RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Section 27A Landlord & Tenant Act 1985 (as amended)

DECISION

Case Number:	**CHI/19UC/LSC/2010/0108**
Property:	**4 Chesham Court** **17 Oakleigh Way** **Highcliffe-on-Sea** **Christchurch** **Dorset BH23 5DQ**
Applicant:	**Mr Robert Alan Williams**
Respondent:	**Oakley Flats Management Limited**
Application:	**8th July 2010**
Directions:	**12th August 2010**
Hearing:	**26th October 2010**
Appearances:	**For the Applicant:** **Mrs Dulson** **For the Respondent:** **Mr.Jordan Pollard, Mr John Woodhouse and Mr Paul Eade**
Decision:	**26th October 2010**

Members of the Leasehold Valuation Tribunal

Mr S B Griffin LLB Chairman
K M Lyons FRICS (Valuer Member)

Case No CHI/19UC/LSC/2010/0108

Flat Number 4 Chesham Court 17 Oakley Way Highcliffe-on-Sea Christchurch Dorset BH23 5DQ

Application

1. This was an Application dated 8th July 2010 made by Mr Robert Alan Williams pursuant to Section 27A of the Landlord and Tenant Act 1985 for a determination on the payability of an additional service charge in the sum of £900 for the service charge year 2009/2010.

2. Directions were issued on the 12th August 2010 and provided for the Applicant to produce a full Statement of Case together with all relevant documents and for the Respondent to produce a Statement in reply. The parties complied with the Directions.

Jurisdiction

3. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable by a tenant to a landlord for the cost of services, repairs, maintenance or insurance or the landlord's costs of management under the terms of the Lease (Section 18

Landlord and Tenant Act 1985. The Tribunal can decide by whom, to whom, how much and when the service charge is payable. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

Lease

4. The Tribunal had a copy of the Lease **of** Flat **17d Oakleigh Way (4 Chesham Court)** - the property. It is dated 16th September 1970. It is for a term of 99 years from and including the 25th day of March 1968 at a ground rent of £20.00 per annum.

5. The provisions relating to the repairing liability of the Respondent **are** to be found at clause 4 (1) of the Lease.

6. Clause 4 (1) in so far as is material provides as follows:-

.....and the Company hereby covenants with the Landlord and separately with the tenant as follows:-

(A) That the Company will at all times during the term hereby granted (except in case of damage to the demised premises caused by any of the perils mentioned in clause 3(3) hereof) keep foundations main walls, timbers, roofs, main drains and sewers and the exterior of the building and every other Building on the Estate and the interior and exterior of the outbuildings thereof respectively and the staircases, halls passages and such other internal parts of the building and every other Building on the Estate as shall or may from time to time be used by tenants of flats on the Estate in common with other tenants in good and substantial repair and in clean and proper order and condition.....

7. The tenant's obligation to pay into the service charge is to be found at clause (5).

8. Clause 5 in so far as is material provides as follows:

(i) During the subsistence of the said term the tenant will pay to the Company an annual subscription of a proportion calculated as provided in sub-clause 3 (14) hereof or such other annual sum as may be determined by the Company as being necessary to ensure that each tenant of any flat on the Estate paying a like amount and the Landlord paying a like amount in respect of each of the completed flats on the Estate for the time being retained by it as hereinafter provided the aggregate sum received by the Company shall equal the aggregate amount properly and **reasonably** required to be expended by the Company and the amount of any

reserves properly and reasonably required by the Company in connection with the performance and observance during the whole of the term hereby granted of the covenants on the part of the Company hereinbefore contained ....."

Inspection

9. The members of the Tribunal inspected the property before the hearing. It comprises in total 3 blocks of purpose built flats constructed circa 1968, **two** of the blocks are 2 storeys. **and one** is 3 storeys. There are 14 flats in total. The Tribunal did not inspect Flat 4 itself as this was not germane to the present application.

Hearing

10. The hearing took place at the Bay View Suite, Royal Bath Hotel, Bath Road, Bournemouth BH21 2EW. It was attended by Mrs Dulson, the partner of the Applicant who spoke on his behalf and by Messrs Jordan Pollard, John Woodhouse and Paul Eade.Mr. Paul Eade is the Managing Director of **Oakley Flats** Management Limited, Messrs Jordan Pollard and John Woodhouse are Managing Agents. Mr John Woodhouse spoke principally for the Respondent but was assisted on occasion by Mr Paul Eade.

11. The Chairman commenced proceedings by outlining to all parties the fact that the Landlords power to levy a service charge and the Leaseholders obligation to pay it are governed by the provisions of the Lease. The Lease is in essence a contract between the Leaseholder and the Landlord and there is no obligation to pay anything other than what is provided for in the Lease. The general principal of a Lease being that the Landlord is not obliged to provide any service which is not covered by the Lease and the Leaseholder is not responsible for payment where there is no specific obligation set out in the Lease. When in doubt, reference should be in the first instance to the wording of the Lease. The Law expects the Landlord to behave in a "reasonable" manner with regard to expenditure on the building. The Landlord has a long term interest in maintaining the condition and the value of **the** investment. The Leaseholder may have a much shorter term view only intending to remain in the property for a few years. Whilst the Landlord is not usually bound to minimize the costs the Law states that service charges must be reasonable. As a general rule, Leases in the private sector do not **require** Leaseholders to contribute to costs of works of improvement to the building.

