

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Decision of the Eastern Leasehold Valuation Tribunal on an application under section 27A of the Landlord and Tenant Act 1985 in respect of 25A Grays Road, Slough, Berkshire, SL1 3QG.

Applicant :Mrs Zuhai Rooney

Respondent :Sylvan Limited

Appearances Mr Mark Jackson of Simon & Co for the Respondent

Case number :CAM/00MD/LSC/2006/0036

Date of Hearing 20 September 2006

Tribunal Members Mrs Judith H. Lancaster BA Barrister-at-Law
Chairman
Mr Richard Marshall FRICS FAAV
Mr Adarsh K. Kapur

INTRODUCTION

1. The Applicant, who is the leaseholder of 25A Grays Road, Slough, Berkshire, SL1 3QG (the "Property"), applied for a determination under section 27A of the Landlord and Tenant Act 1985 regarding one item of the service charges claimed by the freeholder in relation to the Property for the year 1998. The Applicant had always dealt with Mr Dhaliwal, of Simon & Co regarding the Property, and Simon & Co had previously stated in a letter of 18.11.04 to Kidd Rapinet, a firm of solicitors acting for the Applicant, that Mr Dhaliwal was the freeholder of the Property. Mr Dhaliwal was named as the Respondent in the application.

2. In the Respondent's Statement of Case Mr Dhaliwal stated that he made the Statement of Case on behalf of Sylvan Limited, who are the freeholders for the property, and that he had dealt with collection of rent and building insurance since 1998 on behalf of Sylvan Limited.

3. In her Statement of Case, the Applicant raised two additional issues;

a) Mr Dhaliwal had refused to supply details of the building insurance policy, (the "Insurance Policy"), relating to the building, (the "Building"), of which the Property is one part, as required by Nationwide Building Society, (the "Building Society"), with whom the Applicant wished to re-mortgage the Property

b) the Applicant claimed compensation for losses sustained as a result of failure to supply details of the Insurance Policy, and legal fees paid to the Applicant's solicitors, Kidd Rapinet.

THE PROPERTY

3. The Property is a first-floor flat in a mixed industrial/residential area near the town centre. The external walls are rendered and painted, and the roof is tiled. The Property has a ground-floor entrance, with steep stairs to a very small landing. To the left is a double bedroom, and to the right a living/dining room, leading to a small kitchen and a passage to the bathroom/WC. There is gas central heating, but no hot water, except from the electric shower in the bathroom.

THE HEARING

4. The Chairman asked the Applicant whether any of the losses or fees claimed in 2(b) above were sustained in connection with these proceedings. The Applicant stated they were not, and the Chairman explained that the Tribunal had no jurisdiction to make a determination regarding these sums, and therefore they would not be considered at the hearing.

5. The Chairman asked that the two remaining issues be dealt with separately.

Service Charge 1998

6. The Applicant's Case

- a) In 1998 the Applicant had been informed that the freeholder wished to install a kitchen and bathroom on the ground floor of the Building and that for this reason a plumber would be sent to look at the pipe-work in the Property. The plumber had asked the Applicant for £30.00, as an inspection fee, which the Applicant had paid. A further sum had been requested by Simon & Co, said to be due to repair works which had to be carried out in the ground floor premises, as a result of damage caused by a leak from the Property, the hire of a humidifier to dry out the affected areas, the installation of a new fan due to the original fan having short-circuited due to the leak and the redecoration to affected areas..**
- b) The Applicant had sought advice from the Citizens Advice Bureau ("CAB"), and by a letter dated 15.09.1998 to the CAB Simon & Co had agreed they would be prepared to accept £25.00, to include labour and materials, for works carried out due to damage caused by the water leak from the Property.**
- c) By a letter dated 30.09.98 Simon & Co informed the CAB that there had been an error in their letter of 15.09.98, and the figure should have been £250.00.**
- d) Ms Alison Hough, for the CAB, had subsequently spoken by phone to Mr Dhaliwal of Simon & Co, and agreed that the final payment would be the sum initially requested, £25.00. Ms Hough had subsequently written a letter to Simon & Co, dated 8.10.98, enclosing a cheque for £25.00, in full and final settlement.**

- e) However, Simon & Co had subsequently claimed that they did not accept the payment made in full and final settlement, and that there was still a sum of £250.00 outstanding in relation to repair works resulting from the leak. The first written evidence of this claim shown to the Tribunal was a letter dated 05.01.05. They also notified the Building Society by letter dated 16.03.06 that this sum was outstanding.
- f) The Respondent had never provided the Applicant with any evidence that the work had been carried out; no estimate, invoice or evidence of payment. The Applicant had never seen any evidence of a leak, or damage resulting, and confirmed that she did not know of any specific works relating to the alleged leak being done, but that works to the ground floor premises had been carried out during the period when the works resulting from the leak were said to have been done.

