

10597



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/00HN/LSC/2014/0059

**Property** : 25 Wellington Road, Bournemouth,  
Dorset, BH8 8JH

**Applicant** : Tyrell Investments Inc

**Representative** : Mrs Mary-Anne Fenton, Mrs Gail  
Drysdale, and Mr Ben Hume, all of Napier  
Management Services Ltd

**Respondent** : The 6 leaseholders

**Representative** : No attendance or representation

**Type of Application** : Liability to pay service charges : section  
27A of the Landlord and Tenant Act 1985  
("the 1985 Act")

**Tribunal Members** : Judge P R Boardman and Mr K M Lyons  
FRICS

**Date and Venue of  
Hearing** : 2 December 2014 at Court 8, Bournemouth  
County Court, Deansleigh Road,  
Bournemouth, Dorset, BH7 7DS

**Date of Decision** : 4 December 2014

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**DECISION**

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## Introduction

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 whether service charges would be payable for proposed external redecoration and associated repairs at the Property
2. An oral case management hearing took place on 6 August 2014 attended by Mrs Fenton and Mrs Drysdale, who said that the Respondents' respective flat numbers were as follows :

Mr S G Moore and Miss M L Small	Flat 1
Mr M S Tanner	Flat 2
Miss SE Jupe	Flat 3
Mr P Smith	Flat 4
Mr R A Oldham	Flat 5
Mr A J Blackmore	Flat 6

3. No one attended the case management hearing on behalf of any of the Respondents. Mr Oldham had written to the Tribunal on 22 July 2014 stating that he would not be able to attend, and offering his "full support to the other tenants"
4. Documents attached to the application included :
  - a. a notice dated 12 January 2014 under section 20 of the 1985 Act of intention to carry out works
  - b. a schedule of works
  - c. an asbestos survey dated 18 September 2005 by JTEC Environmental Limited
  - d. a specification of works by Napier Management Services Limited dated February 2014
  - e. a summarised tender sheet, proposing the instruction of Access Elite, and setting out the following tenders, with copies :

Access Elite	£2940 (no VAT)
Howards Building Refurbishment Company	£4375 (+ VAT)
Henley's Building Contractors Limited	£6930 (+ VAT)
DD Ross Limited	no tender received
  - f. a notice dated 8 May 2014 under section 20 of the 1985 Act and statement of estimates
  - g. the lease dated 15 December 1989 of Flat 1 at the Property
  - h. a photograph of the Property
5. Mrs Fenton said at the case management hearing that so far as she was aware, all leases for flats at the Property were in materially the same terms
6. At the case management hearing the Tribunal directed that :
  - a. by 20 August 2014 each Respondent should complete and send to the Tribunal and to the Applicant's representative the "form for leaseholders" attached to the directions, indicating whether the

Respondent agreed that the costs of the proposed works were reasonable and would be payable by way of service charge, or opposed the application

- b. by 3 September 2014 each Respondent who opposed the application should send to the Applicant :
- a statement setting out :
    - the reasons why the Respondent opposed the application
    - the relevant service charge provisions in the lease
    - any legal submissions in support of the challenge to the service charges claimed, including argument, if liability to pay is at issue
  - copies of any alternative quotes or other documents upon which the Respondent intended to rely
  - any signed witness statements of fact upon which the Respondent intended to rely
  - any authorities (statutes and decided court and tribunal cases) on which the Respondent wished to rely

## **Documents**

7. The Tribunal has not received any further documents from any of the Respondents
8. The documents now before the Tribunal are those contained in a bundle prepared by the Applicant for use at the hearing, pages 1 to 133 (including a letter from Mrs Fenton dated 5 November 2014 and the notice under section 20 of the 1985 Act dated 5 November 2014 referred to)
9. References in this decision to page numbers are to page numbers in that bundle, unless otherwise stated

## **The lease of Flat 1 (pages 42 to 56)**

10. The lease included the following provisions referred to by the parties at the hearing :

### ***First schedule (the demised premises)***

*ALL THAT ground floor flat number 1.....and for the purpose of grant as well as obligation shall include.....all window frames and the glass therein and all doors in or to the demised premises.....*

### ***Third schedule (Lessee's covenants)***

*12 To keep the demised premises.....in good and tenantable repair and condition.....*

*13(a) To contribute and to pay on demand by way of further*

*and additional rent one sixth share of the costs expenses outgoings and matters contained or referred to in the clauses one to three inclusive of the fourth schedule*

***Fourth schedule (Lessor's covenants)***

*1 That (subject to contribution and payment by the Lessee) the Lessor will maintain repair decorate clean and renew :*

*(i) The main structure of the Building and in particular.....the roof.....outer and other load-bearing walls of the Building.....*

*(ii) The boundary walls and fences of the Premises*

*2 That (subject as aforesaid) the Lessor will in every fourth year of the term re-decorate the exterior of the Building.....*

**Inspection**

11. The Tribunal inspected the exterior of the property on the morning of the hearing on 2 December 2014. Also present were Mrs Fenton and Mr Hume
12. The Tribunal found the property to be as shown in the helpful photographs at pages 38 and 40 and as described at paragraph 3 of the specification dated February 2014 at page 67
13. The windows were all UPVC units set in wooden frames

