

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



S.27A & S20C Landlord & Tenant Act 1985 (as amended) ("the Act")

DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/45UH/LSC/2006/0104
Date of Application:	10 th October 2006
Property:	20 Harley Court Downview Road Worthing West Sussex BN11 4QT
Applicant/ Leaseholder:	Mr T Webb
Respondent/Freeholder:	Danemount Securities Limited C/O Jonathan Rolls Managing Agents
Appearances:	
For the Applicant	Mr T Webb
For the Respondent	Mr Williams from Messrs Jonathan Rolls
Date of Hearing	26 th January 2007
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman) Mr R Wilkey FRICS (Valuer Member) Ms J Morris (Lay Member)
Date Of Decision:	21 st February 2007

THE APPLICATION

1. The Applications in this case are:-

- i) Under Section 27A of the Act for a determination as to the Applicant's liability for service charge accruing in 2003.
- ii) Under Section 20C of the Act that the landlord be prevented from recovering its legal costs incurred in connection with these proceedings before the LVT as part of a service charge in future years.

DECISION IN SUMMARY

2. For the reasons set out below, the Tribunal finds that all service charges accruing in 2003 including the costs of the major works and the year end deficit were reasonably incurred and are payable in full without deduction.

BACKGROUND

3. This application was commenced on the 10th October 2006. Directions were given on the 13th October 2006 and provided for the Applicant to serve a full statement of case within 21 days with the Respondent serving a reply 21 days later identifying the areas and items in dispute.
4. Unfortunately a full statement of case was not served by the Applicant and thus on the day of the hearing the Tribunal was still not clear on the items in dispute. On being questioned by the Tribunal it became apparent that the Applicant had three areas of concern as follows:-
 - i) Was the re-pointing of the end walls and gables to be carried out this year necessary?
 - ii) Was the major work carried out in the financial year ending the 24th March 2003 of a reasonable standard?
 - iii) Was the accounting deficit at the end of the financial year 24th March 2003 reasonably incurred and thus recoverable?
5. The Tribunal considered that issue (i) above did not fall within its jurisdiction and therefore declined to hear evidence on this issue. This left the 2003 major work and the accounting deficit for the same year to be considered by the Tribunal.
6. It should be recorded that neither the Applicant nor the freeholders Managing Agents were involved with the building at the time. The Applicant did not acquire his flat until after the major works had been completed and the managing agents only took over management of the building at the end of 2003. Thus neither party was able to speak about the issues from personal experience.

INSPECTION

7. The Tribunal inspected the property both internally and externally on the day of the hearing in the presence of the Applicant, a director of the freeholder and Mr Williams a representative of the freeholders managing agents Messrs Jonathan Rolls.
8. Internally the Applicant directed the Tribunal to a corner of his flat which showed signs of dampness. The Applicant asserted that the dampness was caused by a metal plate covering the lower part of some broadband cables fitted by the freeholders.
9. Externally the Applicant drew the Tribunal's attention to the guttering at the rear and front of the building and to the general condition of the exterior. The Tribunal also viewed the north and south flank walls and noticed some of the pointing was defective. The north flank wall appeared by comparison to be in a better condition to the south wall.

THE EVIDENCE

MAJOR WORK PROGRAM CARRIED OUT IN 2003

10. The Applicant addressed the Tribunal at very great length in relation to the work carried out in 2003. These works consisted of the replacement of the guttering to include work to the fascias and bargeboards etc and for associated external decorations. The Applicant alleged that the entire work was of such poor standard that - in his words - the work was, "a scandalous waste of the leaseholders' money". The Applicant had a number of specific objections to the work but in summary his main concerns were as follows:-
 - i) The replacement guttering and down pipes were smaller than the original guttering and down pipes
 - ii) The sarking felt had not been fitted as it should have been.
 - iii) The original untreated timber fascias were left in situ and the pvc boards were fixed to the existing timber bargeboards.
11. The Applicant alleged that the absence of sarking felt resulted in water ingress to the building during strong winds. Secondly the failure to replace the original timber fascias and bargeboards meant that remedial work would be required to the guttering system in the near future. Thirdly the Applicant alleged that there were insufficient brackets to support the downpipes such that the downpipes flapped in the wind and finally because the gutters were too small they were unable to cope with the volume of water during storms.
12. Mr Williams commenced his evidence by reminding the Tribunal that the major works subject to dispute were before his firm took over the management of the property from Packwood Property Services in December 2003. It was Packwood

Property Services that had commissioned and managed the works and it was also Packwood Property Services that were responsible for managing the service charge account.

13. That said, Mr Williams contended that taken as a whole the major works were of a reasonable standard. The works had been completed some 4 ½ years ago and the paintwork was still in fair condition bearing in mind the exposed nature of the building. He had visited the property regularly since December 2003, sometimes during heavy rainstorms, and had never once witnessed the gutters failing or overflowing. Furthermore other than an initial complaint very soon after the work was completed, none of the lessees had reported any problems with the gutters other than for routine maintenance such as blocked drains etc. In short it was his opinion that although the new guttering system might be of a lesser specification and size to the previous system, it did the job reasonably well. In these circumstances he did not accept that the major works were in the words of the Applicant, “a scandalous waste of the leaseholder’s money”.

WAS THE ACCOUNTING DEFICIT AT THE END OF THE FINANCIAL YEAR 24TH MARCH 2003 REASONABLY INCURRED?

