



Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the

SOUTHERN RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, as amended, Sections 27A & 20C

Ref : CH1/21UD/LSC/2010/0018

Property: Basement Flat B, 12 Maze Hill, St. Leonards-on- Sea,
East Sussex, TN38 OBA

Applicant: Bruce Arthur Allum

Represented by: Mr Wagstaffe of Counsel

Respondent: Helen Jeanette Boyce

Date of hearing: 18 June 2010

Tribunal: Mrs S O'Sullivan
Mr J N Cleverton FRICS
Ms J Dalal

Background

1. An application was received on 15 February 2010 under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") seeking a determination of the reasonableness and/or liability to pay service charges together with an application under section 20ZA of the Act seeking dispensation of all or any of the consultation requirements contained in section 20 of the 1985 Act. Both applications relate to major works undertaken by the Applicant landlord in 2007/08.
2. The Respondent is the lessee of Basement Flat B (the "Flat") pursuant to a lease dated 11 September 1998 (the "Lease"). The Flat is contained in the property known as 12 Maze Hill, St Leonards-on-Sea, East Sussex, TN38 OBA (the Property), a house arranged over four floors containing a total of five flats.
3. A pre trial review was held on 10 March 2010 following which directions were made of the same date which provided for steps to be taken by the parties to prepare for the hearing. Further to those directions statements of case were exchanged and bundles lodged for the hearing of both applications simultaneously.

The Law

4. Section 18 (1) of the 1985 Act provides that for the purposes of the relevant parts of the Act, "service charge" 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 the relevant costs.
5. Section 19 (1) of the 1985 Act 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 reasonably incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;And the amount payable shall be limited accordingly.
6. Section 19 (2) of the 1985 Act provides that where a service charge is payable before the relevant costs have been incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or otherwise.

7. Section 27A (1) of the 1985 Act provides that 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 by whom it is payable
 - b) the person to 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

8. Section 27A (3) of the 1985 Act provides that an application may be made to a leasehold valuation tribunal for a decision whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs, and if it would, as to-
 - a) the person by whom it would be payable
 - b) the person to whom it would be payable
 - c) the amount which would be payable
 - d) the date at or by which it would be payable, and
 - e) the manner in which it would be payable.

9. Section 20ZA of the 1985 Act provides that where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works the tribunal may make the determination *"if satisfied that it is reasonable to dispense with the requirements"*.

Inspection

10. The Tribunal inspected the Flat and the Property at 10am on 18 June 2010. It was a dry sunny day. The Applicant attended in person along with his Counsel, Mr Wagstaffe and Mr Collins, a solicitor. The Respondent also attended.
11. The Property is a substantial end of terrace period building over four floors with a side extension to the first and ground floors. The front and side walls are fully rendered and the roofs are predominantly of pitched slate mixed with flat lead extensions
12. The Tribunal first inspected the Flat which is reached via some steps to the front of the Property. The Tribunal inspected the exterior of the windows to the Flat and subsequently looked at the windows from the inside. The wall around the windows to the front of the

Flat was seen to be damp but no evidence of water penetration could be seen around the windows. The window frames were seen to be slightly cracked. The bedroom in the Flat smelled of damp and some bubbling to the plaster could be seen on the external wall.

13. The rear of the Property was also inspected. No works had been carried out to the rear of the Property save for the replacement of a bathroom window.
14. The interior of flats 4, 5 and 6 was also inspected.
15. The Property lies in a Conservation Area and is a Grade II Listed building constructed around the mid- nineteenth Century. The works to the exterior including the porch completed by the Applicant to date and which formed the subject of this Hearing, appeared to have been carried out to an above average standard .We took particular note of the additional items that been itemised in the Final Statement of Major Repairs.

