



Residential
Property
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/45UC/OCE/2007/0062

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 24 OF THE
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT
1993**

**Premises: 77 BAYFORD ROAD LITTLEHAMPTON WEST SUSSEX BN17
5HN**

**Applicants: Mr David Harwood Mr Lee Tinkler Mr Timothy Hughes Ian
Fraser**

Respondent: Waterglen Ltd

Appearances for Applicant: Mr Simon Taylor Solicitor

Appearances for Respondent: Did not appear and were not represented

Date of Hearing: 18 February 2008

Date of Decision: ...25 February 2008

**Leasehold Valuation Tribunal: Mrs F J Silverman LLM
Lady Davies FRICS
Mr A Mackay FRICS**

DECISION

- 1 The name of Lee Tinkler shall be removed from these proceedings.
- 2 Ian Fraser shall be added as an Applicant to this application.
- 3 The charge for fire alarms and floor repair charged at £211.50 (page 128) is limited to £75 which the Tribunal considers to be a reasonable sum.
- 4 The charge for the cost of a health and safety report (£490, page 117) is disallowed in total.
- 5 The advance payment for building works (page 120) amounting to £4,910.33 is disallowed in total.
- 6 The charges of £29.38 (page 117) and £146.90 (page 129) for cleaning are disallowed in full.
- 7 The Tribunal considers that the sum of £568.35 (page 129) is a wholly unreasonable sum for the fitting of three battery operated smoke alarms and declares that the total sum payable for this item should be £100, disallowing the balance.
- 8 For the year 2006 the Respondent had charged management fees of £600 (page 117) and for 2007 the sum of £622.98 (page 129). The Tribunal considers that the sum of £150 per year (£300 in total for all four flats for the two years in question) to be a reasonable sum and allows this amount, disallowing the balance.
- 9 The amounts allowed/disallowed above relate to the total sums chargeable to the four flats together and, for the reasons cited below, have not been broken down into individual amounts payable or chargeable to individual Leaseholders.

REASONS

- 1 The Applicants are the long Leaseholders of the four flats which comprise the dwelling house known as 77 Bayford Road Littlehampton West Sussex BN17 5HN (the property).
- 2 Having served notice on the Respondent freeholder to acquire the freehold interest in the property, they made an application to the Tribunal on 9 September 2007 for the Tribunal to determine the price payable by the nominee purchasers for the freehold acquisition, to approve the terms of the transfer and for the Tribunal to determine the amount of outstanding service charges payable by the Applicants.
- 3 Since the date of the receipt of the application by the Tribunal Mr Tinkler has sold his flat and is therefore no longer has an interest in the application and Mr Fraser has asked to be joined as an Applicant . An application was made at the hearing to remove Mr Tinkler's name from the application and to add that of Mr Fraser. That application was granted by the Tribunal.
- 4 At the date of the hearing the price payable for the freehold had been agreed between the parties and the Tribunal was not required to determine this issue nor to approve the form of the transfer.
- 5 The only issue in dispute between the parties remained the amount of service charges payable by the Applicants for the years 2006 and 2007.
- 6 The Tribunal inspected the property immediately prior to the hearing on the morning of 18 February 2008. The Respondent did not attend the inspection.
- 7 The property comprises a small terraced house of conventional brick and tile construction situated in a residential street close to the town centre and a short walk from the shore. The house was probably constructed in the late Victorian or Edwardian era and was subdivided into four self contained flats about twenty years ago.
- 8 There is no garage at the property but parking is available in the street and there are four parking spaces to the rear of the property.
- 9 The front garden was untidy and unkempt, the small rear garden appears to belong to the rear ground floor flat save for a pathway giving access to the parking area at the rear.
- 10 The interior common parts of the property were in a deplorable state of decoration and repair. Walls and ceilings were cracked and plaster was coming off the walls due probably to damp penetration.
- 11 A hole in the hall floor, which we were told had existed for over five years, had not been repaired except for an unsecured piece of chipboard which had been placed over the hole.
- 12 The carpet in the hall and on the staircase leading to the upper flats was in a poor condition.
- 13 The interior was dirty and neglected. There was no evidence that any cleaning had been carried out to the common parts and there was no electric socket in the common areas so that it would not have been possible for a cleaner to use a vacuum cleaner there.