14. The Applicant commenced his evidence by reviewing the end of year cash balances held by the managing agents in 2002, 2003 and 2004. he was able to demonstrate that in the year ending the 24th March 2003 there was a very substantial deficit which had increased from just under £3,000 at the end of March 2002 to over £8,500 at the end of March 2003. In his opinion this demonstrated no effective budgetary control during this period. The Applicant referred to a number of standard accountancy tests to demonstrate effective management accounting. One such test was the liquid asset ratio. This provided a test of efficient management and required a ratio of no more than 1. No such ratio was evident in relation to the management accounts for Harley Court and this proved beyond all doubt gross management incompetence in the final period of the previous managing agents.
15. Mr Williams once more reminded the Tribunal that his firm only took over managing the building in December 2003. He therefore had to comment on a situation that existed prior to his firms’ management. In his opinion the accounts showed that in the year that the major works were carried out much more was spent on the building than had been paid by the lessees. Indeed the vast majority of the deficit had built up in the year that the major works were carried out. Since his firm had taken over management the finances were now on an even keel with the annual expenditure on the service charge account broadly equaling the cash reserves held.
16. Mr Williams reminded the Tribunal that the annual service charges account was audited by Messrs Peter Auguste & Co who were certified chartered accountants chosen by the leaseholders and retained by the Respondents. Mr Williams emphasised that there were no allegations that money had been improperly withdrawn from the service charge account. This was a simple case of more money being spent in one year than had been collected. In short the deficit did not provide

good grounds for the leaseholders being absolved from paying their due proportion of the service charge as calculated in the leases.

THE TRIBUNALS CONSIDERATIONS

MAJOR WORK PROGRAM CARRIED OUT IN 2003

17. In our view, the evidence put before us establishes that the new guttering system is indeed smaller than the previous system. Furthermore from our inspection we could see that the fall of the gutters at the rear is not uniform. Our inspection also revealed that there appear to be fewer brackets supporting the downpipes than had been utilized with the previous system.
18. However, after considering all the evidence before it, the Tribunal accepts Mr Williams's analysis. Whilst the Tribunal acknowledges that the new guttering is smaller than the old and that the fall is not perfect or uniform throughout, we can see no evidence that these defects have caused any loss either to the Applicant or other owner/occupiers. As a consequence, the Tribunal does not agree with the Applicant's view that the works were not of a reasonable standard. Furthermore the Tribunal has been presented with no evidence to suggest that the price of the works was too high.
19. The Tribunal bears in mind that there has been no current or ongoing complaints from leaseholders either about water penetration or that the down pipes flap in the wind. Furthermore from our visual inspection we could see no signs of water staining either to the rear or front of the building. Although some damp was evident in the Applicant's flat, no evidence was deduced that the damp had resulted from the defective guttering system. Indeed in the Applicant's opinion the damp resulted from a metal plate protecting a broadband cable. The evidence deduced by the Applicant does not in our mind demonstrate any damage caused by the limitations of the new system and having regard to the above we conclude that the major work was carried out to a reasonable standard at a reasonable cost.

WAS THE ACCOUNTING DEFICIT AT THE END OF THE FINANCIAL YEAR 24TH MARCH 2003 REASONABLY INCURRED?

20. The Tribunal accepts the Applicants observations that the previous managing agents failed to properly manage the cash flow of the service charge in the year in which the major works were carried out. As Mr Williams points out, the accounts speak for themselves and show the deficit came about simply because more was spent in that year than had been recovered from the leaseholders by way of service charge. As a Tribunal we frequently come across cases where more money is spent in one year than is received. Flat leases usually legislate for this imbalance by providing for a balancing charge to be levied by the freeholder at the end of the year after the annual account is drawn up. Indeed in this case the lease contains such a balancing charge at clause 3(22)(b). This clause reads; *'in the event of monies expended by the*

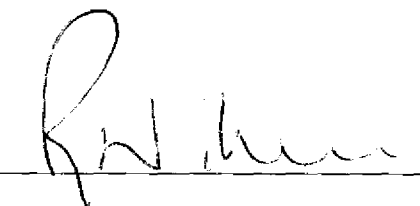
lessor....exceeding the payment on account, the balance shall be paid by the lessee within 21 days after receiving a demand for the same'.

21. Mr Williams offered little evidence in relation to this issue on the basis that the accounts spoke for themselves. He reminded the Tribunal that no allegations had been made of money being improperly withdrawn from the account and he reminded the Tribunal that the annual account was audited by a firm of certified Chartered Accountants, and their reports were unqualified.
22. In our opinion the accounts do speak for themselves and whilst they do reveal failure on the part of the previous managing agents to control the management account effectively, the existence of a deficit does not provide the Applicant with a defence for not paying the deficit if a contractual provision is contained within the lease entitling the freeholder to recover the deficit. In this case the Applicant's lease does have such a clause and we conclude that the Applicant has no grounds to deny the freeholders ability to recover the deficit.

Section 20C & reimbursement of fees.

23. The Applicant's application included an application under Section 20C of the Act for an order limiting the landlord's costs of the proceedings being charged through the service charge account in a future year.
24. When asked by the Tribunal if the freeholder was proposing to charge any part of the cost of these proceeding through the service charge account, Mr Williams requested a short adjournment so that he could discuss the position with his instructing solicitor. On returning to the room, Mr Williams confirmed that as a gesture of goodwill to all the other lessees and also to the Applicant, it was not his client's intention to make any such charge. Relying upon that assurance, Mr Webb did not pursue his proposed application and the Tribunal made no such order.

Chairman



RTA Wilson LLB

Date 21st February 2007

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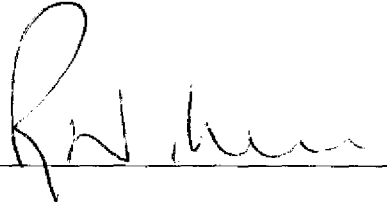
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Chairman 
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