RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

Section 27A Landlord and Tenant Act 1985
Application for a determination of liability to pay service charges

DECISION AND REASONS

Case Number:	CH1/00HE/LIS/2010/0054
Property:	Beach House Portmellon Cove Portmellon Mevagissey St. Austell Cornwall PL26 6PN
Applicant :	Alma Margaret Scholes
Respondents :	Glen Adam Hellings and Thomas David Hellings
Date of Application:	2nd June 2010
Date of Hearing:	18th October 2010
Appearances:	Alma Scholes (the Applicant) Glen Hellings and Tom Hellings (the Respondent)
In Attendance:	Ms Kathyrn Whitford (observer)
Tribunal Members:	Cindy A. Rai (LLB) Chairman A. J. Lumby BSc FRICS John S. Mc Allister FRICS
Date of Decision:	2nd November 2010

SUMMARY OF DECISION

1. The Tribunal determined that the Respondents, Glen Hellings and Tom Hellings, are respectively liable to pay the following amounts in respect of the Applicant's claim in respect of the years stated below.

Year	Flat No 2 Glen	Flat No 3 Tom	Item
2006	*Nil	*Nil	Exterior Redecoration
	20.00	20.00	Outside Lighting
	250.00	250.00	Forecourt resurfacing
		119.22	Water charges
	* Nil	*Nil	Buildings insurance
Total for 2006	**270.00**	**389.22**	
2007	*Nil	*Nil	Forecourt resurfacing
		205.56	Water charges
	20.00	20.00	Outside Lighting
Total for 2007	**20.00**	**225.56**	
2008	Nil	Nil	Forecourt resurfacing
	20.00	20.00	Outside Lighting
		199.37	Water charges
	132.82	132.82	Insurance
	**80.00	**80.00	Provision for gate
Total for 2008	**232.82**	**412.19**	
2009	Nil	Nil	Forecourt resurfacing
	20.00	20.00	Outside Lighting
	178.52	178.52	Insurance
		220.14	Water charges
Total for 2009	**198.52**	**418.66**	
2010		119.32	Water charges
	197.74	197.74	Insurance

* In the absence of an invoice the Tribunal cannot determine what amount the Respondent is liable to contribute but any liability might be subject to the limitation contained in the Regulations referred to in paragraph 2 below

** See paragraph 46 below

2. In the absence of the provision of any estimate of the costs of the proposed future redecoration works which it is assumed are the costs in respect of which Alma Scholes has sought a determination in respect of

the current service charge year being January to December 2010, the Tribunal is unable to make any determination but would remind the Applicant that if the contribution of either of the Respondents in respect of the cost of proposed redecoration is or might exceed £250 regardless of whether she intends to reclaim the costs over one service charge year or several she must demonstrate compliance with the consultation requirements set out in section 20 of the Act and contained in the Service Charges (Consultation Regulations) 2003 (the Regulations) otherwise the amount she can reclaim will be limited in accordance with regulation 6 to £250.

INSPECTION

3. Beach House is an end terrace property which has at some time been converted into four holiday flats. At the front of the property is a slate paved forecourt and vehicular entrance which has been divided during term of Lease by a low wall at right angles to the road from the forecourt in front of the entrance to Flat 3. It is apparent that the entrance was originally gated but there was no gate on the day of the inspection. The entrance provides access to the rear yard via the side of the building to four parking spaces and entrances to all of the flats.

4. Flat 1 is on the whole of the second floor and is accessed via an external staircase at the rear of the block. Flat 2 is part of the first floor and accessed from the balcony at the rear of the block. Flat 3 comprises part of the ground floor of the block. It has both a rear entrance and also a front entrance created by tenant after the Lease of Flat 3 was granted. Flat 4 is a maisonette situate on the other parts of the ground and first floors and has both an entrance at ground floor level through a door at the side of the block and an entrance at first floor level from the balcony at the rear of the block which the Tribunal were told is a communal facility.

5. The Tribunal saw the four car parking spaces marked out at the back of the rear yard. They were told that the adjoining property has full rights of access over the entrance and rear yard from the wooden panel gate in boundary and thus is obliged to contribute towards the cost of maintaining it.

