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SOUTHERN RENT ASSESSMENT PANEL

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF AN APPLICATION UNDER SECTION 20ZA LANDLORD & TENANT ACT 1985

Case No. **CHI/29UL/LDC/2006/0002**

Re. *Flats 1, 2 & 3, 7 Grimstone Gardens, Folkestone, Kent, CT20 2PT ("the premises")*

BETWEEN

THE TRUSTEES VISCOUNT FOLKESTONE (1963) SETTLEMENT

("The Applicants/Landlords")

and

THE LESSEES

("The Respondents/Leaseholders")

Date of Application:	*5th January 2006*
Date of Tribunal's Directions:	*11th January 2006*
Appearances:	*For the Applicants:-*
	Mr. M. P. Mitchell & Ms. J. Goodburn (Both of Smith-Woolley & Perry, Managing Agents)
	For the Respondents:-
	Mrs. H. Hawking (Flat 1)
	Mr. R. Taylor (Flat 3)
Members of the Tribunal:	*J. S. McAllister, FRICS (Chair)*
	R. Athow, FRICS, MIRPM
	Ms. L. Farrier
Date Decision Issued:	*27th February 2006*

REASONS FOR THE DECISION

BACKGROUND TO THE APPLICATION

1. This application is made under Section 20ZA(1) of the Landlord and Tenant Act 1985 ("the 1985 Act") to dispense with the consultation requirements of Section 20 of the 1985 Act. That subsection was introduced by Section 151 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") which became effective on 31st October 2003. Regulations made under the 2002 Act gave the Leasehold Valuation Tribunal ("The Tribunal") powers to deal with such applications.

These powers are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI No. 2003 No. 1987) ("the Consultation Regulations") which came into force on 31st October 2003.

Briefly, the grounds for the application were stated to be the condition of part of the property, i.e. the urgent need for certain repairs, in particular the treatment of a recurrence of a dry rot fungal attack in timbers in Flat 1.

2. Where there are matters which require urgent attention there are powers under the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI No. 2003 No. 2099), ("the Procedure Regulations") which came into force on 31st October 2003, for the Tribunal to deal with matters very quickly. (In particular Regulation 14(4) allows the Tribunal in exceptional circumstances and without the agreement of the parties to give less than 21 days notice of any hearing of an application).

3. The Application was reviewed by a Procedural Chairman and in view of the exceptional circumstances and the urgent nature of the application as set out in the Application Form and the supporting papers, a decision was made to hold a hearing.

4. Directions were issued on 11th January 2006 requesting the production of various documents relevant to the matters contained in the Application Form and the supporting documents. The matter was set down for a hearing on 16th February 2006. Those Directions and details of the hearing were immediately sent to all the Lessees of the flats affected by the Application and if they wished to object to the Applications, they were invited to attend a hearing where they would have an opportunity of being heard.

INSPECTION

5. The Tribunal inspected Flat 1 of the premises immediately prior to the hearing. The landlords were represented by M. P. Mitchell, Esq., Property Manager of the landlords managing agents, Smith-Woolley & Perry, of Folkestone. Also present were Mr. and Mrs. N. Hawking, leaseholders of Flat 1.

Briefly the property (the Premises) comprised a semi-detached former three storey house apparently built about 100 years ago and constructed of brick and render elevations under a tiled roof. Both Mr. Mitchell and Mr. and Mrs. Hawking pointed out to the Tribunal evidence of rotten floor timbers, boards,

skirting boards, etc. in the Basement, Kitchen, and Cloakroom of the flat. Areas of plaster to the walls and ceilings had also been removed and a steel prop was in place providing temporary support to the ground floor.

No other tenants attended the inspection.

HEARING

6. The hearing took place after the inspection at the Salvation Army Hall, Folkestone. Those in attendance were as noted above. Mr. P. Barney, the other Lessee, did not attend the hearing.

APPLICANTS CASE

7. The Landlords were represented by Mr. Mitchell who produced a written submission containing copies of various documents. These were copies of various reports and estimates from Homeguard, a specialist contractor in the eradication of dry rot, rising damp, woodworm, etc. plus various letters from a firm of Loss Adjustors, Teceris. He had also provided a copy of the lease of Flat 1 dated 9th August 1989 (with the application).

Mr. Mitchell referred to the problem of dry rot starting around January 2004, when several specialist contractors were approached. Eradication works were carried out by Homeguard, the contractor chosen, and guarantees issued. Unfortunately, however, the dry rot infestation was not completely eradicated and reappeared in 2005. Homeguard provided a report and estimate of the latest recommended treatment, dated 14th November 2005. It is in relation to these works that the landlords are seeking dispensation of the consultation requirements set out in S.20 of "the 1985 Act".

He had written to the three leaseholders on the 4th January 2006 and to date Mr. and Mrs. Hawking had stated that they had no objection to the landlords application. However, he had to date received no response from the other two leaseholders. In his letter he had also proposed appointing an independent surveyor and arbitrator, under Clause 9 of the lease, a Mr. J. McMillan, FRICS, to supervise the proposed works and determine any disputes therefrom. To date the leaseholders had yet to agree this proposed appointment.

With regard to the repairing covenants in the lease, the landlords had yet to ascertain the responsibility for all the proposed works, between them and the leaseholders.

The Tribunal noted that Homeguard's estimate was for the sum of £5,952 plus VAT, plus insurance, £495 plus VAT.

