

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

Case No. CHI/29UN/LSC/2009/0150

Property: Flat 3
18 Union Crescent
Margate
Kent
CT9 1NS

Applicant: Mr. M. Connelly.

Respondent: Mr. J.P. Davidson

Dates of Hearing: 27th January 2010 and
17th March 2010

**Members of the
Tribunal:** Mr. R. Norman
Mr. R. Athow FRICS MIRPM
Ms L. Farrier

Date Decision Issued:

RE: FLAT 3, 18 UNION CRESCENT, MARGATE, KENT, CT9 1NS

Decision

1. In respect of the year ended 13th September 2008 Mr. Connelly is liable for service charges in the sum of £2,452.16. This is in addition to his liability to pay his proportion of the insurance (which he has not disputed) and ground rent.
2. The Tribunal was satisfied that all the consultation requirements in relation to the works which were included within the service charges claimed in respect of the year ended 13th September 2008 be dispensed with.
3. An order is made that all or any of the costs incurred or to be incurred by Mr. Davidson in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mr. Connelly.

Background

4. Mr. Connelly is the lessee of Flat 3, 18 Union Crescent, Margate, Kent, CT9 1NS ("the subject property") and made an application under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for determination of the liability to pay and reasonableness of service charges in respect of the year ended 13th September

2008. He also made an application under Section 20C of the 1985 Act for a limitation of costs order.

5. Mr. Davidson is the freeholder of 18 Union Street and made an application under Section 20ZA of the 1985 Act for a dispensation of the consultation requirements in relation to certain works.

Inspection

6. On 27th January 2010 in the presence of Mr. Connelly and Mr. Davidson the Tribunal inspected the outside and the common parts of 18 Union Street which is a middle terraced four storey house converted into 4 self contained flats. Flat 1 is the basement flat which has its own front and rear entrances. Flat 2 is on the ground floor, the subject property is on the first floor and Flat 4 is on the second floor. We also inspected a room at the rear of the building which both parties stated was within Mr. Connelly's lease but through which the occupier of Flat 4 has a right of way to obtain access to the back yard by means of a fire escape (described in the lease as the back staircase). Flats 2, 3 and 4 share the common entrance hallway and stairs which were clean, reasonably decorated and carpeted. It was clear that there was a dispute about the decoration which had been carried out. Both Mr. Connelly and Mr. Davidson stated that they had decorated the hall and staircase. The cement render on the exterior walls of 18 Union Crescent was painted. The only defect pointed out to us by the parties was by Mr. Connelly who stated that there had been damage to his flat as a result of water leaking into it apparently from a hopper overflowing.

The hearing on 27th January 2010

7. The hearing was attended by Mr. Connelly and his father and Mr. Davidson.

8. Mr. Connelly confirmed that he is the lessee of the subject property and that his application is in respect of the service charges for the year ended 13th September 2008. Mr. Davidson confirmed that he is the freeholder of the building 18 Union Street and the lessee of Flats 1 and 4.

9. Mr. Connelly in his application had listed the following items which he disputed:

| | £ |
|-------------|--------|
| Fuel | 16.34 |
| Decorating | 281.06 |
| Maintenance | 915.74 |
| Equipment | 811.52 |
| Other | 145.39 |
| Legal fees | 207.00 |
| Accountancy | 28.75 |

10. However, he stated that he was no longer disputing the legal fees of £207.00 and neither did he dispute the charge for insurance, which was dealt with separately.

11. Taking into account the sums paid by Mr. Connelly and the sum of £2,706.76 paid to Mr. Davidson by Mr. Connelly's mortgage provider, Halifax Building Society,

Mr. Connelly believed that his service charge account was now in credit and Mr. Davidson believed that Mr. Connelly was in credit in the sum of £150 but further service charges would soon be due.

