RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**Flat 1, 100 Lansdowne Place, Hove BN3 1FJ**
Applicant	:	**ML Property Company Limited**
Respondent	:	**Mr. Peter T. Chasseaud**
Case number	:	**CAM/OOML/LSC/2008/0046**
Date of Application	:	**28th June 2008**
Type of Application	:	**To determine reasonableness and payability of service charges (Ss. 19 and 27A Landlord and Tenant Act 1985 ("the 1985 Act"))**
The Tribunal	:	**Bruce Edgington (lawyer chair) Frank James FRICS Edward A. Pennington FRICS**
Appearances	:	**Mr. Paul Ashwell of counsel represented the Applicant. The Respondent appeared in person**
Date of hearing	:	**16th October 2008**
Venue	:	**Committee Room 2, The Hove Centre, Hove Town Hall, Norton Road, Hove BN3 4HA**

DECISION

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1. It being recorded that the Respondent has now paid a cheque to the Applicant for £1,293.67, it is the tribunal's decision that it is reasonable for the Applicant to demand the further sum of £3,437.33 from the Respondent as a payment on account of external decoration works.

2. The tribunal makes no order for costs or further refund of fees.

Reasons

Introduction

3. The application on behalf of the landlord for this Tribunal to determine the reasonableness and payability of service charges for 2007 and 2008 sets out the individual items of claim as follows:-

		£
2007		
(1)	half yearly ground rent	25.00
(2)	maintenance excess	305.67
(3)	half yearly maintenance in advance ('07)	45.00
(4)	half yearly maintenance in advance	327.00
(5)	admin. fee	35.25
(6)	legal fees	58.75
(7)	major works	3,264.39
2008		
(8)	half yearly ground rent	25.00
(9)	half yearly maintenance in advance	372.00
(10)	major works additional cost	172.94
(11)	application fee	100.00
		4,731.00

4. The application then asserts that the Respondent has a history of not paying service charges or ground rent and that items (5) and (6) relate to the recovery of such charges for the previous two years. The major works referred to in items (7) and (10) were, it is said, the subject of consultations pursuant to Section 20 of the 1985 Act and the Respondent did not engage in the consultation process.

5. By a Directions Order dated 18th July 2008, the Respondent was ordered to serve and file a statement in reply to the application identifying those matters which are in dispute and setting out the facts relied upon to support his case. In a letter dated 17th August 2008, the Respondent says that he does "..not dispute the ground rate (sic) or maintenance charges levied...".

6. He refers to a period of unemployment as a reason for non payment and then says "However, I am unhappy regarding the cost of major works (redecorating). These charges are excessive bearing in mind that my property has 3 average size windows, 1 larger window, 2 doors, modest areas of painted wall in the front and patio, and a small flight of stairs." He goes on to compare the amount claimed with the cost of redecorating a 4 bedroom detached house – allegedly just over £1,000 – and expresses his belief that his proportion should be recalculated to reflect

the work to his flat.

7. In his statement dated 26th August 2008, Michael Lovegrove, on behalf of the landlord, notes the concession by the Respondent and asks the tribunal to determine the payability of the demand for major works i.e. items (7) and (10) above.

8. Finally, the landlord's solicitors, Griffith Smith Farrington Webb, wrote to the tribunal office on the 9th October 2008 asking the tribunal to decide that "...the Respondent has behaved unreasonably in neglecting or refusing to pay his charges on the due date and.....we would request that the tribunal determine that the costs and fees associated with the hearing be payable by the Respondent."

The Law

9. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlords' costs of management which varies 'according to the relevant costs'. Clearly, the claims by the landlord which are the subject of this application come within that definition.

10. Section 19 of the 1985 Act says that as far as future service charges are concerned 'no greater amount than is reasonable is so payable'. This is, of course, subject to the proviso that such charges are recoverable under the terms of the lease.

11. As far as the decoration works are concerned, the purpose of Section 20 of the 1985 Act as now amended by the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") and the Regulations is to provide a curb on landlords incurring large amounts of service charges which would involve tenants paying large amounts of money.

12. The original regime meant that if service charges were over a certain limit, then the landlord had to either (a) provide estimates and consult with tenants before incurring such charges (b) have such service charges 'capped' at a very low level or (c) try to persuade a judge to waive the consultation requirements.

13. The consultation requirements in the Regulations are now more extensive and include:-

    (a) The service of a notice on each tenant of an intention to undertake works. The notice shall set out what the works are and why they are needed or where particulars can be examined. It shall invite comments and the name of anyone from whom the landlord or the landlord's agent should obtain an estimate within a period of not less than 30 days.

