RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.20ZA Landlord &Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CH/29UN/LIS/2008/0052

In the matter of 5 Augusta Road, Ramsgate, Kent, CT11 8JP

Applicants (Tenants): Mr. R G Green c/o Bell Denning, Solicitors

Respondent (Landlord): Ms. F Simmons

Date of Application: 17th December 2008

Tribunal Members: Mr. S Lal LL.M (Legal Chairman)
Mr. R Athow FRICS MCIArb
Mr. P Gammon MBE

Date of Decision: 3rd July 2009

Application

1. The Applicants applied to the County Court on 1st May 2008 for a claim for unpaid ground rent, unpaid service charge and unpaid proportion of costs relating to the building a wall in respect of 5 Augusta Road, Ramsgate, Kent, CT11 8JP (" hereinafter referred to as the Property") for the year 2007 and 2008. The County Court transferred the matter to the Leasehold Valuation Tribunal and the matter falls to be determined under section 20ZA of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine whether dispensation should be granted by this Tribunal in respect of the wall works and hence a liability to pay for the said works and what may be described as any interim service charges due The actual amount of service charge and the identity of the relevant parties has never been in dispute.

2. Directions were issued on 12th January 2009. Both parties to the proceedings were invited to send to the Tribunal written representations which they have both done. These are referred to below.

3. The Applicant was present at the hearing and was represented by Mr. Ratasingham who described himself as not legally qualified albeit he has advised and represented in other similar disputes. The Respondent was represented by Ms. Simmons in person. She was accompanied by her brother.

The Inspection

4. The Tribunal inspected the Property on the morning of the hearing. It is a terraced house on four floors built 150 years ago. It is understood to be Grade II listed. It is of traditional construction in brick and sliding sash windows. The type of roof could not be ascertained at the inspection as it was impossible to see any part of it due to the parapet walls to the front and rear.

Case for the Applicant

5. This was contained in a detailed Statement prepared by Bell Denning Solicitors which can be found in the Applicant's bundle. In oral submission, Mr. Ratnasingham explained that in about July 2006, the Applicant was made aware that the rear wall was in need of care and attention following what maybe described as a partial collapse. He said that because of the collapse some the remaining flints were in danger of collapse.

6. It appears that the Applicant then contacted his insurers and was told that they did not consider they were liable to remedy the collapse. There appears to have been no further attempt to resolve the matter following the initial loss adjusters report and the Applicant, in what is described as good faith, demolished the wall in November 2008. There appears to have been a limited attempt to ascertain whether the wall was in fact wholly the Applicant's responsibility or was rather a party wall. Be that as it may, Mr. Ratnasingham pointed to what he described as the wholly reasonable nature of the demolition.

7. It appears that the Applicant's wrote to Mr. Nick Dermott of Thanet District Council on 25th November 2006 regarding specifications for the works to rebuild the wall, the intention being to rebuild using blocks as opposed to a flint construction, only to be told by the latter that the wall was in fact listed and that it had to be rebuilt in the exact specification as the original.

8. The first estimate was obtained in December 2006 and a second in January 2007. Both of these were deemed excessive by the Applicant. Over the months of April and May 2007, under pressure of enforcement action by Thanet District Council, an acceptable quotation was found from S.B.S builders at a cost of £2900 and work was commenced.

9. The Applicant paid for the works out of his own account and the Respondent was duly charged the sum of £1396 being her share as the Lessee of two of the flats in the subject Property.

10. It was accepted in the written submissions and in oral submission that the Applicant was unaware of the duty to consult under s.20 of the Act, the Applicant being described as effectively an amateur (in a non-pejorative sense) landlord. It was now advanced that he had in fact acted in the spirit of the legislation by obtaining a number of quotes and eventually going with the cheapest and that no prejudice had been caused to the Respondent. His conduct was described throughout as reasonable and this was advanced as the benchmark against which the Tribunal needed to assess the s.20ZA dispensation.

11. In respect of the interim service charges the Tribunal was directed to the Fourth Schedule of the Lease at Clause 4 where the Tenant was due to provide a twice yearly interim service charge amount, in effect for what Mr. Ratnasingham described as a sinking fund for overall maintenance.