12. We asked Mr. Davidson to give further details of the items in dispute. He explained that the sum for fuel was fuel for his vehicle used in getting rid of rubbish. He stated that there was over 2 ½ tons of rubbish which had to be removed from the building. This included the old fire escape, a washing machine in the common area from Flat 1, doors and tyres and quite a lot of rubbish at the back of the property.

13. Mr. Davidson's Solicitor had prepared a bundle of documents for this hearing and the bundle included a large number of receipts but Mr. Connelly pointed out that some of the receipts appeared to be for items which could not be charged to the service charges. For example some appeared to be in respect of items purchased for the interior of the flats. Mr. Davidson agreed that all receipts had been supplied but that only some of them were relevant.

14. Mr. Connelly wanted information about the sums claimed and so did the Tribunal in order to make a decision.

15. We needed Mr. Davidson to show Mr. Connelly and the Tribunal which receipts he relied upon in support of the service charges. It soon became clear that Mr. Davidson was not going to be able to do this within a reasonable time and that an adjournment would be required.

16. However, he was able to find receipts for two of the larger sums expended namely the fire escape and the scaffolding.

17. Mr. Davidson accepted that strictly he had not complied with the consultation procedure under Section 20 of the 1985 Act but stated that at the time of carrying out the works he was living in one of flats and therefore was meeting Mr. Connelly every day. Mr. Connelly had agreed to the work being done and when Mr. Davidson told him that the fire escape would cost £3,000 Mr. Connelly thought that was good because he had been on the internet and found that fire escapes cost £5,000 to £7,000 hand made. As to the scaffolding Mr. Davidson had had several quotes up to £1,700 and had paid £850 and Mr. Connelly seemed to be happy with that. Mr. Davidson had told Mr. Connelly that the door entry system was being replaced. They did not discuss the cost. Mr. Davidson had expected it to cost £300 or £350 but it cost £500, which was more than he expected.

18. Mr. Connelly stated that he had not used the internet to find the cost of the fire escape. He said that Mr. Davidson had told him that the cost of all the works to the whole building would be £3,000 and that Mr. Connelly would have to pay one quarter of that but in the end the sum demanded was much greater than that.

19. Mr. Connelly said that Mr. Davidson had mentioned the scaffolding and Mr. Connelly thought that £850 was all right for that. Although he had not obtained information from the internet, Mr. Connelly thought that the cost of £3,000 for the fire escape was all right.

20. Mr. Connelly stated that although he thought that £3,000 would be the total cost for the building he thought that the charge for scaffolding would be extra. He therefore expected to pay ¼ of £3,000 + ¼ of the cost of scaffolding and he was happy with that. He thought the total of £3,000 would include the fire escape but Mr. Davidson had told him the external work would be extra but he did not know how much.

21. We explained that if Mr. Davidson wished to claim more than £250 in respect of the major works he would need to apply to us for a dispensation under Section 20ZA of the 1985 Act and that Mr. Connelly would then have the opportunity to respond to that application. If Mr. Davidson did make such an application he would need to complete the application form and the two applications would be heard by the Tribunal at the same hearing.

22. From our interpretation of the lease, we found that the cost of maintenance, decoration and repair of the passageway shown coloured blue on the plan attached to the lease (unfortunately no coloured copies of the plan were provided) and the rear staircase was to be shared equally between the tenants of Flats 3 and 4. Therefore Mr. Connelly is responsible for half of that cost.

23. From the documents produced we found that demands for service charges had not been made in accordance with the provisions of Section 21B of the 1985 Act and the Service Charges (Summary of Rights and Obligations, and Transitional Provisions)(England) Regulations 2007. A lessee may withhold payment of service charges which are not demanded in accordance with those provisions but if he does so the landlord is often able to correct the position by serving a new demand for the service charges accompanied by the notice required by those provisions.

24. We explained the directions which would be made and the parties stated they would be able to comply within the times allowed and that they could attend a hearing on 17th March 2010 at 10.30 am.

