SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/00HA/LIS/2007/0036

In the matter of an application under Section 27A of the Landlord & Tenant Act 1985 as amended. ("The 1985 Act") and Section 20C of the 1985 Act

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DECISION

Applicant:	Kildare Flats (Bath) Limited 6 Gay Street Bath, BA1 2PH
Respondent:	Mrs Vera E Lane Flat 9 Kildare Sydney Road Bath, BA2 6NR
Premises: ("The Premises")	Flat 9 Kildare Sydney Road Bath, BA2 6NR
Date of Application:	Undated but referred to the LVT by the Bath County Court on the 11th day of October 2007 (Claim No 7QZ23029)
Date of Provisional Directions:	17th October 2007
Date of Inspection and Hearing of Application:	4th January 2008
Venue of Hearing:	The Drawing Room The Pump Rooms Stall Street Bath, BA1 1LZ
Members of the Leasehold Valuation Tribunal:	Mr A D McCallum Gregg (Chairman) Mr J Reichel, BSc, MRICS Mr S Fitton Clerk – Miss Nik Bennett

Persons Present at The Hearing on behalf of The Applicant	Mr Christopher Jones (Barrister) Mrs Deborah Velleman (Representing Managing Agents) Mr Simon Fisher (Trainee Solicitor)

There was no representation on behalf of the Respondent.

Preliminary Matters

1. This application which had been referred by the Bath County Court under Section 27A of the 1985 Act related to a determination of liability to pay items of service charges for the years 2003 to 2006 inclusive and also an application under Section 20(c) of the 1985 Act for an order that all or any of the costs incurred by the Applicant should not be regarded as relevant costs.

2. Directions were given in this matter on the 17th of October 2007.

3. Pursuant to those directions the Applicant sent to the Tribunal and the Respondent their statement of case dated November 2007 with accompanying documents on which the Applicant based its case.

4. The Respondent sent her statement of case to the Tribunal and to the Applicant and this had been received by the Tribunal on the 19th of December 2007.

5. The premises were inspected prior to the hearing on the 4th day of January 2008 in the presence of all parties.

6. The Tribunal then adjourned to the Pump Rooms in Bath for the hearing at which the Respondent did not attend and was not represented.

7. Prior to the hearing a witness statement from Mrs Deborah Velleman had been handed in and this had been read by the Tribunal. At the commencement of the hearing a skeleton argument on behalf of the Applicant was handed to the Tribunal.

8. Since neither of these documents had been seen by the Respondent a further direction was made that the Respondent be given 14 days within which to make any written responses to either of those two documents.

9. No further written representations have been received from the Respondent.

The Hearing

1. Mr Jones opened the case for the Applicant on the basis that there were two issues to be resolved by the Tribunal. The first issue was whether the service charges for the years concerned had been properly levied and the second issue was whether, if the charges had been properly levied and were recoverable, there was an actionable counterclaim that would entitle the Respondent to set off the value of that counterclaim.

2. From the papers before the Tribunal and from the evidence of Mrs Velleman the Tribunal accepted that the Applicant is the landlord of the premises and the respondent is the tenant of the premises pursuant to a lease dated the 7th day of July 1978 made between Costain Homes Limited and Mr and Mrs Roe for a term of 999 years from the 24th day of June 1977.

3. The Tribunal was then referred to Schedule 7 of the lease and in particular Clauses 9 to 12 inclusive.

4. The Tribunal heard evidence from Mrs Velleman on behalf of the Applicant that whilst the strict terms of the seventh schedule of the lease had not been complied with the respondent, Mrs Lane, had acquiesced in that non-compliance for a number of years.

5. Furthermore Mrs Velleman stated that she had been preparing the accounts for the company since the end of the 1980s before full management was taken over in 2007. She stated that during that period there had never been any audited accounts. The accounts had however always been circulated before the Annual General Meeting and discussed at that meeting before being approved and submitted to Companies House. In answer to a question from Mr Fitton she stated that they had never had to alter or amend the accounts. Mr Jones therefore argued that this had become an accepted practice as had been set out in his skeleton argument.

6. Mrs Velleman further stated that there were in fact always two meetings of the management company in each year. The first in the summer when the accounts had been prepared and were agreed and the second in the autumn when the budget for the next year was approved.

7. The Tribunal found that whilst the strict terms of the lease may not have been complied with this method of dealing with the accounts and in particular not having them audited had been accepted by the Respondent and her fellow leaseholders.

8. The Tribunal therefore concluded that the service charge had been properly levied for each of the years in question.

The Tribunal then considered the second issue, namely the question of disrepair and whether any actionable counterclaim arose as a result of that disrepair. The items considered under the heading of disrepair were as follows:-

(i) The ceilings of the hall and the spare bedroom.

(ii) The ceilings in the kitchen and the sitting room.

(iii) The wallpaper in the sitting room.

(iv) The carpets in the sitting room.

(v) The balcony area and the patio door and the work that had been carried out to the balcony.

(vi) The garage.

(vii) The outbuilding (dustbin store).

In considering the above matters the Tribunal's findings were as follows:-

(i) There were marks on the ceilings of the hall and the spare bedroom and both ceilings suffered from minor cracking. The marks on the ceilings had been caused when water due to condensation had come from the water tank which was in the roof space above the ceiling and which in turn had been caused as a result of lack of ventilation to that roof space.