6. The Tribunal inspected the boiler room which is a small "lean to" shed adjacent to the rear wall of Flat 3 housing a boiler and a washing machine. It was apparent that some copper pipes had been severed. Alma Scholes stated that a separate water supply had recently been provided to the

boiler which now served only her flat. There was visible evidence of some recent concreting of the path adjacent to the door of the boiler room.

7. The Tribunal were shown the three communal external lights and a light which is located beside the entrance to Flat 4. It was suggested that although the Lease provides that the entire yard (excluding the parking spaces), at the rear of the block, and the whole of the forecourt at the front of the block is a communal area Alma Scholes has unilaterally annexed a part of the front forecourt for her excusive use and to protect her privacy. Similarly the area in front of Flat 3 is apparently used exclusively by the lessee or occupier from time to time of that flat.

PROCEDURAL MATTERS

8. Alma Scholes applied to the Tribunal for a determination as to the liability of both Glen Hellings, the lessee of Flat 3 of the Property and Tom Hellings, the lessee of Flat 2 of the Property in respect of the service charge years 2006, 2007, 2008, 2009 and 2010. Each service charge year runs concurrently with a calendar year. The application is made under section 27A of the Landlord and Tenant Act 1985 (the Act).

9. Directions were issued on the 8th June 2010 by John Tarling a procedural chairman of the Tribunal. Following the issue of the Directions both Glen Hellings and Tom Hellings separately supplied the Tribunal with bundles of information and correspondence (Bundles 2 and 3), as did Alma Scholes. (Bundle 4). Responses to the evidence and information Bundle 4 were sent to the Tribunal and the Applicant by Glen Hellings on behalf of both of the Respondents. (Bundle 5). Subsequently Alma Scholes responded. (Bundle 6). At the Tribunal all of the parties and the Tribunal members had access to the original application bundle (bundle 1), and Bundles 2 - 6. Following the Hearing and in response to a request by the Tribunal at the Hearing Alma Scholes sent copies of further water bills together with copies of some insurance schedules to the Tribunal office, (Bundle 7).

HEARING

Applicant's case

10. Alma Scholes explained that she had been unable to collect the service charges she considered to be due from the Respondents and therefore had made the application to the Tribunal for a determination as to their

liability to pay the charges she had levied. Whilst an initial payment on account had been made when the leases were granted neither party had paid service charges since then. When her attempts to recover sums due had failed she had applied to the County Court for a judgement. Subsequently and in accordance with a direction of the court the parties tried mediation but that failed. The County Court subsequently dismissed her application and suggested that the service charge dispute be referred to the Leasehold Valuation Tribunal so she had made this application. She confirmed that the leases of both flats were identical and that the copy lease supplied with her application (which was the lease of Flat 3) was complete. She also produced a complete copy of the lease of Flat 2 attached to which were coloured plans to which the Tribunal members were able to refer during the Hearing.

11. In support of her application she referred the Tribunal to clause 2 of the Flat 3 lease dated 10th June 2005, which is the lease to Glen Hellings (the Lease). Clause 2 of the lease refers to the tenant's obligation to pay in addition to ground rent and insurance rent, the Service Charge payable in accordance with the Second Schedule. The Second Schedule to the Lease provides that the landlord shall provide the "Services" set out in the First Schedule, subject to the tenant paying the Service Charge. The Lease entitles the landlord to charge on the grant of the lease a sum on account of the service charges for that year which in the case of both leases would have been the year ending 31st December 2005 as both were granted in that year. In fact the full amount of the Initial Provisional Service Charge of £250 was collected from each Respondent although the lease of flat 2 is dated 9th December 2005.

12. She was unable to explain in any detail how the sums collected by her solicitor on completion of the sale of each flat had been calculated but her evidence shows, and she confirmed that in each case an amount had been collected for that service charge year and effectively credited towards what she subsequently calculated to be the tenant's liability for that year and the succeeding year. She told the tribunal that her solicitor had suggested or estimated the amounts that she sought to collect both on completion of the leases of the two flats and in the subsequent service charge year. A copy of a service charge budget is contained within Bundle 4 at page 4A.

