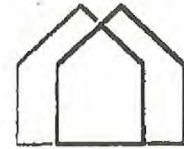


7715.



Residential  
Property  
TRIBUNAL SERVICE

**HM COURTS AND TRIBUNALS SERVICE**

**SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference CHI/00ML/LIS/2011/0080**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER S27A OF THE LANDLORD AND TENANT ACT 1985**

<b>Applicant:</b>	Preston Grange (Brighton) Ltd
<b>Respondent:</b>	The Leaseholders of the residential flats
<b>Premises:</b>	Preston Grange Grange Close Brighton East Sussex BN1 6BH
<b>Applicant's Representative</b>	Ms M Knowles Solicitor
<b>Respondent's Representative</b>	Not represented
<b>In Attendance for Respondents</b>	Mr Olsen Mr Humphreys
<b>Date of Application:</b>	24 October 2011
<b>Leasehold Valuation Tribunal:</b>	Mrs F J Silverman Dip Fr LLM Mr A MacKay FRICS
<b>Date of hearing</b>	: 19 March 2012

## **Decision**

The Tribunal declares :

- a) that the glass in the windows of each flat belongs to that flat and is therefore generally the responsibility of each flat owner;
- b) that the responsibility for the glass in the windows of each flat generally lies with the leaseholder of that flat;
- c) that where the landlord is replacing the windows in their entirety the landlord becomes responsible for the glass as well as for the windows themselves;
- d) that when the windows are being replaced as a proper part of the landlord's responsibilities under the service charge provisions of the lease, the entire cost of those windows, including the glass in them, is recoverable as part of the service charge payable by the leaseholders.

## **Introduction**

1 The Applicants filed an application with the Tribunal dated 24 October 2011 asking the Tribunal to make declarations relating to the responsibility for the replacement windows (including the glass) to the flats at the property known as Preston Grange Grange Court Brighton East Sussex BN1 6BH (the property) under section 27A Landlord and Tenant Act 1985. Directions were issued by the Tribunal on 7 November 2011 and 1 December 2011.

2 The hearing of the matter took place before a Tribunal sitting in Brighton on 19 March 2011 at which Ms Knowles represented the Applicant. No response had been filed by the Respondents and they were not represented at the hearing. Mr Humphries and Mr Olsen (leaseholders of flats 16 and 17 respectively) had both made written representations to the Tribunal which the Tribunal had read and took into account at the hearing but as they had not submitted a response or witness statements either to the Applicant or to the Tribunal they were not able to be heard at the hearing.

3 The Tribunal inspected the property immediately before the hearing.

4 The property comprises a block of 47 flats on the ground and nine upper floors situated in Grange Close which is slightly set back from the main London Road and a short distance from Brighton city centre. The front of the block, constructed in the late 1960's, overlooks Preston Park. A railway station, local shops and other amenities are nearby. London Road is served by a bus route into the city centre. Some of the flats have either a garage or car port but there is no other off street parking and on street parking in the area is extremely limited. Apart from a small area of grass and plants immediately surrounding the property there is no garden. The property is brick built with a flat roof. Some of the flats have small balconies. Although the exterior of the property appeared to be in a reasonable condition a large number of the windows, window frames, sills and surrounds were in

a poor state of repair. The original windows visible in a number of the flats were single glazed sash units thought to be of Crittal manufacture and in need of repair or renewal. It was noted that some leaseholders had replaced their windows with more modern PVC units set into the existing wood frames. The Tribunal inspected the exterior and common parts of the property and was shown the interior of flats 29 and 27, both on the fifth floor. The common parts of the property were in good decorative order with the upper floors being served by lifts. Flat 29 faced the south side and rear of the property and had a balcony accessed by a single wooden door from the main living room. The leaseholder had installed secondary glazing to the windows. Disrepair of the windows balcony door and balcony balustrade was evident. Flat 27 was in a similar condition, again with secondary glazing having been installed by the leaseholder, the main differences being that the latter faced on to Preston Park at the front of the property and had access to the balcony from two single doors, one leading from the living room, the other from the main bedroom.

### **Matters in dispute**

5 The Applicant sought the following declarations from the Tribunal

- a) that, generally, the responsibility for the windows, excluding glass, is the responsibility of the Applicant;
- b) that, generally, the responsibility for the glass in the windows, is the responsibility of the Respondent leaseholders;
- c) that in a case where the windows are being replaced in their entirety, the Applicant becomes responsible for the glass;
- d) that, in respect of the glass, the cost is recoverable either as a service charge or not.