- 14 Three domestic battery operated smoke alarms had been fitted in the hall and staircase area but there was no record of their having been tested.
- 15 A lean to partly covered in corrugated polythene sheets provided some protection to the rear side entrance of the property. We were told that part of the roof of this area had been removed some time ago to facilitate a redecoration of the exterior which had not taken place. The roofing had not however been replaced and the partial covering which remained was broken and in very poor condition. We were told that the pathway in this area flooded when it rained.
- 16 Part of Flat 2 comprises a single storey rear extension to the property and we briefly inspected the interior of this flat to be shown damp penetration coming both from a roof leak and from penetration from the outside walls.
- 17 The hearing of this matter took place at Chichester on 18 February 2008 commencing at 11.25am. The Respondent did not attend and was not represented at the hearing. At the Chairman's request the Tribunal clerk telephoned the Respondent's representative at 11.35am to enquire whether they were intending to appear at the hearing. The clerk reported that the Respondent's telephone was on an answer machine and that he had therefore not been able to communicate directly with them. The hearing therefore proceeded in their absence.
- 18 The Applicants said that they had paid service charges over the years, including advance payments for works which were promised to be done and payments into a sinking fund. Despite this no works had been done to the property and they had therefore sought to purchase the freehold reversion so that they could undertake the works themselves. They had complained frequently to the Respondent about the state of repair of the property but had received no satisfactory response. They were also concerned as to where their money had gone because despite requests to the Respondent, no proper accounts had ever been produced.
- 19 Directions had been made by the Tribunal following a pre-trial review on 12 October 2007 (which the Respondent did not attend) . However, these had not been complied with and the documents sent by the Respondent to the Tribunal for the hearing did not disclose sufficient information for the Tribunal to be able to determine what amounts had been paid or payable by each Leaseholder in the years in question.
- 20 The Tribunal adjourned to consider whether it should adjourn the hearing and issue further Directions requiring the Respondent to produce further documentation but decided that this would serve no useful purpose. The Respondent had been asked by the Applicants to produce proper accounts and ordered by the Tribunal to produce all relevant documentation. This they had failed to do. They had also failed to provide any proper response to the Applicants' application (except for agreeing the purchase price) or to attend the hearing. A postponement of the present hearing would inevitably delay the completion of the freehold acquisition

- and delay the Applicants' plans to repair the property which was in urgent need of attention .
- 21 The Tribunal decided therefore that it should proceed with the hearing in order to resolve in principal those service charge items which were in dispute, all of which had been properly incurred under the service charge provisions of the lease.
- 22 The first item in dispute was a charge for fire alarms and floor repair charged at £211.50 (page 128). There were no fire alarms at the property. The floor repair presumably relates to the placing of an unsecured piece of chipboard over the hole in the hall floor. The Applicants were prepared to pay £75 for this work which the Tribunal considers to be a reasonable sum.
- 23 The Applicants also disputed the cost of a health and safety report apparently commissioned by the Respondent at a cost of £490 (page 117). The Applicants had never seen this report, and no copy of it nor an invoice showing payment were included in the Respondent's documents. Since there was no proof that the report had ever been commissioned or paid for and no evidence that any works had been carried out to the property as a result of the report, it appears that the Applicants have derived no benefit from this purported expenditure and the Tribunal disallows the full amount of £490.
- 24 The Applicants had been asked to make an advance payment for building works (page 120). The total paid by the Leaseholders amounted to £4,910.33. No works have been done. The Applicants were concerned that this amount which should have been paid into the sinking fund appeared to have disappeared , the balance on the sinking fund having recently reduced from approximately £7,000 to approximately £2000. The 'missing' funds appear to have been used by the Respondent to pay for a contract report and fire risk assessment totalling £4,999.46 (page 128). The Respondent's documents did not disclose a copy of the reports nor any invoices showing payment for the reports. No copies of the reports had been sent to the Applicants who have therefore derived no benefit from them and will have to commission further reports themselves when they commence repairs. We find that this sum is therefore an unreasonable charge and the advance payment of £4910.33 is disallowed in total.
- 25 Page 117 of the Respondent's documents shows a charge of £29.38 for cleaning and page 129 a similar charge for £146.90. There was no evidence that the premises had been cleaned at any time and both these sums are disallowed in full.
- 26 Although a fire inspection had recommended that extensive fire safety precaution works should be undertaken at the property the only steps which had been taken by the Respondent was to fit three domestic battery operated smoke alarms in the hallway and staircase of the property for which they had charged £568.35 (page 129). The Applicants do derive some benefit from this work, even though it does not comply with current fire regulations and were prepared to pay £100 for it. The Tribunal considers that the sum of

£568.35 is a wholly unreasonable sum for the works actually done and declares that the total sum payable for this item should be £100, disallowing the balance.

- 27 For the year 2006 the Respondent had charged management fees of £600 (page 117) and for 2007 the sum of £622.98 (page 129). The Applicants felt that these sums were unreasonable in the light of the poor state of repair of the property and the Respondent's failure to carry out any works. They acknowledged however that the Respondent had done some minimal management in, for example, issuing service charge demands and maintaining some accounting records. They were prepared therefore to offer the sum of £150 per year (£300 in total for all four flats for the two years in question) which in the circumstances the Tribunal considers to be a reasonable sum and allows this amount.
- 28 The amounts allowed/disallowed above relate to the total sums chargeable to the four flats together and , for the reasons cited above have not been broken down into individual amounts payable or chargeable to individual Leaseholders.



Frances Silverman
Chairman
25 February 2008