13. The Lease refers to the tenant paying a 25% contribution towards both the Insurance Rent (which related to his share of the building insurance) and the Service Charge. However notwithstanding what is recorded in the

leases she considered this unfair as Flat 4, which is the flat she occupies is much bigger than any of the other flats, so she made a unilateral decision to collect 20% contributions from the tenants of Flats 2 and 3 in respect of the service charges. She deemed it appropriate that Flat 4 should contributed 40%. She also owns Flat 1 and allocates a 20% contribution to that flat.

14. The first item she sought to recover was the costs of external redecoration which was invoiced in 2006. Her evidence is that she paid £1,345.25 for the redecoration works which she accepted were not completed. She told the Tribunal that the decorator could not finish the work on account of illness. She was unable to produce either an invoice or a quotation. When questioned she admitted that she had not consulted the Respondents before deciding to get the work done. As she had collected money on account of service charges on completion of the sales of the flats she assumed that such monies could be spent by her on services. She agreed to try and find a copy of the invoice showing the amount actually paid and that if she could she would send four copies of this to the Tribunal and a copy to the Respondents. At the date of this decision this has not been received.

15. The outside lights for which she was reclaiming the costs of electricity were not separately metered. She felt that the amount claimed was fair and she had simply estimated that it must cost in the region of £100 a year to provide this lighting.

16. She explained that she had charged for the use of the boiler room because when she had sold Flats 2 and 3 to the Respondent it was agreed as is evidenced in the statement headed "Things Agreed" signed by both parties a copy of which appears in more than one of the bundles but which the Tribunal referred to at pages 11 and 12 of Bundle 2, that the Respondents would move the boiler (which is an oil boiler) and instead install a boiler in her Flat 4 On completion of the works the boiler room would be added to the lease of Flat 3. This has not been done, so she moved her washing machine, (which was originally housed in the boiler room) into her flat. The Respondents installed their own washing machine in the boiler room and continued to use it and therefore decided to make a charge. In fact it must have later become apparent that both the water supply to the boiler and the washing machine and the electricity were connected to the Flat 3 supply and effectively paid for by Glen Hellings. Presumably this was why the copper pipes had been cut and the water supply to the boiler rerouted. In response to enquiry from the Tribunal she

accepted that each of the Respondents had the right to use of the boiler room granted by clause 1.22 of the Lease Therefore it was inappropriate for her to make any charge for the use of the boiler room within the service charges.

17. She also told the Tribunal that she had issued a claim in the County Court to try and recover the unpaid service charges and details of two claims are contained in Bundle 4 as Documents 11, 12, 13, 14 and 16 which include at least part of an undated Judgement made in respect of Claim 7TR01870 against Tom Hellings and an order dated 19th January 2010 in respect of Claim number 7TRO1825 against Glen Hellings.

18. She produced at the Hearing some of the water bills for the years to which her application relates. These bills referred to charges for Flats 1, 2 and 4. Flat 3 has an independent water meter. Tom Hellings however has not paid for the water he had used. She had tried to apportion the charges on a per capita basis taking into account the number of people in each flat using the water but Tom Hellings had objected to this split and had not paid towards the water notwithstanding that he had had the benefit of a water supply to his flat. In the Judgement referred to in paragraph 17 above the County Court Judge suggested that the costs should be split equally between the three flats sharing the meter

19. She suggested that since the Lease entitled her to recover a payment on account of the current years estimated service charge by four quarterly payments each year it was appropriate for her to invoice this service charge and then put the amounts recovered towards the cost of both incurred expenses and anticipated future expenses. It was for this reason that she sought to spread the costs of the forecourt resurfacing and the costs of external redecoration being both the costs she had actually paid for the redecoration that had been partly completed in 2006 and the proposed remedial works and redecoration she wanted to carry out this year or next year. She had obtained a quote for a replacement gate to enclose the property but she considered the quotation of £2,000 excessive and therefore had made provision for contributions to be recovered in respect of a lesser anticipated expenditure. She had not disclosed the quotation to the tenants and had apparently not realised that she might be obliged legally to consult them in a specific way, if she wished to retain a legal entitlement to thereafter recover the actual costs of the works.

