

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

Case No: CHI/00ML/LIS/2007/0015

**RE: FIRST FLOOR FLAT, 77 WILBURY CRESCENT, HOVE,  
EAST SUSSEX, BN3 6FH**

**Between:**

Mrs I Paulson ("the Applicant/Tenant)

Mr H Duddy & Ms K Glyde ("the Respondents/Landlords")

In the matter of Applications under:

- (a) Section 27A Landlord and Tenant Act 1985 (The Act)  
(Liability to pay service charges) and
- (b) Section 20(C) of the Landlord and Tenant Act 1985  
(Application for an order in respect of costs incurred in connection  
with the initial application and subsequent proceedings)

Date of the Hearing: 27th September 2007

Venue:

Maritime House,  
Portslade,  
East Sussex

Members of the Leasehold Valuation Tribunal:

Mrs H C Bowers MRICS Valuer Chairman

Mr C Harrison Lawyer Member

Mr T Sennett Professional Lay Member

Date of the Tribunal's Decision: November 2007

## Reasons

### 1. Introduction

1.1 An application under Section 27A of The Act was made on 27th March 2007. The Pre Trial Review held on 28th June 2007 limited the items that the Applicant wished to challenge under the Section 27A application, to the following:

- (a) Service Charge Year 25th December 2002 to 24th December 2003
  - i) Blockbuster Contracts Limited - Drain repairs £7,978.25
  - ii) Atlas Home Limited - Managing Agents fees £329.
- (b) Service Charge Year 25th December 2003 to 24th December 2004
  - i) Atlas Home Limited Managing Agents fees £352.50
- (c) Service Charge Year 25th December 2004 to 24th December 2005
  - i) Atlas Home Limited Managing Agents fees £204.88
  - ii) Peter Overill Associates Management fees £159.36
- (d) Service Charge Year 25th December 2005 to 24th December 2006
  - i) Decor8 - Redecorations of the publicways £495
  - ii) Kemp Town Flooring Co - supply and fit carpets to publicways £135
  - iii) Peter Overill Associates Management fees £376
  - iv) Additional maintenance for external repairs and redecorations - £9,640.38  
Arrears carried forward Ground Floor Flat £4,500, First Floor Flat £5,265.38
- (e) Budget for Service Charge Year 25th December 2006 to 24th December 2007
  - i) Health and Safety Survey and Fire Risk Assessment - £350
  - ii) Management Agents Fees - £385

1.2 An application under Section 20(C) was made by the Applicant for an order to limit the costs in respect of the proceedings arising from the initial

application.

1.3 A Section 20ZA application was made by Mr Duddy in respect of the following items:

- i) Repairs to the sewer pipes at the front of the property.
- ii) Redecoration of the common way.
- iii) Re-carpeting of the common way.

However, Mr Duddy withdrew this application and it was left to the Tribunal only to consider the applications under Section 27(A) and Section 20(C) of the Act.

## **2. Inspection**

2.1 The Tribunal inspected the property on 27th September 2007 and were accompanied by Mrs Paulson, Mr Lloyd, Mr Duddy and Mr Glyde. The subject property is an inner terrace house dating from the early part of the twentieth century. The house has been divided to provide two flats; one on the ground floor and another on the first floor. The front elevation of the house is brick under a modern concrete tiled roof. The first floor is painted render with some decorative timber work. The windows have timber casements. There is a small balcony area at the first floor level, above the front porch. There is a small garden to the front, but there is no off street parking. There are gardens to the rear and it was noted that there is a fire escape for the first floor flat leading into the rear garden. It was noted that the major works, that were mentioned in the papers submitted by the parties has not been carried out. However, Mr Duddy had replaced the rear back door and window to the ground floor flat, at his own cost.

2.2 Internally the Tribunal inspected the small entrance lobby that lead into the common hall way, described by the parties as the publicway. This was in good decorative order and the carpet appeared new and in good order.