7. The Respondent's Case

Mr Jackson had no personal knowledge of this case. He had been instructed by Mr Dhaliwal of Simon & Co, who has been dealing with the Property on behalf of the Respondent, that there had been a leak, which required the repair works set out in 6(e) above. Mr Jackson had been told the £30.00 payment by the Applicant to the plumber had been for works done in the Property. He could provide no written evidence to confirm that the works had been necessary, had been caused by a leak from the Property, or actually carried out. He did understand that other building works were being carried out to the ground floor premises when the alleged leak happened.

Building Insurance

8 The Applicant's Case

- a) The Applicant had previously had her own building insurance policy, but, as agreed with Simon & Co, from 22.02.2005 the Applicant agreed to pay 25% of the premium for the Insurance Policy.
- b) The Applicant had paid her share of the premium for the year 2005/2006.
- c) She had written to Simon & Co on 24.02.06 asking how much she owed for the year 2006/2007, but had received no reply.
- d) When requested by the Applicant, to supply details of the Insurance Policy, as required under the terms of the Lease of the Property dated 03.09 1985 (the 'Lease'), Simon & Co had refused on the grounds that the Applicant's share of the premium for 2006/2007 was outstanding. This had resulted in the Applicant being unable to re-mortgage the Property.

e)

9 The Respondent's Case

- a) Mr Jackson believed the Applicant's letter of 24.02.2006 had been received, but the information requested did not appear to have been provided to the Applicant.

- b) **The Respondent's Statement of Case states that the Respondent would not provide an up-to-date insurance schedule relating to the Building until the outstanding premium had been paid.**
- c) **Mr Dhaliwal had instructed Mr Jackson to say to the Tribunal that the Applicant could come to the offices of Simon & Co to inspect the schedule and premium details for the Insurance Policy, but copies of any documents would not be provided until the Applicant had paid her share of the premium.**

Costs

10. The Applicant had made an application under section 20C of the Landlord and Tenant Act 1985 for the Tribunal to make an order preventing the Respondent from recovering costs incurred in connection with the proceedings. The Chairman asked Mr Jackson whether the Respondent intended to recover such costs in this way. Mr Jackson did not know.

11. The Applicant stated that she had not incurred any costs in connection with these proceedings, apart from the fee paid to the Tribunal.

THE DECISION

12. Under paragraph (2) on the second page of the Lease the Tenant is required to pay to the Landlord 'such sum or sums...as shall be a just and fair proportion of the amount the Landlord may from time to time expendin payment of....other service charges or outgoings whatsoever in respect of any part of the Building not included in...this demise'. This paragraph would cover items such as the disputed sum of £250.00 referred to in paragraph 6 above, but the Tribunal determined this sum had not been reasonably incurred, as required by section 19(1) of the Landlord and Tenant Act 1985, as Simon & Co had not produced any substantive evidence either that any damage had occurred as a result of a leak from the Property, or that the works in question had actually been carried out, eg an estimate of the cost of the works, an invoice for the cost of the works or evidence of payment for the works. Therefore this sum could not be included as an item in the service charge for 1998.

11. Regarding the Insurance Policy, having heard the evidence the Tribunal considered that it did not have jurisdiction regarding the issue raised, relating to the non-disclosure of details of the Insurance Policy but in light of the undertaking in 9(c) above, the Tribunal hoped that this matter would be swiftly resolved.

12. Regarding costs the Tribunal determined that Simon & Co, on behalf of the Respondent, had acted unreasonably in connection with the proceedings, in that;

- a) **they sent a representative to the Hearing who had no personal knowledge of the case;**

- b) they had provided no substantive evidence for the claim for the sum of £250.00.

13. The Tribunal considered it just and equitable in these circumstances;

- a) to grant the application under section 20C of the Landlord and Tenant Act 1985, and made an order that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining any service charge payable by the Applicant;
- b) to require the Respondent to reimburse the Applicant for the whole of the fee paid by the Applicant in relation to these proceedings i.e. £200.00, pursuant to the powers granted to the Tribunal under paragraph 10, Schedule 12, of the Commonhold and Leasehold reform Act 2002 and the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.



Judith H. Lancaster
Chairman
20 October 2006