RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property	:	**Medina Villas 82-84 Newland Street Witham Essex CM8 1AW**
Applicant(s)	:	**Mr. and Mrs. P. Warnock**
Respondent(s)	:	**Pier Management Ltd. for and on behalf of Regisport Ltd.**
Case number	:	**CAM/22UC/LSC/2005/0006**
Date of Application	:	**13th December 2004**
Type of Application	:	**To determine liability to pay service charges (Section 27A Landlord and Tenant Act 1985 ("the 1985 Act"))**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL WHICH MET ON 29th APRIL 2004 AT THE RAMADA JARVIS HOTEL, WITHAM

Introduction

1. This is an application by tenants of Flat 6/F in the property. It follows a decision of this Tribunal on the 17th September 2004 granting limited dispensation to the Respondent allowing them to proceed with remedial works to the property without all the consultation requirements set out in the 1985 Act as amended.

2. That application was made following the discovery of extensive dry rot in the ground floor and basement of the property which was already spreading to the residential parts. The Tribunal considered that urgent work was needed and set out a strictly limited timetable for further consultation with the tenants.

3. A letter was written to the tenants on the same day as the Tribunal's decision. However, it appears that despite the requirement to send 3 estimates to the tenants, only one was sent being the landlord's "recommended" contractor. The landlord appears to have complied with the Tribunal's order in all other respects. Mr. Warnock conceded, after some initial hesitation, that the letter of the 17th September 2004 and enclosures as set out in the bundle had been received.

The Property

4. The Tribunal went to the property as arranged. Unfortunately, Mr. Warnock was clearly not expecting anyone to attend for an inspection and it was not possible to gain access to the bottom flat immediately above the shop. Mr. Meagher from Pier Management attended. Fortunately, the members of the Tribunal were the same as for the previous hearing and had seen inside the building before the remedial work was undertaken. A description of the general construction, nature and use of the property is contained in the Decision of this Tribunal referred to above and is not repeated here.

The Hearing

5. Mr. Warnock attended the hearing and confirmed that he was speaking on behalf of the tenants. The Tribunal noted the letters of support in the papers. Mr. Meagher attended to represent the Respondents but had to accept that he hadn't dealt with the case at the relevant time and could only refer to the Respondent's file.

6. The first matter to be dealt with is really a preliminary issue. Having been ordered to send out copies of the 3 estimates, why was only 1 sent out? Should the Tribunal penalise the Respondent by refusing to allow more for the works in question than would be allowed if Section 20ZA of the 1985 Act had not been complied with?

7. Mr. Warnock accepted that the letter of the 17th September 2004 and enclosures had been received. Mr. Meagher could give no explanation as to why only 1 estimate had been sent but he did make the points, correctly, that

the estimate sent was the lowest and that the tenants had not put forward any alternative prospective contractor.

8. Taking all matters into account, the Tribunal decided on this preliminary issue that the breach of the Tribunal's direction was a relatively minor one and, on balance, it agree to consider the costs of remedial works as a whole on their merits.

9. Mr. Warnock put his case. His points were as follows:-

(a) The dry rot emanated from a cupboard in the shop and he understood from a contractor on site that the problem had been reported a long time ago. Therefore, the problem should have been resolved before damage reached the flats. Unfortunately, he could produce no corroborative evidence of this.

(b) Surely the Respondent had obtained a survey report when they purchased which would have revealed the problem which, again, would have alerted the Respondents and avoided the dry rot spreading to the flats. Once again he could produce no evidence of this.

(c) The contractors had damaged the lighting system and the tenants had just received a demand for about £1,200. Why should they have to pay this?

(d) The management fee of 15% of the cost of the work was excessive

(e) The surveyors' fees were excessive.

10. Mr. Meagher's responses to these points were (using the same numbering):-

(a) The Respondents had no knowledge of any report of dry rot before 11th May 2004

(b) Regisport Ltd. had acquired the freehold on 17th June 2003 and he could not say whether a full survey was undertaken.

