

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No.CHI/00ML/LSC/2007/0101

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
UNDER Section 27A of the LANDLORD AND TENANT ACT 1985**

Property: Flat 10, Sycamore Close, Portslade, East Sussex,
BN14 2HY

Applicant: Mr Russell Coleman (tenant)

Respondent: Downland Housing Association (landlord)

Appearances: For the Applicant:
Mr Coleman in person

For the Respondent:
Ms L Walter, customer & revenue services manager
Mr M Robbins, asset managers

Application: 04 November 2007

Directions: 18 December 2007

Hearing: 30 April 2008

Decision: 27 June 2008

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA
Lady Davies FRICS
Mrs J Morris

Summary of decision

The landlord failed to comply with the statutory consultation requirements under Section 20 of the Landlord and Tenant Act 1985 and attendant Regulations in respect of qualifying long term agreement and qualifying works. Therefore the service charge contribution due from the tenant is limited to £250.

CHI/00ML/LSC/2007/0101

Fiat 10, Sycamore Close, Brighton, East Sussex BN14 2HY

Application

1. This was an application made by Mr Coleman on 04/11/2007 pursuant to Section 27A of the Landlord and Tenant Act 1985 ("The Act") for:-
 - (i) a determination of his liability to pay service charges of £4,186.33 representing the costs of window replacement including administration charges for the work;
 - (ii) whether the statutory consultation procedure under Section 20 of the Act were correctly followed;
 - (iii) whether the cost of £90.52 for the door entry system was reasonably incurred;
 - (iv) an order pursuant to Section 20C of the Act that the Respondent's costs in these proceedings are not relevant costs to be included in future service charges.
2. Directions were issued on 18 December 2007. The Applicant, Mr Coleman, complied with those Directions but the Respondent, Downland Housing Association, did not, on the basis that the relevant documents could not be accessed within the time limits. The matter came before the Tribunal on 30 April 2008.
3. By the hearing date the parties had reached agreement on the cost of the door entry system and accordingly this matter was not required to be dealt with by the Tribunal.

Jurisdiction

4. The Tribunal has power under Section 27A of the Act to determine whether a service charge is payable, and if so, the person by whom and to whom it is payable, the amount, and the time and manner in which it is payable. Under Section 19 of the Act the Tribunal must also consider whether the service charges in dispute have been reasonably incurred and whether the works or services to which they relate are of a reasonable standard.

Lease

5. The Tribunal had a copy of the lease of 10 Sycamore Close. The lease is dated 30 November 1988 between Downland Housing Association (the lessor) and Ronald Wallace and Karen Ruth Topping (the original lessees) and is for a term of 99 years from 25 July 1983 at a ground rent of £10 per year. Mr Coleman is the current lessee.
6. The lessee's obligation to pay service charges is to be found at Clause 5(b)(ii) and is "to pay on demand ... a reasonable proportion of the costs incurred by the Association (i.e. the lessor) in carrying out repairs to the property". The proportion applied by the lessor was 1/15. At Clause 7(a) the lessor covenants "to keep in good and substantial repair and condition the structure and exterior of the property" including "the outside of any window frames and doors".

Inspection

7. The members of the Tribunal inspected the property before the hearing accompanied by Mr Coleman and Mr Robbins. It comprised a one bedroom ground floor flat in a modern purpose built block situated in a residential area of Portslade. The flat was in good order. The windows were replacement UPVC double glazed type in good condition and working order.

Hearing

8. A hearing took place in Hove on 30 April 2008. Mr Coleman, the applicant tenant, attended in person. Ms Walter and Mr Robbins attended for the respondent landlord, Downland Housing Association ("Downland").

Facts

9. From the written and oral evidence and the documents supplied the Tribunal found the following facts:

- (i) In 2005 Downland embarked upon a programme to install replacement UPVC double glazed windows in some 660 of its properties.
- (ii) Between December 2005 and July 2006 Downland sent 3 letters regarding the window replacement to Mr Coleman, purporting to comply with the notice and consultation requirements under Section 20 of the Landlord and Tenant Act 1985 in relation to Qualifying Long Term Agreements (QLTA).
- (iii) The contractors appointed by Downland were Dorwin Ltd. Scaffolding was erected in December 2006 and the window replacement work was carried out to Mr Coleman's flat in mid January 2007. In general the work was carried out to a satisfactory standard. The replacement windows were an improvement over the previous aluminium frames.
- (iv) During installation some damage was caused to the interior of the flat which was not made good. By the date of the hearing Downland had offered and Mr Coleman had accepted £150 compensation to cover redecoration cost and the Tribunal did not consider this aspect further.
- (v) It was not clear from Downland's letters that the window replacement programme extended beyond Sycamore Close. This only became apparent when Mr Coleman requested a copy of the contract and specification in July 2007. He also received an invoice for £4,186.33. This was broken down as follows:

Flat windows	£1,838.32
Communal windows share	£ 733.83
Scaffold share	£ 407.25
Fascia share	£ 498.33
Administration fee	£ 100.00
Vat @ 17.5%	£ 608.60

- (vi) Mr Coleman disputed the amount but despite continued correspondence with Downland the dispute was not resolved and he applied to the Tribunal.