## **3. Lease**

3.1 The ground floor flat is held as a freehold interest. The lease for the first



remit of the local authority, as the work was located in the road and not within the boundaries of the property or the footpath outside.

4.4 Mr Duddy indicated that a survey that had been carried out prior to his purchase of the property, identified there were some defects to the drains that required attention. The work had been carried out to the rear of the property, but Mr Duddy stated he had not sought to recover any contribution from the tenant. As to the work to the front of the house, the majority of this work was covered by an insurance claim and there was only the shortfall of £790 plus VAT, a gross sum of £978.25 to be paid. The managing agents had advised that as the amount was less than £1000, there was no need to go through the consultation process. Mr Duddy had managed this contract himself and had not received any further quotations. It was confirmed that no approach had been made to the local authority.

#### Managing Agents Fees

4.5 The Applicant had stated that when they had first acquired the flat the property had been managed by Atlas Home Limited, but that they had been disinstructed and the property had been managed on an informal basis by the previous freeholder and the Applicant. Mrs Paulson was dissatisfied with the quality of the current service and felt that the agents used by Mr Duddy had not dealt with their queries adequately.

4.6 Mr Duddy had appointed a managing agent to deal with the property as he did not have the time resource or the experience to deal with the management issues relating to the subject property. There had been some issues with sending correspondence to the Applicant. It was confirmed that amongst other duties the agents seek insurance quotations and arrange cover and arrange the preparation of the service charge accounts.

#### Publicway

4.7 Mrs Paulson confirmed that the cost of the carpet was no longer in dispute. However, with respect to the decoration works, she was not given details of when the work was to commence. In response to questions, it was confirmed that there was no dispute in respect of the quality of the work, it was purely a question of the cost of the work.

4.8 Mr Duddy had not seen the alternative quotation for £250 that was mentioned by Mrs Paulson in correspondence. Mr Duddy had obtained an alternative quotation that had put the cost in excess of £500 and therefore considered the figure actually incurred would appear to be reasonable.

#### Major Works

4.9 Mrs Paulson stated that the section 20 procedure was started, but that she had not had sight of the specification of works, until the tender from one of the contractors approached by the Managing Agents had been accepted. Mrs Paulson had expressed her concern about the cost of the work and had subsequently sent the tender document to two further contractors and had received lower tender prices. Although it was accepted that it was necessary to carry out some work to the property, it was felt that the scope of the work had been over-specified. A question was raised in respect of the Applicant's liability to pay for any work to the balcony area.

4.10 A meeting had been held between the parties and it was agreed that major works were required to the property. A specification was prepared by Peter Overill Associates and the consultation process had been commenced by September 2005. Mr Lloyd and Mrs Paulson had had opportunities to nominate a contractor and the timescales for making such a nomination had been extended on a number of occasions. An alternative contractor had been nominated, and this nomination was accepted, but the contractor suggested by Mr Lloyd and Mrs Paulson had failed to submit a tender by the closing date, even after being chased by the Managing Agents. A further contractor suggested by Mr Lloyd and

Mrs Paulson also failed to meet the deadline for a submission of a tender price.

#### Health and Safety Survey and Fire Risk Assessment

4.11 Mrs Paulson stated that there had been no correspondence in respect of this survey. Her telephone enquiries from the Fire Department indicated that the survey was not a legal requirement.

4.12 Mr Duddy referred to a letter dated 7<sup>th</sup> August 2007 from Peter Overill Associates that indicated that there was an obligation under the Regulatory Reform (Fire Safety) Order 2005, that required a fire risk assessment to be carried out.

### **5. Decision**

#### Drain Repairs - £7,978.25 - Blockbuster Contracts Limited

5.1 We were not given any evidence from Mrs Paulson that these costs were excessive. A significant element of the total bill was covered by an insurance claim and the fact that this claim was paid out is some indication that the work and the level of cost was not unreasonable. We noted that Mr Duddy did not seek any of the cost in respect of the drainage work to the rear garden. We considered the net sum that was sought from Mrs Paulson and taking these factors into account, we determine that the sum of £978.25 is reasonable for the work undertaken. Finally, although it appears Mr Duddy had failed to follow the section 20 consultation requirements applicable at that time and to which a statutory limitation of £1,000 would have applied. As this sum is higher than the amount claimed then this would have no impact upon the outcome of our decision.

