RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.27A Landlord &Tenant Act 1985 as amended

S.20ZA Landlord &Tenant Act 1985 as amended

S.20C Landlord &Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CH1/29UG/LSC/2009/0093

In the matter of 13, 15 and 17 Harmer Street, Gravesend, Kent, DA12 2AP

Applicants (Tenants):

Dominika Collard & Spencer Collard (Flat 13A)
Rebecca Osmond (Flat 13C)
Paul Bassi (Flat 13D)
Monica Ewart (Flat 17A)
Seema Bassi (Flats 17B and C)
Mr. & Mrs. Olupitan (Flat 17D)

Respondent (Landlord): Mr. V.M Kapil

Date of Application: 15th July 2009

Tribunal Members: Mr. S Lal LL.M (Legal Chairman)
Mr. R Athow FRICS MCIArb
Mrs. L Farrier

Date of Hearing: 11th November 2009

Date of Decision: 13th November 2009

Application

1. The matter comes before the Tribunal for a Determination as to the reasonableness and indeed the liability to pay certain aspects of the service charges relating to the subject premises for the years 2008/09 and the current year 2009/10.

2. The Respondent in turns seeks dispensation from the Tribunal is respect of certain building works that comprise part of the service charge demand on the basis that they are emergency works and the Tribunal should grant such dispensation in respect of a failure to consult with the Lessees.

3. The Tribunal inspected the property on the morning of the hearing in the presence of Mr. Kapil and Mr. Ewart and Mr. Collard. The subject property forms part of a substantial terrace of Grade 2 listed Georgian properties situated in the centre of Gravesend. 13, 15 and 17 have been incorporated into the same freehold ownership and at some time in the past converted into self contained flats. There are three separate entrances (13, 15 and 17) each giving access to four flats with a communal hall and stairway. Additionally, there are thee flats, one in each of the basements of 13, 15 and 17, each with their own access from the rear. There is also vehicular access from another road to the rear and what appears to be designated parking for at least some of the flats. The Tribunal were able to observe during its inspection the poor state of care of the communal areas and also the fire alarm system which had been linked to the emergency lighting on the stairway.

4. The matter was listed for hearing at the Woodlands Centre, Swanley. In terms of the listed Applicant's, only Mr. Ewart and his father and Mrs. Bassi attended. The Respondent was present with his wife Mrs.Kapil. Neither party had legal representation but were content for the matter to proceed as litigants in person.

5. Directions had been issued by the Tribunal at a Pre-Trial Review held on 6th August 2009 when the respective parties had attended. On that occasion the Tribunal pursuant to its powers as set out in Regulation 12(C) of the LVT (Procedure) (England) Regulations 2003 recorded the matters in dispute that had been agreed and those that remained in dispute. The latter were as follows:

Year 2008/09	Unisystem Maintenance	£2127.01
	Cleaning Hallway	£2000
Year 2009/10	Unisystem Maintenance	£2500
	Sash Windows	£3480.00

The matters described as "sash windows" but which actually comprised both repairs to the windows as well as other general building work is the subject of the s.20ZA application by the Respondent, Mr. Kapil. Both parties had complied with Direction and the Tribunal had regard to the written and documentary evidence provided by both sides.

Unisystem Maintenance

6. This was the dispute over the fire alarm system. The Applicants stated that the fire alarm maintenance was very high for a system which had never really worked. In the written submissions of Mrs. Collard dated 14th September 2009, she said that the alarm system has been in fault mode for over 4 months and that the bulbs in the hallway blow. Mr. Ewart stated to the Tribunal that he himself had replaced the emergency lighting bulbs outside of his flat.

7. In reply Mr. Kapil said that he had tried to do his best with the fire alarm system and indeed he produced a letter from himself to Unisystem dated 2nd September 2009 in which he pointed out "that none of your service employees have inspected the inside of the flats over the many years in order to ensure that all the smoke alarms and other instruments like door closures are in working order." The matter had been left with the promise of a site visit by Unisystems which is still yet to take place.

Cleaning

8. The Applicants say that the communal parts have never been cleaned to their knowledge and indeed drew the Tribunal's attention to the Lease for the subject premises which at Clause 4b makes it the Lessees responsibility to clean the communal areas.

9. The Respondent stated in Reply that he had received a number of complaints in respect of the dirty state the communal areas (it seems that the complaints may have originated from assured shorthold tenants renting individual units). This lead Mr. Kapil to hire a cleaning company called Proletuk.com for the sum of £2000. He admitted, as evidenced by the emails in his bundle at page 64, that he was in potential dispute as to the nature and quality of this work.

Section 20ZA Dispensation

10. This was an application made in the instant case by the Respondent in respect of building and repair works carried out in June and July of 2009. Mr. Kapil confirmed that the amounts were as follows, £11800 in respect of building works, £1920 in respect of extra works carried out and £3480 in respect of the supply and fitting of replacement sash windows. His case was that he had been contacted by the Tenant of Flat 15 in June 2009 who reported a leak. Mr. Kapil had then gone onto to erect scaffold to investigate the leak and as the scaffold was up, he had done other repairs and renovations to the windows and roof.

11. He admitted that he had not consulted but referred to the emergency nature of the works and the issue of economy, which is the scaffolding, was in place in any event. He did admit that the Tenant who had complained of the leak had in fact had the matter resolved himself by the provision of a repaired flashing and Mr. Kapil had not been involved or indeed played any part in this matter.