Cost of window replacement: the case for the tenant

10. Mr Coleman's case was set out in a clear and comprehensive Statement of Case which had obviously taken a good deal of time and effort to prepare. Essentially his case was twofold: first, the cost of the replacement windows as demanded of £4,186.33 was unreasonably high for the size of his flat and the number and type of windows, and secondly, he contended that Downland did not comply with the statutory consultation requirements.
11. In support of his first point, Mr Coleman contended that for the price charged, he would have expected a higher quality product and a high standard of workmanship, which he did not receive. He carried out a detailed analysis of the pricing of the window units, based on a table of prices per window type and size as compared to the windows supplied to his flat. The information was extracted from the tender document prepared by Downland containing its

required specification and a set of benchmark prices against which each contractor should tender. Those prices were for a fully fitted window.

12. By this method, Mr Coleman demonstrated that the price per window as supplied and fitted by Dorwin should have been 33.2% less for one window type and 18% for another. This was the discount Dorwin quoted against the benchmark price as a result of which they were awarded the contract. The discounts offered by all the contractors who tendered were contained in a table headed "Window Replacement Tender". Applying Dorwin's discounts, Mr Coleman calculated that the cost of the windows in his flat should have been £1,304.79 and his share of the communal windows for his block (flats 10-16) should have been £490.20. The fascia share should be removed altogether because it was not mentioned in the consultation process.
13. Other costs involved in the window replacement works were scaffolding costs and administration fees which Mr Coleman accepted were reasonable.

Cost of window replacement: the case for the landlord

14. At the hearing, Ms Walter and Mr Robbins admitted that a result of Mr Coleman's analysis, they had looked again at the costs charged by Dorwin and found that they had been over charged because the discounts had not been correctly applied. Without the work done by Mr Coleman and his attention to detail this would not have come to light. However, they did not entirely agree with his figures as they believed there had been some double counting.
15. At the request of the Tribunal, the parties discussed this further over the lunch adjournment and were able to agree the reasonable cost of the windows as follows:

Flat windows	£1,385.00
Communal windows share	£ 504.73
Scaffold share	£ 407.26

Statutory Consultation: the case for the tenant

16. On this issue Mr Coleman contended that Downland had failed to comply with the statutory consultation requirements contained in Section 20 of the Act. Initially Downland in its first letter of 20 December 2005 stated its notice of intention to enter into a qualifying long term agreement. The reason for this only became clear later when Mr Coleman was sent a copy of the tender document and discovered that the contract for window replacement covered some 660 properties, rather than just his block, and was for a period in excess of 12 months.
17. In his Statement of Case, Mr Coleman analysed the three notices sent by Downland in relation to the detailed procedural requirements set down in Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 [SI 3003/1987] ("the 2003 Regulations").
18. The first notice dated 20 December 2005 was headed "Notice of Intention to Enter Into a Qualifying Long Term Agreement: Section 20 Notice 1". Mr Coleman contended that Downland should have explained why this form of notice was necessary, rather than a notice for qualifying works, and differentiated between the two, as the letter referred to "replacement of all existing windows" as "services to be provided" rather than works. However, he accepted that the letter did include a statement that the landlord intended to enter into a QLTA, a brief description of the window replacement and the reasons why this was considered necessary (that "numerous doors and windows were beyond economical repair [*sic*]"). Mr Coleman did not respond to this notice as at the time he did not appreciate its legal implications and was content for the windows to be replaced.