25. Directions were made. Received from Mr. Davidson was an application for dispensation under Section 20ZA of the 1985 Act and a statement and breakdown of claimed service charges. Received from Mr. Connelly was a response to the statement and breakdown. These documents were considered by the Tribunal.

The hearing on 17th March 2010

26. The hearing was attended by Mr. Connelly and Mr. Davidson.

27. The parties had no objection to the applications being heard together.

28. Mr. Connelly had received all the papers for this case but did not have them with him. Copies were provided.

29. Both parties had previously stated that they had painted the hall and staircase. We therefore asked who had done this and when.

30. Mr. Connelly gave evidence that a year or two before Mr. Davidson purchased the freehold in 2007, and therefore probably in 2005, the previous freeholder had totally refurbished the common parts, fitted new carpets and a double glazed window and that Mr. Connelly had stripped the banisters and painted the hall and staircase. The previous freeholder had paid him to do this. Mr. Davidson at the end of 2008 had pulled up the dark blue carpet which was hard wearing and still in good condition and replaced it with a beige carpet which now looked dirty and had repainted the hallway and stairs. Mr. Davidson had told Mr. Connelly that he would not charge him for painting the hallway as Mr. Connelly had previously done it. In Mr. Connelly's opinion, the hall and staircase did not need painting when Mr. Davidson painted it and the carpet which was hardwearing did not need replacing. The common parts were being used only by Mr. Connelly after the refurbishment in 2005 until Mr. Davidson purchased and damage to the decorations and the carpet was caused when Mr. Davidson was fitting out his flats. However, Mr. Connelly accepted that the carpet would not cost much.

31. Mr. Davidson's evidence was that he had not charged for the labour but had charged for the carpet and two tins of paint. There was some left so that the painting could be touched up when needed. Mr. Davidson stated that the blue carpet was of poor quality and threadbare and needed replacing for safety reasons and insurance but accepted that during the work which he had carried out there was no protective covering on the carpet.

32. Two invoices for carpeting had been produced at pp 111 and 115 of Mr. Davidson's bundle of documents but it was only the invoice at p 111 which indicated that £306 had been paid which related to the common parts. The invoice at p 115 was in respect of a bedroom, washroom and kitchen and not the common parts.

33. In the breakdown of claimed service charges that sum and the invoice at p 115 had been included under the heading of decorating but Mr. Davidson was not sure that that was correct.

34. It soon became clear that the breakdown of claimed service charges which Mr. Davidson explained had been prepared by his professional advisors was not helpful to the parties or to the Tribunal and we decided that we would have to go through the breakdown and deal with each item. Fortunately, Mr. Davidson had his handwritten instructions to his Solicitor in which he had indicated which invoices and receipts were in respect of sums he wished to claim as part of the service charges and which were not.

35. We looked at each item in the breakdown. Many of them Mr. Davidson stated he did not wish to claim as they were not in respect of anything which came within the service charges. Of the items which Mr. Davidson indicated he did wish to claim, Mr. Connelly accepted almost all as being charges to which he had to contribute.

36. The sums which Mr. Davidson wished to claim are set out in a schedule annexed to this determination. In that schedule the columns show the supplier, the Tribunal's comments, the page in the bundle where the invoice or receipt can be found, the sum claimed, the sum agreed or in the absence of agreement determined by

the Tribunal, Mr. Connelly's share of that sum as a percentage, the sum for which he is liable and totals.

37. The sum for insurance is a separate matter and has been accepted by Mr. Connelly.

38. The sums for electricity and legal fees were accepted by Mr. Connelly.

39. The sum in respect of accounts was not accepted by the Tribunal as the figures produced did not show which sums were claimed as service charges and which were not and we were not satisfied that the accounts were certified.

40. The sum in respect of the fire escape was agreed by Mr. Connelly and under the terms of the lease he is liable to pay 50% of the total not 25% as the parties had thought.

41. There is an item shown on the schedule as JPD labour 100 hours. This is a charge made by Mr. Davidson in respect of his labour in carrying out work to the exterior and the common parts. He estimated that he worked at least 100 hours and has charged that out @ £10 per hour giving a total of £1,000. Mr. Connelly accepted that charge as being reasonable.

