

LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/00AY/LSC/2012/0198

Premises: Heathwood Court, Emmanuel Road, London
SW12 0PD

Applicant: Heathwood Court Residents Co Ltd

Representative: Mr. G McKee (Flat 8, Company Secretary), Mr. M Sherrocks (Flat 9, Company Treasurer), Miss. M Baird (Flat 2, Chair of Residents)

Respondent(s): Mr. and Mrs. Morgan (Flat 3), Mr. A Buckley (Flat 4), Mr. V Smith (Flat 1), Mr. I Lynch (Flat 7)

Representative: As above

Date of hearing: 21st June 2012

Appearance for Applicant: Mr. G McKee, Mr. M Sherrocks, Miss. M Baird

Appearance for Respondent(s): Mr. and Mrs. Morgan, Mr. A Buckley

Leasehold Valuation Tribunal: Mr. L Rahman (Barrister)
Mr. Maloney FRICS
Mrs. Barrett JP

Date of decision: 19th July 2012

good and proper condition and to cleanse repaint redecorate replace and renew: the main structure of the Building including (but not by way of limitation) the foundations the tiles of the Roofs and the exterior and the load bearing walls".

17. The Tribunals interpretation of Clause 5.4.1 and Clause 7 of Schedule 1, which both sides agreed with, is that the Applicant is responsible for the roof tiles and the Respondents are responsible for the loft space (which includes all the roof beams and associated structures supporting the roof, including the felt under the roof tiles).
18. So far as maintenance costs is concerned, the "Particulars" states ***"Tenant's share of the Annual maintenance cost, All expenditure except that relating to the Roof: One Fifteenth part. Expenditure relating to the Roof (Nos. 1, 3, 4, 6, 7, 9, 10, 12, 13, and 15 only): One Tenth part. (Where 'Roof' means the whole of the structure of the Building above the level of the bottom of the joists supporting the ceilings of the upper floor of the upper maisonettes)"***.
19. Clause 4.2.5 states, with respect to the Respondents share of the annual maintenance cost for any year; *"The amount of the share is specified in the particulars to this lease"*. Clause 4.10.2 states *"The contributions of the Tenant and of the tenants of every other flat in the Building shall be held by the Landlord as a separate fund and on trust for the Tenants for the time being of the flats in the Building in proportion to the shares in which they respectively contribute to the annual Maintenance Cost"*.
20. The Applicant states the lease is clear. The "Particulars" states all 15 flats individually pay 1/15 of the annual maintenance cost except in relation to expenditure relating to the roof, in which case only the maisonettes individually pay 1/10. The Applicants' understanding of the meaning of the word "roof" includes all the fabric above the joists in the upper flats, which includes the tiles. The Applicant states the use of the word "joist" is not used in a technical sense but to simply delineate the boundary to show the costs that should be borne by the maisonettes only. The "Particulars" does not use the words "Roof Structure" but uses the words "the whole of the structure of the Building above the level of the bottom of the joists supporting the ceilings of the upper floor of the upper maisonettes", which makes it broader and includes tiles.
21. The Respondents argue the "Particulars" do not cover the whole roof but only part of the roof. It does not relate to all expenditure concerning the roof but is limited to expenditure concerning the "structure" of the roof, which does not include roof tiles. The Respondents state roof tiles are not part of the "roof" as defined in the "Particulars" and in Clause 5.4.1 and Clause 7 of Schedule 1. The Respondents state the "Particulars" refer to the expenditure concerning the "roof structure" and not everything roof related. The use of technical language, such as the word "joists" in the "Particulars", shows the word "structure" is intended to mean structure in a technical sense and would not include tiles and battens. The Respondents accept the costs of repairing and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (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.

Section 19

- (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 provisions 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.

Section 27A

- (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.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

he agreed with the contents of the letter, he did not personally accept what was written in the letter, but that was the general agreement. He stated that he had been lazy and not diligent and had passed over the meanings and consequences of the contents of the letter sent to the solicitor. Mr. Buckley stated he could not recall why he had agreed with the letter that was sent to the solicitor. The Respondents confirmed they had received copies of all the minutes referred to above and correspondence with the solicitor at the relevant time. The Tribunal note the Respondents had at the time agreed with the letter sent to the solicitor and signed the lease.

32. The Tribunal found the evidence from Mr. Sherrocks, one of the lessee's of the maisonettes, persuasive. The Tribunal noted that whilst financially it was not in Mr. Sherrocks' interest to support the Applicants interpretation of the lease, he nevertheless confirmed the Applicants argument. Mr. Sherrocks stated he did not attend the meetings in 2005 and 2006 but he was aware of what was going on. He read the minutes of the meetings and the information that was sent to him. He also spoke to Mr. McKee. His recollection was that under the old lease the suggestion was that the loft space belonged to all 15 flats. The solicitor confirmed the previous lease was ambiguous on this point. After much discussion, it was agreed the maisonettes would be responsible for the whole roof, including the tiles. He believed this was generous to the lower flats but given that the lower flats had agreed to the maisonettes having their respective loft spaces, it was the best way to go forward. He did not recall anyone differentiating between the roof structure and the tiles. He always believed the roof meant the tiles also.
33. Finally, the Tribunal note the timing of the dispute and the subsequent application to this Tribunal. The Respondents raised concerns regarding their liability to pay for the roof tiles only after it became apparent at the start of 2012 that the roof tiles may have to be replaced within the next 5 years at a cost of about £30,000. Issues were not raised earlier, particularly after payment for the roof tiles from the roof fund in 2010.

Application under s.20C and refund of fees

34. The Applicant did not make an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that had paid in respect of the application and hearing. There was no application for costs.
35. The Respondent did not make any application for an order under section 20C of the 1985 Act.

Chairman: _____



Date: 19/07/2012