12. The Originating Applicants state that dispensation should not in fact be granted because the work was not an emergency and indeed point to a letter dated the 24th April 2009 in which Mr. Kapil had cited a potential cost of between £15000-20000 in respect of repairs to the windows. In other words they doubt the emergency nature of any building works and point to the fact that the "leak" issue had in fact been resolved by the Tenant taking his own remedial action

The Tribunals Decision

13. The statutory provisions primarily relevant to applications of this nature are to be found in section 18, 19 and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract form each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes means:

"an amount payable by a tenant of a dwelling as part of or in addition to the rent-

a. which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
b. the whole or part of which varies or may vary according to relevant costs."

"Relevant costs" are the cost or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.

1. Section 19 provides that :

"Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:

a. only to the extent that they are reasonably incurred, and
b. where they are incurred on the provision of services or the carrying out of works only if the services or works are of reasonable standard

and the amount payable shall be limited accordingly."

2. Subsections (1) and (2) of section 27A of the Act provide that :

"(1) An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable and, if it is, as to-

a. the person to whom it is payable
b. the person by whom it is payable,
c. the amount which is payable,
d. the date at or by which it is payable, and
e. the manner in which it is payable.

Unisystems Fire Alarm

14. The Tribunal finds that none of the monies demanded by the Respondent are recoverable as a reasonable sum because the system has never been adequately maintained. The Tribunal finds that even Mr. Kapil in his letter of the 2nd September 2008 admits that the system has never been adequately maintained. This fortifies the Tribunals assessment of the Applicant's evidence that the system has been faulty with blown lights, lights not working and no regular or systematic maintenance so as to ensure that it has worked properly. The monies demanded are in respect of maintenance and the Tribunal finds that no such maintenance has in fact been carried out or carried out to a standard that would entail the Respondent charging the Lessees for the same as a reasonable sum.

Cleaning

15. The Tribunal discount in its entirety any sum charged in respect of cleaning services. The communal areas of the premises were in a poor state of cleanliness and the Tribunal accepts the evidence of the Applicant's that it has been they themselves who have carried out the cleaning. In any event under the terms of Clause 4(b) of the Lease, it is clearly described as a responsibility of the Lessees to clean the common parts and the Respondent in this case has taken on himself a liability he does not have, has never had and accordingly the Lessees are under no obligation to pay him. In any event as has been noted there is no evidence of any cleaning having taken place and indeed Mr. Kapil is no in dispute with the cleaning company. In the circumstances the monies demanded for cleaning are non-recoverable both under the Lease and in any event even if they were, wholly unreasonable as no cleaning was in fact done.

Section 20ZA

The Law

16. Section 20ZA(1) provides that where an application is made to a LVT for a determination to dispense with all or any of the consultation requirements in relation to qualifying works or qualifying long term agreement, the tribunal may make a determination if it is satisfied that it is reasonable to dispense with the requirement.

17. It is to be noted that in contrast with the equivalent power under the pre-CLARA section 20(9) the tribunal need only be satisfied that it is reasonable to dispense with the requirement and that the landlord acted reasonably.

18. To an extent the power to dispense is an exceptional power because it effectively seeks to override the statutory starting point that consultation will occur because Parliament has decreed that that is the core of the legislative scheme. The notion of reasonableness would cover both the need for the works (for example a situation of urgency) as well as a consideration of the degree of prejudice that there would be to tenants in terms of their ability to respond to the consultation if the terms were not met.

19. The Tribunal finds on the evidence before us that Mr. Kapil appeared to have planned in his mind the need to replace the sash windows and erect scaffolding for the purposes of doing so in April 2009, hence his letter suggesting the same to the Lessees at that time. The Tribunal finds that the work that was in fact carried out in June 2009 was the realisation of that intention. The "leak" which the Respondent referred to as constituting the emergency, appears to have been resolved by that individual Tenant replacing the defective flashing. The Tribunal is lead therefore to the inescapable conclusion that either Mr. Kapil intended all along to erect scaffolding and carry out repairs in June 2009 or having done so as part of an investigation into the roof, decided to carry out the building repairs because it was expedient for himself to do so as the scaffolding was in situ. In either scenario, the Respondent has not made out his case for an "emergency "situation" that would warrant dispensation, which is off course a potentially draconian step as it deprives tenants of the right to put forward their own quotes.

20. In the absence of consultation all that can be recovered from the Respondent is the statutory sum of £250 per lessee in respect of the works carried out.

Section 20C Application

21. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicants have succeeded in respect their submissions as to why dispensation should not be granted and also in respect of the service charges in dispute. The Tribunal directs that no part of the Respondent's relevant costs incurred in the application shall be added to the service charges as a just and equitable outcome in light of its substantive decision.

Summary of Decision

22. The Tribunal directs that no dispensation be granted under Section 20ZA of the Landlord and Tenant Act 1985, the liability of the Applicant's being limited to the statutory maximum of £250 per lease per flat which the sum is allowed to be charged in the absence of dispensation. The Respondent is not liable to pay interim service charges as they were not served in the prescribed form.

23. The Tribunal directs that no part of the Unisystems maintenance is payable as constituting an unreasonable sum and that no sums demanded in respect of cleaning are payable under the terms of the Lease.

24. The Applicant's succeed in their s.20C application and no costs of this litigation maybe added to any future service charge demands.

Chairman.....

Date..... 15th March 2009