IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/43UE/LBC/2006/0081

IN THE MATTER OF 7 COURTLANDS, 7 EPSOM ROAD, LEATHERHEAD, SURREY, KT22 8SS

AND IN THE MATTER OF SECTION 168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2003

AND IN THE MATTER OF SECTION 27A OF THE LANDORD AND TENANT ACT 1985

BETWEEN:

7 EPSOM ROAD (LEATHERHEAD) MANAGEMENT LIMITED

Applicant

-and-

TIMOTHY RAYMOND HALL

Respondent

THE TRIBUNAL'S DECISION

Background

1. The Applicant's managing agent, Huggins Edward & Sharp, makes two applications on behalf of the Applicant in this matter. The first application is made pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("CLRA") for a determination that the Respondent is in breach of clause 3(3) of his lease. The second application is made pursuant to s.27A of the

Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination that the Applicant's proposed costs of replacing the windows in the Respondent's premises are both reasonable and payable by him. Each of these applications is dealt with in turn below.

2. The Respondent occupies the subject property by virtue of a lease dated 24 July 1973 granted by Kestrel Homes Ltd to Alexander John Andrews and Maria Immaculada Andrews for a term of 125 years from the same date ("the lease"). By clause 3(3) of the lease, the lessees covenanted to:

> *"...substantially to repair decorate cleanse and maintain the interior of the demised premises including.....the windows and window frames thereof (except for external decoration)...."*

3. By clause 5 of the lease the landlord covenanted with the tenant to observe and perform the obligations set out in the Fourth Schedule. Paragraph 1 of the Fourth Schedule provides that the landlord shall:

> *"Well and substantially to repair and decorate cleanse maintain and amend all structures and parts of structures.....not hereby or by any similar lease already granted made the responsibility of the tenant...."*

Paragraph 1(a)(i) of the Fourth Schedule then goes on to define the general obligation set out above so as to include, *inter alia*, an obligation to repair and maintain *"the foundations exterior walls (including doors and windows)"*.

4. By clause 3(12) of the lease, the tenant covenanted to contribute towards the expenditure incurred by the landlord pursuant to the Fourth Schedule. The calculation of that contribution is set out in clause 3(13) and is effectively the gross annual value of the subject premises in relation to the aggregate gross annual values of the property as a whole. In any event, the tenant's service charge contribution shall not be less than £30 per annum, payable in advance on 24 June of each year.

Inspection

5. The Tribunal inspected the property on 8 December 2006. It was confined to the external parts of the building. The Tribunal was not able to internally inspect the Respondent's premises as he did not attend the inspection. However, the Tribunal noted the external condition of the Respondent's windows and found them to be in poor condition and potentially dangerous as some of the frames appeared to be rotting and some of the window panes were in some cases in danger of falling out.

Hearing

6. This matter was dealt with by the Tribunal entirely on the basis of the statements and other documentary evidence filed on behalf of the Applicant. The Respondent has not responded in any way to these proceedings. There was no hearing and the Tribunal heard no oral evidence or argument. Its determination is, therefore, based entirely on the documentary evidence before it. The Tribunal's determination took place on 8 December 2006 and 4 January 2007.

(a) The s.168(4) Application – Breach of Covenant

7. The issue in relation to this application was whether the repairing obligation regarding the windows in the Respondent's premises fell on the Applicant or the Respondent. In the Tribunal's view this issue turned on a construction of clauses 3(3) and paragraph 1 of the Fourth Schedule of the lease. Pursuant to the Tribunal's Directions dated 8 December 2006, the Applicant's solicitors filed written submissions in relation to the construction of these provisions.

8. The primary submission made was that the repairing obligations imposed on the landlord by paragraph 1 of the Fourth Schedule was limited to the main structure and common parts of the building, see: ***Holiday Fellowship Ltd v Hereford*** (1958 H No.66), where it was held by the Court of Appeal that windows did not form part of the main walls or structure of a building. Alternatively, in the event that windows did form part of the exterior walls, within the meaning of paragraph 1(a)(i) of the Fourth Schedule, that obligation on the landlord was conditional upon it not already being the tenant's obligation to maintain and repair the windows of the demised premises. It was further submitted that clause 3(3) already imposed that obligation on the tenant because the obligation to externally decorate the windows is expressly reserved to the landlord, which is consistent with the landlord's express obligation to externally decorate the exterior of the building found in paragraph 1(b) of the Fourth Schedule. The inference to be drawn, therefore, is that the tenant's repairing obligations also extends to the

external parts of the windows despite the only express reference in clause 3(3) being made to the interior of the demised premises.