Mr. Mitchell summarised the Applicants case by stressing the urgency of the proposed works, confirming that a letter dated 4th January 2006 had been sent to all three Tenants and that to date no Tenant had objected to the proposed works, either verbally or in writing.

He stressed that the nature of any rot as such that it can spread extremely quickly, given the right conditions. Consequently it was to the benefit of the landlords and the three lessees to treat it as soon as possible to limit the spread and minimise the cost of the remedial works.

RESPONDENTS CASE

8. Mrs. Hawking (Flat 1) indicated at the hearing that she supported the application to the Tribunal.

Mr. Taylor (Flat 3) produced at the hearing, a written submission dated 15th February 2006 settingout his various concerns about the matter. He concluded by stating, "..... it is my view that SmithWoolley & Perry must bear responsibility to remedy the dry rot without further recourse to the lessees, It is on that basis that I feel it is inappropriate for me to either agree or oppose their application."

CONSIDERATION

9. Following the hearing the Tribunal considered all the written and oral evidence submitted at both the inspection and the hearing. They were satisfied that they had sufficient evidence before them on which they could make a decision.

10. The Tribunal reminded itself of the statutory provisions. Section 20ZA(1) provides that:-

> 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 reaching a decision the L.V.T. will take into account all the relevant circumstances including:
>
> (a) whether the health, safety or welfare of any occupier of the subject or adjoining property will be prejudiced by delay; and
>
> (b) the requirements of natural justice - in particular:
>
> the duty of L.V.T. to give notice of the application to any respondent and any person who is likely to be significantly affected by the application under regulation 5 of the procedural regulations; and
>
> whether any respondent will have sufficient opportunity to prepare and/or present their case.

3. *Where a hearing is convened as a matter or urgency, the L.V.T. may consider that it is appropriate to make an interim determination in the first instance. It may also be necessary to make separate determination about those parts of an application that are urgent and at a later stage, those that are not.*

It was important to balance any inconvenience likely to be caused to the Lessees against the requirements of natural justice. It noted that all three Lessees have had the opportunity of commenting on the proposals, the cost of which they would all ultimately have to contribute to. The Tribunal noted that the general provisions of Section 20 were put in place by Parliament to specifically provide protection for Lessees against the actions of unscrupulous Landlords. The Tribunal reviewed the evidence and was satisfied that the Lessees had been made well aware of the details and costs of the proposed works. It was satisfied that from the evidence given, that to date no Lessees had objected to the proposed works either in writing or verbally at the inspection and hearing. The Tribunal's function in dealing with the current Application was to consider only if the consultation requirements should be dispensed with and nothing else.

11. The Tribunal noticed that the leaseholder of Flat 1 had a lease covenant (Clause 3(4)(a)) to pay the Landlord one third of the total costs incurred by the Landlord in carrying out certain of its obligations including the Landlords obligation to maintain and keep in substantial repair and condition the main structure of the building including the foundations and roof etc (Clause 4(1)). They also noticed that the leaseholder of Flat 1 had to keep in good repair the interior of the flat, including the floors etc. (Clause 3(5)(a)).

The Tribunal were satisfied that all or some of the proposed works were "qualifying works" within the meaning of S.20 of the Landlord and Tenant Act 1985.

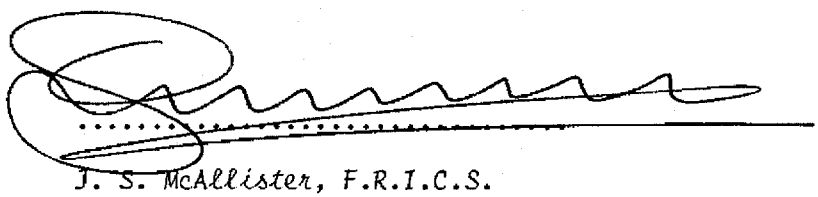
DECISION

12. After fully assessing all the evidence before it, the Tribunal decided that it was reasonable to make a determination to dispense with the Service Charge consultation requirements, i.e. it granted the Application. This decision would enable the specified works to commence as soon as possible. The Tribunal gave the decision verbally to the parties after the hearing having regard to the need for the repairs to be carried out as a matter of urgency.

In arriving at the decision the Tribunal expresses no opinion whatsoever about the reasonableness or otherwise of the estimate price or the standard of the proposed specific repair works. However, this decision relates to the whole of the proposed works as specified in the Homeguard report and estimate dated 14th November 2005. Furthermore the Tribunal's decision does not make any determination as to the responsibility of the cost of the works between the landlords and three lessees having regard to the repairing covenants in the lease.

Accordingly this decision would not prevent any party in the future making an Application to the Tribunal under Section 27A of the 1985 Act (Section 155 of the 2002 Act) with regard to the reasonableness of Service Charge costs and/or whether the standard of any works for which the costs are charged is reasonable.

Accordingly the Tribunal makes the Order attached.



J. S. McAllister, F.R.I.C.S.
(Chairman)

Dated this 27th day of February 2006.

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O R D E R

OF THE LEASEHOLD VALUATION TRIBUNAL

On Hearing the Landlord's Managing Agents and the Lessees of Flats 1 and 3, IT IS HEREBY ORDERED under Section 20ZA(1) of the Landlord & Tenant Act 1985 (The Act) (as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002) that dispensation to comply with the requirements of Section 20 of the Act is hereby granted in respect of all the proposed repair works to the Premises as set out in the report and estimate prepared by Homeguard (South East) Ltd dated 14th November 2005.

J. S. McAllister, F.R.I.C.S. (Chairman)

Dated this 27th day of February 2006