(b) The landlord or landlord's agent shall then attempt to obtain estimates including from anyone proposed by a tenant.

(c) At least 2 detailed proposals or estimates must then be sent to the tenants, one of which is from a contractor unconnected with the landlord, and comments should be invited within a further period of 30 days

(d) A landlord or landlord's agent must take notice of any observations from tenants, award the contract and then write within 21 days telling everyone why the contract was awarded to the particular contractor.

14. The 2002 Act also deals with the question of costs and recovery of fees. As far as fees are concerned, the tribunal notes that item (11) is the fee for issuing this application. There was also a fee of £150 for the hearing. Paragraph 9 of Schedule 12 to the 2002 Act allows Procedural Regulations to be made, as they have been, giving a tribunal the power to order that tribunal fees paid by one party should be reimbursed by the other.

15. Paragraph 10 to the said Schedule 12 provides that a person shall not be required to pay costs incurred by another party in connection with proceedings before this tribunal unless such person has, in the opinion of the tribunal, "...acted frivolously, vexatiously, disruptively or otherwise unreasonably in connection with the proceedings".

The Inspection

16. The members of the Tribunal inspected the property and the building in which it is situated in the presence of Mr. Ashwell and Mr. Lovegrove on behalf of the Applicants and the Respondent himself who allowed the members of the tribunal to come through his flat to see the work undertaken to the rear.

17. 100 Lansdowne Place appeared to be an early 19th century terraced property of brick construction with a stucco finish to the front elevation and render on the rear. The tribunal was unable to see the roof but similar properties in the area have a shallow pitched slate roof. The building has a lower ground floor, i.e. the subject property, and 4 floors above.

18. The tribunal noted that the external decoration works were practically finished although the scaffolding at the front was still *in situ*. The Respondent pointed out that the contractor had left the external well area to the rear of the lower ground floor flat in a very untidy state; the walls to this well area had just been repainted but they needed re-plastering in places and the metal framed window to his flat had not been prepared properly.

The Lease

19. The Tribunal was supplied with a copy of the counterpart lease to the property. It is a lease for 99 years from the 24th June 1985 with a current ground rent of £50 per annum. The Particulars on the first page make it clear that the property is Flat no. 1 on the lower ground floor of the building which is 100 Lansdowne Place, Hove. The inspection and documents provided by the Applicant show that there are 8 flats and the proportion of service charges payable by each flat vary from 6% to 20%. The proportion for this flat is 12%. There is no explanation in the lease for the variations between the flats.

20. Clause 5 sets out the landlord's obligations which include, subject to payment of service charges, keeping the exterior of the building and the common parts in good decorative order. Clause 4 requires the tenant to pay the interim charge and the service charge "...in the manner provided in the Fifth Schedule...".

21. For the purpose of this application, the important provision is in relation to interim service charges which are defined as "...such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessors or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment". The charges are payable on the 24th June and 31st December in each year after a certificate has been served. Oddly, the certificate can be served by the landlord or an agent but the certificate can only be signed by the agent.

The Hearing

22. The hearing was attended by the people who were present at the inspection. At the outset, the Respondent confirmed that apart from the demand for payments on account of the major external decoration works, he had paid all the service charges and the fee for making this application because he accepted that they were payable. His only argument was about the amount of his contribution towards the major external decoration costs.

23. Mr. Lovegrove gave evidence. He confirmed that his statement was true. He said he had no connection to the contractor which had carried out the decoration works i.e. Pembroke Building Services Ltd ("Pembroke"). He said that he would raise the Respondent's detailed criticisms of the contractor's with the supervising surveyor and had not done so before because he was unaware of them.

24. The Respondent, Mr. Chasseaud gave evidence. Unfortunately he was not an impressive witness:-

    (a) He suggested that £15-16,000 was a more realistic price for the

major works which is a figure given to him by a friend of his who is a decorator. He had known this person for about a year. At first he said that this estimate came from his friend looking at the building only. Then he tried to suggest that he had not received a copy of the tender document setting out the specification for the works. It was pointed out by one of the tribunal members that this document could be seen amongst his papers which he then accepted. He then agreed that the builder friend had seen the tender specification of another tenant in the building because he had temporarily mislaid his copy at the time.

(b) Having agreed that the consultation procedure had been complied with by the Applicant, he could offer no explanation as to why he did not suggest contractors from whom estimates could be obtained save that he was busy, even when he knew that only 3 had been obtained by the Applicant. One of his criticisms of the Applicant was that not enough estimates had been obtained.