9. The Tribunal did not accept the submissions made on behalf of the Applicant on the construction of clause 3(3) and paragraph 1(a)(i) of the Fourth Schedule of the lease. The Tribunal did not accept the general proposition that the repairing obligation imposed by paragraph 1 generally, and in particular 1(a)(i), is limited to external decorations of the windows and common parts generally. The authority of ***Holiday Fellowship Ltd*** relied on by the applicant had little or no application in this instance. A proper reading of that case reveals that the lease terms in that instance as to the extent of the landlord's repairing obligations were not expressly stated.

10. In the Tribunals' judgement, the meaning of the lease terms here are quite clear. The only repairing obligation imposed on the tenant by clause 3(3) of the lease is limited, *inter alia*, to the interior of the windows and window frames in the demised premises. It is consistent with the other interior repairing and maintaining obligations imposed on the tenant to be found in clause 3 generally. The express reservation in relation to the obligation to externally decorate is entirely consistent with the provisions of paragraph 1(b) of the Fourth Schedule. To draw an inference that the obligation to externally repair and maintain the windows falls on the tenant by this express reservation is to read too much into

clause 3(3) and ignores the meaning and effect of paragraph 1(a)(i) of the Fourth Schedule.

11. Paragraph 1 of the Fourth Schedule of the lease sets out the general repairing obligation imposed on the landlord. That obligation is further defined in paragraph 1(a)(i) which clearly imposes an obligation on the landlord to, *inter alia*, repair and maintain the exterior of the windows of 'the Building' as defined. There is no express provision or reservation appearing within that paragraph or the Fourth Schedule generally limiting the obligation to the common parts as submitted on behalf of the Applicant. The obligation to repair and maintain all of the exterior of the windows in the building, including the Respondent's windows, falls on the Applicant. Accordingly, the Tribunal finds that the Respondent is not in breach of clause 3(3) of the lease by failing to carry out external repairs and/or redecoration.

(b) The s.27A Application – Service Charge

12. In this application, the Applicant seeks a determination that if window repairs are carried out to the Respondent's premises, whether it would be reasonable for these works to be carried out for the cheapest of two quotes of £1,964 plus VAT and £1,660 plus VAT obtained from DB Designs Southern Ltd and Cristal Windows respectively. The Applicant seeks a further determination as to the person by whom the costs are payable, to whom, the amount, the date and the

manner in which such payment should be made. The estimated costs arise in the present service charge year ending 24 June 2007.

13. From the documentary evidence before it, the Tribunal was satisfied that the Applicant was required and had consulted with the Respondent in accordance with s.20 of the Act. Again, the Respondent does not appear to have responded to either the s.20 consultation or to this application.

14. The Tribunal, above, has already made a finding that the windows in the Respondent's premises are in a state of disrepair. The Tribunal has also found that the obligation to maintain and/or repair those windows is on the Applicant resident management company. In the event that it consider it necessary to replace the Respondent's windows with uPVC double glazing, the Tribunal, on balance, having regard to the number and specification of the windows, finds the estimated costs of £1,660 plus VAT provided by Cristal Windows to be reasonable. *Prima facie*, there was no evidence before the Tribunal that the estimated costs were not reasonable.

15. As to the person by whom the repair costs would be payable, the answer is self-evident. The contractual terms of the lease prevail and a service charge contribution would be payable by all of the lessees to the residents management company in accordance with the provisions of clause 3(13) of the lease, which also deals with the timing and manner of payment.

(c) The Paragraph 10 of Schedule 12 Costs Application

16. This application was made in the written submissions made by the Applicant's solicitors dated 22 December 2006. It was made on the basis that the Respondent has failed to act or respond in any way to either the informal attempts made by the Applicant to resolve the issues that formed the subject matter of these applications nor has he responded to these proceedings. The Applicant submits that the Respondent, in so doing, has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably. The consequence of this is that the Applicant has incurred significantly greater costs than otherwise would have been the case.

17. The Tribunal did not consider the Respondent's approach in this matter helpful. It is perhaps fortunate for him that the relevant lease terms were construed in his favour and the Tribunal had some sympathy for the Applicant's position in this matter. However, there is no basis on which the Tribunal can make a finding that the Respondent had ***acted*** frivolously, vexatiously, abusively, disruptively or otherwise unreasonably within the meaning of paragraph 10(2)(b) of Schedule 12 of CLRA. To make such a finding, the Respondent would have needed to act positively as opposed to an omission to do so. He is entitled to do nothing like any other litigant in any proceedings. The sanction in other proceedings is either default judgement and/or costs orders against the defaulter. Unfortunately, those sanctions are not available to the Tribunal in these proceedings. Accordingly, the Tribunal makes no order under paragraph 10(2)(b) of Schedule 12 of CLRA.

Dated the 4 day of January 2007

CHAIRMAN.....I. Mohabir.....

Mr I Mohabir LLB (Hons)