42. Of the remaining sums shown in the schedule in respect of repairs and maintenance we have indicated a number where part only of the invoice amount was claimed by Mr. Davidson and Mr. Connelly accepted liability for his share of that part.

43. Mr. Connelly disputed the following two items:

(a) The invoice at page 111 of the bundle in respect of carpets for the hall stairs and landing. The Tribunal accepted the evidence of Mr. Connelly that in 2005 new carpets had been fitted in the hall stairs and landing and that until Mr. Davidson purchased the building Mr. Connelly was the only person living in the property and using those areas. We found on a balance of probability that in those circumstances it was unlikely that the carpet would have needed to be replaced by December 2007, the date of the invoice, unless it had been damaged by Mr. Davidson when he was fitting out his flats. Mr. Davidson accepted that during the work which he carried out there was no protective covering on the carpet. We therefore concluded that the cost of that carpeting had not been reasonably incurred and that Mr. Connelly was not liable to contribute to it.

(b) The charge of £20 for petrol at p 140 of the bundle. The Tribunal accepted Mr. Davidson's evidence that this was fuel used by his vehicle to take away a large quantity of rubbish from the property. As this included the old fire escape we found that this claim was justified. Mr. Connelly is therefore liable to pay one quarter of that sum.

44. The Tribunal then went on to consider the application for dispensation with the consultation requirements.

45. When an application is made for a determination to dispense with all or any of the consultation requirements, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements. We considered all the evidence given by the parties and found that the parties were at the relevant time living at the property and that they met almost daily. It was accepted by the parties that there had been discussion about the cost of replacing the fire escape and quotes for scaffolding and that the parties had agreed those items. Although no notices had been served in respect of the works we found that in fact there had been satisfactory consultation about the work and its cost and that the sums claimed and either agreed by Mr. Connelly or determined by the Tribunal were reasonable. Mr. Connelly had not been disadvantaged by the failure to serve notices. As a result we were satisfied that it was reasonable to dispense with the requirements.

46. At the hearing an application was made for an order that all or any of the costs incurred or to be incurred by Mr. Davidson in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mr. Connelly. The Tribunal may make such order on the application as the Tribunal considers just and equitable in the circumstances. Mr. Davidson stated that he would not be making a charge on the service charges for these proceedings but as we were satisfied that Mr. Connelly was justified in making his application for a determination of the liability to pay and reasonableness of service charges because there had been a lack of clarity in the demands made, we considered that in all the circumstances it was just and equitable to make such an order and for the avoidance of doubt did so.