(c) He said that his father's 4 bed roomed detached house in Cambridge had been re-decorated about 6 years ago without scaffolding for a cost of £2,200. The chair of the tribunal then pointed out to him that he had written to the Applicant's solicitors on the 17th August 2008 (page 9 in the bundle) pointing out that the cost of decorating a 4 bed roomed detached house "...would be probably just over £1,000". He was asked whether he was talking about the same property and he then immediately agreed and said that his figure of £2,200 was wrong and that the true figure was just over £1,000.

Conclusions

25. It is clear that the Respondent has had financial problems and one can certainly understand, at first glance, him feeling aggrieved at having to pay over £3,000 to decorate the parts of the building directly relating to his flat. However, what he failed to fully appreciate was that he has a contract with the landlord and that contract provides for him to contribute 12% of the cost of maintaining the whole building and common parts.

26. He wanted the tribunal to change the percentage proportion of service charges apportioned to his flat but had failed to make the necessary application. It was pointed out that such an application would not be easy to make. If he is contemplating making such an application, then he is urged to seek expert help.

27. The original contract was entered into in 1985 by Mr. Chasseaud's predecessor in title, Stewart McNair, who agreed that it was in the interests of his flat that the whole building should be kept in good repair and condition. As some flats were on higher levels and would require scaffolding, he agreed to share that sort of expense.

28. An extreme example of the need to have everyone contribute will come when the roof needs replacing. Mr. Chasseaud will still have to contribute 12% of the cost even though he could argue that he would derive no direct benefit. He will hopefully now understand that it is in his long term interests that the whole building is maintained properly.

29. As to the question of consultation, the tribunal makes no decision as to whether the consultation requirements of Section 20 of the 1985 Act have actually been complied with because it is not being asked to consider the reasonableness of the actual costs incurred. However, it seems that they probably were at the time although the chosen contractor ceased trading. Assuming Pembroke have undertaken the works within the 2007 estimate, then one suspects that a future tribunal, given the facts available to this tribunal – including the lack of any known opposition from other leaseholders in the building – would have little difficulty in either finding that the consultation requirements had been fulfilled or waiving any breach.

30. Having said that, and for future reference, this tribunal would have expected more estimates for this size of contract. It is suggested that it would be good practice to go to 6 contractors with the expectation of obtaining at least 4 tenders.

31. As to the demand for a payment on account of service charges, the tribunal is satisfied, on the evidence, that the figure contained in the estimate of Pembroke is in the right sort of range for the amount of work involved. In view of the fact that the work is practically completed, it is reasonable to demand the figures sought by the Applicant. The proportion of 12% of the total cost is not something which can be changed by this tribunal in this application.

32. If the work had not started, the tribunal would probably have not been prepared to include a VAT element.

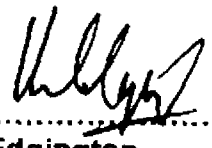
33. The tribunal did not accept that the Respondent's friend had given a realistic estimate of the costs involved and it was noted in particular that there was no evidence at all either in writing or otherwise from this unnamed friend to support the Respondent's case.

34. As far as the landlord's costs of representation in these proceedings are concerned, the only argument is, in effect, that if the Respondent had properly understood the terms of his lease, then this application would not have been necessary. The problem which the provision in Schedule 12 of the 2002 Act seeks to address is unreasonable etc, behaviour "*..in connection with the proceedings*". Despite being pressed on this point,

counsel for the Applicant could only put the Applicant's case on the basis that the Respondent did not, on the day, have an arguable case.

35. That sort of argument was not, in this tribunal's view, in the minds of the legislators who drafted paragraph 10 of Schedule 12. It is the sort of argument frequently made in the civil courts when seeking orders for indemnity costs rather than *inter partes* costs when a litigant loses a case. Paragraph 10 orders are, in effect, wasted costs orders which are entirely different in character.

36. As far as recovery of the fees is concerned, the tribunal does not order that the hearing fee of £150 be reimbursed by the Respondent. As the Respondent had admitted, some time before the hearing, that the only issue was his share of the major works, it may have been more prudent to withdraw this application before the hearing fee was incurred, await the invoice from the decorator and then seek to recover the actual cost. The problem faced by the Applicant is that it knows that the Respondent challenges the reasonableness of the cost and the standard of workmanship. This may now involve a further application and it should not have been necessary to have 2 applications relating to what are, in effect, the same service charges.



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Bruce Edgington
Chair
16th October 2008