

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Number: CH1/000HG/LSC/2006/0060

Decision on an Application under Section 20ZA and 27A of the Landlord and Tenant Act 1985

Applicant/Tenant: Miss Amanda Hyde
Respondent/Landlord: Blantyre West Country Properties Limited
Re: Flat 2 48 Haddington Road, Stoke, Plymouth, PL2 1RR
Date of Application: 4 July 2006
Date of Hearing: 22 February 2007
Venue: St Catherines House, 5 Notte Street, Plymouth
Representation: Miss Amanda Hyde represented herself
Mr J E Fancourt for the Landlord
Tribunal Members: Mr A L Strowger MA (Cantab) (Chairman)
Mr P J R Michelmore FRICS
Mr P G Groves
Date of Decision:

DECISION

The Application and the proceedings

- 1 The Application under section 27A of the Landlord and Tenant Act 1985 ("the Act") is for a determination of the reasonableness of service charges payable. The Applicant Tenant also seeks an order under section 20C that all or any of the Landlord's costs of the proceedings should be regarded as relevant costs to be taken into account in determining the service charge payable.
- 2 At a Pre-Trial Review on the 8 November 2006 the Tenant withdrew her application under section 20ZA as she had accepted that she had no ground to make such an application. Tribunal made Directions and ruled that in the light of the previous Tribunal's determination of 25 August 2004, the present application be limited to a consideration of the service charge years 2004/5, 2005/6 and 2006/7.

- 3 Prior to the Hearing the Tribunal made a site inspection attended by the Tenant who pointed out a number of defects to which she had made reference in her written evidence or intended to refer to at the Hearing. From its necessarily limited inspection the Tribunal found that with the replacement of rendering and subsequent re-decoration to the front elevation having been successfully completed, externally the property appeared to be in slightly above average condition compared with others nearby except for the chimney stack to the right when viewed from the front. That chimney may well be letting in water.
- 4 Internally, the subject flat appeared to be drying out satisfactorily following the external repairs. However, the Applicant indicated to the Tribunal members where she is retaining pans and newspapers in the roof space to catch ongoing water leaks. It appeared to the Tribunal, with these being located beneath the chimney stack forming part of the right party wall that the water entry is from that source. This present problem would not, therefore, appear to relate to the service charge items presently under challenge.
- 5 The Tribunal were also shown into the front room of Flat 1 adjoining, where damp staining at high level to the front wall appeared likely to have been caused by temporary blockage to the outlet to the parapet gutter resulting in that gutter being over-topped. It was understood that the blockage had been cleared and the damp stains are drying out.

Background

- 6 A Tribunal had previously been held on 11 August 2004 pursuant to a Landlord's application for the determination of liability to pay service charges for the financial year 2003/04 and a Tenant's application for determination of reasonableness of service charges (both incurred and to be Incurred) for the years 1999 to 2005 inclusive. The Tribunal issued its determination on 26 August 2004 and made rulings as to the amounts payable up to the end of the financial year 2003/4.
- 7 The Tenant's major complaint has been in relation to significant problems that she has experienced with damp penetrating her flat and damaging the plaster and decorations. These problems have continued since the last Tribunal. The problems pre-date the ownership of the present Landlord.

Property and the Lease

- 8 The property, Flat 2 on the first floor, is one of four flats served, by communal entrance hall, in a mid-terraced building probably built in the second half of the 19th century. The conversion was carried out in 1895 or thereabouts. Flat 2 comprise a living room at the front with a partially partitioned kitchen area, and a double bedroom with an en suite bathroom at the rear. There is access to the roof void from the internal hallway.
- 9 The lease in respect of Flat 2 is dated 31 October 1968 and was granted for a term of 99 years from that date. It is expressed to have been granted in similar terms to leases granted in respect of the other 3 flats in the building. The leases provide for the payment in addition to the ground rent of £25, "by way of further or additional rent an annual sum as a service charge to be calculated in accordance with the provisions of the Fourth

Schedule hereto for each and every year of the term and proportionately for any part of the year in advance on the 24th day of June in each year....”

- 10 Under clause 5 of the lease, the Landlord entered into various covenants with the tenant including, at sub-clause (iii)

“that (subject to the contribution and payment as herein provided) the Landlord will maintain and keep in good repair and condition

- (a) The external and structural walls of the building and the foundations and roofs hereof with their gutters and rainwater pipes including the external front door of the building
- (b) The paths steps porch hall stairways and doors used by the tenants in common with the landlord and/or the tenant or occupiers of the building or any part or parts thereof and the rear and front gardens and the boundary walls and fences
- (c) The drains cables pipes and wires in under or upon the building and enjoyed or used by the tenant in common with the landlord and/or the tenant or occupiers of the building or any part thereof and
- (d) That (subject to the contribution as aforesaid) the landlord will in every fifth year decorate the exterior of the building in the manner in which the same was previously decorated.”