19. The second notice was dated 16 May 2006 and was headed "Notice of Proposals to Enter Into a Long Term Agreement: Section 20 Notice 2". Mr Coleman submitted that this letter did not comply with paragraph 6(2)(a) of Schedule 1 of the 2003 Regulations because it did not contain adequate notification of the landlord's proposals in relation to the works, which are required to be prepared under paragraph 5. In particular, the notice was not accompanied by a copy of each proposal, nor did it specify a place and hours at which the proposals could be inspected. Regulation 5(4) provides that the landlord's proposals should include a "statement of relevant matters" (paragraph 5(4)) and where reasonably practicable a statement of the tenant's estimated contribution. The only reference to "the proposal" was: "that Downland appointed the two most competitive companies as indicated within the tender documents". Apart from being a wholly inadequate summary, the text was confusing, in that the use of the past tense suggested that Downland had already appointed two contractors even though the consultation process was not yet completed.
20. The only documentation attached to the letter was a "leaseholder observation response form", i.e. a table summarizing responses to the first notice, and a copy of the one-page "Window Replacement Tender" table of proposed discounts referred to at paragraph 12 above. This document was not at all self-explanatory and only made sense in the context of the whole tender contract, a copy of which was not supplied to Mr Coleman until July 2007 after he started requesting information about the whole window replacement contract.
21. Continuing with his application of the 2003 Regulations to the notices served by Downland, Mr Coleman observed that under paragraph 8, the landlord has a duty on entering into the QLTA to give written notice within 21 days stating its reasons for making the agreement or specifying a place where the reasons can be inspected together with a summary of responses from the notice of proposals. This step is not required where the agreement is made with the person who submitted the lowest estimate. In light of their mention of two contractors in the letter of 16 May it was not clear whether paragraph 8 applied or not.
22. However, Downland had on 3 July 2007 sent a letter headed "Notice of Reasons for making a long term agreement: Section 20 Notice 3", stating that Downland had entered into an agreement with Dorwin Ltd and Anglian Building Products Ltd. The date of the agreements was not given so it was not possible to identify whether the letter was issued within 21 days.
23. Finally Mr Coleman argued that Downland was further obliged under Schedule 3 of the 2003 Regulations to serve separate notice because they wished to carry out qualifying works under the QLTA. This stage of the consultation was omitted.

Statutory Consultation: the case for the landlord

24. No Statement of case had been prepared on behalf of Downland in response to Mr Coleman's detailed written submissions. Ms Walter and Mr Robbins initially asserted at the hearing that Downland's case was that it had complied with the consultation requirements. However, they had no submissions or legal argument in support, and no witness statement from the surveyor, Colin Walls, who had dealt with the window replacement contract and prepared the notices.
25. On hearing Mr Coleman's case and examining the documents with the Tribunal during the hearing, Ms Walter and Mr Robbins accepted that Downland had not properly complied with all the detailed consultation requirements. In particular, there was no copy of proposals, no adequate statement of relevant matters, and the documentation supplied was confusing and incomplete. It appeared to them that Mr Walls had attempted to follow the procedure and used templates for the purpose but had not provided sufficient detail.
26. Ms Walter and Mr Robbins explained that notice had been given for a QLTA because the contract entered into with Dorwin and Anglian was for window replacement over 3 years to all

Downland's properties. It was therefore a substantial and costly project. Dorwin was the contractor which carried out the work at Sycamore Court. Ms Walter and Mr Robbins accepted that it was only as a result of Mr Coleman's application and submissions that they had realized there was an error in the prices charged by Dorwin, i.e. that the correct discount had not been applied for the window types fitted. They had gone back to Dorwin and were in the process of agreeing a revised price. This would no doubt be to Downland's benefit, bearing in mind that only a small proportion of the cost of the contract would be passed on to long leaseholders by way of service charges, the majority of the affected occupiers being assured tenants.

Decision

- 27.** The Tribunal broadly accepted the submissions put forward by Mr Coleman. It was clear that although Downland knew that statutory consultation was necessary and had attempted to carry it out, it had failed to comply correctly with the detailed requirements of the 2003 Regulations, neither did it complete the full consultation process.
- 28.** The Tribunal decided that the window replacement contract was a QLTA because it was a long-term contract including the provision of works which were to take longer than 12 months. As such, under the 2003 Regulations, the landlord is required to carry out a two-stage consultation process: first, to consult on the QLTA under Schedule 1 Reg 5(1)), and second, in relation to the qualifying works to be performed under the QLTA, to consult further under Schedule 3 (Reg 7(1)). In taking this view the Tribunal had regard to the judgment of the Lands Tribunal reported as LRX/81/2007.
- 29.** As a result, the contribution payable by Mr Coleman by way of service charge towards the cost of window replacement is limited to £250, this being the prescribed statutory limit under Regulation 6 in relation to the qualifying works.
- 30.** If the statutory consultation procedure had been correctly followed the tribunal was prepared to accept the figures agreed between the parties as the cost reasonably incurred in respect of Mr Coleman's share of the cost of replacement windows to his flat.
- 31.** Finally, although the point was not raised at the hearing, the Tribunal would draw to the parties' attention in this decision that it is open to the landlord if it is so minded to make a retrospective application under Section 20ZA of the 1985 Act for a determination to dispense with the consultation requirements.

Dated 27 June 2008

**Ms J A Talbot MA
Chairman**

