

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE No: CHI/OOML/LSC/2006/0112

B E T W E E N :-

MS ISABEL SELLIAN

Applicant

AND

THRUSHSTAR PROPERTIES LIMITED

Respondent

PREMISES: Flat 3
12 Ventnor Villas
Hove
East Sussex
BN3 3DD

DATE OF HEARING: 20th April 2007

TRIBUNAL; Mr D Agnew LLB, LLM (Chairman)
Mr R A Wilkey FRICS, FICPD
Mrs J K Morris

1. The Application

- 1.1 On 30th October 2006 the Applicant applied to the Tribunal for a determination as to the reasonableness of service charges in respect of the Premises from 2003 to 2007 under Section 27A of the Landlord and Tenant Act 1985.
- 1.2 She also applied for an order under Section 20C of the said Act that the Landlord should not be permitted to add the costs of these proceedings onto future service charge demands.

2. The Premises

- 2.1 The Tribunal inspected the Premises immediately prior to the hearing on 20th April 2007 in the presence of the Applicant, her agent, the Landlord's managing agent Mr Wheeler of Austin Rees and the Landlord's legal representative, Mr Boon of Eyre & Johnson.
- 2.2 The Premises comprise a one bedroom flat situated on the second floor of a large Victorian semi-detached villa. The exterior walls have been rendered, the windows are single glazed wooden sash windows some of which, particularly to the rear of the property are in need of repair and redecoration. The front elevation of the property had recently been redecorated to a good standard, as far as the Tribunal could tell from a ground floor inspection. The side elevation had obviously had cracks in the render repaired and the whole elevation repainted. The iron fire escape serving three floors of the building only and situated at the rear of the property was badly rusted and evidently was in a dangerous state as wooden planks had been nailed to the outside of the window frames to prevent anyone from venturing onto the fire

escape from inside the building. The rust from the fire escape had caused severe staining to the rear wall of the building. Some vegetation could be seen growing from the guttering.

- 2.3 Inside, the Premises comprised a good sized living room with a bay window and a fireplace, a kitchen which had been partitioned off from the living room, a bedroom and bathroom. There were evident signs of damp in the front corner of the living room next to the bay window and the chimney breast. There were signs of damp on the chimney breast and in the corner near the rear window in the bedroom. The stairs leading from the bedroom to the kitchen had clearly been replaced recently but unfortunately with poor quality materials and workmanship. The bathroom had signs of damp above the bath, round the window and paint was peeling from the ceiling.

3. The Lease

- 3.1 By clause 2(22) of the lease dated 5th November 1975 between R.A.P. Thomas Limited (1) and Ethel Mary Hodgson (2) the lessee covenanted "To contribute and pay to the Lessor by way of additional rent a maintenance and service chargebeing a proportionate part of the annual costs expenses and outgoings incurred by the Lessor in complying with the obligations contained in the Third Schedule hereto and of the other matters which without prejudice to the generality thereof are set out in the Fourth Schedule hereto."

- 3.2 By the Third Schedule the Lessee was required to "4.1.1 keep the main structural parts of the building including the roof timbers fire escapes main walls and external parts thereof and the foundations thereunder and the watercourses drains pipes wires aerials gutters ducts and conduits not used solely for the purpose of the Flat or any one of the other flats in the Building and the common hall in the Building and the common steps and staircases passages and footpaths in good and tenantable repair and condition.....

4.1.3 paint or otherwise decorate adequately all wood and iron work and where previously painted the stone and outside rendering of the exterior of the Building and the common entrance hall which are usually painted or decorated whenever the Lessor considers it reasonably necessary so to do"

4. The Law

- 4.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date at or by which it is payable

(e) the manner in which it is payable.

- 4.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
- 4.3 The consultation provisions are contained in The Service Charges (Consultation Requirements) (England) Regulations 2003. These are detailed and comprehensive and it is not proposed to reproduce them in these reasons.

5. The hearing

- 5.1 This took place at Maritime House, Hove on 20th April 2007.
- 5.2 Present were the Applicant and her daughter and Mr Wheeler and Mr Boon mentioned in paragraph 2.1 above.