- 11 The Fourth Schedule of the leases provides as follows in relation to the service charge

“1. The service charge shall (subject as hereinafter provided) be a one quarter part of the sum which on the twenty fourth day of May in every year of the said term the landlord or his authorised agents estimate and certify in writing to be the cost and expense to the landlord for the 12 months immediately following of

- (a) Performing their obligations under Clause 5 (ii) (iii) (iv) (v) (vi) and (ix) hereof.
- (b) Administrative costs interest charges professional and management fees incurred in connection with any matters referred to in this Clause including (without prejudice to the generality of the foregoing) accountancy and audit fees the cost of supplying an audited statement of the service charge to each tenant and the cost of preparing estimates of the service charge for any period or of future expenditure

- 2 Whenever applicable in arriving at the estimated cost as aforesaid for each and every period of twelve months the landlord shall take account of any difference between the sum which the tenant has paid in advance for the immediately preceding period of twelve months and the costs and expenses actually incurred by them for such period and shall increase or decrease the estimated cost as aforesaid as the case may be by the amount of such difference Provided Always that upon the expiration of each twelve month period the landlord or tenant shall pay or repay as the case may be to the other the appropriate proportion of the amount by which the estimated cost of the said year falls short.”

The Law

- 12 Section 19 of the Act sets out the limitation of service charges as to reasonableness:
- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:-
 - (a) Only to the extent that they were reasonably incurred, and
 - (b) Where they are incurred on the provision of services or the carrying out of works, only if the service or works are of a reasonable standard.
- Section 18 defines the meaning of “service charge” and “relevant costs”.

The Hearing

- 13 The Tribunal heard oral evidence from Miss Hyde, Mr M Clark (friend of the Tenant) and Mr Fancourt. Both parties made brief final submissions.

Documents

- 14 Both parties submitted bundles of documents in pursuance of Directions. As the Tenant’s bundle of documents contains a considerable number of extraneous documents that may relate to the currently adjourned County Court action, but are not directly relevant to the present application, unless otherwise specified, references to “the bundle” or to a specific “page” are references to documents in the Landlord’s bundle. The bundle includes the service charge accounts for the years in question. Likewise references to “the statement” are references to the statement of the Landlord’s charges to the Tenant (at page 24) covering the period from February 2004 to 20 November 2006. The Tribunal has cross referenced these with the service charge accounts. A number of the items on the statement are chargeable to the Tenant personally – such as, for example, the charge for supplying leasehold information on 24 July 2006 – and do not form part of the service charges and do not fall within the remit of the Tribunal. The Tribunal has referenced to the Tenant’s bundle where it contains documents that are not in the Landlord’s bundle.

Findings of the Tribunal on the facts of the case

- 15 The statement shows an opening balance of £2,966.49 due to the Landlord at the beginning of the period. This is later adjusted by the credit of £1,213.72 on 17 January 2006 following the previous Tribunal’s decision. It is regrettable that it took so long for the Landlord to bring the appropriate adjustment into account. However the opening balance is not a matter for this Tribunal to consider as it is not a service charge for the years in question.
- 16 The issues in this case concern the amounts of service charges for years 2004/5, 2005/6 and 2006/7 and the reasonableness of the standard of work that was carried out.

Service charges for the year to 25 May 2005

- 17 The service charge account for the year is found at page 29. The Tribunal has no difficulty in finding that within its expert knowledge the insurance premium is reasonable and the management charge is within the range of charges known to be made currently in the local area for managing similar properties.

