

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT
PANEL**

Case number CAM/38UG/LSC/2005/0035

**LANDLORD AND TENANT ACT 1985 AS AMENDED SECTION 20ZA AND
SECTION 27A**

In respect of : 19 Sunnymede Flats, Hernes Road, Oxford OX2 7PX

Parties	:	Colin Kilpatrick	Applicant
		-and-	
		John Higgs	Respondent

Appearances : Parties in person

Tribunal	:	A. A. Dutton	Chair
		Mr G R C Petty	FRICS
		Mr R V N Auger	FRICS

Application Date 28th June 2005

Hearing Date 6th October 2005

Decision Date 24th October 2005

DECISION

A. BACKGROUND

1. This matter concerned two applications made by Mr Colin Kilpatrick, the first under s20ZA of the Landlord and Tenant Act 1985 ("the Act") and the other under s27A of the Act.
2. The application under s20ZA for dispensation from all or any of the consultation requirements contained in s20 of the Landlord and Tenant Act 1985 related to roofing works to the flat roof above a block of seven garages situated to the rear of Sunnymead Flats in Hernes Road Oxford which were carried out in January 2005.
3. The s27A application for a determination of the liability to pay service charges related to the sum of £785.00 which was the contribution payable by Mr Higgs for the re-roofing of the garages and a further sum of £400.00 representing an interim maintenance charge levied by Mr Kilpatrick to cover various expenses for the calendar year commencing January 2005.
4. At the time of the hearing Mr Kilpatrick was the outright owner of four of the flats and had a one-third share in another flat that had been previously owned by his mother. Accordingly the only flat in the block, of which there were six, which was not owned either in whole or in part by Mr Kilpatrick, was the flat belonging to Mr Higgs.
5. Mr Higgs was the Lessee of his property held under the terms of a Lease dated 26 November 1976 which indicated that he had at one time been the registered proprietor, with a Mr Dudley Gerald Higgs, of the land upon which the six flats and a block of seven garages had been built. We do not need to recite in these Reasons how the freehold became owned by Mr Kilpatrick. We shall refer to the terms of the Lease insofar as they are necessary to this application when so required.

B. EVIDENCE

6. Both parties had submitted written documentation supporting their case. In addition both Mr Kilpatrick and Mr Higgs attended the hearing. We can take the evidence quite shortly. Insofar as the application for dispensation was concerned, Mr Kilpatrick told us that in October 2004 he had noticed that the roof was in a

deteriorating condition. He had obtained quotations from Westlake Asphalt Company Limited and from Midland Felt Roofing which showed figures in excess of £6000.00 subject to VAT. He had also obtained a quotation from Nick Brown Roofing Limited, and they were in fact the Company that carried out the works, at a price of £5495.00 no VAT being charged.

7. He told us that he had shown the estimates he had obtained to all other Leaseholders but in the case of Mr Higgs, had e-mailed those details to his then Property Agents, Chancellors. No response had been forthcoming and when in Christmas 2004 the leaks appeared to have suddenly deteriorated he decided to proceed to carry out the repair works. He now asks the Tribunal to grant dispensation on the grounds that it would be reasonable to do so. At the hearing he accepted that he had not followed the full procedures contained in the Act but did get three estimates and chose the cheapest. He had satisfied himself that the Contractor was competent. There had, he said, been difficulties in contacting Mr Higgs and that he had sought the opinion of Chancellors but had not received any response. It appeared however that the difficulties in contacting Mr Higgs were not apparent in October 2004 as he produced a copy of a letter from Mr Higgs which showed the correspondence was clearly passing between them. He told us that the other Lessees had paid although at that time one was his mother and the other was a Miss Woodward. There had been no explanation from Mr Higgs as to why he would not pay.
8. On the question of the outstanding service charge he informed us that this related to the annual interim payment that he had always sought. He relied on clause 5.ii(a) of the Lease which states as follows: *"To pay to the Landlord in respect of the items mentioned in the Fourth Schedule the yearly sum of £30.00 or (whichever shall be the greater) such a sum as represents the Tenants share (the calculation of such share being set out in the Fifth Schedule) of the total expenses actually incurred during the twelve months preceding each 25th day of March credit being given in any event for such part of the said sum of £30.00 paid in any previous year or years which shall not have been previously spent and certified as hereinafter provided"*. His assertion was that this constituted an interim service charge and that the figure of £400.00 was in line with previous expenses. This sum included the annual ground

rent of £25. We were told that Mr Higgs had been willing to settle this interim charge previously.

