



Residential
Property
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/OOML/LSC/2008/0046

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A & 20C OF THE
LANDLORD AND TENANT ACT 1985 (AS AMENDED)**

Premises: Flat 2 East Court 222 Portland Road Hove BN3 5QT

Applicant Mr A V Gravenor:

Respondent: Ms A S Glover

Appearances for Applicant: Mr K Pain , Counsel

Appearances for Respondent: In Person

Date of Hearing: 1 August 2008

Date of Decision:11 August 2008

Leasehold Valuation Tribunal: Mrs F J Silverman LLM

Lady Davies FRICS

Mr T W Sennett MA FCIEH

DECISION

The Tribunal declares that the Applicant was entitled to demand the sum of £1222.90 from the Respondent under the terms of her lease and that this sum is due and payable by the Respondent to the Applicant .

The Respondent 's application under s 20C is refused.

REASONS

- 1 The Applicant sought a declaration from the Tribunal in relation to unpaid service charges which he contended were due and payable by the Respondent under the terms of her lease.
- 2 This matter was transferred to the Leasehold Valuation Tribunal by Order of Brighton County Court dated 24 April 2008.
- 3 The principal issue to be determined by the Tribunal was the Respondent's liability to pay the sum of £1222.90 to the Applicant by way of service charge under the terms of her lease for the year ending 31 March 2007.
- 4 The Tribunal inspected the property (East Court 222 Portland Rd Hove BN3 5QT , 'the property') on 1 August 2008.
- 5 The Respondent is the tenant of Flat 2 East Court and the Applicant is the Landlord of the property (including West Court and the ground floor retail units, see below).
- 6 The property forms part of a block comprising retail units on the ground floor with flats occupying the first and second floors of the block. Including West Court, which is part of the same block, but not the subject of this application there is a total of 14 retail and residential units in the building.
- 7 The property is situated on Portland Road , a busy retail street in Hove . Public Transport in the form of buses and a railway station are nearby and the sea front is a short walk away. There is no on

site parking for the residential unit owners and parking in nearby streets is restricted.

- 8 The Tribunal inspected the exterior and common parts of the property
- 9 The property is of brick and tile construction. Although the structure of the building appeared to be sound several tiles were missing or broken on the roof and the property appeared to be in need of repair and redecoration.
- 10 The Tribunal also had access to the Respondent's flat (no 2) in order to inspect the rear of the property which overlooks a concrete yard at the back of the ground floor retail premises and which appears to be used for parking loading and storage purposes associated with the retail use of the ground floor of the building.
- 11 The Respondent did not dispute the amounts of the annual service charge which related to sums expended by the Applicant landlord, nor the standard of works done to the property. Her objections in relation to the amount claimed by the Applicant lay in that she disputed that she was liable under the terms of the lease to pay in advance for works which had not yet been done.
- 12 She accepted that she had been given notice of the sums due and the fact that the Applicant intended to carry out major works to the property. She conceded that these works were necessary and that the majority of the tenants in the property had already paid what had been demanded.
- 13 The Tribunal was asked to consider whether the sums demanded by the Applicant were properly payable under the terms of the lease under which the Respondent held her flat.
- 14 Paragraph 1 of Schedule 5 of the Lease clearly provides that the Applicant landlord is entitled to require payment 'to a reserve fund for future anticipated maintenance such sum in each year as the Lessor or its Managing Agents shall think necessary ...in so far as such expenditure or anticipated expenditure relates to repair maintenance and exterior decoration of those parts of the structure

of the building (excluding the roof)'...and ' all such other expenditure or anticipated expenditure'.

15 It is clear therefore that the Applicant landlord is entitled to recover from the tenants a sum in respect of future expenditure .

16 The Respondent argued that such sum should not include provision for the roof because of the specific exclusion in parentheses of the roof from the first part of the paragraph as quoted above.

17 However, the different treatment of the roof from the other parts of the structure has been made in the lease, not to exclude potential roof repairs from the reserve fund, but to differentiate between the proportions payable by the retail and the residential tenants. In so far as the service charge applies to the roof the proportion payable by the tenants of the property (including those of the ground floor retail units) the cost is shared by all 14 unit holders whereas the repairs affecting other parts of the structure and exterior (above the ceiling level of the shop premises) are divided by seven, representing only the residential tenants.

18 It is clear from the encompassing wording of the clause cited that future expenditure on the roof does fall within the ambit of the clause and thus is a sum which the Applicant is entitled to demand and recover from the Respondent.

19 The Tribunal therefore concludes that the Applicant was entitled to demand the sum of £1222,90 from the Respondent under the terms of her lease and finds that this sum is due and payable by the Respondent to the Applicant.

20 The Respondent also argued that the s 20 notices served by the Respondent in respect of the proposed works were defective. .

21 At the date of the hearing no contract had been entered into by the Applicant with a contractor to do any of the works, no works had been done at the property and no date had been set for the commencement of any works. The only issue before the Tribunal was whether the Applicant had the right to demand sums in advance in anticipation of such major works. The answer to this


question involved a determination of the relevant clause in the lease and was not concerned with any works to the property.

22 The Tribunal therefore did not consider the question of the s 20 notice to be relevant to the issue to be decided by it and declines to express a view on the validity or otherwise of the notice. There was insufficient evidence before it on which it could have made such a decision.

23 The Tribunal reminded the Respondent that if she wished to challenge the validity of the notice or the standard of works (when carried out) she would be able to ask the Tribunal to determine that matter in a separate application at a later stage.

24 The Respondent made an application under s 20C of the Landlord and Tenant Act 1985.

25 Having heard representations from both parties the Tribunal declines to make an order under that section. The Respondent had declined to pay sums which were properly due and payable by her causing the Applicant to commence proceedings against her. The Respondent's refusal to pay appeared to be based on her misunderstanding of the obligations imposed on her by her lease which she had agreed to when she had bought the property. Had she taken legal advice on the problem the proceedings could have been avoided. It is not reasonable in these circumstances to impose the costs of these proceedings on the Applicant.



Frances Silverman

Chairman

11 August 2008