IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UN/LSC/2008/0026

IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

AND IN THE MATTER OF ST MILDRED FLATS, 7 ETHELBERT TERRACE, MARGATE, CT9 1RX

BETWEEN:

MR TERENCE FOSTER

Applicant

-and-

(1) MS CHRISTINE GRAY
(2) MR H. MacCORGARRY

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This application is a renewal of an earlier application made by the Applicant pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") choose one a determination of the Respondents liability to pay and/or the reasonableness of service charges arising in the 2004/05 service charge year.

2. The service charges in issue form part of a course at major works carried out to the subject property that were completed in or about the beginning of 2005. The works were commenced approximately one year previously. The Tribunal originally considered this matter in its Decision dated the 30 January 2007 when it determined that of the Applicant could not recover a service charge

contribution greater than £250 because he had not carried out statutory consultation with the lessees in accordance with section 20 of the Act before the major works were commenced. In a subsequent application, the Applicant made an application for dispensation in relation to the consultation requirements and that application was granted by the Tribunal on 13 September 2007. Accordingly, the Applicant now renews his application for a determination in relation to the costs that are in issue. Those costs are:

(a) Redecoration of the front elevation of the property	£761.68
(b) Repairs to the fire escape, rear yard and roof	£245.53
(c) New railings to the front of the property	£264.00

These are each considered in turn below.

3. The Applicant is the freeholder of the subject property. The Respondents are the leaseholders of Flat 3, which they hold pursuant to a lease dated 5 November 1990. At the hearing, it was confirmed on behalf of the Respondents that their contractual liability to pay the service charges was not in issue. The Respondents only sought to content that the service charge costs claimed by the Applicant had either not reasonably been incurred or were unreasonable as to quantum. It is, therefore, not necessary to set out the relevant service charge provisions, which are, in any event, already set out at paragraphs 3 of the 4 of the Tribunal's earlier decision dated the 30 January 2007.

Inspection

4. The Tribunal inspected the subject property on 28 May 2008. The property is a late Victorian mid terraced house converted into 5 flats on the Seafront in Cliftonville. The building has rendered and colour washed elevations with mainly sash windows. There is a communal entrance hall and staircase to each floor. There is also a door from the hall giving access to the rear garden at first floor level and an external staircase which leads to the rear garden and then to the roadway at the rear.

Hearing

5. The hearing in this matter also took place on 28 May 2008. The Applicant appeared in person. The Respondents were represented by Mr MacCorgarry.

(a) Redecoration of the Front Elevation

6. The Applicant said that he had personally supervised and did some other work himself because at the time he was the owner of two of the flats in the building and was, therefore, personally liable for two fifths of the costs. He contended that the work had been carried out to a reasonable standard. No work had been carried out to the windows of the flats because they were demised to be individual lessees of the flats. As part of these works, the roof covering to the ground floor front bay window had been replaced. He said that the front elevation walls had been blasted and a stabiliser and undercoat finish applied before it had been redecorated.

7. Mr MacCorgarry contended that the preparatory work had not been carried out properly as evidenced, for example, by the rusting nail marks on the front door and the external rendering to the front of the building. He said he had noticed these problems approximately 6 months after the works had been completed. Other problems included the painting to the front door as evidenced by the drip marks. The Applicant accepted the presence of a few drip marks of paint on the front door.

8. Having inspected the property, the Tribunal concluded that the costs were reasonable. The rusting nail marks cannot be prevented in the medium term having regard to the position of the property on the seafront and be inevitable weathering it sustains. The rusting could only be prevented if annual maintenance was carried out at a greater cost to the leaseholders. In the Tribunal's judgement, the rusting could not be prevented and was no more than a purely aesthetic matter. As to the drips of paint on the front door, the Tribunal also concluded that this was also merely an aesthetic matter and, in any event, it was accepted on behalf of the Respondents that the front door have performed adequately and suffered from no other failings. Accordingly,

the Tribunal allowed these costs as being reasonable and payable by the Respondents.

(b) Railings to the Front of the Property

9. This work involved the installation of new metal railings at the front of the property. The Applicant said that the work had been carried out by a local firm. The new railings had been sprayed to prevent rust and then painted. The work had been carried out by one of the top firms in the area and he had followed their advice to leave the old metal stumps in situ. He submitted that the work had been carried out to a reasonable standard and at a reasonable cost.