(c) Any damage to the lighting system was not a matter for this Tribunal

(d) The management fee is reasonable

(e) The surveyors fees are reasonable. The surveyors had already been appointed by the commercial leaseholder and it made sense to use the same firm. He understood that a level of fees had been negotiated jointed by the commercial leaseholder and the Respondents. He was not able to give details

Decision

11. As to the cost of the remedial works, the Tribunal decided that it was reasonable. The contractor had given the cheapest quotation out of 3 and the tenants did not provide any evidence to suggest that the cost was unreasonable. The members of the Tribunal also used their own knowledge and experience in coming to this decision.

12. Obviously the Tribunal cannot make a judgment about whether the work has been undertaken reasonably because reinstatement work has covered up the dry rot rectification work. In any event, the Tribunal could not gain access to the relevant parts of the building. Presumably there is a guarantee.

13. As to the management fee, the Tribunal decided that the Respondents were able to recover a management fee for this sort of major work but 10% of the total project costs would the usual and reasonable rate. As neither party could give the Tribunal any assistance on this issue, the members' own knowledge and experience was used to arrive at this decision.

14. Finally, the Tribunal turns to the surveyors' fees. This was the most difficult to assess. The totals of the invoices from Ingleton Wood show a charging rate of £60 per hour for 39.5 hours and a charging rate of £35 per hour for 7.8

hours of what appears to be design work. Once again the parties were unable to assist the Tribunal with any evidence as to the reasonableness of these invoices. In the Tribunal's experience, a reasonable property owner would negotiate a surveyor's fee in such a way that the total amount of fees would be reasonably predictable. In other words they would negotiate either a fixed price or an hourly rate with a 'cap' i.e. a maximum figure.

15. In this case, the Tribunal did feel that the number of hours expended for the work said to be on the flats only was grossly excessive as was the total amount of the surveyors' fees compared with the contract price. Having said that, the charging rates appeared to be extremely reasonable. All in all, the Tribunal's view was that a reasonably competent property owner would negotiate a 'cap' on this project of £2,500 inclusive of VAT. That is the figure which the Tribunal decides is reasonable.

16. The Tribunal did consider the fees of the engineer, structural engineer etc set out on page 46 of the bundle to be reasonable.

17. As far as any damage to the lighting was concerned, the Tribunal did not consider this to be any part of this application. Even if it were, neither party had provided sufficient information upon which a decision could be made.

18. The expenditure considered reasonable by the Tribunal is therefore:-

TTP	10,721.90
Previous LVT application fee	250.00
Engineers fees	663.88
Ingleton Wood	2,500.00
	14,135.78
10% management fee	1,413.58
Total figure	£15,549.36

18. The parties agreed to apportionment of the charges between the various parts of the building and, using those apportionment figures the amounts due from the various occupiers of the building are:-

84A	14.06%	2,186.24
84B	14.06%	2,186.24
84C	14.06%	2,186.24
84D	9.38%	1,458.53
84E	14.06%	2,186.24
84F	9.38%	1,458.53
Shop	25.00%	3,887.34
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19. The Applicant asked for an order that the Respondent's costs incurred in respect of this case should not be added to any future service charge. The Tribunal also considered whether it should order the Respondents to refund the fee paid for this case to the Applicants.

20. Although the application had some merit, the Tribunal did not consider that the Respondent had behaved so badly as to warrant a refund of the fees paid for this case. On the other hand, the Respondents had behaved rather foolishly in not complying with the previous Tribunal's direction. If they had complied strictly with those directions, had charged the more normal major works management fee and had provided better detail of the surveyor's fees, this application may not have been necessary.

21. For those reasons the Tribunal does make an Order pursuant to Section 20C of the 1985 Act which will prevent the Respondents from charging any costs arising out of its representation in this application against future service charges.

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Bruce Edgington
Chair
04/05/2005

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