

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

Case Number: CHI/18UH/LIS/2008/0018

Re: The Courtenay Courtenay Place Teignmouth Devon TQ14 8AY
("the Premises")

Between: Mr and Mrs M Titford (Flat 1)
Mrs Peggy Patricia Nathan (Flat 2)
N A Donovan (Flat 7)
Ms Josephine A Cooper (Flat 6)
Mr Jeffrey Everitt (Flat 10)

Applicants

And

Peninsula Inns Limited

Respondent

Dates of Hearing – 4th September 2008 and 12th January 2009

Appearances – Miss H Bray of Counsel for the Respondent
(4th September 2008 only)
The Applicants in person (Both dates)

Members of the Leasehold Valuation Tribunal – D Sproull LLB (Chairman)
J B Tarling MCMi and T N Shobrook BSc FRICS

Background

1. This was an application by Mr and Mrs M Titford the leaseholders of Flat 1 The Courtenay Courtenay Place Teignmouth Devon TQ14 8AY under Section 27A Landlord and Tenant Act 1985 for the determination of the reasonableness of the service charges in respect of the property for the year ended 30th November 2006 and the year ended 30th November 2007.

2. The following owners of other flats in The Courtenay had been joined in the application as Applicants:-

Ms Josephine A Cooper - Flat 6
Mr Jeffrey Everitt – Flat 10
Ms Peggy Patricia Nathan – Flat 2
N A Donovan – Flat 7

3. The freehold interest in The Courtenay was owned by the Respondent company. We had a specimen Lease before us of Flat 1 dated 15th February 1984. The Lease was for a term of 99 years at a ground rent of £25.00 per annum.

The Inspection

4. The Tribunal inspected the property prior to the Hearing in the presence of the Applicants, Counsel for the Respondent and representatives of the Respondent company. All the areas of concern were pointed out to the Tribunal during the course of the inspection save for a roof area to which access could not be obtained. This roof was subsequently inspected prior to the reconvened Hearing on the 12th January 2009.

The Issues

5. From the papers lodged by the parties it appeared that the issues to be decided by the Tribunal were:-
 - (a) For the year ended 30th November 2006 the Surveyor's fee of £1,906.00 and the administration charge of £378.00
 - (b) For the year ended 30th November 2007

A charge for:-

Netting in the sum of £1,155.00
Carpets £1,733.00
Flat roof repairs £2,232.00
Administration £390.00
 - (c) For the year 2006/2007 the separate refurbishment charge detailed in a bill from F I Joinery Limited for the sum of £68,190.25

Submissions

6. The Tribunal had before it written submissions from both the Applicants and the Respondent but there was no agreed bundle

Section 20 Landlord and Tenant Act 1985

7. Counsel for the Respondent conceded that the consultation requirements had not been complied with and made a formal application under the provisions of Section 20ZA of the 1985 Act for dispensation in respect of regulations 8, 11, 12 and 13 of the Service Charges (Consultation Requirements) (England) Regulations 2003. She contended that the Respondent had acted reasonably and had complied with the spirit of the consultation requirements.

The Lease

8. The Tribunal had noted the various percentages for contributions set out in the Second Schedule to the Lease which did not agree with the percentage which appeared to have been charged in the service charge accounts. It transpired that there had been a Deed of Variation varying those percentages to those referred to in the service charge accounts. All parties agreed that the latter percentages were the correct ones to be charged.
9. The Tribunal had also noted the £30.00 charge “indexed in accordance with the cost of living index” in respect of general office administration. It transpired that the sum charged in this respect was £42.00 and all parties agreed that this was the correct figure without the need for evidence to be produced showing the relevant calculation.
10. Miss Bray referred the Tribunal to clause 4.2 of the Lease as her authority for the Applicants being under an obligation to pay a service charge.

The Statutory Provisions

11. The relevant statutory provisions applicable to this application are as follows:-

Section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”). This provides that an application may be made to an LVT for a determination whether a service charge is payable and if it is, as to:

- (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 which it is payable and
- (e) the manner in which it is payable.

Section 18 of the 1985 Act

This defines services charges as “an amount payable by a tenant of a dwelling as part of or in addition to the rent:

- (a) which is payable, directly or indirectly, for services, repairs, maintenance.. or insurance or the landlords costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs

Section 19(1) of the 1985 Act

Section 19 (1) of the 1985 Act provides that relevant *service charge* costs shall be taken into account (a) only to the extent that they are reasonably incurred and (b) only if the works are of a reasonable standard

Section 20ZA of the 1985 Act

This provides that where an application is made to a Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

The Evidence

12. Mr Titford gave evidence on behalf of the Applicants. They had asked for a breakdown of Surveyors’ bills but had only had them produced at the Hearing

and they were hard to understand. He contended that it was not necessary for a Surveyor to be instructed all the time and that a large proportion of the work carried out was to do with the large account for refurbishment work. With regard to the administration charge, although it had been agreed that £42.00 was the correct figure and that 9 x £42.00 was the £378.00 that had been charged he contended that there really had not been any administration at all. So far as the charge for netting was concerned he said this should have been included in the original sum of £68,879.00. The charge for the carpets remained in dispute.