20. She also explained that she wanted to decorate the exterior and carry out some repair works. She was unable to produce estimates or confirm that there has been any consultation with the Respondents in relation to these

costs. Nevertheless she has attempted to try to collect sums in advance within the service charge as a provision for these anticipated works. She did accept that it would not be possible for any works to commence until after the end of the winter and that the repairs must precede the redecoration.

Respondent's case

21. The Respondents are father and son. Tom Hellings said that he was not happy with the way in which Alma Scholes sought to recover the water charges which she had apparently split on a per head of occupancy basis. He thought the costs should be shared equally between the three properties to which the bills related. This was confirmed by the judge who made the judgment in the County Court case against him, referred to in paragraph 17 above.

22. He was unhappy with being asked to contribute toward the initial redecoration costs because none of the works had been carried out to any part of his property.

23. He did not want to pay for outside lighting when previously it had never worked. It is now accepted in the Respondents' written submissions that the external lights are working now. He had not paid towards the insurance of his flat because he had never been provided with a copy of the insurance schedule or evidence of the premium due.

24. He had been advised by his solicitor that as the forecourt resurfacing enhanced what was previously there he was not liable as it was not maintenance work. In addition he had not been consulted about the costs of the work or the reason for it being done.

25. Finally he suggested that his solicitor advised him that he only needed to pay a provisional sum of £250 initially and thereafter he only had to pay 25% of the "actual service given and audited". He said that the service charge bills received, (none of which were apparently accompanied by invoices), were for work not actually done and enhancements to Mrs Scholes own flat.

26. He had not agreed with the way in which Mrs Scholes sought to recharge the cost of the water and also suggested that part of his reluctance to pay was on account of Flat 3 paying for the hot water supply to Mrs Scholes flat. (See paragraph 16 above).

27. Glen Hellings said that his solicitor told him that the initial payment of £250 was for a period of one and a half years because the lease states that it was payable for the period from the date of his lease until the end of the financial year next. He interpreted that as being not the subsequent December 31st but the one after. On that basis he had not anticipated receiving a bill in January of subsequent year for £500 on account of service charges. This is Document A in Bundle 3 which is dated 15th January 2006 and refers to £250 on account for the half year and also a payment of £100.62 for insurance for an unspecified period. Other invoices are included in Bundle 3 relating to central heating charges and charges for the washing machine rental.

28. Following the recommendation of the County Court judge he and his father Tom Hellings had tried to settle their dispute with Alma Scholes. This was unsuccessful although he conceded that this was in part due to his father, Tom Hellings attempting to settle another unrelated dispute with Alma Scholes at the same time.

29. He stated that there were very few outside lights and he had not noticed them being switched on at any time. He was not prepared to pay for the forecourt because he was not consulted about the work or provided with estimates of the cost.

30. He has not seen estimates in respect of the proposal by Alma Scholes to install a replacement gate.

31. He accepted that the Things Agreed document had been signed but since Alma Scholes had not kept to her agreement to sell Flat 1 the Respondents had not replaced her boiler.

32. He has not seen estimated costs in relation to the proposed decoration and repair works. He knows that he must be consulted if he is to be liable to contribute.

33. In summary he accepted that he was liable to pay an annual service charge. His refusal to pay the amounts demanded by Mrs Scholes was on account of an absence of information supplied by her and the lack of any consultation coupled with a real concern that he and his father were continually being asked to contribute towards expenditure that was of no benefit to their respective property. Alma Scholes did not allow them to use the forecourt fronting Flat 1 so it was inequitable that they should be asked to pay for it.

DECISION

34. The background to this application reveals a long running dispute between the parties that seems to have preceded the sale of Flats 2 and 3 to the Respondents. Following the grant of the two leases the parties all signed the "Things Agreed" statement referred to in paragraph 16 above. It is not clear why some of what was agreed was not contractually incorporated within the leases of the two flats but it was clearly not.

