

IN THE LEASEHOLD VALUATION TRIBUNAL

SECTIONS 19 AND 27A LANDLORD & TENANT ACT 1985

Case No	CHI/00ML/LSC/2007/0097
Property	14 Adelaide Crescent, Hove
Applicant	Coppercrest Investments Ltd represented by Dean Wilson Laing
Respondents	Lessees of 14 Adelaide Crescent (8 flats)
Members of the Tribunal	Ms H M Clarke (Chair) (Barrister) Mr R A Wilkey FRICS FICPD
Date of consideration	15 January 2008
Date of decision	17 January 2008

**1. THE APPLICATION**

The Landlord applied for a determination of whether a sum claimed from the lessees by way of advance payments for major works was reasonable and payable, and whether works carried out to the specification provided would be of a reasonable standard. The Application also asked for a determination of the amount that would be payable in respect of the work and by whom it would be payable.

**2. THE DECISION**

The sum of £35,000 demanded as advance payment on account by the Applicant from the Lessees was reasonable and payable by the Lessees in the light of the evidence placed before the Tribunal. The specification relied upon by the Applicant provided for a reasonable standard of works. The Tribunal was unable to make any determination as to the amount which would be payable in respect of the proposed works before the costs were incurred.

**3. THE LAW**

Section 19 Landlord & Tenant Act 1985 states:

*(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.*

*(2B) An application may also be made to a leasehold valuation*

*tribunal by a tenant by whom, or landlord to whom, a service charge may be payable for a determination—*

- (a) whether if costs were incurred for services, repairs, maintenance, insurance or management of any specified description they would be reasonable,*
- (b) whether services provided or works carried out to a particular specification would be of a reasonable standard,*  
*or*
- (c) what amount payable before costs are incurred would be reasonable.*

4. Section 27A Landlord & Tenant Act 1985 states:

*(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*

5. **THE LEASE**

The relevant parts of the Lease provide for the tenant to pay their due proportion of the moneys expended by the landlord in complying with its covenants, and in addition for the tenant to pay such sum “*as the Lessor or its agents shall in the absolute discretion deem appropriate ...on account of the Lessee’s liability for the next half-year*”. Payment dates are half-yearly in June and December. The proportions payable by the tenants of each flat are set out in the Recitals to the Leases. The Tribunal was provided with the Lease for Flat 3 for which the proportion payable is 17.75%. The landlord’s covenants include an obligation to “*remedy all defects in and keep in good and substantial repair and condition...the whole and each and every part of the Block which is not comprised in the Flat and not the subject of ...any lessee’s covenant..*” including in particular the roofs, gutters and pipes, main structure and exterior, windows excluding glass and moveable parts, and common areas.

6. **THE INSPECTION**

the Tribunal inspected the property immediately prior to the consideration. The property comprises a terraced 19<sup>th</sup> century building on 6 floors converted into 8 flats. Flats 4 - 8 are served by a lift, and Flats 1 and 2 in the lower ground floor have their own entrance. The exterior of the property was rendered. There were rear additions to the building with various different areas of roof, some being pitched and tiled and some being flat. The Tribunal’s attention was drawn to various areas of dampness internally

particularly in Flats 7 and 2 to which access was given by the tenants, and to defects in the guttering and the external render. The Tribunal did not inspect the roof areas due to severe weather conditions. The Tribunal noted that the building appeared generally to be in reasonable condition but that it appeared that work was required along the lines of the specification proposed by the Applicant.

## **7. THE CONSIDERATION**

Directions for a paper consideration were given on 31 October 2007, requiring any Respondent who wished to oppose the Application to send a detailed response providing in addition any proposed changes to the Schedule of works, any alternative works, and any reasons why the works should not proceed. The Tribunal received a letter from Mr John Vaughan the lessee of Flat 3 setting out certain objections to the application. A further direction was made providing for the matter to be considered only on the documents without an oral hearing.

8. The Applicant provided a bundle of documents containing the application, various items of correspondence, the Specification of Works, the Lease for Flat 3 (and stated that all the leases were in like form), a typical demand for payment on account, and a letter from the Applicant's surveyor Mr Stephen Hoadley BSc MRICS giving his expert opinion that the cost of the proposed work would be in the region of £35,000 - £40,000 plus VAT and offering his view as to the causes of dampness affecting the interior of the building. The Applicant explained that the consultation procedures laid down by statute would be followed, and at the time of consideration no tenders or costs estimates had been sought other than that provided by Mr Hoadley.
9. Mr Vaughan objected to the demand on several grounds. He contended that work was required to remedy a problem affecting his flat (he did not specify what) and objected to paying for structural work which he considered would not benefit his property. He raised an objection as to the share of the cost attributed to his flat, and questioned whether the work and the cost were justified in the absence of alternative quotes.
10. The Tribunal also received a letter from Ms Saunders (Flat 4) stating that she did not contest the Specification.
11. The Tribunal considered the Lease. It was clear within the natural meaning of the words that an advance payment on account could be demanded for works which would fall within the landlord's repairing obligations.

