

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF PART II LANDLORD & TENANT ACT 1987

Case No	CHI/29UG/LAM/2007/0005
Property	50 Pier Road Northfleet Kent
Applicant	Mrs M White, Tenant Flat D, 50 Pier Road
Respondents	(1) Charnwood Builders Ltd, Landlord Rep by Mr P Savastano, Director (2) Ms E Benson, Tenant Flat A, 50 Pier Road
Members of Tribunal	Ms H Clarke (Barrister) (Chair) Mr R Athow FRICS MIRPM Ms L Farrier
Date of hearings	26 March 2008 & 30 April 2008
Date of decision	26 May 2008

1. THE APPLICATIONS

There were 3 applications before the Tribunal.

i) The Applicant Tenant asked the Tribunal to appoint a manager of the property on the grounds that the First Respondent had not complied with its obligations.

ii) The Applicant sought a determination that sums demanded by the Respondent by way of service charges for the years ending 2006 and 2007 had not been reasonably incurred or were not payable, and that a demand for an advance payment on account of £2500 was unreasonable.

iii) The Applicant also sought an order under s20C Landlord & Tenant Act 1985 that any costs incurred by the First Respondent in connection with the proceedings were not to be taken into account in determining the amount of service charges payable.

2. By a letter dated 27 March (the day after the hearing) the Applicant asked the Tribunal to disregard the part of the

application referring to electricity charges. The Tribunal had by that time made its determination in respect of the electricity charges, and therefore sets out its decision and reasons in this decision.

3. THE DECISION

In the particular circumstances of the case the Tribunal decided to notify the parties orally after the first hearing of its provisional decision in respect of the appointment of a manager. The Tribunal decided provisionally for the reasons set out below to appoint Mr Michael P S Robinson FRICS of McConnells Chartered Surveyors as manager and receiver of the property, subject to further consideration of the terms of such an appointment. The Tribunal then adjourned the question of appointment to a further hearing and asked Mr Robinson to submit proposed terms of appointment.

4. Following the adjourned hearing the Tribunal decided not to appoint Mr Robinson as manager.

5. The Tribunal determined that the sums demanded as periodic service charges were not reasonably incurred, with the exception of the insurance premium. The sum of £2,500 demanded by the Respondent as payment on account of major works was not reasonable.

6. The Tribunal ordered that any costs incurred by the Respondent in connection with these proceedings were not to be taken into account in determining the amount of service charges payable.

7. THE LEASE

The Applicant is the current tenant under a Lease dated 27 April 1989. The relevant clauses of that Lease require the landlord to:

"whenever reasonably necessary maintain repair rebuild decorate and renew....a) the external walls all main structural walls and structure the foundations roof ceiling joists chimney stacks gutters and rainwater pipes ..c) the main entrance and common hall and all other (common parts)"

8. The Lease obliges the tenant to pay one-quarter of the expenses of repairing common structures including the roof, and of the "costs charges and expenses from time to time incurred by the Lessor" in performing its obligations. The landlord may require a payment on account of £100 or such sums as may be specified by it to be fair and reasonable. The tenant is also liable to contribute one quarter of the cost of lighting the common parts.

9. The Tribunal was not shown the Lease of any other flat in the property but it was understood that each of the flats other than the Applicant's was also held under a long lease.

10. **THE LAW**

S24 Landlord & Tenant Act 1987 (as amended) provides, so far as is relevant, that a Leasehold Valuation Tribunal may appoint a manager/receiver where it is satisfied that a relevant person (in this case the landlord) is in breach of his obligations to the tenant under the tenancy and/or has failed to comply with his obligations to manage the property in accordance with the RICS Residential Management Code of Practice, and the Tribunal is satisfied that it is just and convenient to make the appointment.

11. Section 19 Landlord & Tenant Act 1985:

"(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 are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise."

