

3343

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of sections 27A and 20C, Landlord and Tenant Act 1985

And in the matter of Flat 2, 10 Royal Crescent, Harrogate HG2 8AB

Case number: MAN/36UD/LSC/2007/0012

BETWEEN

Applicant JOHN FRENCH

Respondent HYDE LANE PROPERTIES LIMITED

DECISION

1. For the reasons given below -
 - 1.1 the Applicant's share of the £399.50 fee of LHL Group Ltd invoiced to the Respondent's managing agents Rayners by invoice number 338 dated 26 December 2006 is properly included in the Applicant's service charge account for the year ending 31 December 2006
 - 1.2 the Applicant's share of Rayners' £353.68 fee described as "Surveyors department fees" in the Respondent's Statement of Income and Expenditure for the year ended 31 December 2006 is to be removed from the Applicant's service charge account
 - 1.3 no order is made under section 20C of the Landlord and Tenant Act 1985 ("the Act")
 - 1.4 no costs orders are made against either party.

The Application

2. Under section 27A of the Act, the Applicant lodged an application dated 24 March 2007 for a determination as to the service charges raised by the Respondent in the two years from 1 January 2006 to 31 December 2007,.
3. The application states that the Respondent is Rayners, which is a firm of managing agents acting for the freehold owner Hyde Lane Properties Limited.

It is clear that Rayners have been involved in the application solely as agents of Hyde Lane Properties Limited, which is therefore taken to be the Respondent to the application.

4. The Applicant holds a lease of the first floor flat at 10 Royal Crescent on Leeds Road in Harrogate ("the Property"). The lease creates a term of 99 years from 10 May 1985 and reserves an annual ground rent of £25. The Applicant is required to contribute two sevenths of the sums expended by the Respondent in providing the services set out in Clause 4 of the Lease. Clause 4 includes at (b) the obligation

"to keep maintained and repaired:-

(i) the main structure of the Property and in particular..... the outer and other main or loadbearing walls and the floor joists foundations roof chimney stacks gutters rainwater pipes and any paths drives and other areas boundary walls gates and fences thereof....."

5. The Property consists of a stone built Victorian terraced house with a pitched slate roof and stone chimneys. The Property is now divided into one apartment each on the ground and first floors and one larger apartment comprising the second and third floors. The three leaseholders share the benefit of a small front garden, rear yard, entrance hall, staircase, and a metal fire escape to the rear. The drawing rooms to the front of the ground and first floors have bow windows. At first floor level the Applicant's bow window is topped by a flat roof.

6. The Respondent's Statement of Income and Expenditure produced by Rayners for the year ended 31 December 2006 included the following fees -

"LHL Group Limited

Inspection, preparation and completion of structural report 399.50"

and

"Rayners Estate Offices

Fees in accordance with the terms of the lease including VAT 493.50

Surveyors department fees 353.68"

Of the "Rayners Estate Offices" fees, £493.50 represents an uncontested charge of £140 plus VAT per annum per apartment for management of the Property (excluding preparation of the annual financial statements which is undertaken by Elliott & Partners, a firm of accountants). The Applicant queried Rayners' additional "Surveyors department fees" of £353.68, for which no invoice has been disclosed to the leaseholders or produced to the Tribunal. He also queried the fee paid by Rayners to LHL Group Limited, a firm of building surveyors with an office in Harrogate. Other than these items, the Applicant did not dispute the items charged in the service charge accounts for the two years in question.

7. In his written submissions to the Tribunal, the Applicant referred to two areas of damp in his apartment, one above the bow window in the drawing room at the front and the other in a corner of the kitchen to the rear of the Property. The Applicant's (at this stage unsupported) estimate of the cost of internal repair and redecoration of these areas was £1250. However the parties agreed at the hearing that this figure does not form part of the service charges raised by the Respondent, and is not therefore within the jurisdiction of the Tribunal under section 27A of the Act.
8. In his written submissions to the Tribunal, the Applicant also mentioned various sums of money (ground rent and service charge contributions) which he had withheld from the Respondent while his queries remained outstanding. These retentions by the Applicant were not matters which the Tribunal was required to consider.
9. The Respondent, acting through Rayners, supplied a written response to the Application. The Tribunal also had the benefit of bundles of documents submitted by the Applicant and the Respondent. At the request of the Applicant, the Respondent did not attend and was not represented at the Tribunal's inspection of the Property and the Applicant's apartment, which took place on 21 August 2007. Later the same morning a final hearing was held at The Crown Hotel in Harrogate. The Applicant presented his own case.