Legal fees

- 18 The two charges for professional fees (at pages 32 and 33) are in respect of the legal fees of Messrs Cawthra Feather. The first account is for ££452.38 and the second for £340.75 making a total of £793.13. The only reference in the bills to the work done is “Matter description: Ms Hyde” and “In connection with the above”. These are not itemised bills and give the Tribunal no information as to whether or not the charges are reasonable. In their statement of case the Landlord says that the bills were incurred by its Solicitors in connection with the claim made by the Tenant against the Landlord in the County Court. The Landlord refers its statement of case to this action being presently stayed pending the outcome of the Tribunal’s determination.
- 19 The Tribunal has considered both whether the two accounts are recoverable as service charges and whether or not the charges are reasonable. The courts have interpreted service charge clauses restrictively and only allowed legal fees where there are clearly included in the charging provisions of a lease. The most relevant recent case on the subject is **St Mary’s Mansions Ltd v Limegate Investment Co Ltd & Sarruf [2003] 05 EG 146**. In that judgement, which reviews the case law, the court found that for legal costs to be recoverable there has to be a clause in clear and unambiguous terms to that effect.
- 20 To justify the recoverability of these legal fees as part of the service charge, the Landlord relies on clause 1(b) of the Fourth Schedule of the Lease. The Tribunal does not find that this clause entitles the Landlord to recover legal fees from the Tenants as a service charge. There is no specific reference in the Fourth Schedule to legal fees being recoverable as a service charge. The description in clause 1 (b) of the schedule refers to “professional and management fees incurred in connection with any matter referred to in this clause (without prejudice to the generality of the foregoing) accountancy and audit fees the cost of supplying an audited statement of the service charge to each tenant and the cost of preparing estimates of the service charge for any period or of future expenditure or of future maintenance”. Notwithstanding the phrase “without prejudice to the generality of the foregoing”, the Tribunal finds that the reference to “generality” is insufficient to allow the inclusion of legal fees as a service charge. The whole tenor of the Schedule is concerned with accounting provisions. The generality of clause 3 of the Fourth Schedule does not include any reference to legal fees. Interpreting the phrase “ejusdem generis” to preceding words and to the context of the whole of the schedule – and indeed clause 3 of the lease - would not entitle the Landlord to recover legal fees as part of the service charge. The Tribunal follows decisions of the courts in finding that legal fees are not recoverable under the service charge provisions without a specific provision in a lease. Accordingly these sums are disallowed by the Tribunal.
- 21 The Tribunal would also observe that even had there been a specific charging provision to allow the recovery of legal fees, the accounts of Cawthra Feather do not provide any information to justify their fees and to enable the Tribunal to conclude that the fees claimed are a reasonable amount.

Bettisons’ first account

- 22 In September 2004 Francis Bettison, Chartered Surveyors “(Bettisons)”, was asked by the Tenant to carry out an inspection of the property to ascertain the cause of damp in

her flat. The report (“Bettison’s first report”) addressed to the Tenant is found at page 41 of the bundle. Bettisons identified the cause of the dampness of the internal plaster in the Tenant’s flat as the failure of the external stucco rendering. However after the account was disputed by the Tenant, the Landlord eventually paid the bill of £160 plus VAT (at page 35) and marked it “agreed to pay FB and charge to Hyde’s account”. It was included on the statement to the Tenant. The Landlord in its statement of case under “Surveyor’s fees in connection with the damp” states it decided to recover from the Tenant under the provisions of the Lease.

- 23 However this report was, in effect, adopted by the Landlord, and formed the basis on which it instructed Bettisons to prepare a schedule of works that required to be done to the building by the Landlord under its repairing obligations. Accordingly the Tribunal considers that the bill should be brought into the service charge account for the year and considers that it is properly recoverable from all the Tenants as part of the service charge for the year. The Tenant would then be responsible for one quarter - £40 plus VAT rather than the total amount.

Service charges for the year to 25 May 2006

Buildings insurance

- 24 The budget is shown at page 114 of the bundle and the account at 115. The budget slightly underestimated the buildings insurance but there is no evidence before the Tribunal to suggest the final figure of £500.40 is an unreasonable amount; the Tribunal, from its expert knowledge accepts this being within the range of reasonable premiums.

Management charges

- 25 The management charge was increased from £320 to £400 but the Tribunal still finds this to be within the range of local charging rates and is not unreasonable.

Electricity charges

- 26 There is no evidence for finding that the electricity charge is unreasonable; the Tribunal notes that, as before, the charge is based on an estimated reading and would recommend that meter readings are taken. There may be a credit due on the account as a result.

Major Works

- 27 For some reason the Landlord has not included the “major works” carried out by Kirk Construction Limited (“Kirk”) in the service charge account for the year. Instead the Landlord sent the Tenant a separate account headed “Major Works, External”. This is undated. The bottom line was a demand for payment from the Tenant of £1493.90, being her one quarter share of the total. This figure appears on the statement to the Tenant and the entry is dated 3 November 2005. The account of Kirk (“the Kirk account”) is dated 23 August 2005 and is found at page 99. The amount claimed was £5654.10 and it was paid on 20 September 2005. The Tribunal treats this as part of the service charge account for the year ending 5 May 2006.