12. The Tribunal therefore examined the Specification. It was in standard detailed form and prepared by a reputable and experienced local firm of surveyors. It made provision for a contingency sum of £2,500 but otherwise did not contain costings. A survey would be required as to the extent of window and other joinery repairs. It also contained provision for work in respect of damp problems affecting the interiors. Items 6.1 -6.34 to Flats 7 and 8 provided for the installation of a damp-proof membrane and redecorating. Items 6.35 - 6.45 to Flat 4 and the common areas also provided for the installation of a damp-proof membrane and redecorating. In respect of Flat 2 and the communal area, items 6.46 - 6.47 allowed for making good following damp proofing work undertaken by others.
13. Mr Hoadley expressed his view that the dampness affecting Flats 8, 7 and 4 was probably penetrating dampness through the chimney stacks, through external walls, and/or through roof covering. The dampness affecting Flat 2 and the remainder of the lower ground floor may be due to some penetrating dampness and also to rising dampness. For that reason provision had been made for external and internal works and for a specialist to inspect for rising dampness.
14. The Tribunal considered this to be a reasonable approach in the circumstances. It took the view that the majority of work set out in the Specification would be likely to fall within the landlord's repairing covenant. However, the same could not be said with any certainty about all of the damp related work. The Tribunal's attention had been drawn to an extract from Woodfall's 'Law of Landlord & Tenant' at para 13.033 and the cases cited therein. It appeared to the Tribunal that the provision of a damp-proof membrane where one had not previously existed could amount to an improvement rather than a repair, which would exceed the scope of the covenant in the Lease. Moreover the cause of the damp penetration may be an attribute of the demised premises rather than a defect arising in an area which the Landlord was obliged to maintain. However, Mr Hoadley's opinion was that water penetration through areas within the Landlord's responsibility, namely roofs, walls and guttering, was a significant contributory factor. The Tribunal accepted this evidence as entirely reasonable at this stage of the process, and there was nothing to contradict it. A more certain assessment could be made when the cause of the dampness could be more certainly identified.
15. The Tribunal then considered whether the Specification taken as a whole provided for works to be done to a reasonable standard. This had not been disputed by any party and there was no other evidence on the matter. In the expert opinion of the Tribunal, supported by the inspection of the property, the Specification provided for appropriate works to be done to a reasonable standard.

16. On the evidence presently available, the Tribunal decided on the balance of probabilities that the majority of the proposed works would fall inside the scope of the landlord's repairing covenant. This satisfied the provision in the Lease for advance payment on account in respect of those works. The Tribunal then considered whether the amount demanded was a reasonable amount within the meaning of s19(2) Landlord & Tenant Act 1985. It reflected the lower end of the estimated range of costs net of VAT predicted by Mr Hoadley. In the expert view of the Tribunal the price estimated by Mr Hoadley was within an appropriate range for the work within the landlord's covenant.
17. Mr Vaughan had questioned whether alternative estimates ought to be provided but he had not provided any himself. Under the consultation process, fully priced quotes for the work will be provided, including by any contractors nominated by the tenants. The Tribunal did not consider it to be necessary for additional speculative estimates for the likely cost of the Specification to be obtained prior to putting it out to tender. The Tribunal observed that it was concerned in this determination with establishing whether an advance payment was a reasonable amount, not whether the costs actually incurred would be payable. On the evidence available, the Tribunal decided that the sum demanded by way of advance payment was reasonable.
18. The Tribunal was asked to determine by whom costs would be payable in respect of the Specification of Works. The advance payment was payable by the tenants under the terms of their Leases. Each Lease makes provision for the proportion due from the respective flats. Mr Vaughan objected that the works would not affect his flat, and that it was unjust for the proportions to be assessed according to square footage of the flats. The Tribunal did not have information about how the respective proportions were calculated, but the obligation of each tenant is set out as a term of the Lease and is not within the discretion of anybody, including the Tribunal, to adjust. Likewise, the covenants under the Lease provide (in the usual way) for all tenants to contribute to the maintenance and repair costs incurred by the landlord irrespective of the part of the building primarily affected in any particular instance.
19. The Tribunal was then asked to determine how much would be payable if costs were incurred in connection with the specified works. The Tribunal was unable to make any determination on this matter. There were as yet no quotes for works, no detailed costings, certain items were specifically listed as provisional, the consultation procedure had not been carried out, and the only evidence of cost

was the figure predicted by Mr Hoadley and intended as no more than a guide. There was no evidence of costs of any specified description within the meaning of s27A Landlord & Tenant Act 1985. In the circumstances no determination was made on this question.

Signed *hmc* ----- H M Clarke (Chair)  
Dated *16 January 2008* -----