12. **THE INSPECTION**

The Tribunal inspected the property immediately prior to the hearing. The Applicant and her husband, and Mr Savastano on behalf of the Respondent were present at the hearing. It was a four-storey mid-terrace 19th century building converted into 4 flats. The roof was tiled with a number of roof lights. Internally the common parts showed no signs of recent decoration. Lights were provided to the common hallway, some of which appeared to need attention. There was a fire extinguisher but no record of inspections or tests. The electricity meters serving the building were located in the common hallway. The Tribunal observed extensive signs of water penetration near a skylight at the top of the common stairwell. The Tribunal inspected the interior of Flat D (the top flat) at the invitation of the Applicant lessee and observed a hole in the kitchen ceiling where a large area of plaster had fallen. There was a bucket and tray containing water

and debris below the hole, which had been covered with a temporary patch repair of plastic which had in turn fallen away.

13. THE INITIAL HEARING

The Hearing was attended by the Applicant and her husband, and by Mr Savastano on behalf of the Respondent, and by Ms E Benson the Second Respondent, and by Mr Robinson FRICS.

14. Directions for the exchange of statements and evidence were given at a directions hearing on 18 December 2007 which the Applicant attended but the Respondent did not. Both parties provided statements of case and documents in support. The Tribunal had regard to the documents and submissions provided by both parties in the course of its decision.

15. The Tribunal also had regard to the witness statements prepared by Ms E Benson, and by Mr Keith Walters of Chartwell Lettings who manage the letting of the Applicant's flat, and by Mr Anthony John Williamson FRICS who prepared an expert report relating to the condition of the roof at the property.

16. THE EVIDENCE

The Applicant produced service charge demands dated March & September 2006 and March & September 2007. In each year a total of £45 was demanded for electricity, £60 for accountant's fees, and a payment in advance of £100. The Applicant said she did not know what the £100 was for nor what, if anything, it had been spent on in the previous year. There were no invoices. The Applicant was very concerned that the Respondent had asked for payment to be made to "Pickering Mortgage Services". She had no idea who this referred to, but submitted that it showed that the Respondent was not keeping the service charge money in a separate account.

17. The electricity bills for the building were in disarray. The Applicant had let her flat to a tenant, who had approached her as he was worried about the amount he was being charged for electricity, and it transpired that he had been charged for all the electricity used in the building. Mr Savastano had said he would sort this out, but had not obtained any proper bills. The electricity company had eventually reimbursed the tenant. No bills supporting the service charge demands for electricity were shown to the Tribunal.

18. Mr Savastano for the Respondent said that he became a director of Charnwood Ltd and took over management of the freehold in about 2005. The amounts demanded for electricity were only

small, so why was the Applicant worrying about them. He said that Charnwood was receiving bills for 'ludicrous' amounts, over £825 for common parts, so it simply invoiced the lessees £45 per annum. He could not explain why the Applicant's tenant had been billed for the whole house's electricity and he could not produce any adjusted accounts.

19. Mr Savastano said he thought the accountants' fee may be for filing the accounts, but he did not know what the accountants had actually done. He produced to the Tribunal, and sought to rely on, invoices from Downs & Co accountants. He admitted in answer to the Tribunal's questions that these invoices related to Charnwood Builder's trading accounts. He said that Pickering Mortgage Services was his personal trading name of his main business. He suggested to the Tribunal that asking the lessees to pay their service charges to Pickering Mortgage Services could have been an administrative oversight by someone in the office, but he agreed that the demands asking for this did bear his signature. He then said that no lessee had actually made payment to Pickering Mortgage Services. The Applicants said they had done so. Mr Savastano had no explanation for this.
20. In summer 2007 water began to come through the roof into the Applicant's flat. The Applicant said that she wrote letters and had telephone conversations with Mr Savastano on behalf of the Respondent but he was unhelpful and rude. At first he did not call back. Subsequently he was abusive to Ms White and suggested she sort out the problem herself. Ms White arranged and paid for a temporary repair. Mr Savastano told Ms White that he had obtained quotes for a proper repair, but only a single quote was eventually provided in November 2007. Ms White alleged that the Respondent had prevented her own builders from carrying out the work. By the time of the Tribunal hearing the roof had not been repaired, and water continued to enter the flat.
21. In January the Respondent demanded an advance payment of £2500 in order to proceed with 'roof repairs'. The demand was not accompanied by any specification or quote or estimate. The Applicant did not pay this sum.
22. Mr Savastano said that he had wanted to carry out the work but the Respondent had been thwarted by the Applicant's conduct. When asked by the Tribunal to clarify he explained that he had tried to phone the Applicant but she refused to talk to him. He had taken advice. Following the request for £2500 he sent a further letter saying that a consultation procedure under s20 Landlord & Tenant Act 1985 would take place "when a date for commencement of works is known". He said that he did have 2