- 28 The main issues arising in this application relate to these “major works”. There was correspondence concerning the major works; this is in the bundle at pages 46-49, with the full specification prepared by Bettisons at pages 50-66. Further correspondence ensued (pages 67-73). The Landlord eventually obtained the necessary quotes and Notice was duly served on the Tenants. In her letter to Bettisons of 21 May 2005 (page 92) the Tenant expressed her satisfaction with the Kirk quote.
- 29 Central to the Tenant’s complaints are the damage that was caused to the internal plaster and decoration of her flat by the ingress of water. She has maintained throughout that the root cause of the problem lay in the condition of the parapet gutter which has resulted in water penetration to the inside of her flat. By way of background the Tribunal notes that the Tenant’s bundle of documents contain at section 10 a report by Robin Hancock, Chartered Building Surveyor (“the Hancock report”) dated on the front cover, July 2004 but at the end July 2003. Hancock had access to the roof void of flat 2 and made and made an external inspection from which he reported at 9.04 that at the front *“the upstand parapet wall and gutter and parapet copings were found to be in a defective order with ineffective protection resulting in the need to fully renew surfaces to prevent further water penetration”*. In a letter to GVA construction dated 21 July 2003 Hancock, on the Landlord’s behalf, sought a quotation for carrying out the necessary remedial work.
- 30 Bettison’s letter of report to the Tenant on 21 September 2004 identifies the defective stucco rendering. The Landlord then made contact with Bettisons and instructed the firm to prepare the specification of remedial works to be carried (pages 50 – 66). The work went out to tender and the successful contractor was Kirk. The Tribunal notes Bettinson’s comment in the faxed letter to the Landlord dated 18 May 2005, found at section 10, page 14 of the Tenant’s bundle (but does not appear in the landlord’s bundle):
- “A properly laid parapet gutter should last the length of the building. From inside of the roof there does seem to be a defect though clearly the valley gutter was not original. She showed me where she thought it leaked but there was no dampness there at the time. The gutter obviously does not always leak. It is only possible to inspect this gutter from the outside and this from a scaffold. I did not include its full replacement in the price specification as the work might not be needed but I have allowed the cost in my tender report to you. The reason for this is that a builder is entitled to his profit on unexpected contingencies figures”.*
- 31 The Kirk quote allowed for this work to the parapet gutter as a provisional sum of £1650 (or £1700). In the event after the scaffolding was erected, Kirk’s inspection concluded that this work was not necessary. Accordingly that element was taken off the final account (see page 93) – and £1650.50 allowed back.
- 32 However the Tenant considers that this particular remedial work should have been carried out and remains convinced that the failure to carry out work to the parapet gutter has left an ongoing problem.
- 33 Shortly after the major works were carried out by Kirk and before the scaffolding was taken down, Vickery Holman, Chartered Surveyors were commissioned by the Tenant’s Solicitors to make a report on the condition of the building in connection with her claim in the County Court against the Landlord. .

- 27 The Tribunal has considered this report dated August 2005 (“the Vickery Holman report”). The surveyor was able to access the outside of the building, including the parapet by using the scaffolding. The general conclusion at page 165, is that *“As a general comment we would note that the building is in a condition much as one would expect from one of this age, type and construction. Whilst there is evidence of past damp penetration and damage, recent work has been (is being) carried out, which appear to have remedied such problems. However, deterioration to other building elements is occurring and normal cyclical maintenance and redecoration is becoming due. Specific areas of concern, or areas of worthy of comment are noted below”*. There are comments about the parapet gutter. Under item 2 it was noted that “single outlet only at South Western corner could be prone to blockages which, in association with the other noted defects, could encourage flooding and seepage at stepped joints. Some crazing to rendered face to internal elevations of parapet, with further cracking and some detachment to rendered capping to wall. The latter in particular likely to aggravate any damp penetration within wall”. Under item 3 there is reference to the condition of the chimney stack. The report comments on the recent rendering work under item 5 and expresses some reservations under item 10 re. roof void. There was minor residual dampness within the front parapet wall beneath gutter but the wall was relatively dry at the time of inspection.
- 28 It was put to the Tribunal that the ingress of water in October 2006 that caused further damage to the interior of the Flats may have been the result of a blocked drain on the parapet. Apparently debris was removed from it. The reason for there being debris is a matter for speculation. It was suggested that that the builder failed to clear away loose material on conclusion of the works. However although the Tribunal has noted the observations in the Hancock report, the writer was not called as an expert witness. In the absence of any expert evidence following this ingress of water, the Tribunal cannot attribute the consequent damage as the result of any failure on the part of Kirk to carry out the major works to a reasonable standard.
- 29 There is no expert evidence that the works that form part of the monies the Landlord is presently seeking to recover under the service charge provisions have not been carried out to a reasonable and satisfactory standard.