6. The Applicant's case

- 6.1 At the outset the Tribunal established that the only matters that the Applicant sought to challenge in the service charge accounts from 2003 to 2007 were those relating to the major works carried out to the exterior of the building in 2003/4 and to the interior of her flat and the exterior of the building in 2006.
- 6.2 The reason why she challenged those items of expenditure was because she said she had been suffering from damp problems in her flat for ten years and this had still not been cured. She believed that this was because the work had not previously been carried out properly or had not been properly supervised and that this meant that the work had to be re-done for which she was continually being required to contribute to the cost. She said that she had paid £6,000 as her contribution to what she thought would be a complete refurbishment of the building. However all that was done was the filling in of cracks to the render on the side elevation in 2003. Although not all the money that had been collected for this work had been spent the surplus had not been returned to the tenants. This was then used to pay for the work of redecoration to the front elevation of the building in 2006 and also some work to the interior of her flat when the rotten internal wooden staircase had been removed and replaced with a very poor substitute. A notice had recently been received from the managing agents saying that more work was to be carried out to the building at a further cost. She did not know how much this would be and she was very concerned that she was being asked continually for money to carry out work which was not solving her damp problem. This had caused her to lose a considerable amount of money in rent as, due to the condition of the premises she could not charge as much as she would otherwise be able to do and there had been a period when she was unable to let the property at all. She was continually having to redecorate due to the damp. She understands the cost of removing the fire escape and the work to the rear elevation has been estimated at £9,000 to £11,000 whereas she has received an oral quotation that it should only cost £500 to remove the fire escape and £300 for scaffolding. She thought she

was being charged too much and in any event this work should have been included in the amount charged for the works in 2003. As for the cost of the works to the front elevation in 2006 which cost about £9,000 she thought it should only have cost about £2,000 for the painting and £1,500 for the scaffolding. The Applicant produced no written evidence to support her figures. She complained that there had been no consistency of approach in dealing with the building and no 5 year cycle of works.

7. The Respondent's case

- 7.1 Mr Boon explained that his and Mr Wheeler's involvement with the building was very recent following the change of managing agents from Remus Management Limited to Austin Rees in 2006 but he had gone to some trouble to obtain the previous managing agent's papers in order to understand the history of the management of the building and to be able to explain what had happened to the Tribunal and to Ms Sellian.
- 7.2 In 2000 a firm of surveyors, Daniells Harrison, had prepared a report on the works required to be done to bring the building up to a proper standard. There were 17 recommendations which included works to deal with damp in the basement and ground floor flats. There was no mention of damp in any other flat and so it must be concluded that at that time there was not a problem with damp in either of the other flats or that the problem was not brought to their attention. The estimated cost of the 17 recommendations was £24,000 (Ms Sellian's share would have been just over £6,000) and Mr Boon presumed that this is where Ms Sellian has obtained the idea that for this £24,000 the building as a whole should have been brought up to standard. The then managing agents thought that £24,000 was too much for the tenants to have to bear all at once and so suggested phasing the works over a period. Unfortunately, however, in 2002 matters changed because it became apparent at this time that there was damp in other parts of the building. Daniells Harrison were asked to report again and whereas previously the render repair was said to be "generalised", this time the focus of the render work was on the side elevation.
- 7.3 An amended Section 20 notice under the consultation procedure with the tenants was issued on 22nd November 2002. The proposed cost of the works was £17,377.69. During the course of the works, savings in costs were made because a decision was taken to cut out, fill and decorate over cracks in the render rather than hack off more extensive areas of render. Due to these savings in costs some work was able to be done to two chimney stacks, a rainwater pipe and some high level render. The total cost of all these works did not exceed the £17,377.69 estimate and the works were supervised by Daniells Harrison.
- 7.4 Further works were carried out to Flat 3 in 2005/6 at a cost of £1,433.50 including treatment for internal damp and replacement of the stairs.
- 7.5 The front elevation works were carried out from funds in hand. The cost of the works to the front elevation was £6,045.00 plus VAT.

7.6 Mr Boon submitted that the works carried out from 2003 to date were reasonably required to be done and had been carried out to a reasonable standard and at a reasonable cost after the Section 20 procedure had been followed.

8. The determination

8.1 The Tribunal determined that as there was no challenge from the Applicant in respect of all items contained in the service charge accounts for the year 2003 to 2006/7 inclusive save for the three items dealt with below, all these items are to be considered reasonable and properly chargeable to the Applicant.

8.2 The three items in dispute are the Applicant's share of £17,377.69 for the works to the side elevation in 2003, £1,433.50 for the works done to the Applicant's flat to include the replacement of the stairs in 2006 and £6,045 plus VAT for the painting of the front elevation in 2006.

