

## HM COURTS AND TRIBUNALS SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
OF THE NORTHERN RENT ASSESSMENT PANEL

## LANDLORD AND TENANT ACT 1985

## Section 27A and Section 20(C)

**Properties:** Apartments at Empress Court, 403 Marine Road East,  
Morecambe, LA4 5AN

**Applicants:** Mrs B A Ratcliffe and 6 others

**Respondent:** Empress Court (Morecambe) Ltd

**Tribunal:** M J Simpson. LL.B (Chairman)  
J Faulkner. FRICS

**Date of Determination:** 23 April 2012

**Decision:**

- 1. The cost of the Building Works was reasonably incurred and is payable by the tenants under the Service Charge, subject to our decision re Apportionment set out in our interim decision.**
- 2. The landlord's costs of dealing with this application up to and including the 16<sup>th</sup> January 2012 (and any consideration of an Appeal from that Determination) shall not be Relevant Costs and cannot be claimed from any tenant under the Service Charge or otherwise.**
- 3. We make no Order in respect of the costs of submitting the written representations, the subject of today's Determination.**

This Determination follows on from Interim Determination of the Tribunal dated 16<sup>th</sup> January 2012, which dealt with the issues of the lifts and apportionment, and this Determination should be read in the light of that.

The building works and Section 20C costs issues were dealt with as follows:-

*"Cost of the Building works*

Because of the failure of the Landlord Company to comply timeously with the Directions for disclosure, we have insufficient, in fact practically no, information upon which to determine this issue.

It would be unhelpful for us to simply find in favour of the Applicants, especially as they are not in a position to fully examine the costs and put forward their own alternative figures.

We attempt to remedy this failure on the part of the Landlord Company by adjourning that part of the application and giving the following further Directions.

1. The Respondent shall by 4.00pm on Monday 6<sup>th</sup> February file with the Tribunal and serve on the Applicants a statement and accompanying documents including, but not limited to, any revised specification, revised quotation. Details of supervision of the works, final account(s) for the works, guarantees and warranties and a copy of the consequent actual or proposed Service Charge Demands to be made of the Applicants.
2. The applicants shall by 4.00pm on 27<sup>th</sup> February file with the Tribunal and serve on the Respondent, their responses, including, but not limited to the cost for the works for which they contend as a reasonable sum.
3. Both parties shall by 4.00pm on 5<sup>th</sup> March inform the Tribunal if they require a further hearing, whereupon the Tribunal will decide whether to proceed on the basis of written representations or otherwise.

#### Costs.

We defer our consideration of any Section 20C Order until the conclusion of the case.”

Further evidence has been filed and served in accordance with that Direction, and all parties have indicated that they do not require a further hearing, but are content for the Tribunal to deal with outstanding issues on the basis of the current written representations and the documents included in the Bundle for the Hearing of 16<sup>th</sup> January.

The Respondent's representations are set out in the letter of 1<sup>st</sup> February 2012 from the representative on record for the Respondent, Homestead Consultancy Services Ltd (Mr Bentham).

The Bill of Quantities prepared by Anna Williams was the starting point. £15,000 for contingencies were removed, variations were made in the provisions for repairs, render and masonry paint options, to produce a renegotiated contract figure, including the addition of some works, of £29,920. The detail of these events is set out in the statement, in the form of a letter dated 31 January 2012, of George Dickson of No.24.

The contract and works were overseen on a daily basis by Mr Prescott of No.21. He has a professed competence in such and holds a HNC in building. There were no supervision fees.

Copies of the relevant invoices were supplied, as were copies of the Contractors Public Liability Insurance, Trades Person Insurance, Sovereign Guarantee (re damp proofing chemicals) and the contractors guarantee.

Finally they aver that the work has been carried out satisfactorily and that there has been no recurrence of the earlier problems since the work was completed in July /August 2011.

The Applicants representations are set out in letter and enclosures dated 20<sup>th</sup> February from Mr & Mrs. Ratcliffe.

They note that the reduction in anticipated expenditure was achieved by reducing the scope of the provisions in the contract rather than reducing the cost of the various items of work. They are concerned that the work that might have arisen, which would have been catered for in Ms. Williams 'provisions', has not been identified, may be necessary and has not been undertaken.

They question the adequacy of Mr Prescott's supervision and especially the absence of such recourse or professional guarantee as would have been available had the work been supervised by a Chartered Building Surveyor such as Ms. Williams.

#### Determination.

We had regard to the representations made in preparation for and at the Hearing, the Hearing Bundle, our inspection of the premises and the further representations set out, in précis, above. We did not have regard to the continuing gratuitous disparaging character comments.

The inspection revealed no continuing problem, despite the inclement winter weather that had been experienced. No one complains, even today, that the works have not been effective, so far.

Against the background of earlier estimates in 2008, Ms Williams schedule of works and the quotations thereby obtained, the overall cost of the works does not appear to be unreasonable and is within the range of all the figures and quotation that have been made available to the Tribunal. Indeed the Applicants do not contend for a different figure. They fear that not enough has been done and have concerns that what has been done was not adequately supervised and lacks effective guarantees

There is no evidence before us, beyond the applicants' misgivings, to indicate that the scope of the work is inadequate. There is no evidence that, during the repair process, work became apparent that needed to be done and would have utilised the 'provisions' that were deleted from Ms. William's specification.

Compliance with the landlords repairing covenant is a matter for the Courts. We do not have jurisdiction to say that more should have been done, so long as the failure to carry out any (as yet unidentified) further works has not thereby made that which has been done an unreasonably incurred expense. There is no evidence to support the contention that it has.

Whilst we accept that the frequency and proximity of Mr Prescott's supervision does not evidence, one way or the other, the quality and expertise of that supervision, there is no evidence of bad workmanship by Mr Gray, the contractor, or of the use of inadequate or inappropriate materials.

We accept that the guarantees evidenced by the Respondent are not as extensive or as 'gold plated' as may have been the case with the continued employment of Ms. Williams. The warranties that are available are not inadequate to such a degree as to make the overall cost of the works unreasonably incurred.

We therefore determine that the cost of the Building Works was reasonably incurred and is payable by the tenants under the Service Charge, subject to our decision re Apportionment set out in our interim decision.

Costs.

None of the parties make any representations as to costs, save for the nominal Section 20C application tick box on the Applicants original application form to the Tribunal.

The Applicants were certainly successful in respect of all the issues dealt with at the Hearing. We therefore determine that the landlords cost of dealing with this application up to and including the 16<sup>th</sup> January (and any consideration of an Appeal from that Determination) shall not be Relevant Costs and cannot be claimed from any tenant under the Service Charge or otherwise.

The landlords' claim in respect of the Building Works has prevailed and accordingly we make no Order in respect of the costs of submitting the written representations, the subject of today's Determination. That does not preclude a challenge to the reasonableness of the amount of those costs or their payability under the terms of the Lease, if and when any such costs are claimed and quantified.



Martin J Simpson.  
Chairman