The generator

- 30 The Tribunal finds that the additional sum of £202 billed by Kirk in respect of the provision of a generator was properly and reasonably incurred as the Tenants were not prepared to allow for any electricity connection to be made to any of the flats. The Tribunal finds that the amount charged was not unreasonable.

Summary

- 31 In summary the Tribunal has received no evidence that to show that the final figure of £5,975.59 in respect of the “major works” was unreasonably incurred or that the works was not carried out to a reasonable standard. It finds that the sum was both reasonable and reasonably incurred and that the work was done to a reasonable standard.

Matters outside the jurisdiction of the Tribunal

- 32 The Tribunal has noted that clause 6 (iii) of the Lease states “*The Landlord shall not be liable or responsible for any loss or damage whatsoever suffered by the tenant or any other person firm or company through the condition of or any defect in the demised premises or the building or any defect in anything affixed thereto in relation to the use of any parts of the building used in common.*” However the issue as to whether or not the Landlord is liable for the consequential damage to the internal plaster as a result of his failure to fulfil his repairing obligations to the exterior and the structure is not within the remit of the Tribunal to consider under the present application.
- 33 In passing the Tribunal also would note that the Kirk account includes a sum of £73 plus VAT (total £85.78) which was the abortive cost of awaiting access to carry out internal works. The Tenant had challenged this charge. The Tribunal heard oral evidence from her, corroborated by Mr Clark, to the effect that the builders gave them no forewarning as to when they were coming; it would therefore seem inappropriate that such a charge should be made. However it has been charged to the account of the Tenant and not raised as a service charge. The Tribunal would also observe that Bettison’s second account dated 30 August 2005 was for work carried out at the request of, and for the Tenant. These are all matters between the Landlord, the builder and the Tenant; they are not service charges recoverable by the Landlord from the Tenant within the meaning of the Act. The same comment applies to the account of £1088.61 for the internal works. This is not a service charge. None of these items are within the LVT’s jurisdiction to consider.

Service charges for the year to 25 May 2007

- 34 The 2006/7 budget is at page 120 of the bundle. The Tribunal does not find that any sums included in this are unreasonable in amount or unreasonably incurred. The insurance premium at £469.42 does not appear to be an unreasonable premium. The estimated electricity charge is less than the actual sum included in the previous year’s accounts but is still an estimated charge. The management charge is within the acceptable range of charges that within the expert knowledge of the Tribunal are made in the local area.
- 35 It remains open to the Tenant to make a further application with regard to the current year after the final service charge account of actual expenditure is rendered.

General observations

- 36 Somewhat inevitably in an old building such as a property of this kind that there will always be ongoing issues with regard to its condition and there will be a need to keep up a regular programme of maintenance. Before the present Landlord arrived on the scene there were serious shortcomings with regard to the previous Landlord fulfilling its obligations under the leases, as identified by the last Tribunal. The Tenant has suffered problems over many years as a consequence of the earlier Landlord’s neglect and apparent lack of interest in carrying out necessary repairs to the building. However the present Landlord, following the company re-structuring, would appear to have a better understanding of its obligations to the Tenants under the Leases and has shown intentions of fulfilling those obligations in the future.

Summary

- 37 **The Tribunal finds that for the year 2004/5 the service charges were reasonably incurred and that the carrying out of works was to a reasonable standard.**
- 38 **The Tribunal finds that for the year 2005/6 the service charges were reasonably incurred and that the carrying out of works was to a reasonable standard except that it disallows the whole of the legal fees of Messrs Cawthra Feather in the sum of £793.13. This sum was not reasonably incurred and is not recoverable as a service charge.**
- 39 **The Tribunal finds that for the year 2006/7, insofar as an account has been rendered, the service charges were reasonably incurred and that the works or services were to a reasonable standard**

Application under section 20C

- 40 In her application for an order under section 20C, the Tenant has referred to the Landlord claiming Court Costs. The Landlord's Solicitors have responded to this in their letter of 21 July 2006 (page 29) and explained that these costs relate to the Tenant's unsuccessful county Court claim against the Landlord in her application to claiming.
- 41 The Tribunal has not found significantly in the Tenant's favour and does not consider it appropriate to make an order under section 20C, limiting the recoverability of the Landlord's costs under the service charge provisions.

Signed:



A.L. Strowger, Chairman

Dated: 30 March 2007