

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

**S.27A & S.20C Landlord & Tenant Act 1985 (as amended)
("the Act")**



DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/21UD/LSC/2006/0122
Date of Application:	1 st November 2006
Property:	Flat D 5 Cloudsley Road St Leonards-on-Sea E Sussex TN37 6JN
Applicant/Leaseholder:	Mr A Davey
Respondent/Freeholder:	Mr P Lemcke
Date of Hearing:	14 th May 2007
Venue:	Hornty Park Sports Complex Bohemia Road Hastings
Appearances:	
For the Applicant:	Mr J Holden, Solicitor
For the Respondent:	Mr P Lemcke in person
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman) Mr A MacKay FRICS (Valuer Member) Ms J Morris (Lay Member)
Date of Decision:	25 th May 2007

THE APPLICATION

1. This is an application made by Mr Davey pursuant to Section 27A of The Landlord and Tenant Act 1985 for:-
 - i) A determination of his liability to contribute towards service charges of £30,561.75 representing the costs of re-roofing and repainting the exterior of the property and £2,601 being the Respondent's costs of supervising the above work.
 - ii) An order pursuant to Section 20C of the Act that the Respondent's costs in these proceedings are not relevant costs to be included in determining the service charge for future years.
 - iii) The Tribunal is also required to consider, pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 whether the Respondent should be required to reimburse the fees incurred by the Applicants in these proceedings.

INSPECTION

2. The Tribunal inspected the property prior to the hearing and were accompanied by the parties and their representatives. The property comprises of a semi detached house built circa 1890. The front elevation is of pebble dash rendering and painted. The property is arranged over ground first and second floors with a pitched roof covered in synthetic slates, all of which appeared to have been recently replaced / renewed. The previously painted surfaces and woodwork were in good condition and had been recently repainted.

DECISION IN SUMMARY

3. In the absence of a section 20ZA dispensation order, the Applicant's contribution towards the re-roofing / repainting work is limited to £250.
4. The Respondent's supervision fee of £2,601 is not recoverable from the Applicant by way of service charge.

PRELIMINARIES

5. The hearing took place on Monday 14th May 2007. The Respondent appeared in person. The Applicant was represented by Mr J Holden, Solicitor. Both parties had set out their respective positions in their statements of case, and both parties had prepared and submitted bundles containing their evidence and documents relied upon. The Applicant's statement of case identified the issues in dispute as;

- a) the repainting / re-roofing costs incurred in 2006 and
- b) the supervision fee in connection with the above

THE EVIDENCE PRESENTED AT THE HEARING

6. Mr Davey's evidence can be briefly summarised as follows;

- a) The Respondent materially failed to comply with the consultation procedure in relation to the Works. In particular the Respondent failed to inform him of the reasons why the work needed to be carried out, and failed to invite the Applicant to nominate an individual from whom the Respondent could obtain a quotation. Furthermore the Respondent also failed to provide the written quotations obtained by him.
- b) Mr Davey does not accept that the building needed re-painting / re-roofing.
- c) Mr Davey contends that the Respondent has charged a supervision fee for which he is not entitled under the provisions of the Lease relating to his flat.

7. Mr Davey in evidence told the Tribunal that he had received a letter from the Respondent at the end of June 2006 advising that the Respondent intended to retile and repaint the exterior of the property and carry out ancillary works at a cost of approximately £30,000. No estimates were enclosed. At the beginning of August 2006 the Respondent sent to the Applicant by letter three notices identifying the costs of tiling the roof and roof line work, redecorating the exterior and the cost of scaffolding to allow this work to be done. The letter indicated that the work had been pencilled in to start in the second week of September and that extra costs may be incurred as the work proceeded. Mr Davey did not believe that the work was necessary and in any event felt that the costs were too high. He tried to obtain alternative estimates, however, as scaffolding had been erected, building companies were reluctant to get involved. As a consequence Mr Davey instructed solicitors who wrote to the Respondent in September recording that their client had not accepted the quotes or been given an opportunity to comment on them. Furthermore the solicitors questioned the validity of the supervision charge. At that time the works were already proceeding and no resolution was reached between the parties. Accordingly Mr Davey applied to the leasehold Valuation Tribunal 1st November 2006 for a determination as to his liability to pay.

8. Mr Davey challenged the Respondent to justify the need to have such extensive work carried out. In his view the Respondent had produced no reports which indicated that such whole scale works were necessary. The only report produced related to when the Respondent had purchased the property and this did not recommend the replacement of the roof or the repainting of the exterior. In the circumstances it was his view that the work was not necessary and had therefore not been reasonably incurred.