6 The Applicant had served notices under s20 Landlord and Tenant Act 1985 and their validity was not in issue before the Tribunal. Similarly, the Tribunal was not asked to determine whether the proposed replacement of the windows constituted an improvement as opposed to a repair/renewal. Nor was the Tribunal asked to determine the reasonableness of the cost of the proposed works. No section 20C application was made. The Tribunal has no jurisdiction to determine matters relating to any compensation payable to the leaseholders arising out of the proposed works.

7 The Tribunal accepts the Applicant's evidence that all leases of the flats are in common form and was supplied with a copy of the 99 year lease of Flat 1 dated 28 October 1969 and made between Disca Property Company Ltd and Alice Clara Carlile-Walley. The leases of the garages and car ports are separate from those of the flats and are not relevant to the issues to be determined in this application.

8 Schedule 2 of the lease reserves to the landlord (currently the Applicant) (inter alia) the 'roofs foundations and external parts of the property (but not the glass of the windows of the flats...)'. Schedule 3 of the lease defines the demised property (defined in the lease as 'the Premises') and excepts from the demise (inter alia) 'the main structural parts of the building of which the Premises form part including the roofs foundations and external parts thereof but not the glass of the windows of the Premises'. Reading these two schedules together it is clear that the glass in the windows of each flat belongs to that flat and is therefore the responsibility of each flat

owner. Although the lease does not expressly include the window frames within the reserved matters in Schedule 2, neither does it expressly include them within the demise in Schedule 3. The wording of Schedule 2 does however reserve the main structural parts of the building to the landlord and this is reflected in an identically worded exclusion of the structure from the demise in Schedule 3. Window frames are normally considered to be part of the structure of a building and in the absence of their express inclusion within the demise the Tribunal determines that the intention of the draftsman was to include them as part of the structure lying within the landlord's repairing responsibility.

9 In relation to the glass itself, Schedule 3 of the lease includes the glass of the windows within the demise and this is supported by Clause 3(5) of the body of the lease which imposes responsibility for the maintenance of the glass on the leaseholder. The Tribunal declares therefore that the responsibility for the glass in the windows of each flat generally lies with the leaseholder of that flat.

10 By paragraph 4a of Schedule 7 of the lease the landlord is entitled to recover through the service charge the cost of (inter alia) 'maintenance replacement and renewal of main structure roof and balustrading and reserved property'. Since the Tribunal has determined above that the window frames form part of the structure it follows that by virtue of this paragraph in Schedule 7 the landlord is entitled to replace the window frames as part of the structure and to charge that cost to the leaseholders by way of service charge. As stated above, this application is not concerned as to whether the landlord should have repaired or maintained those frames rather than replacing them nor is it concerned with the reasonableness of the proposed costs of the replacement.

11 The issue before the Tribunal is whether, having chosen to replace the windows in their entirety, the landlord also becomes responsible in these circumstances for the glass in those windows which would otherwise be the responsibility of the leaseholders. By including the glass in the windows within the demise the draftsman of the lease must have intended that a leaseholder would be responsible for the replacement of the glass should it become damaged by accident (eg by a bird hitting the window and cracking the pane). It cannot have been intended by this wording that a landlord who replaced the window frames would then leave the frames empty expecting each leaseholder to employ a glazier to fit each of his windows with new glass. This latter would be the effect if the wording of the lease was construed to make the leaseholder responsible for the glass in circumstances where the landlord properly carried out its maintenance responsibilities by fitting new replacement windows under the terms of the lease. Replacement glass is an integral part of the replacement of the window frames and windows, particularly so where new double glazed units are supplied factory fitted with glass. The Tribunal therefore declares that where the landlord is replacing the windows in their entirety, as is the case here, the landlord becomes responsible for the glass as well as for the windows themselves. Once the new windows have been fitted, any accidental damage to the glass thereafter will fall to the leaseholder to repair or replace.

12 Following from the conclusion in paragraph 11 above, it must follow that, as the windows are being replaced as a proper part of the landlord's responsibilities under the service charge provisions of the lease, the entire cost of those windows,

including the glass in them, is recoverable as part of the service charge payable by the leaseholders.

13 The Tribunal read the representations made by Mr Humphreys to the Tribunal, made principally in his letter to the Tribunal dated 23 November 2011, in which he requested a formal hearing. His objections centred around the fact that he had already replaced the windows to his own flat and did not wish to pay for another replacement and sought compensation from the Applicant. He also made observations on the consultation process carried out by the Applicant. Mr Olsen's comments, in which he correctly observed that the glass in the windows was part of the demise, related to consultation issues and the question of whether the proposed works were a repair or an improvement. The Tribunal explained to them that the subject matter of their objections were not matters which the Tribunal was able to deal with under the current application.

Frances Silverman  
Chairman  
19 March 2012