

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

DECISION AND REASONS

Case Number: CH/29UQ/LSC/2009/0092

In the matter of Flat 12, Smarden Place, Maidstone Road, Paddock Wood,
Kent, TN12 6BT

Applicants (Landlord): Southern Land Securities Ltd, represented by Marsden
Rawthorn LLP

Respondent (Lessees): Mr. G and Mrs. M. Hendrick

Tribunal Members: Mr. S Lal LL.M (Legal Chairman)
Mr. R Athow FRICS MIRPM
Mr. P Gammon MBE BA

Date of Hearing: 7th October 2009
Date of Decision: 9th October 2009

Application

1. The Applicants applied to the Tunbridge Wells County Court in respect of a claim for unpaid ground rent and unpaid service charges in respect of Flat 12, Smarden Place, Maidstone Road, Paddock Wood, Kent, TN12 6BT. The County Court transferred the matter to the Leasehold Valuation Tribunal and the matter falls to be determined under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine the reasonableness of the service charges for the years 2006-2009. Because the greatest bulk of expenditure concerned major works in 2006, matters relating to s. 20 of the Act, as to whether proper notice requirements were complied with in the first place so as to incur any liability, naturally fall to be determined. The Tribunal has no jurisdiction over ground rent in any event.
2. Directions were issued on 13th July 2009. Both parties to the proceedings were invited to send to the Tribunal written representations which they have both done. These are referred to below.
3. The Applicant was represented by Ms. Debbie Toson from Hamilton King, the managing agents. The Respondents appeared in person and were not represented.

The Inspection

4. The Tribunal inspected the Property on the morning of the hearing, 7th October 2009. Neither the Applicant or their agent attended. It is a detached building erected approx 150 years ago. It is of traditional construction in brick under a tile roof and has a mixture of windows, some being sliding sash and some in UPVC. The building has been converted into six flats accessed via an open fronted communal stairway with the flats being identified as 8-18 Maidstone Road. The Tribunal were able to inspect the inside of Flat 12 and were able to see the remains of quite substantial water damage to the South wall of the lounge as a result of damp penetration. The reason for the damp was explained by the lessees and is contained in their submission.

Case for the Applicant

5. This was contained in a detailed Statement of Case dated 11th August 2009 which can be found in the Applicant's bundle. From that document as well as the earlier Particulars of Claim lodged in the County Court it can be seen that the largest proportion of the disputed service charge relates to major works carried out in 2006.
6. The Tribunal raised with Ms. Toson matters relating to the start of that major works process begun in 2006 and whether the requisite Notice under s. 20 of the Act had been complied with. This seemed to the Tribunal the logical place to start and was a precondition of any liability to pay.
7. The Applicant's Statement of Case at Paragraph 7 states that "A letter was sent to all Lessees on the 4th April 2006 from the Managing Agents with a copy of the report and Section 20 Notice of Intention in order to carry out the required external repairs and redecoration."
8. The Tribunal referred to the letter accompanying the Notice of Intention (the first stage of a three stage process, see below) at page 44 of the Applicant's Bundle and queried whether any surveyors Report or contractors Report had in fact been sent with it as neither were included in the Bundle. Ms. Toson could not confirm whether it was in fact sent. She stated that she only joined the Company in 2007 and she was working from her file. She asked the Tribunal to assume that it had been sent as she had no record of any objection to its non-disclosure on file. She mentioned that her company had changed their policy in respect of Notice of Intentions in the last two years so as to provide a more detailed letter to any relevant Lessee. She was able to produce a letter dated 17th November 2005, some 6 months before, from the surveyor addressed to the Managing Agents which referred to a possible problem with damp.