9. Mr Davey also challenged the authority of the Respondent to charge a supervision fee equating to 10% of the cost of works. Mr Davey maintained that there was no clause in the lease enabling the Respondent to make such a charge and in these circumstances he should not have to contribute.

10. In reply, Mr Lemcke accepted that he had not complied with the letter of the consultation procedure but maintained that he had complied with the spirit. In his statement of case he concedes that he had not correctly followed the consultation procedure. In cross examination he also accepted that the procedures he had adopted “were not necessarily the correct ones”. He also accepted that he had not looked at the law relating to consultation either prior to having the work carried out or in preparation for this hearing. Instead he relied on what he called his own considerable practical experience as to what was necessary. He contended that even though the formal consultation procedure had not been carried out the Applicant had long known of his intention to carry out the work and had never been in touch to voice his opposition. Furthermore Mr Davey had been sent some information in relation to the work including the costs and Mr Lemcke asserted that Mr Davey could have registered his objections at the time but chose not to do so. As to the necessity for the work to be carried out, Mr Lemcke maintained that it was very obvious that the work needed to be done. However, Mr Lemcke accepted that he had not instructed a surveyor to carry out a structural survey and he accepted on cross examination that the only survey that he had relating to the property made no recommendation as to re-roofing or re-painting. That said, Mr Lemcke was adamant that the work needed to be carried out and that it made sense to re-tile the whole of the roof rather than repair it. In his experience patch repairs were often ineffectual and the cost would be un-known from the outset. Once it had been established that the scaffolding had to be put up it made sense to entirely re-roof and at the same time to carry out repainting.

11. In relation to the supervision fee he could not point to any clause in the lease authorizing this but said that practical experience told him that it was quite usual for a freeholder to charge to the service charge account 10% of expenditure by way of supervision/management fees. In the event he now accepted Mr Davey’s solicitor’s assertion that there was no authority for this charge and accordingly he agreed to concede the amount in full.

THE TRIBUNAL’S CONSIDERATION

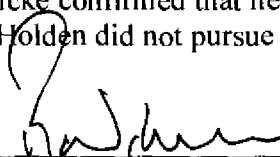
12. Section 20 of the Act requires landlords to consult leaseholders about proposals to carry out works. Where section 20 applies to any qualifying works, the relevant contributions of leaseholders are limited to £250 unless the consultation requirements have been either –
 - a) complied with in relation to the works or
 - b) dispensed with by the Leasehold Valuation Tribunal.

13. The consultation requirements are prescribed by regulation and are currently to be found in the Service Charges (Consultation Requirement) (England) Regulation 2003. In this context qualifying works are defined as works on a building which will result in service charge contributions any leaseholder being more than £250.
14. In this case we find as a matter of fact that the works carried out by the Respondent which are subject to this dispute were qualifying works and therefore subject to the consultation requirements. On the Respondent's own admission the consultation procedure has not been complied with and neither has the Respondent applied for or obtained a dispensation order from the LVT. The maximum amount payable by the Applicant in respect of the works is therefore limited to £250 provided the Tribunal is satisfied that the cost of works are recoverable under the lease and were reasonably carried out. In this case we are satisfied that the service charge provisions of the lease do enable the Respondent to carry out work and to recover the costs from the lessee by way of service charge. Mr Davey contends that there was no need for the work to be carried out while Mr Lemcke contends that the roof was at the end of its life and required replacement. On the limited evidence available to the Tribunal we are satisfied that at least some work was necessary to the roof and that the property has benefited from external repainting. There is evidence to suggest that the common parts of the building have suffered from water penetration, possibly coming from the roof. The work carried out by the Respondent appears to be of a high standard and we have no doubt that the lessee has benefited considerably from the new roof and the repainting. We therefore consider that this work fully justifies service charge of £250, and more if the capping did not apply. We therefore conclude that £250 is payable by the Applicant for this work.
15. As to the Respondent's supervision fee we agree with the submissions made by Mr Holden that there is no provision in the lease for a management fee to be charged by the freeholder. In the absence of a contractual provision, there can be no liability upon the Respondent to contribute towards these charges. This is the reason why we find that these charges are not recoverable.

SECTION 20C COSTS

16. At the hearing Mr Holden confirmed that he wished to pursue his client's application under S20C of the Act. When asked by the Tribunal if the Respondent was proposing to charge any part of his costs of the proceedings through the service charge account. Mr Lemcke confirmed that he did not propose to make any charge. Relying on that assurance, Mr Holden did not pursue his proposed application and the Tribunal made no such order.

Signed


RTA Wilson LLB

Dated 25th May 2007