9. Mr Higgs, as had Mr Kilpatrick, had filed written submissions to us. At the hearing Mr Higgs accepted that the sum of £400.00 was due and confirmed that he would make that payment within 14 days. The only issues therefore that fell to be considered were the questions of dispensation and the recoverability of the costs of the work. The basis of Mr Higgs complaint did not appear to be that the works were not required or that they had been carried out in a substandard fashion or that the charge was excessive. Instead his reason for not paying Mr Kilpatrick appeared to relate to matters which were not within the jurisdiction of the Tribunal. He complained to us about Mr Kilpatrick's ownership of the freehold and some perceived concerns in respect of the terms of a Deed made in 1960 as well as legal access. None of these matters came within the jurisdiction of the Tribunal and were not therefore issues that we could deal with.
10. At the conclusion of the hearing Mr Kilpatrick requested reimbursement of the fees he had paid for the application and the hearing which totalled £300.00. He did not see why he should have to pay a fee to a Tribunal to get back that which was due to him, that he had done all that he should have done to ensure that Mr Higgs knew what works were to be undertaken and that even now it was not clear from Mr Higgs documentation exactly what his reasons were for not paying.
11. Mr Higgs did not believe that he should have to pay for the fees. He seemed to believe that there was some relationship between the other tenants, Mr Kilpatrick and his previous Managing Agents but that was not in fact an issue that was pursued and certainly not something we have taken into account in making our decision.

C. THE LAW

12. Section 20ZA was introduced by the Commonhold and Leasehold Reform Act 2002. It affects any works carried on after 31 October 2003 unless notices under s20 had been given before that date. It is accepted that in this case s20ZA does apply. Previously a request for dispensation had to be made to the County Court. The matter however can now be dealt with by this Tribunal and it is for us to decide

whether or not it would be reasonable to dispense. The behaviour of the Landlord is not the issue. It is the question on reasonableness.

13. The provisions of s27A require us to determine the liability to pay service charges, whether they have been reasonably incurred and by whom and to whom those service charges are payable amongst other matters.

D. DECISION

14. We do not need to make any findings in connection with part of the s27A application as Mr Higgs conceded that the sum of £400.00 was properly due and that payment would be made within 14 days. It should however be noted that included within the £400.00 was the ground rent payment of £25.00 for which this Tribunal has no jurisdiction. Accordingly although Mr Higgs should clearly pay his ground rent we can only order that he pay the service charge element in respect of the interim costs which should be limited to £375.00.
15. We turn now to the question of the dispensation under s20ZA and, if we find it reasonable to dispense, the payment of the sum of £785.00.
16. It appears clear that competitive quotes were obtained and we accept Mr Kilpatrick's evidence that those were sent to Chancellors. It is unclear why he did not send copies of those quotations direct to Mr Higgs as he had been in correspondence with him in October 2004. Furthermore we are concerned that Mr Kilpatrick, being one of three Lessees at the time (the others being his mother, Miss Woodward and the Respondent, Mr Higgs) should have ensured that those three Lessees were fully informed and if there were any doubt as to whether or not Mr Higgs had received copies of the quotations, they should have been sent directly to him.
17. That being said, Mr Higgs in the hearing before us and in the documentation raised no issues concerning the standard of work, the need for the work to be done or the costs of same.
18. The introduction of the requirements contained in s20ZA were to ensure that there was proper consultation between the parties and the fact that the Landlord at fault

does not now need to seek dispensation from the court should not be taken as an indication that those requirements have in any way been lessened.

19. In this case however we are prepared to accept that the works were required to the garage, that they had been carried out properly and that the costs in respect of same were reasonable. Taking those matters into account therefore we do order that dispensation under s20ZA be given and it therefore follows that in the absence of any complaint by Mr Higgs as to the need, standard or costs of the works that the sum of £785.00 is properly due and owing and is payable by Mr Higgs to Mr Kilpatrick.
20. We turn now to the question of the fees. The Tribunal has power under the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 to order reimbursement of fees provided that the paying party is not in receipt of any of the benefits which are referred to in the regulations. There was no evidence before us that Mr Higgs fell into that category.
21. We have considered all that has been said. The application for dispensation had to be made by Mr Kilpatrick if he was to recover the contribution to the roofing works in the absence of any agreement by Mr Higgs. He admitted that he had not followed the procedure and in our view should have made greater effort to ensure that the quotations were delivered to Mr Higgs. In those circumstances we do not believe it would be appropriate to require Mr Higgs to reimburse the fee for the application which was £150.00. However we take a different view of the fee paid for the hearing which was £150.00. In none of the documentation submitted by Mr Higgs did he raise a reasonable defence with regard to his liability to pay for the roof repairs and admitted at the hearing that he should, and would pay the interim sum of £400 to include the ground rent. Nor did he raise any objection to the question of dispensation. His complaints related to matters that were wholly outside the jurisdiction of this Tribunal. Accordingly in the absence of any compelling reason why the service charge should not have been paid and in the absence of any argument whatsoever with regard to the question of the roofing repairs we have concluded that the need for the hearing could have been avoided and as such