The Respondent Hyde Lane Properties Limited was represented by its director Mr Battersby, and by Mr Munns of Rayners.

LHL Group Limited invoice

10. In November 2006 at the request of Rayners, Mr Robin Harper of the Harrogate office of LHL Group Limited inspected the roof of the Property and reported in writing. The reason for the report was said to be "*water ingress into the roof*". Damp patches had been reported by the occupier of the apartment on the second and third floors. The Tribunal were told that these damp patches were reported to Rayners for the first time in the autumn of 2006. In his report Mr Harper described the lead flashings to the chimneys above the areas of water ingress as being "*old and worn*", and recommended that the flashings to both chimneys be replaced with "*new Code 4 lead flashings, all in accordance with the Lead Sheet Association Handbook*". He estimated that the cost of the work would be in the region of £4500, of which a substantial part would relate to the provision of scaffolding. The repair has not yet been carried out.

11. The Applicant asserted that the cost of this report should not be included in the service charge account for two reasons. Firstly, he said that in the summer or autumn of 2004 Rayners' Mr Sawyer, a building surveyor working for Rayners, had inspected the roof of the Property at a time when other repairs were being undertaken, and that in his view Mr Sawyer should have noted the deterioration of the lead flashings and recommended their replacement while scaffolding was already in place. Secondly, the Applicant has established that Mr Paul Batchelor, who is a director of LHL Group Limited and has worked out of that company's Leeds office since the end of 2004, is related to the owners of and was formerly employed as a surveyor by C K Batchelor Limited, a firm of builders whose work on the Property in 2004 is said by the Applicant to have been defective, and to have caused the two areas of damp in his apartment. At the time of his application, the Applicant had not been provided with a copy of Mr Sawyer's report, and believed that LHL Group Limited had been asked to comment on C K Batchelor's workmanship. The Applicant argues that LHL Group Limited should not have been instructed in

connection with the Property because of a potential conflict of interests, that Mr Harper's report is not impartial, and that the leaseholders should not have to pay for it.

12. In response, the Respondent says that as there was no complaint or other evidence of any leak in 2004 when Mr Sawyer inspected the roof it was not appropriate at that stage for him to recommend replacement of the lead flashings. Further, the Respondent says that it was entirely ignorant of Mr Paul Batchelor's existence when LHL Group Ltd was instructed, and that it had no knowledge of any connection between that company and C K Batchelor Ltd.

13. The Tribunal finds that until damp patches were reported to Rayners in or about October 2006, there was no reason for the Respondent to recommend to the leaseholders that they pay for replacement of the lead flashing. Further, if Mr Sawyer had suspected the lead flashings when he inspected the roof in 2004, the investigation, costings and recommendations he would have had to undertake at the time in order to report fully to the leaseholders would very likely have cost something in the region of the fee raised by LHL Group Limited in November 2006. It was reasonable for the Respondent to instruct LHL Group Ltd in response to the report of leaks in the roof. If Rayners' in-house surveyors had undertaken this work themselves, they would have been entitled to charge the leaseholders for doing so, over and above their usual management charge. The Applicant does not complain of the amount of the fee, which the Tribunal also considers to be reasonable. Mr Harper's report does not relate to any work which C K Batchelor Ltd was asked to carry out at the Property in 2004, and therefore no conflict of interest arises by virtue of Mr Paul Batchelor's employment by LHL Group Limited. For these reasons, the fee for preparation of this report is properly included in the service charge for the year ended 31 December 2006.