The Hearing

16. The hearing of this matter took place on 18 June 2010.
17. At the hearing the Applicant attended and was represented by Mr Wagstaffe of Counsel. The Respondent, Ms Boyce, appeared in person.
18. At the pre trial review the Chairman had noted that the Respondent did not appear to challenge the cost of the major works themselves. However the Respondent confirmed at the commencement of the hearing that she did wish to challenge the overall cost of the major works and also challenged the standard of the works carried out to the windows at the Flat. She did not question the standard of works in relation to any other items carried out as part of the major works. The Respondent did oppose the application under section 20ZA and also made an application under section 20C.
19. A preliminary point was raised by the Respondent in relation to major works carried out in 2005/06 at a cost of approximately £9,000. The Respondent questioned whether proper consultation had taken place under section 20 of the 1985 Act. Mr Allum conceded that there had been no consultation in relation to these works as he explained that he had then only recently acquired the Property and had been unaware of the requirements contained in section 20. The effect of this failure to consult is that the landlord will be limited to recovering a maximum contribution of £250 from each lessee until such time that a successful application is made under section 20ZA for dispensation. However this matter was not presently before the tribunal, this issue not having been raised at the pre trial review or in the parties' statements of case. Accordingly the Tribunal was not in a position to make a determination in this respect. It is however hoped that the parties will be able to resolve this matter between them, Mr Allum having conceded that no

consultation had taken place in relation to these works, failing which it will be necessary to make a further application to the Tribunal.

20. The Respondent also raised an issue in relation to her proportion of the service charge payable. She submitted that the Applicant has carried out substantial alterations to the first floor of the Property which have resulted in an increase in the floor area of the flats on the first floor. As a result she says that the proportion of service charge she is obliged to pay is no longer reasonable and should be varied to take into account the variations in size of the flats. The Tribunal noted that pursuant to clause 2(5) of the Lease the Respondent covenants to pay a one quarter part of all expenses. The Tribunal is unable to vary this fixed percentage under the present applications. The Tribunal does however have the power to consider applications for variation of a lease under section 35 of the Landlord and Tenant Act 1987 but this must be a separate application and the Respondent should take independent legal advice in relation to this issue.
21. The Tribunal was referred to evidence over the course of the hearing and heard oral evidence from the parties. The Tribunal does not intend for the sake of brevity to repeat all that evidence in this decision, the evidence in any event being contained in bundles in the parties' possession. What follows therefore is a summary of the evidence heard and the Tribunal's decision in relation to each of the matters before it.

Application under Section 27A

22. The Applicant gave evidence in relation to the works themselves.
23. As set out above the Property contains five flats, three of which are let on long leases with the remaining two flats being let by the Applicant on assured shorthold tenancies. The Tribunal heard that the Applicant decided to carry out the programme of major works after receiving a letter from Hastings Borough Council in 2006 expressing the wish that the external appearance of the Property be improved. A Notice of Intention was served on 2 May 2007 which attached a Schedule of Works prepared by Will Brand Surveying Services Limited. The works proposed were extensive external works of repair including the repair of render, renewal of the lead and slate roofs, repair of joinery and decoration. A Stage 2 Notice was subsequently served on 18 June 2007 enclosing copies of two quotations. One of these quotations was made by the Applicant and as the lowest contractor he commenced work in July 2007. The works were completed in April 2008. The Tribunal heard that as the work progressed items of further work were found to be necessary and these were carried out as part of the current project. The Applicant's evidence was that he consulted informally with the lessees in relation to these additional works but no further formal consultation took place.