**The hearing**

14. Those attending the hearing on 2 December 2014 were Mrs Drysdale, Mrs Fenton, and Mr Hume
15. No one attended the hearing on behalf of the Respondents
16. The Tribunal was satisfied, pursuant to rule 34 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that :
  - a. each Respondent had been notified of the hearing
  - b. it was in the interests of justice to proceed with the hearing in the absence of the Respondents

**The parties' respective obligations under the lease**

17. In answer to a question from the Tribunal, Mrs Drysdale conceded that the wooden frames to the UPVC windows were the tenants' responsibility to repair under the lease, by virtue of paragraph 12 of the third schedule to the lease and the definition of the demised premises

in the first schedule, but submitted that those wooden frames were nevertheless the Landlord's responsibility to clean and redecorate by virtue of paragraphs 1 and 2 of the fourth schedule. She also submitted that, although the first schedule referred to "window frames" it mentioned only "doors" and not "door frames", with the implication that although individual flat doors were the responsibility of the tenants, the door frames were the responsibility of the landlord

### **The proposed works**

18. Mrs Drysdale took the Tribunal through each item of works in the specification starting at page 120. She submitted that each item was the landlord's responsibility under paragraphs 1 and 2 of the fourth schedule to the lease, and therefore an item properly included in the service charge under paragraph 13(a) of the third schedule, except for the following parts of the following items, which she conceded were the tenants' individual responsibility in each case :

02.05 : "repair rot in sub frame" and "replace any defective sealants"

02.06 : "replace any defective sealants"

02.07 : "replace any defective sealants"

02.08 : "replace any defective sealants"

02.09 : "replace any defective sealants"

03.05 : "replace any defective sealants"

03.11 : "replace any defective sealants"

04.05 : "replace any defective sealants"

04.10 : "replace any defective sealants"

04.12 : "replace any defective sealants"

05.05 : "replace any defective sealants"

05.06 : "replace any defective sealants"

19. In answer to a question from the Tribunal in relation to item 04.03, Mrs Drysdale submitted that the patio sliding door referred to was still a "door", and not a "window" for the purposes of the definition of the demised premises in the first schedule to the lease, despite having glass in it, so that the frame was a door frame and not a window frame, with the result that the item "replace any defective sealants" was the landlord's responsibility

### **Quotations**

20. Mrs Fenton said that she had sent a letter on 25 April 2014 (page 112) requesting tenders. Documents sent with that letter included :

a. the Napier specification starting at page 66

b. the AkzoNobel painting systems specification starting at page 58 and referred to at page 71

c. the 2005 asbestos survey starting at page 88 and referred to at page 72

21. The quotations were at pages 114 to 123 as listed in the summarised tender sheet at page 130 :

Access Elite	£2940 (no VAT)
Howards Building Refurbishment Company	£4375 (+ VAT)
Henley's Building Contractors Limited	£6430 (no VAT)

22. The quotations from Access Elite and Howards both expressly included a contingency sum of £500. The quotation from Henley's, to which was attached the priced schedule at pages 120 to 123, did not mention a contingency sum

### **Notices under section 20 of the 1985 Act**

23. Mrs Fenton said that she had served notices as follows :

- a. on 12 February 2014 (starting at page 108)
- b. on 8 May 2014 (starting at page 124)
- c. on 5 November 2014 (starting at page 131)

24. The summarised tender sheet at page 130 had indicated the intention to instruct Access Elite. However, as stated in the notice dated 5 November 2014 at page 132, due to recent experience with Access Elite, Napier did not feel that the service or works provided would be suitable or adequate for the tendered sum, so that the proposal was now to instruct Howards in accordance with their quotation at page 116

25. None of the Respondents had responded to any of the notices

### **Summary of the Applicant's case**

26. Mrs Drysdale asked the Tribunal to decide that the proposed works were reasonably required, that the sum quoted by Howards was a reasonable cost, and that the cost could be included in the service charge, subject to the exclusion of the items identified as being the responsibility of individual tenants

### **The Tribunals Decision**

27. The Tribunal finds that:

- a. the proposed works are reasonably required
- b. the sum quoted by Howards is a reasonable cost for those works; in making that finding, the Tribunal has taken into account that Napier had originally advised accepting the quotation from Access Elite, and that the quotation from Howards is considerably more expensive than the quotation from Access Elite; however, the Tribunal accepts :
  - Napier's submission that recent experience with Access Elite had led Napier to the view that the standard of work would not have been of a reasonable standard and that

the sum quoted by Access Elite would therefore not have been reasonable either

- the fact that the sum quoted by Howards is considerably less than the sum quoted by Henley's
  - the sum quoted by Howards as reasonable in all the circumstances
- c. it is reasonable to include the cost of the works in the service charge, subject to the exclusion of the items identified earlier in this decision as being the responsibility of individual tenants

28. In relation to the notice dated 5 November 2014 at pages 131 to 133, the Tribunal noted after the hearing a matter not drawn to its attention during the hearing, namely that the notice stated that "*we have now entered into a contract* for the carrying out of the works.....with Howards.....[in place of Access Elite]", rather than stating that they *intended* to instruct Howards in place of Access Elite

29. However, the Tribunal makes no finding or further comment in that respect, because this is an application under section 27A of the 1985 Act, with no application before the Tribunal under section 20ZA of the 1985 Act, and, in any event, there is no indication before the Tribunal of any objection, or allegation of prejudice suffered, by any of the Respondents in that respect

## Appeals

30. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case

31. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision

32. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal

33. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 4 December 2014

Judge P R Boardman