R. Norman
Chairman

Union Crescent Margate

| DATE | SUPPLIER | | PAGE | CLAIMED | AGREED | SHARE | NET DUE | |
|----------------------------------|---|---------------------------------|--------|------------|------------|-------|------------|------------|
| 25/10/2007 | MORE THAN - INSURANCE | | 188 | £ 507.27 | £ 507.27 | 25% | £ 126.82 | £ 126.82 |
| 02/11/2007 | ELECTRICITY | | | £ 20.00 | £ 20.00 | 25% | £ 5.00 | |
| 29/01/2008 | ELECTRICITY | | 184 | £ 25.36 | £ 25.36 | 25% | £ 6.34 | £ 11.34 |
| 23/10/2009 | PAYNES - LEGAL/MANAGEMENT | | 204 | £ 828.00 | £ 828.00 | 25% | £ 207.00 | £ 207.00 |
| | BATCHELOR COOP - ACCOUNTS | NOT ACCEPTED BY LVT | 210 | £ 115.00 | £ - | 0% | £ - | £ - |
| 26/11/2007 | PAY ENG - FIRE ESCAPE | 50% AS PER LEASE | 89 | £ 2,984.00 | £ 2,984.00 | 50% | £ 1,492.00 | £ 1,492.00 |
| REPAIRS & MAINTENANCE | | | | | | | | |
| 02/11/2007 | SCAFFOLDING | | 108 | £ 850.00 | £ 850.00 | 25% | £ 212.50 | |
| 04/11/2007 | WF TIMBER - REAR GATE | | 102 | £ 86.00 | £ 86.00 | 25% | £ 21.50 | |
| 09/11/2007 | BREWERS - MATERIALS | | 98 | £ 23.32 | £ 23.32 | 25% | £ 5.83 | |
| 14/11/2007 | BREWERS - MATERIALS | | 93 | £ 12.16 | £ 12.16 | 25% | £ 3.04 | |
| 19/12/2007 | HARRISONS - CARPETS | £308.00 NOT ACCEPTED BY LVT | 111 | £ 308.00 | | 0% | £ - | |
| 04/01/2008 | LAURENCE STORES - MATERIALS | | 124 | £ 10.59 | £ 10.59 | 25% | £ 2.65 | |
| 10/01/2008 | WICKES - MATERIALS | | 131 | £ 130.82 | £ 130.82 | 25% | £ 32.71 | |
| 10/01/2008 | WICKES - MATERIALS | | 132 | £ 2.98 | £ 2.98 | 25% | £ 0.75 | |
| 21/01/2008 | MALCOM WAITE - PETROL | DUMPING OF OLD FIRE ESCAPE, ETC | 140 | £ 20.00 | £ 20.00 | 25% | £ 5.00 | |
| 13/02/2008 | WICKES - MATERIALS | | 150 | £ 71.67 | £ 71.67 | 25% | £ 17.92 | |
| 20/02/2008 | JAMES DÉCOR - MATERIALS | | 151 | £ 6.99 | £ 6.99 | 25% | £ 1.75 | |
| 21/02/2008 | WICKES - MATERIALS | | 152 | £ 28.96 | £ 28.96 | 25% | £ 7.24 | |
| 22/02/2008 | BREWERS - MATERIALS | | 153 | £ 2.35 | £ 2.35 | 25% | £ 0.59 | |
| 24/02/2008 | WILKINSONS - MATERIALS - PART ONLY | | 154 | £ 9.46 | £ 2.99 | 25% | £ 0.75 | |
| 25/02/2008 | WICKES - MATERIALS - PART ONLY | | 155 | £ 11.20 | £ 7.49 | 25% | £ 1.87 | |
| 01/03/2008 | WICKES - MATERIALS | | 159 | £ 49.97 | £ 49.97 | 25% | £ 12.49 | |
| 04/03/2008 | WILKINSONS - MATERIALS - PART ONLY | | 160 | £ 7.47 | £ 4.98 | 25% | £ 1.25 | |
| 05/03/2008 | WICKES - MATERIALS | | 161 | £ 9.77 | £ 9.77 | 25% | £ 2.44 | |
| 18/03/2008 | ROOFLINE DESIGN - MATERIALS - PART ONLY | | 169 | £ 14.88 | £ 5.17 | 25% | £ 1.29 | |
| 18/03/2008 | WICKES - MATERIALS & LADDER | | 170 | £ 94.99 | £ 94.99 | 25% | £ 23.75 | |
| 21/03/2008 | WICKES - MATERIALS | | 172 | £ 15.99 | £ 15.99 | 25% | £ 4.00 | |
| 25/03/2008 | WICKES - MATERIALS | | 173 | £ 4.98 | £ 4.98 | 25% | £ 1.25 | |
| 01/04/2008 | JPD - LABOUR - 100 HRS | | NO INV | £ 1,000.00 | £ 1,000.00 | 25% | £ 250.00 | |
| 24/07/2008 | A D PHILPOTT - EXT WORKS - PART ONLY | | 177 | £ 545.00 | £ 525.00 | 25% | £ 131.25 | £ 741.82 |
| | | TOTAL DUE | | | | | | £ 2,452.16 |