24. In relation to the works to the Respondent's windows the Tribunal was informed that the windows had not been replaced but that repairs had been carried out. These were not individually priced in the Schedule of Works but additional works to the basement windows were set out in the final statement at an additional cost of £250 which were set out as *"new headframe and lots repair work to sill, clad internal frame, new staff bead, stained and waxed and new window furniture"*. The Applicant's evidence was that his approach to all windows at the Property was to repair or replace the windows as necessary. His view was that the windows at the Flat did not require replacement as they were sound but instead he replaced the moving parts of the windows and repaired the frames.
25. The Tribunal was referred to various handwritten notes in the bundle. From pages 89 to 113 of the Applicant's bundle could be found the Applicant's handwritten breakdown of the works. From pages 114 to 115 could be found the Applicant's handwritten breakdown of expenditure. The Tribunal initially found these documents difficult to follow and it was not clear how the totals charged had been reached. However the Applicant took the Tribunal through the calculations and the Tribunal was satisfied that the Applicant had provided evidence to support the cost of the major works.
26. The original contract price as specified in the Stage 2 notice was £21,375. This was subject to some adjustments as set out in final statement of major repairs at pages 143 to 144 of the Applicant's bundle. Together with the additional works of £9,340 the total final cost of the works was £32,030.99. Pursuant to the Lease the Respondent was obliged to pay a one quarter share of the cost of these works at £8,007.75.
27. As referred to above the Respondent challenged the overall cost of the major works. She had not obtained any alternative quotations and was unable to comment on any individual items. Her position was simply that the costs were *"too high"*. The Respondent confirmed that she was happy with the standard of works overall save for the works to the windows in the Flat. She did not accept that the windows were sound and submitted that they almost always leaked when it rained. She accepted that there had been no evidence of any leaking on the inspection but pointed out that it was a fine day. She did not have any photographs to show the windows when leaking. The Tribunal heard that she had informed the Applicant that the windows were leaking shortly after the works had been completed in March 2008. He had told her to let her know the next time it happened but she had failed to do so as she had no confidence that he would take any action. The Respondent challenged the whole of the cost of the works to the windows as she did not consider any repairs to be worthwhile as in her view the windows needed replacing.
28. The Respondent also informed the Tribunal that she had obtained a grant for the replacement of her windows which she said evidenced the fact that the windows needed replacement. However the windows were repaired before the replacement could take place pursuant to the grant.

29. The Respondent also wished to point to some discrepancies in the supporting invoices provided by the Applicant. The parties and the Tribunal looked through the invoices. After consideration it was clear that only the invoices relevant to the Property had been charged to the major works. However it was accepted by the Applicant that the way in which he had produced the invoices was at first sight confusing and it was only after some explanation of the coding he had used that it became clear which items had in fact been charged. The Respondent confirmed that she was happy with the explanation and no longer wished to challenge any individual invoices.
30. The Tribunal considered the reasonableness of the cost of the major works carefully. It had inspected the works to the Property on inspection and had noted that they had been carried out to a reasonable standard. The Tribunal had no evidence before it to suggest that the cost was unreasonable. In addition the lessees had not had to bear the cost of Vat and a management fee for the overseeing of the works. As far as the Respondent's complaints in relation to the windows were concerned the Respondent had failed to produce any evidence that the windows were currently in disrepair. Although the Respondent's bedroom was seen to be damp it was not clear that this resulted from any defect in the windows which appeared to be sound.
31. The Respondent's only real challenge to the cost of the works was that the cost was generally too high. Having regard to its own experience and expertise the Tribunal found that the cost of the works was reasonable and should be allowed in full.
32. The Tribunal would mention that there is an issue in relation to the damp in the Respondent's bedroom which obviously will need to be addressed. The Respondent has agreed to contact the Applicant on the next occasion on which the windows leak and the Applicant may wish to consider his own investigations to ascertain what steps can be taken to alleviate the problem.
33. It was clear to the Tribunal that there has been a history of poor communication between the parties. In particular the Respondent appeared to be frustrated by her failed attempts to obtain various information from the Applicant which she requires to obtain disability allowance grants toward the payment of her service charge as a result of her disability. The Applicant agreed at the hearing that the Respondent could provide the Local Authority with his details and he would liaise with them to provide the information required.

Application under Section 20ZA

34. The Applicant also made an application under section 20ZA for dispensation from consultation in relation to the additional works carried out to the Property at the time of the major works as set out above. Mr Wagstaffe submitted that it was reasonable to grant

dispensation in these circumstances. The Tribunal was referred to the "soft consultation" which had taken place with the lessees throughout the major works in relation to the additional works. The Tribunal was referred to various minutes of meetings with the lessees in relation to the major works. The Tribunal heard that it would have been totally uneconomic to abandon the work to carry out another section 20 consultation and that the lessees had agreed that the further works needed to be carried out.

