cost and they were allowed as claimed.

Management Fees

20. The Respondent charged a management fee of £75 until the 2011/12 service charge year. In the following year, this was increased to £125. He provided a "menu" of services for which this charge was made.

21. The Applicant argued that the management services provided by the Respondent was limited to no more than arranging the buildings insurance and collecting the ground rent annually. In total, this would take no more than 1 hour. He submitted that the fees charges were unreasonable and contended for a figure of £20-30 per annum, being his one-third contribution.

22. In reply, the Respondent submitted that the management fees were reasonable because they were substantially cheaper than commercial rates charges by managing agents. In support, he relied on two quotes obtained from local agents ranging from £175-200 as a minimum charge. In addition, the Respondent said that he invariably visited the site about 1-2 times a week to carry out an inspection. However, he conceded that not a great deal of maintenance had been required in the last few years.

23. It was clear to the Tribunal that the management of the property was being carried out entirely by the Respondent. In real terms, the property required little or no regular management. This was largely reflected in the heads of service charge expenditure claimed, which were not recurring items on a regular basis. Accordingly, the Tribunal found that the management fee of £175 for the year 2011/12 was not reasonable and allowed the sum of £75 in respect of that year. The management fee of £75 claimed in relation to the preceding years was allowed as being reasonable for the same reasons.

24. Accordingly, on the basis of the findings above, the Tribunal determined that the Applicant's total liability for the service charges in issue is £1,076.

Costs & Fees

25. The Applicant had made an oral application at the hearing under section 20C of the Act. However, the Respondent stated that he was not seeking to recover any costs he had incurred in responding to this application. On this basis, the Applicant said that he would also not seek an order for the reimbursement of the fees he had paid to the Tribunal to have the application issued and heard. It was, therefore, not necessary for the Tribunal to consider or make any orders in relation to either of these matters.

Signed
Mr I Mohabir LLB (Hons)
Chairman
Dated the 26 day of June 2012