35. It is not disputed by the Respondents that the Lease contains provisions enabling the landlord to collect service charges from the tenants and which provisions also oblige her to provide services. However notwithstanding that it appears that Alma Scholes has never been successful in her attempts to collect the service charges she believes to be due. This was despite her unilateral decision to collect only 20% from each of the Respondents rather than the 25% referred to in the lease. The Respondents suggested that they did not pay because it was their perception that Alma Scholes was collecting and using the service charges primarily for the benefit of her two flats to the detriment of theirs. Furthermore she would not allow them the recreational use of the forecourt over which the Lease granted them rights. She removed the washing machine from the boiler room and then sought to charge them for using it notwithstanding that their leases gave them the right to use it. She also decided to apportion the water charges on a "per capita" basis thus reducing her liability and increasing that of Tom Hellings (Flat 3) which shared the joint supply with Flats 1 and 4. Furthermore it was later discovered that Glen Hellings was paying for the hot water supply to Flat 1. For all of these reasons Tom would not pay towards to the cost of the water. He said that he would have paid towards the insurance if he had received a copy of the schedule or evidence of the premium paid but it was not provided and he was suspicious that the amounts Alma Scholes sought to collect included a contribution towards the cost of her contents insurance.

36. The initial redecoration work had been carried out without any consultation and the Respondents had not seen either an estimate or an invoice and neither had been produced by the date of this decision.

37. The forecourt resurfacing which was again carried out without consultation is primarily in front of Alma Scholes flat and benefits her disproportionately now she had refused to allow the Respondents to use that area at all apart from passing over the access way by foot and with vehicles.

38. The charges for the electricity for the communal lights have not changed during the years relating to the application. No actual evidence has been supplied as to whether or not the lights have worked continually throughout the period. On the basis of its inspection the Tribunal found that that there are three communal lights. It was not suggested that these lights were not working at the time of the inspection. It has noted what the Respondents have said but in the absence of any other evidence and its consideration of the general background to this application the Tribunal determines that the Respondents are liable to contribute towards the cost of this lighting and that the amount charged by the Applicant per flat for the relevant service charge years is reasonable.

39. Other disputes appear to have occurred in relation to both the use of the parking spaces in the rear yard and the communal balcony. Attempts to resolve matters in the County Court and by mediation have not resulted in a satisfactory solution either.

40. The Tribunal determined and so advised the parties at the hearing that it has no jurisdiction to deal with the application in relation to ground rent.

41. Its jurisdiction is to determine liability to pay and reasonableness of those service charges which the Applicant is entitled to recover under the leases. Therefore it determines that the Respondents are not liable to pay for the use of the boiler room as they have a right to use it under clause 1.22 of the Lease and this was accepted by the Respondent at the Hearing.

42. The Tribunal has seen no written evidence as to the costs of the works carried out to forecourt. It was however clear from its inspection that part of the forecourt has recently been resurfaced. The general appearance of this work is good and the work that has been carried out appears to be of reasonable quality. The Respondents do not deny that this work was done nor do they suggest that the work was unsatisfactory.

43. Section 20 of the Act provides that relevant costs incurred on carrying out qualifying works which exceed the limit referred to (being that contained in Regulation 6 of the Regulations) cannot be taken into account in determining the amount of the service charge unless either the relevant requirements have been complied with or dispensation from compliance with those requirements has been given. Therefore had the Applicant fully consulted with Respondent prior to the works being undertaken the Respondents would "prima facie" be liable to contribute towards the cost, but given that only a part of the communal area has been replaced and the evidence before the Tribunal that regardless of what is provided for in

the Lease the Applicant considers that much of that area is for her own exclusive use, it may have been difficult for the Tribunal to determine what contribution would have been reasonable. Although no evidence as to the actual cost of the works has been provided the Tribunal accepts that the Applicant has incurred costs which may well have been in the region of the figure of £4,000 she refers to in her application. She also suggested that she would have expected the adjoining property to contribute towards the costs of this work. The Tribunal determines that the Respondents respective contributions should be limited to an amount of £250 for the 2006 service charge year that being the limit stated in Regulation 6, referred to in paragraph 2 above, since the Applicant accepted that she had not consulted the Respondents about the costs because she thought she was entitled to invoice for moneys on account and spread the costs and then spend the moneys collected (or in her case invoiced but for the most part not collected).