35. The Respondent opposed the application under section 20ZA. She did not consider that it was necessary for the works to be carried out immediately and that although it may have been more convenient it was her view that the cost to the lessees had not been considered. When asked whether she would have been likely to respond to any consultation she submitted that she would have responded in relation to the cost of the additional works but would not have been likely to have objected to the scope of the works.
36. As set out above the Tribunal may dispense with the all or any of the consultation requirements contained in section 20C of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*". The Tribunal considered the additional works in conjunction with the original specification. The additional items totalled £9,340 and were for the most part made up of small additions to the work originally envisaged. By way of example the rendering required a further coat of paint and a replacement frame was required to a top floor window. The porch had required significantly more works in excess of £2,000 than originally envisaged as the Applicant explained that it had been found to be totally rotten when works commenced. In addition a window in the top floor flat was found to need total replacement as it was causing water damage to the Property at a cost of £2,500. The Tribunal noted that the Applicant had followed proper consultation procedures in relation to the original specification and no point had been raised in relation to the consultation itself. The Tribunal accepted the Applicant's evidence that it had been more cost effective to carry out those further works at the time rather than to go through a fresh consultation process. Further the Tribunal noted that the Applicant had carried out some informal consultation with the lessees by holding various meetings with the lessees in relation to the additional works required.
37. The Tribunal considered whether the Respondent had suffered any prejudice as a result of the Applicant's failure to consult in relation to the additional works. It noted her evidence that she would have been likely to have objected to any additional works on the grounds of cost alone rather than the scope or necessity of the works.
38. Taking all the circumstances into account the Tribunal concluded that the Respondent had not been prejudiced and was satisfied that it was reasonable to dispense with the consultation requirements in relation to the additional works in this case.

39. The Tribunal therefore orders that pursuant to its powers under section 20ZA of the 1985 Act that the consultation requirements in relation to the additional works as set out in the final statement of major repairs be dispensed with.

Costs application

40. The Respondent made an application under section 20C for an order that the Applicant be prevented from recovering his costs of the proceedings through the service charge. The Respondent submitted that the Applicant had acted aggressively in relation to the major works and had not responded properly to her requests for information. She considered that the proceedings could have been avoided if the Applicant had provided the Respondent with the information requested to enable her to obtain grants. Further the Respondent submitted that the Applicant had unnecessarily increased his costs by instructing solicitors and Counsel to represent him at the hearing.
41. Mr Wagstaffe conceded that a summary of tenants rights and obligations as required under section 153 of the Commonhold and Leasehold Reform Act 2002 had not been served until after the issue of proceedings. He was unsure as to the exact date upon which this had been served but the Respondent accepted that she had now been served with such a notice. He submitted however that this should not be a bar to the recovery of the Applicant's costs through the service charge although he conceded that it may be a factor that the Tribunal could take into account. However he submitted that in excess of £2,500 had been outstanding for more than 2 ½ years and proceedings had become necessary to recover that sum. He was instructed that the Applicant's legal costs were in excess of £4,000.
42. The Tribunal considered the application carefully. The Tribunal has the discretion to make such an order under section 20C if it considers it "*reasonable to do so in all the circumstances*". The documents before the Tribunal had not been well presented and had contained many irrelevant documents which had made it difficult for the Respondent to prepare her case. The Applicant's manner as evidenced in the correspondence had in the Tribunal's view been aggressive and the Applicant had failed to properly respond to questions raised by the Respondent. In addition the Applicant had failed to serve a Summary of Tenants Rights and Obligations as required pursuant to section 153 of the Commonhold and Leasehold Reform Act 2002 with the service charge demands and this was not served until after the issue of proceedings. Taking all circumstances into account the Tribunal considered it would be appropriate for the Tribunal to exercise its discretion in this case to make an order under section 20C. The effect of this order is that the Applicant is prevented from recovering his costs of the proceedings through the service charge.

A handwritten signature in black ink, appearing to read 'SO Sullivan', with a long horizontal flourish extending to the right.

Chairman: Sonya O'Sullivan

Dated: 21 July 2010