12. Finally the Applicant invited the Tribunal not to make an order under S. 20c of the Act relying on Clause 2 (7) (iii) of the Lease as entitling them to recover their legal fees in relation to these proceedings, pointing out their obligation to continue with the Application at great cost to themselves and they have acted at all times fairly and reasonably.

The Case for the Respondent

13. Ms. F Simmons pointed out that the wall itself should have been maintained historically and that it was not, this contributing to the collapse. She says in her Statement of Reply that it was she who had told the Applicant of the need for listed building consent and the need to preserve the flints.

14. She says she was unaware of the demolition of the wall in November and that no surveyors report had been obtained prior to the demolition. She raises the possibility of repair rather than demolition. She says that the time of three months from the initial partial collapse to the demolition invalidates the assertion made that the wall was demolished for safety reasons. She says that no contact was made by the Applicant in the seven months before the start of enforcement action. She says that the Applicant did not act reasonably at all.

15. In respect of the interim service charge amounts the Respondent says that she has withheld the service charge in retaliation for the failure of the Applicant to offer her the freehold under Clause 2 of the Lease after the sale of the fourth and final flat. She said that the sale had completed in November 2007 and the freehold purchase had in fact only been offered a few days prior to the present Tribunal hearing.

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 purpose 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.

The Tribunal's Decision

19. The Tribunal are satisfied from the chronology that there was no degree of urgency to the works. The partial collapse is agreed to have happened in July 2006 and yet the wall was not demolished until November 2006 and indeed was not rebuilt (the actual cost levied on the Respondent) until some nine months later. There is no evidence before the Tribunal that any work was done to the wall between July and November, for example making it safe and then engaging in proper consultation. The Tribunal are satisfied that repair work to the wall as opposed to complete demolition may well have been a potentially viable option and indeed ultimately a cheaper one. Proper consultation may well have disclosed this alternative. The impression given is that the Applicant, having been rebuffed in the insurance claim, decided to demolish the wall and replace it with a block construction to do away with problems inherent in flint construction at this particular location.

20. The Tribunal are unable to accept the argument that the Applicant acted in the spirit of the legislation. The decision of this Tribunal must be one lawfully open to it and the question is either he acted within the legislation or did not. To invite concepts of "acting in the spirit of the legislation" because he was ignorant of the duty to consult would negate the primary function of this Tribunal as to whether it is "reasonable" to dispense within the meaning of Section 20ZA.

21. It is a truism, often repeated to the point of cliché, that ignorance of the law is no defence and the Tribunal are unable to accede to the argument that because the end result was the cheapest alternative anyway, no prejudice has been caused to the Respondent.

22. On the contrary the Tribunal are satisfied that the Respondent may well have benefited from a period of consultation, for example the repair option or indeed the consultation may well have provoked further enquiry as to who owned the wall in the first place. Both of these could ultimately have been of benefit.

23. 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 which would amount, as the Respondent is the lessee of two flats to a figure of £500.

24. In respect of interim service charges the Tribunal are satisfied that they were not issued in the proper form until April 2009, the Lease requiring annual audited accounts and therefore the interim service charge demands prior to this date are not recoverable in any event.

25. The Tribunal notes that the Applicant has failed to offer the freehold until quite recently and this is something he must have done in the mandatory sense in at least November 2007 according to Clause 2 of the Lease.

26. 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 Respondent has succeeded in respect of her submissions as to why dispensation should not be granted and also in respect of interim service charges. The Tribunal directs that no part of the Applicant's relevant cost incurred in the application shall be added to the service charges as a just and equitable outcome in light of its substantive decision.

Decision

27. The Tribunal directs that no dispensation be granted under Section 20ZA of the Landlord and Tenant Act 1985, the liability of the Respondent being limited to the statutory maximum of £250 per lease per flat which is the sum allowed to be charged in the absence of dispensation. The Respondent is the Lessee of two flats, therefore the maximum she can lawfully be asked to pay is £500.

28. The Respondent is not liable to pay interim service charges as they were not served in the prescribed form.

29. The Respondent succeeds in her s.20C application and no costs of this litigation maybe added to any future service charge demands.

Chairman.....

Date.....3/7/09.....