12. The Applicant by written representation in Form LVT4 and again in her Statement of Case, stated that Mr Williams in his capacity as a qualified Plumber was of the professional opinion that the reason for the problem which had given rise to this present demand was only blockage of the gutters and downpipes which could have been dealt with at a much lesser cost. The work undertaken by the Landlord was the replacement of soffits, fascias and guttering all in UPVC. The

Applicant in the Hearing reiterated that in summary this was the thrust of her application. When invited by the Chairman to respond Mr Woodhouse on behalf of the Respondent, reiterated the comments set forth in the letter of the 28th September to the Panel Office at Chichester **in which** (inter alia) he had stated he did not consider the matter related to a blocked downpipe and that Oakley Flat Management Limited had been advised that it would be uneconomic to continue to repair already rotten woodwork. The view had accordingly been taken that factoring in the **potential savings in** future costs of maintenance and repair of **the fascias and soffits** replacement with UPVC would prove the most **cost** effective and efficient **decision**. **He also stressed that the existing guttering was imperial sizes and that it was not possible to obtain replacement parts including rubbers and clips as all new guttering was now produced to metric sizes. When the soffits and fascias were replaced it would not therefore be possible to put the existing guttering back and therefore it had been renewed out of necessity.**

13. The Chairman pointed out that under the terms of the Lease the Landlord **was only entitled to repair and** not to improve. An adjournment of ten minutes was allowed to enable the Respondent to consider its position and ascertain whether it could produce evidence of a costings **for** repair and redecoration (within the repairing obligations of the Lease) **to enable** a comparison **to** be made in support of the contention that **the replacement works** actually undertaken and referred to in the Section 20 Notice was the most economic approach. The Respondent was

unable to supply any such written evidence. When asked for his own opinion as to the **comparison of costs Mr. Woodham** agreed it would have been much less than the **replacement** work undertaken **but he was unable to estimate the amounts.** **The** Applicant **concurred that the costs would have been considerably less and that in the Applicant's opinion replacement at this time had not been necessary.**

14. The Chairman explained that it followed from this that the Notice served by the Respondent under Section 20 of the Landlord and Tenant Act 1985 upon the Applicant **is** invalid **as the works specified therein were incorrect and insofar as they were not within the landlords authority to carry out under the terms of the lease.** Where a Landlord proposes to carry out works of repair, maintenance or improvement which would cost an individual service charge payable of more than £250 he must before proceeding formally consult all those expected to contribute to the cost. Upon inspection of the Section 20 Notice as served by the Respondent dated the 4th August 2009 it stated (inter alia) .....

The works to be carried out under the **S.20 Notice which had been served** are to replace the soffits, fascias and guttering in UPVC.

We consider it necessary to carry out the works because the existing are tired and in need of replacement due to time they have been fitted. Also by fitting new UPVC a financial saving would be made long term by minimal maintenance that would be required.

15. It followed from this that the Section 20 Notice as served by the Respondent was ultra vires of their ability so to do and thus invalid and ineffective. The Applicant in his Statement of Case had also stated (inter alia) that he had not received a summary of tenants rights and obligations as required by Section 21B – Landlord and Tenant Act 1985 Service Charges (summary of rights and obligations and transitional provisions) Regulations 2007 (SI2007/1257). Upon enquiry by the Chairman of the Respondent on this point, Mr Woodhouse confirmed that such information had been given. A fact which was then confirmed by the Applicant.

16. The Tribunal **determined** that in consequence of the Section 20 Notice as served by the Respondent, **having** been disallowed it precluded the Respondent from claiming any more than £250 of reimbursement of **the** expenditure incurred. Whilst neither party have been able to assist the Tribunal in its earlier enquiry for the cost of repair/redecoration within the terms of the repairing covenant contained within the Lease, the Tribunal considered that the Applicant had derived a benefit **from** the work effected. Whilst there had been no Section 20 consultation, the statutory cap was reasonable in the circumstances **whereby the Tribunal determined that the cost of the repairs to the timberwork the redecoration and the repairs/replacement of gutters would have exceeded £3,500.00 including VAT.** Accordingly the Tribunal determined the sum of £250 should be paid as soon as possible and in any event within 14 days of the date of this Decision.

Section 20C Application

17. The Applicant made an Application under Section 20C of the 1985 Act for a determination by the Tribunal that the costs of the Tribunal proceedings should not be added to future service charge demands. It is unclear as to whether there is any entitlement to claim such costs by way of service charge. Even if that were not the case however, the Tribunal would have made an Order under Section 20C. The Tribunal considers that the Applicant was justified in making his Application to the Tribunal and it would therefore have been just and reasonable for an Order to be made under that Section.

Dated 26th day of October 2010.

Signed

Stephen B Griffin LLB

Chairman