The Tribunal heard evidence that the original wooden cladding had been replaced by PVC and the tank properly insulated. Furthermore, the Tribunal heard from Mrs Velleman that the Applicant had offered to redecorate the hallway and spare bedroom ceilings at no cost to the Respondent but those offers had been rejected (see Paragraphs 5, 6 and 7 of Mrs Velleman's proof of evidence).

Mrs Velleman stated that the offer to redecorate these areas remained.

(ii) The ceiling in the kitchen and sitting room showed evidence of cracking and that cracking largely followed the joint lines of the plasterboard cladding. There had been a suggestion that this problem may have been caused as a result of the proximity of the railway line to the entire building. Subsequently the Respondent had suggested that the problem was due to an ingress of water due to leakage of the roof. Mrs Velleman stated that a number of flats had experienced similar problems with regard to surface cracking. The Tribunal accepted her view that this had probably been due to drying or natural shrinkage and the Tribunal relying on its own expertise agreed with that conclusion. The Tribunal therefore concluded that this cracking was not the responsibility of the management company and could be rectified during redecoration as it had been in other flats by filling the cracks with mastic filler and then repainting. Mrs Velleman stated that other owners had done this and there had been no further problems reported (see Paragraph 8 of her proof of evidence).

(iii) The wallpaper in the sitting room – No mention had been made of this problem in the papers before the Tribunal and Mrs Velleman stated that she was first made aware of this problem on the inspection of the premises that day.

Mr Reichel commented that the wallpaper problem appears in the upper area of the room and following an inspection of the outside of the premises it was noted that the pointing of the stonework above the windows appeared to be of an inferior quality than that below the windows. In all probability those areas therefore need repointing.

Mrs Velleman stated that the building was last scaffolded and the exterior maintenance carried out in, probably, 2003 or 2004. The company deals with exterior maintenance every 5 or 6 years.

(iv) The Carpets – A certain amount of bunching was noted in the carpets in the sitting room. Again Mrs Velleman stated that she was only made aware of that problem that day.

The Respondent had suggested that it was due to an ingress of dampness.

The Tribunal could see no evidence in support of this assertion.

(v) The Balcony Area – There were two issues dealing with this area, namely

(i) The patio door and
(ii) The waterproof membrane.

There had been a leak from the balcony area into the flat below. This had been caused by a problem with the patio itself. Originally it was intended to put in a waterproof membrane.

However a more cost effective and conservative proposal was put forward and that had been implemented and appeared to have corrected the problem thereby removing the need for the more extensive works.

The Patio Door – The Tribunal had noted from Schedule 2 on Page 18 of the paginated bundle and Schedule 3 on Page 19 of the paginated bundle that the responsibility for the doors and windows were those of the leaseholder. Mrs Velleman stated that the owner prior to Mrs Lane had replaced the patio doors and in her view those replacement doors had been defective which in turn had caused damage to the joists and cladding of the floor area just inside the patio door.

The management company had repaired that damage to the floor and the patio doors had been replaced by the Respondent at a cost of £1,700.

(vi) The Garage - The Garage had been inspected by the Tribunal and whilst there was some staining to the untreated wood of the garage ceiling at the rear left hand corner the Tribunal could find no evidence of fresh dampness in that ceiling and concluded that the stains were old. A certain amount of moss was noted on the roof of the garage and this should perhaps be treated with
chemicals to avoid further growth.

The Tribunal did however accept the evidence of Mrs Velleman (see Paragraph 9 of her statement).

(viii) Outbuildings - The rotting woodwork of the dustbin store had only been noted on the inspection that day.

The Applicant accepts that maintenance will need to be done during the normal maintenance regime for the block in order to rectify that problem.

Outstanding Amount for Service Charges

The Tribunal noted from the statement of case submitted by the Applicant that in November 2007 the Respondent owed the sum of £1,876.25 for outstanding service charges.

Mrs Velleman informed the Tribunal that since then a further demand of £600 had been submitted to the Respondent for the period covering the 1st of January 2008 to the 30th of June 2008. The total arrears therefore amount to £2,476.25.

Furthermore, it appeared from Page 17 of the Respondent's bundle that at a meeting that took place on the 2nd of November 2007 all the leaseholders with the exception of the Respondent, who was only present for part of that meeting had discussed and approved the £600 service charge for the period from the 1st of January 2008 to the 30th of June 2008.

Damages for Distress and Inconvenience

This had been referred to on Page 7 of the paginated bundle.

Mr Jones argued that if the Tribunal had concluded that there was no disrepair on behalf of the management company then it followed that there should be no damages for distress and inconvenience.

The Tribunal accepted this view.

Application Under Section 20C of the Act for the Applicant's Costs

Details were given of the costs to date and Mr Jones argued that the Applicant had no alternative than to pursue the claims against the Respondent firstly in the County Court and then following the transfer of this matter to the Tribunal, secondly in the Tribunal.

The Tribunal accepted this argument and made an order that the Applicant should be entitled to recover its costs as part of the service charge.

The Tribunal accordingly made an order.

DETERMINATION AND DECISION OF THE TRIBUNAL

1. That the service charges for the years 2003 to 2006 inclusive have been properly levied and are payable by the Respondent.

2. That the Applicant should be entitled to recover its reasonable costs pursuant to Section 20C of the Act and that these can be regarded as part of the service charge.

Signed.....

Andrew D McCallum Gregg (Chairman)
A Member of the Southern Leasehold Tribunal appointed by the Lord Chancellor issued this 23rd day of January 2008