#### Managing Agents Fees

5.2 Although Mrs Paulson had made some enquiries from local firms about the level of managing agents' fees in the area; no evidence had been supplied to the Tribunal. There was no evidence of complaints concerning the

performance of the managing agents and the lease clearly includes provision for a managing agent to be appointed, and this was not disputed by the Applicant. The Tribunal consider that it is reasonable for the respondent to appoint an agent to deal with the management issues. With the lack of any alternative evidence available to us, but using our own collective knowledge of fees we are satisfied that the level of fees incurred are reasonable.

#### Publicway

5.3 It was accepted at the hearing that the carpets were no longer in dispute. All that remained in dispute was the issue of the re-decoration, again the quality of the work was not disputed, Mrs Paulson's case related only to the cost of the work. Whilst Mrs Paulson stated that she had received a quotation for the work to be done for £250, there was no evidence before us on that point. The alternative quotation received by Mr Duddy did appear to indicate that the original quotation was reasonable. Relying on this information and given our inspection of the publicway, the Tribunal are satisfied that the sum of £495 was reasonably incurred.

#### Major Works

5.4 It would appear to us that the Landlord had given the Applicants many opportunities to suggest alternative contractors for the major works and the contractors nominated by the Applicant had failed to submit a tender, even though the deadlines had been extended. In the opinion of the Tribunal the Landlord had shown a great deal of patience. As to the question of the works being over-specified, we are quite satisfied that the Landlord and the Managing Agents had acted professionally. Whilst the specification was detailed, this was more of an issue of the full scope of the works being explained to a contractor and leaving no doubt as to what was required, rather than the nature of the works being over-specified. Certainly we were not provided with any evidence of the works being over-specified and in our expert opinion the specification seemed reasonable for the work that was anticipated.



5.5 As to the question of the cost of the work, the Managing Agents had received two tender bids that were quite similar in price. There were bids supplied by Mrs Paulson by two contractors, but as these bids were received well after the tender process had finished and the full details of the tender bids from the original contractors were available, then little reliance can be placed on this evidence. The Tribunal determines that the cost of the proposed major work is reasonable. This is of course subject to the provisions of Section 27A as to the costs actually incurred and the quality of the work once it has been carried out. There are provisions in the service charge mechanism that allows for the recovery of service charges in advance and it would appear that this proposed major works would fall under this element of the service charge. One final question that was raised and needs to be address is whether the Applicant is responsible for any element of work carried out on the balcony area. From the lease plan the balcony area is within the property that is demised to the tenant. As such the tenant is responsible to keep the property that is demised in "good and tenantable repair". It would appear that the landlord would have no repairing obligations for this area and would not be able to recover any items of expenditure in relation to this area from the service charge.

#### Health and Safety Survey and Fire Risk Assessment

5.6 Although Mrs Paulson objects to this item, no evidence was produced to show that the cost of the survey was excessive. Mr Duddy had stated that there was a legal requirement for this survey to be undertaken, although this point was disputed by Mrs Paulson. However, we are of the opinion that it is not unreasonable for a landlord to review his obligations and to make himself aware of the potential risks to a property and such actions would be seen as good management. Overall we are of the opinion that the work undertaken was reasonable and that the associated costs are also reasonable.

Section 20 C Costs

5.7 No representations were received from the parties on this point. Overall, the Respondent has been successful in this case and therefore we determine not to award an order under section 20 C that any costs incurred by the landlord in respect of these proceedings are not to be regarded as relevant costs to be taken into account in determining future service charges.

Signed  
Chairman

H C Bowers  
A member of the panel  
appointed by the Lord Chancellor