13. Concerning the charge for flat roof repairs he contended that the repairs carried out were not required and were not the cause of the problem. The position so far as the draft final account for the refurbishment work was not at all clear with some of the items on it not chargeable to the Applicants at all. There was dispute as to the choice of contractor and the relationship of F I Joinery Limited who finally did the work to the Respondent company. The company suggested by the Applicants was rejected out of hand. The original estimate had allowed for all the windows of the building to be taken out and replaced whereas they were not. The estimate had also allowed for all the rendering of the building to be hacked off whereas only small areas actually had to be taken off.
14. A document entitled "Draft Final Account" was produced and after a short adjournment the Respondents indicated that some items in the column marked "Additional" had not been charged to the Service Charge Account. Many other items remained in dispute. It seemed clear to the Tribunal that the parties were anxious to attempt to resolve the outstanding points. However the Applicants said they had not had an opportunity to seeing the Invoices for the works which they were being asked to pay for. At the request of the parties the Tribunal agreed to adjourn the Hearing and gave Directions as to the disclosure of documents. These Directions included an invitation to the parties to meet and together prepare a Scott Schedule showing what items were now agreed and what were not agreed, and their respective positions regarding the matters not agreed.
15. A further inspection of the property was carried out by the Tribunal on the 12th January 2009 specifically to inspect the works carried out to the flat roof which were not accessible to the Tribunal on its previous inspection and there was a further hearing on that day.
16. At the reconvened hearing held on 12th January 2009 correspondence was produced confirming that partners in BDO Stoy Hayward LLP Chartered Accountants had been appointed Administrators of the Respondent Company and that they would not be playing any part in the matter, nor would they be attending the adjourned hearing. Prior to this the Respondents had instructed Michelmores, Solicitors of Exeter to prepare a Hearing Bundle of over 500 pages which was before the Tribunal.
17. Mr and Mrs Titford had also sent some further correspondence to the Tribunal including a letter dated 12th November 2008. That letter set out the Applicants

position regarding the Respondents application for dispensation from the Section 20 Consultation procedures. That letter contained the following written representations on behalf of the Applicants:

- (a) “We do not believe that the landlord has complied even “in the spirit of the Act” considering that as far back as 2004 he was notified by our solicitors that we were alleging that service charges had not been properly demanded or charged to us
 - (b) We have not to date received the letter stating our rights that the landlord must present to its leaseholders
 - (c) These works were not an emergency so therefore the consultation process should have been complied with fully
 - (d) The landlord did not consider or put forward to the other lessees the estimate from Rooftek and Protek Wall coverings which were nominated by ourselves. The company allegedly put forward to Mr Peggs from the “proposed son in law” of a leaseholder should not have been considered because he himself was not a leaseholder
 - (e) No statement was produced and therefore our nomination company was not considered
 - (f) There was no 30 day consultation period
 - (g) We do not consider that Peninsular Inns have complied with the Act at all. We were in effect manipulated into accepting FI Joinery or F I Construction. None of the subsequent invoices were from F I Construction who had been used by Peninsular Inns with Mr Peggs for a considerable length of time as Furnish Inns Ltd prior to its bankruptcy.
18. When the Hearing reconvened on 12th January 2009 further evidence was heard from Mr Titford in respect of the issues particularised in clause 5 of this Decision and, in particular, he confirmed that at a meeting with Mr Bayliss of the Respondent Company on the 29th September 2006 it was agreed, inter alia, that the cost of the netting, carpets and the flat roof repairs would be included in the refurbishment contract where the total sum involved was £68,190.25 as specified in paragraph (c) of clause 5 of this Decision. In support of that evidence Mr Titford produced a copy of a Schedule which appeared to have the signature of Mr Bayliss on it.
19. Following the conclusion of the Hearing on 12th January 2009, the Tribunal retired to consider the matter and make its determination. First of all the Tribunal considered the matter of the major item in dispute, namely the bill from F I Joinery Ltd for the sum of £68,190.25 in respect of the major refurbishment works. The first matter to be decided was whether or not the Tribunal was minded to dispense with the Section 20 Consultation provisions. The Application for dispensation had been made within the Respondents

written submissions dated 19th June 2008 and the relevant matters are referred to in Paragraphs 7 to 15 of that document.