44. The Lease provides in Schedule 1 for the landlord to maintain repair and replace the communal areas so that the Respondents' argument that this work was an enhancement and so they are not liable to pay for it is not accepted.

45. It also determines that the service charges are recoverable quarterly as the Lease provides. Furthermore the amount which the Landlord can invoice in each service charge year should be based on the amount actually spent in the previous service charge year. Any shortfall can be recovered "on demand". Any credit shall be carried forward. The First Schedule to the Lease provides for all of this; the Respondents had misunderstood what the Lease provided for when they suggested that no further amounts could be invoiced in 2006. The Applicant was entitled to invoice "on account" on each quarter day in 2006 starting with the 25th March, the usual quarter days being that date, the 24th June, the 29th September and 25th December.

46. Paragraph 8 of the First Schedule to the Lease contains a provision enabling the landlord to set aside such sums as it reasonably requires in replacing maintaining items she is obliged to maintain. What the Applicant cannot do is to spend this accumulated provision on any works the costs of which would exceed the £250 limit in Regulation 6 (referred to in paragraph 2 above). Therefore it is reasonable for the Applicant to invoice the Respondents "on account" in respect of a provision to provide a replacement gate. The Applicant has obtained a quotation which she unilaterally decided was too expensive. She has not consulted the

Respondents but it would be advisable for her to consult them, when she obtains further quotations.

47. It does not appear that the Applicant has either understood or sought to comply with the section 20 consultation procedure. In future she must do so if she wants to recover service charges in respect of major items of expenditure and on the basis of the percentages she currently collects this will be any works the cost of which exceeds £1000. Spreading the tenants' contribution over more than one service charge year and accumulating funds within the service charge accounts will not enable her to avoid complying with section 20 of the Act and the Regulations.

48. Following requests made at the Hearing the Applicant has provided copies of water accounts as well as making other copies available at the hearing. Based on the figures provided the Tribunal determines that Tom Hellings is obliged to contribute one third of the costs invoiced costs shown on the invoices either produced at the hearing or subsequently. Paragraph 4 of the First Schedule to the lease obliges the landlord to discharge any rates (including water rates) taxes duties assessments charges impositions and outgoings assessed charged or imposed on the Building as distinct from any assessment made in respect of any flat in the Building." This is not entirely helpful as clearly the Flats 1, 2 and 4 do not fall within the definition of the "Building" in the lease but the true intention is clearly that the three flats would contribute to the shared cost of the water. The Respondents have not disputed this but rather suggested that Tom did not pay for this water because Glen had effectively been paying for Alma Scholes hot water supply. This is not an acceptable argument. The Tribunal notes that the figures it has extracted from those water bills produced at the Hearing, or subsequently, seem to match the information contained in Bundle 4. It determines that the costs must be split equally between the flats sharing the water supply. It agrees with the County Court Judge who suggested that it might have aided recovery if copies of the relevant water invoices were always disclosed to Tom Hellings when demands for payment were sent to him. It is also noted that Tom Hellings will inevitably avoid paying for some of the water he has consumed since the information supplied by the Applicant is not complete. This may go someway towards compensating the Respondents for the costs clearly incurred by Glen Hellings in supplying water to the boiler for Mrs Scholes sole benefit.

49. Copies of the insurance schedules for the years 2007, 2008, 2009 and 2010 have now been produced. On the basis of the information contained

in them the Tribunal determines that Respondents are each liable to pay 25% of the invoices for 2007 and 2008 neither of which include contents. In 2009 and 2010 the insurance for Flats 1 and 4 (the Applicants' flats) and Flats 2 and 3 (the Respondents' flats) is separately shown so the liability to pay is 50% of the premium for those policies in each of those years.

50. For all of the reasons set out above the Tribunal has determined that he Respondents are liable to pay those service charges set out in paragraph 1 for the years referred to which include 2010 where appropriate information has now been supplied by the Applicant. Any amounts actually paid by either party should be credited by the Applicant against the amounts that the Tribunal has determined that the Respondents are liable to pay.

Cindy Alpona Rai

Chairman