quotes, one of which was independent. When pressed by the Tribunal he admitted that he did not have them at the time he wrote to the Applicant saying they were available.

23. The Applicant produced a copy of a Notice served on the Respondent on 9 October 2007 in accordance with s22 Landlord & Tenant Act 1987. The Notice referred to the following matters:
 - failure to repair the roof:
 - failure to clarify the liability for electricity and produce proper bills in support:
 - failure to provide a policy of insurance or proof of renewal payment:
 - failure to replace the communal front entrance door with one that was sufficiently durable.
24. The Applicant also relied on the provisions of the RICS Residential Management Code of Practice with which she said the Respondent had failed to comply in respect of the said matters and the general management of the building.
25. The Applicant said that she tried to obtain copy insurance documents but Mr Savastano told her that he would 'withdraw consent' for subletting her flat if she continued to ask for the documents. The Tribunal saw a letter from the Respondent asserting that the Applicant was in breach of her Lease by subletting. When the Tribunal asked Mr Savastano about this he said it was a 'silly mistake' and agreed that the Lease did not restrict the Applicant from subletting without permission. In the same letter he suggested that she should "get a life".
26. As to the front entrance door, the Respondent's case was that it was damaged by forcible police entry. A claim was made promptly to the insurers, but their workmen took the wrong measurements so a temporary door was in place for too long.
27. The Second Respondent Ms Benson said that she had no problems with Charnwood Builders Ltd, and she had paid the £2500 demanded. She objected to the appointment of a manager because it would put her to expense.
28. The Tribunal heard from Mr Michael Robinson FRICS the proposed candidate for appointment by the Tribunal as a manager. He provided information as to his proposed remuneration and his qualifications and experience of management, and as to his professional and public liability insurance.

29. THE ADJOURNED HEARING

The adjourned hearing was attended only by Mr Robinson, who had submitted proposals for the terms of his appointment. He told the Tribunal that since the previous hearing his firm had accepted instructions to become the managing agents for the Applicant's flat. Nonetheless he still wished to be appointed as manager under the Tribunal's statutory powers. He did not consider that any conflict of interest would arise, because he would be able to draw on funds under his control to meet the Applicant's service charge liabilities. He had been put in funds of around £1200 by the Applicant, and had used this money to carry out the roof repairs, including the replacement of the skylight over the landing. He had also advised the Applicant in connection with surveys for the internal repairs. Mr Robinson did not recall the exact amount of the bill for the repairs, which he said was in the region of £1,000, and in respect of which no consultation procedure under s20 had been followed. Mr Robinson told the Tribunal that he rarely embarked on the s20 procedure in respect of the properties he managed because he tried to work by agreement. He had not heard from the Respondent since the last hearing. Ms Benson had drawn it to his attention that the gutters needed work, and there were other issues in the property such as the possible need for a HMO licence from the local authority. There was therefore in his view still a need for a manager.

30. REASONS FOR DECISION


The Tribunal considered the service charge demands issued in September 2006 and September 2007. A sum of £100 was demanded by way of advance payment. However there was no reconciliation of amounts spent at the end of the year, no evidence of work having been done, no receipts or invoices, and no evidence as to what that sum had been or would be spent on. There was no evidence of any surplus being held in a reserve fund. In the circumstances the Tribunal determined that the sum of £100 in each of those years was not reasonably incurred and was therefore not payable.