9. She stated to the Tribunal that this was the Report referred to. The actual Notice of Intention refers in general terms to "External Repairs and Redecoration." The Tribunal enquired if the applicant was aware of the RICS 'Service Charge - Residential Code of Practice'. Ms. Toson confirmed that, although neither the landlord nor the managing agent were members of any professional or trade body, they were aware of the Code and that they complied with it. Similarly she stated that they were aware of the need to comply with the Consultation procedures as laid down, especially the need to consult in accordance with the criteria laid down in the Commonhold Leasehold Reform Act 2002
10. The Respondent's in their oral evidence to the Tribunal were adamant that they had not seen any surveyors Report or contractors report and their understanding that the Notice of Intention went no further than that there was a problem with damp, which they would have been aware of in any event as the damp was in their flat! The Respondent confirmed that this damp problem had first been brought to the attention of the managing agent in October 2005.
11. The Tribunal notes that under the Act, s.20 Notice is in effect a three stage process-(1) a notice of intention with an opportunity for tenants to make observations about the proposals, then (2) a notice of proposal to enter into an agreement, with details of the estimates provided or being made available, and a further period for observations and (3) after entering into an agreement, a notice to the tenants giving reasons, summarising observations made and the landlord's response to them. Stage 3 is omitted if the landlord contracts with a nominated person or accepts the lowest estimate. The statutory purpose of proper notice is to protect tenants against unscrupulous landlords who were having buildings works done by associated companies at excessive cost.
12. The burden is on the Applicant to satisfy the Tribunal that the Notice of Intention complied with the Act and more specifically with the Service Charges (Consultation etc) (England) Regs 2003 Sch 4, Part 2, which requires the Notice to describe in general terms the works proposed. The Applicant has singularly failed to satisfy the Tribunal on the civil standard of a balance of probabilities that the Notice of Intention had within it any description, even in general terms of the proposed works other than the very general "external repairs and redecoration." The Tribunal are not satisfied that we should "read into" the fact that there were no objections to the non-enclosure of any alleged accompanying Reports as therefore meaning that they had been sent. This was an evidential step too far when the Respondent's presented cogent and compelling evidence that they did not have any supporting documentation either at the time or in the file. If they had done so the Tribunal is in no doubt that they would have been active participants in the consultation process.

13. The Tribunal is fortified in its view by Ms. Toson's observation that her company now did things differently as regards s. 20 Notices by giving the lessees fuller information in a 3 page letter setting out the intended works. This suggests that the change of policy was because they had not done so before.
14. In the circumstances the Tribunal is not satisfied that the start of the Consultation process complies with the Act or supporting Regulation and therefore the costs of the building works is limited in any event to the statutory maximum in lieu of a valid notice of £250 per lessee. In the circumstances the Tribunal did not need to go on to consider the reasonableness of the major works.

Other Matters

15. In terms of the Reasonableness under s.27A of the Act in respect of other elements of the Service Charge, the Respondents queried the electricity supply for the year 2006 demanded of the subject property of £678.61. Ms. Toson accepted that this was unreasonable as it seems to have been caused by Flat 18A (which does not pay any Service Charge) having illegally tapped into the communal electricity supply. She accepted that this was done by a previous landlord and was not the lessee's responsibility to have remedied. She accepted that a reasonable sum for the subject property would be £300.
16. Ms. Toson also accepted that the additional major works item for 2006 for £1677.35 would not apply as it was outside any statutory consultation procedure and that the surveyor's fees for year ending 2006 in the sum of £528.75 appeared twice as they were already in the major works and fees tender. She also accepted that the amount of £1677.35 would need to be disallowed from the 2007 Accounts for Repairs and General Maintenance as this appeared to be the same amount carried over from the year ending 2006.
17. The Respondents' did not seek to challenge the reasonableness of any other items in the three service charge years.

Summary of Conclusions

18. For the Reasons above the Tribunal determines that for year ending 2006, the Service Charge is as described in the year end accounts but that liability for major works and fees tender is limited to the statutory maximum of £250 per lessee, the electricity supply is limited to the reasonable sum of £300 and the major works and fees completed and surveyors fees be discounted as was accepted by Ms. Toson. The management fee will have to be reduced to reflect the new liability.

19. In respect of year ending 2007, the Tribunal determines that the Repairs and Maintenance amount be reduced by £1677.35. The management fee will have to be reduced to reflect the new liability.
20. In respect of year ending 2008 the Tribunal makes no findings as to reasonableness per se as the Respondents did not query any of the amounts demanded.
21. The practical consequence of the above is that the account invoice for the Respondent's at pages 30-31 of the Applicant's Bundle will have to be amended to reflect the Tribunal's findings. Inevitably it will mean that legal fees incurred between 27th June 2008-14th August 2008 are not recoverable as they were in pursuance of what the Tribunal found was a defective Notice in any event. The Tribunal notes that the Applicant cannot charge interest either on any outstanding Service Charge and Ms. Toson was unable to assist the Tribunal from where in the lease this provision arose. In practical terms this will mean inevitably that the Respondents will be in credit and the Tribunal directs that any monies be refunded to them.
22. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Respondents have succeeded in respect of their submissions. The Tribunal directs that no part of the Applicant's relevant cost incurred in the application shall be added to the service charges.

Chairman.....



Date.....

9/10/09.