20. At Paragraph 14 of those written representations the Respondents admit that they “did not comply to the letter with the consultation requirements” and describe what they had not done. Towards the end of Paragraph 14 of that document the Respondents submit “that the Respondents acted reasonably and in substance complied with the spirit of the consultation requirements...” The Applicants arguments in reply are set out in their letter dated 12th Novmber 2008 which is referred to in Paragraph 17 hereof.
21. The Tribunal reviewed all the facts and then applied the law relating to dispensation. Helpful guidance has been given to the Tribunal by a number of recent Decisions of the Lands Tribunal. In the Lands Tribunal Decision in the matter of Eltham Properties Limited v. Mrs A S Kenny and others regarding 19 The Esplanade Scarborough North Yorkshire (LRX/161/2006) at Paragraph 26 of that decision, there is guidance which says “What the LVT had to determine was whether it was reasonable to dispense with the consultation requirements, and the reasonableness of dispensation is to be judged in the light of the purpose for which the consultation requirements were imposed. The most important consideration is likely to be the degree of prejudice that there would be to the tenants in terms of their ability to respond to the consultation if the requirements were not met”. Further in Paragraph 27 of that decision the Lands Tribunal approved of the LVT’s decision in that case when it commented “The *Leasehold Valuation* Tribunal noted that the test in Section 20ZA(1) was not whether a landlord had acted reasonably but whether it was reasonable – that is in an overall sense or in all the circumstances – to make the determination applied for”.
22. In a Further Decision of the Lands Tribunal in the case of London Borough of Camden v. Leaseholders of Flats at 30-40 Grafton Way London (LRX/185/2006), the Lands Tribunal approved the decision of the LVT not to dispense when the tenants had had to piece together a number of different documents before they could decide what work was to be done at what costs etc. as the tenants in that case did not have all the relevant information they would be hampered in their attempts to make proper observations.
23. In applying the law to the facts of the present case the Tribunal noted that in their written representations the Respondents had maintained that they had acted reasonably. This was clearly not the test that was to be applied, but rather whether it was reasonable for the tribunal to dispense. After reviewing all the evidence the Tribunal came to the conclusion that it accepted the arguments put forward by the Applicants and rejected the arguments by the Respondents. The Respondents had admitted that they had failed to comply with a number of the consultation procedures set out in the Consultation Regulations. The Tribunal made findings of fact that the Tenants in this case had been prejudiced as they had not had the opportunity to put forward their own contractor, nor had they been given a clear 30 day notice or all of the relevant information they were entitled to. Further the Tribunal concluded that the spirit of the provisions of the Act had not been complied with and it had

not been a question of there being just a technical breach of the consultation provisions. There had been no “emergency” which might have excused the Respondents from complying with the consultation provisions. For these reasons the Tribunal decided not to dispense with the requirements of the Section 20 Consultation Regulations.

24. Following on from the decision not to dispense the Tribunal reviewed the statutory provisions where the Section 20 Consultation procedures had not been complied with and no dispensation had been granted. Those matters are set out in:-
- (a) Section 20(1) of the 1985 Act, the “relevant contribution of tenants are limited in accordance with subsection (6)... unless the consultation requirements have been complied with or dispensed with.
 - (b) Section 20(5) of the 1985 Act refers to “an appropriate amount is an amount set by regulations made by the Secretary of State...”
 - (c) Regulation 6 of the 2003 Consultation Regulations set the “appropriate amount” as £250.00
25. In consequence, the amount payable by each Applicant/Lessee to the Respondent/Landlord in respect of the item of £68,190.25 detailed in the bill from F I Joinery Limited for 2006/2007 shall be £250.00.
26. The Tribunal accepted the Applicant’s evidence in respect of the netting, carpets and flat roof repairs and concluded that these were not properly chargeable separately but were to be regarded as part of the refurbishment contract referred to in the last clause.
27. The Tribunal found that the Surveyor’s fee of £1,906.00 and the administration charge of £378.00 for the year ended 30th November 2006 were reasonable as was the administration fee of £390.00 for the year ended 30th November 2007.

Payability

28. The Tribunal decided to exercise its powers under Section 27A to determine whether or not the service charges that are in dispute are payable by the Applicants to the Respondents. The Tribunal reviewed the provisions of the Service Charges (Summary of Rights and Obligations, and Transitional Provisions)(England) Regulations 2007 which came into force on 1st October 2007. Regulation 2 provides that these Regulations apply where on or after 1st October 2007, a demand for payment of service charges is served in relation to a dwelling. Regulation 3 provides that a summary of rights and obligations which must accompany a demand for payment must be in the form referred to in the regulations.
29. The Tribunal further considered Section 48 of the Landlord and Tenant Act 1987 which provides that a landlord “shall by notice furnish the tenant with an

address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

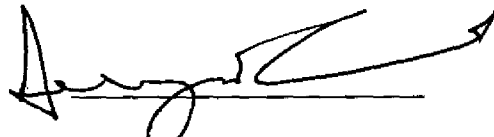
The Tribunal reviewed all the Demands for the items in question, namely those in the year ended 30th November 2006 and 30th November 2007. There appeared to be three such Demands:-

- (a) Dated 31st December 2006
- (b) Dated 4th October 2007 and
- (c) Dated 31st December 2007

All the Demands were in the same form and contained the words "Please make cheques payable to Peninsula Inns..." with an address to which the cheques should be sent. The Tribunal takes the view that the words on the Demands are insufficient to comply with Section 48 of the 1987 Act. For this reason none of the amounts demanded are yet payable until the landlord has complied with that section of the Act.

30. In respect of the Demands dated 4th October 2007 and 31st December 2007, neither of these demands comply with the Service Charge 2007 Regulations as they do not have attached to them the summary of rights which those Regulations require. Accordingly, for this reason none of the amounts demanded by those Demands are payable by the Applicants to the Respondents until such Summary of Rights have been served on the Applicants.

Chairman



Dugald Sproull LLB

Dated

28th January 2009