Rayners' "Surveyor Department Fees"

14. The sum of £353.68 added by Rayners to the 2006 service charges was not fully explained to Mr French at any time prior to the final hearing of the

application on 21 August 2007. At the hearing, Mr Munns explained the charge by reference to a timesheet showing time expended by Mr Sawyer in 2006 which was charged at a rate of about £50 per hour in 6 minute units, and was said to represent work over and above the usual management functions undertaken by Rayners for their annual fee of £140 per apartment. The time record included arranging to have the common parts of the Property checked by ChemTest for the presence of asbestos in order to comply with new statutory requirements. Mr Munns confirmed to the Tribunal that Rayners had had the same checks carried out at all the properties they manage. ChemTest is a company based in Newmarket, Suffolk. Mr Sawyer's timesheet also included letters to surveyors (not identified) regarding inspection of the Property, brief meetings on 13 November and 4 December 2006, and the preparation of letters sent to the Applicant and the other leaseholders. The total fee represented 4.3 hours of Mr Sawyer's time.

15. The asbestos tests had to be carried out at the Property and all other properties managed by Rayners. The Tribunal does not consider that this work justifies a fee over and above Rayners' usual management charge. Any additional time spent on the Property, specifically on answering the Applicant's letters, was incurred at least in part because of the lack of information provided to the Applicant. For example, Rayners did not promptly supply the Applicant with a copy of LHL Group Ltd's report, has not provided any written record of the variation to the specification agreed with C K Batchelor Ltd in 2004, and did not provide any breakdown of their fee of £353.86. In these circumstances the fee is not a reasonable addition to the service charge account and the Applicant's share (which he has not paid) is to be credited back to him.

Costs applications


16. The Applicant applied for an order under section 20C of the Act. His section 27A application referred to payments and retentions which were not included in the service charge and were therefore outside the jurisdiction of the Tribunal. Nevertheless, the Respondent had to deal with those issues. His application to have the LHL Group Ltd fee removed from the service charge account (which he did not withdraw once he had seen Mr Sawyer's report)

was unsuccessful. He has succeeded only in relation to Rayners' additional fee. Therefore no order is made under section 20C of the Act. For the avoidance of doubt, this Tribunal makes no determination as to whether the Lease enables the Respondent to recover the costs of responding to Tribunal applications as part of the service charges.

17. The Applicant applied for reimbursement of fees amounting to £230 which he has paid to the Tribunal office in these proceedings. For the reasons given at paragraph 16 above, no order for reimbursement is made.

18. The Respondent sought an order for costs against the Applicant on the basis that the application was vexatious. The Tribunal finds that the Applicant's concerns were genuine although premature in that no service charges have (yet) been levied in relation to the cost of completing or remedying work undertaken at the Property in 2004. Moreover, the Respondent failed to provide the Applicant with any prompt or complete explanation of their own charges, the ambit and findings of the LHL Group Ltd report, or the jurisdictional issues arising from the application. For these reasons, no costs order is made in favour of the Respondent.

Dated 28 August 2007

.....

A M Davies, Chairman

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of sections 27A and 20C, Landlord and Tenant Act 1985

And in the matter of Flat 2, 10 Royal Crescent, Harrogate HG2 8AB

Case number: MAN/36UD/LSC/2007/0012

BETWEEN

Applicant JOHN FRENCH

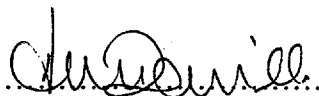
Respondent HYDE LANE PROPERTIES LIMITED

ORDER

On hearing the Applicant in person and Mr Battersby and Mr Munns for the Respondent, it is ordered that:

1. The Applicant's share of the £399.50 fee of LHL Group Ltd invoiced to the Respondent's managing agents Rayners by invoice number 338 dated 26 December 2006 is properly included in the Applicant's service charge account for the year ending 31 December 2006
2. The Applicant's share of Rayners' £353.68 fee described as "Surveyors department fees" in the Respondent's Statement of Income and Expenditure for the year ended 31 December 2006 is to be removed from the Applicant's service charge account
3. No order is made under section 20C of the Landlord and Tenant Act 1985
4. No order for costs.

21 August 2007



Chairman