31. A charge of £60 per annum was made in each of the years in question for 'accountancy fees'. However, the only evidence before the Tribunal referred to the costs of replacing the Directors of Charnwood Builders and filing their company accounts, and appeared to have no connection to the costs of managing the property or carrying out any obligation under the Lease. In any case, there was no provision in the lease for accountant's fees to be charged. The Tribunal determined that the sum of £60 in each of those years was not reasonably incurred and was therefore not payable.

32. The electricity charges were not supported by any accurate or current bill. The history relating to electricity payments by the Applicant's tenant was confused and nobody seemed able to explain what had happened. The Tribunal determined that the Respondent had not produced any evidence to show that the sums demanded under the service charge were actually due from the Applicant.
33. The sum of £2500 was demanded by way of advance payment for major works. There was insufficient evidence before the Tribunal to explain what works were proposed, when and how they would take place, or who would do them. In the circumstances the Tribunal determined that the sum demanded was not reasonable.
34. There was strong evidence before the Tribunal that the Respondent had collected money intended for service charges into the personal business bank account of one of its directors. This indicated at the very least a lack of awareness of the duty to hold such money in trust for the lessees and to account to the lessees for the sums collected. There had been no attempt to carry out such accounting or explain how service charge money was to be applied.
35. The Tribunal found that the Respondent had not acted in accordance with its obligations under the Lease to repair the roof, or to arrange for the provision of quotes by independent builders. The evidence given by the Applicant was clearly set out in the correspondence and the Respondent's replies were inadequate. The Tribunal felt that Mr Savastano's account of events lacked credibility. The Respondent appeared to have no understanding of the requirements of s20 Landlord & Tenant Act 1985 and the consultation procedures required by that section.
36. On the evidence the Tribunal was satisfied for the reasons set out above that the Respondent was in breach of its obligations owed to the Applicant under her tenancy and relating to the management of the property and further that it had failed to comply with the provisions of the RICS Residential Management Code of Practice.
37. The Tribunal found that the Respondent was in breach of the obligations which it owed to the Applicant under her lease to produce the insurance policy and receipt, but it was accepted by the time of the hearing that the building was correctly insured.
38. In the circumstances the Tribunal considered there to be problems at the property which could suitably be resolved by the

appointment of a manager, and took a provisional view that Mr Michael Robinson FRICS should be appointed.

39. On the adjourned hearing, however, the Tribunal decided that Mr Robinson should not be appointed. Contrary to Mr Robinson's belief, the Tribunal considered that a fundamental conflict of interest would arise if he were to be appointed as the agent of the Tribunal to manage the property and to take on the Landlord's obligations under the Lease, whilst at the same time Mr Robinson's firm, of which he was the principal, should be the managing agents of the Applicant's leasehold interest. The Tribunal took the view that the situation disclosed a misapprehension on the part of Mr Robinson as to the nature of a Tribunal appointment as a manager, and that it would not be cured if he were to relinquish the role of managing agent.
40. The Tribunal was also concerned that Mr Robinson had neither complied with the consultation procedures under s20 nor satisfied the Tribunal that the procedures did not apply to the works carried out. The immediate need for work had been met, at the Applicant's expense (subject to any recovery of money or indemnity to which she may be entitled). It was therefore neither just nor convenient that he should be appointed.
41. The Tribunal found there to have been other problems in the management of the building, and observed that the parties might wish to consider instructing managing agents in respect of the Lease obligations. It would be desirable that any such agent be familiar with professional management responsibilities and have a thorough understanding of landlord & tenant law.
42. In respect of the s20C application, the Tribunal considered that the Applicant had little alternative but to make the application for a manager due to the Respondent's inaction and failure to manage. Even after the application was made the Respondent had not addressed its omissions and continued to be in breach of its obligations. The Tribunal therefore decided that it was just and equitable that if the Respondent had incurred any costs in connection with the Tribunal proceedings, that those costs should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Signed-------- H Clarke Chair

Dated ---26 May 2008-----