10. Mr MacCorgarry said that the old metal railings that had been removed had simply been cut away leaving be metal bases protruding from the concrete foundations. These were also a cosmetic problem because they were now rusting and should have been covered with a proprietary paint. The new railings had only been given a very thin coat of paint, which was not appropriate for the seafront position of the property. The new railings had suffered from paint blistering and rusting approximately 6 months after they had been installed. He submitted that if they had been painted properly, the problem would not have arisen.

11. On inspection, the Tribunal found the new railings to be of a standard steel finish and were not galvanised. The Tribunal did not consider the non-removal of the metal stumps of the old railings to be material. To achieve this would have involved the demolition and removal of the concrete base or foundations and this would have resulted in greater costs to the leaseholders. Again, the Tribunal found the complaints made by the Respondents in relation to the old and new railings was of the cosmetic and can be addressed by regular maintenance of the railings with, no doubt, a cost consequence to the leaseholders.

(c) Repairs to Fire Escape, Rear Yard and Roof

12. The Applicant said that the fire escape, communal back door, rear gate and roof underneath the fire escape had all been repaired or replaced as a result of disrepair. In addition, he had personally built up the rear boundary wall. He submitted that the cost and standard of work were reasonable.

13. Mr MacCorgarry said that the only cost that was being challenged was in relation to be rear communal door leading on to the fire escape. He accepted that the other works carried out when necessary and that the cost and standard of work was reasonable. However, he contended that the rear door fitted was not in fact an external door and, therefore, suffered from disrepair in a fairly short period of time after installation. Had an external door been fitted, the disrepair would not have occurred. Moreover, insufficient coats of paint have been applied to the door to protect it from the elements. The deterioration in the condition of the door occurred approximately 1 year after it had been installed. This had been caused by water ingress to the joints and beading around the glass, which had resulted in the woods swelling and cracking. The Applicant accepted that the rear door had deteriorated faster than was expected. Nevertheless, he submitted that the cost was reasonable because it had lasted approximately 4 years.

14. When considering this issue, with the Tribunal had regard to the Applicant's admission that the incorrect rear door had been fitted. It had only lasted approximately 4 years and, on any view, was in need of replacement. Both parties had agreed that be cost of installing a replacement door would be approximately £260. Had the correct door been installed from the outset, in the Tribunal's view, it would have had a lifespan of approximately 15 years. The Tribunal accepted the Respondent's submission that the cost of replacing the door could have been avoided if the correct door had been installed in the first place. Accordingly, it disallowed the sum of £50, being one fifth of the estimated cost of installing the correct door originally. The Respondents liability, therefore, for these costs is £195.53.

Section 20C & Fees

15. The Respondents made an application under section 20C of the Act that we Applicant should be prevented from recovering through the service charge account any costs he had incurred in these proceedings.

16. Mr MacCorgarry submitted, in support of the application, that if be Respondents succeeded then the Applicant should not be entitled to his costs.

17. The Applicant submitted that he had made an offer as long ago as 10 April 2006 to the Respondents to settle this matter and that this had met with no response from them. Had they done so, then this application may not have been necessary and he would not have incurred fees totalling £250.

18. The Tribunal was satisfied that clause 2(7) (iii) of the Respondents lease allowed the Applicant to recover his costs and fees through the service charge account. In this clause, the tenant covenanted, *inter alia*, to:

> *"to pay all costs..... incurred by the Landlord of and incidental to the preparation and service of;-*
> *(iii) proceedings for the recovery of any of the rents reserved"*

Clause 1 of the lease reserves the service charge as further rent.

19. The discretion to be exercised by the Tribunal under section 20C is to make an order preventing a landlord from being able to recover his costs where it is just and equitable to do so in all the circumstances. In the present case, the Applicant has largely won and it would be unjust and inequitable for him to be deprived of his costs, if any, and fees incurred in bringing this application. The Tribunal also had regard to the fact that the Applicant had made an open offer to settle this matter on 10 April 2006 and if this had been accepted or used as a basis for a negotiated settlement, these proceedings could have been avoided. The Tribunal, therefore, directs that the Respondents reimburse the Applicant is fees of £250 pursuant to Regulation 9 of the Leasehold Valuation (Fees) (England) Regulations 2003. As to the Applicant's costs, if any, the amount of those costs are not known and are not relevant to the exercise of the Tribunal's discretion under this section. However, the Tribunal should make it

clear that in making no order, it does not also make a finding that the Applicants costs, if any, are also reasonable. If and when those costs are known to the Respondents and they are challenged as being unreasonable, they will have to form the subject matter of another section 27A application if necessary.

Dated the 14day of July 2008

CHAIRMAN.....

Mr I Mohabir LLB (Hons)