8.3 The Applicant accepted that her share of the expenditure is 25.35% of the total.

8.4 Although the Applicant has received a Section 20 notice in respect of works to be done to the rear of the building including the removal of the iron staircase tenders have only just been received in respect of this work and the Applicant has not yet received a demand for a payment on account of that work. This being the case the request for payment will not have been during a service charge year for which the application covered and the Tribunal decided therefore that it did not have jurisdiction to deal with that proposed expenditure at this stage. Once a payment on account has been requested the Applicant could, if she thought it appropriate make a new application to the Tribunal in respect thereof.

8.5 With regard to the three items in dispute the Tribunal decided as follows:-

a) £17,377.69 in 2003. The Tribunal had no doubt that it was reasonable for works to be done to the render on the side elevation in view of the damp problem being experienced on the interior walls of Flat 3 on that side. Penetrating damp is likely to be caused by rain soaking through the walls, entering through gaps in the windows or by running down walls from overflowing guttering. The work that was done appears to have been done to a reasonable standard. The cracks have not re-opened and the Tribunal considered that it could well have been the right decision to fill cracks rather than hack off more extensive areas of render if it had been found that the adherence of the render was good when it actually came to doing the work. The cost was probably on the high side but the cost of the works themselves was only £12,000 of the total price, the balance being made up of professional fees, which were in line with what one would expect. In any event the cost was not outside the range of cost that might be expected for work of the type and extent carried out and it has to be borne in mind that the contractors were working in a restricted amount of space at the side of the property. Further, it would seem that this work has been successful in dealing with the damp to a certain extent. The Applicant herself recognised that the damp had improved although there was still a problem. However, as the Landlord's managing agent said, it can sometimes take a considerable period for walls to dry out and it may be necessary to remove plaster from the interior and allow the

wall to dry out before replastering to deal with the problem fully. This is not always a practical possibility particularly where property is being let out to sub-tenants. The Tribunal therefore found this price to be reasonable in all the circumstances.

- b) £1,433.00 for internal work to Flat 3 in 2006.

The Tribunal had very little evidence as to what was done save for the replacement of the stairs. The new stairs had been very poorly done but the cost is not high. Evidently some work was done and in view of the amount and the fact that there is no other evidence as to the extent of what was done, the Tribunal did not find that the cost was unreasonable.

- c) £6,045.00 plus VAT (total £7,103.38) for painting the front elevation. This appears to have been done well and this elevation now has a good appearance. The Tribunal considered that the cost of this work was, in fact, very reasonable and disagreed with the Applicant's estimate as to what the cost should have been.

- 8.6 The Tribunal could understand the Applicant's frustration in having been required to pay out money for what she thought would be a complete putting of the property into good condition only to find that her damp problems have persisted to a certain extent and that more work needs to be done to attend to the rear elevation and removal of the staircase. What she evidently did not understand, but hopefully now with Mr Boon's explanation and these Reasons, is that the works she thought she was paying for changed due to the fact that the problems with the building changed. Although she may have paid more than was required to carry out the work in 2003, she has not lost that money because it has been put to payment for the two sets of work in 2006. Had the money not been paid as asked in 2003 it would not have been possible to paint the front elevation last year. The moneys held in the service charge account are now practically, if not wholly, exhausted and the Applicant must realise that before the work to the rear of the premises can be carried out she will be required to make a further payment. She has received a Section 20 notice in respect of these works but it is understood she has not made a response thereto. The consultation process is designed to give tenants an opportunity to have their say in respect of major items of expenditure on repairs that they will be expected to have to make and the Applicant is entitled to take advantage of that procedure in respect of the anticipated expenditure.

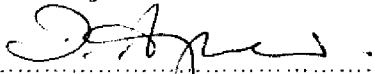
9. Conclusion

- 9.1 The Tribunal, for the reasons set out above, determines that the service charges rendered in respect of the Premises for the years 2003 to 2006/7 inclusive are reasonable and payable by the Applicant.

10. Section 20C application

- 10.1 The Applicant has not succeeded in reducing any of the items of the service charges in dispute and the Landlord has been put to expense in answering the application. The Tribunal decided therefore that it would not be appropriate to make an order under Section 20C of the 1985 Act.

Dated this 26th day of April 2007

A handwritten signature in black ink, appearing to read "D. Agnew", written over a horizontal dotted line.

D Agnew LLB, LLM

Chairman