

**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

BIR/37UJ/LIS/2004/0005

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER
(i) SECTION 27A OF THE LANDLORD AND TENANT ACT 1985
AND
(ii) SECTION 20C OF THE LANDLORD AND TENANT ACT 1985*

Applicant: Mr P Malster (leaseholder)

Respondent: Waterglen Ltd (landlord)

Subject property: 10 Rushworth Court
Loughborough Road
West Bridgford
Nottingham NG2 7LH

Applications to LVT: 6 October 2004

Member of the Tribunal: Professor N P Gravells MA
Mr D B Power FRICS

Date of determination: 20 OCT 2004

Applications

- 1 This is a decision on two applications made to the Leasehold Valuation Tribunal by Mr Malster, leaseholder of 10 Rushworth Court, Loughborough Road, West Bridgford, Nottingham NG2 7LH ("the subject property"). The two applications are, first, under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for the determination of the applicant's liability to pay a service charge; and, secondly, under section 20C of the 1985 Act for an order for limitation of costs.
- 2 The respondent landlord is Waterglen Ltd.
- 3 The parties agreed that the application should be determined without a hearing and on the basis of written representations. Representations were received from the applicant leaseholder and from David Glass Associates, managing agents, representing the respondent landlord. All written representations received by the Tribunal were copied to the other party.

Background to the application

- 4 The subject property is one of twelve flats in a block of purpose-built flats. The respondent is also the freeholder of an adjacent block of flats; but the two blocks are managed as separate entities (except in limited circumstances that have no relevance for the purposes of the present application).
- 5 The application relates to a single item of expenditure included in the 2002/2003 service charge for the subject property (and the other eleven flats in Rushworth Court), namely the cost of repairing the communal television aerial mast in December 2002. The sum of £940 (£800 plus VAT) was included in the service charge accounts for Rushworth Court for 2002/2003; and, in accordance with the allocation percentage in the applicant's lease, £81.59 (representing 8.68 per cent of £940) was included in the applicant's individual service charge account.

Representations of the parties

- 6 The applicant submits that the costs of the repair work to the aerial charged to the service charge account were not reasonably incurred. In particular, the applicant alleges that the repair consisted of the re-erection of the existing aerial mast, which had corroded and broken into two parts, by overlapping the two parts and lashing them together with black tape. The applicant submitted a number of recent photographs of the aerial mast.
- 7 David Glass Associates, representing the respondent freeholder, submitted copies of two documents apparently relating to the repair of the aerial mast. The first document is a job sheet completed by Kent Fire (Fire Protection Engineers) and dated 6 December 2002, which describes the work as "install/repair communal aerial mast" and "repair damaged window". (The window in question is assumed to be one of the windows forming part of the structure providing access from the second floor of the block to the roof where the communal aerial mast is located.) The second document is an invoice raised by Kent Fire and dated 10 December 2002. The invoice, which describes the relevant work in similar terms to the job sheet, is in the sum of £940 (£800 plus VAT). Mr Antonio Ahmed of David Glass Associates

also sent two letters to which reference should be made. In the first letter, dated 2 November 2004, Mr Ahmed stated the "belief that the works were undertaken to a reasonable and proper standard and the costs are recoverable accordingly". In the second letter, dated 22 November 2004, Mr Ahmed explained that many of the personnel employed by Kent Fire and by David Glass Associates respectively at the relevant time were no longer available to provide further details of the work carried out on the aerial mast. However, he stated that Kent Fire had quoted "to repair a main pole supporting approximately ten aerals and to carry out works to the access door to the roof". He also referred to a statement from Kent Fire that "in view of the time that has lapsed, it would be difficult to know if any other work has been carried out or if anyone has tampered with or replaced the aerals".

- 8 As indicated, all written representations received by the Tribunal were copied to the other party.

Inspection

- 9 In the light of the nature of the matter in dispute and the evidence submitted by the parties, the members of the Tribunal arranged to inspect the roof of Rushworth Court and the communal television aerial mast. All parties were notified of the date and time of the inspection, which took place on 10 December 2004. Mr Malster, the applicant leaseholder, attended the inspection; the respondent freeholder did not attend and was not represented.

Determination of the Tribunal

Liability to pay service charge

- 10 In its determination of the matters in dispute between the parties the Tribunal took account of all relevant representations and evidence submitted by the parties. It also took account of the evidence of the inspection.
- 11 The Tribunal finds the evidence of the inspection compelling and conclusive. The communal television aerial mast is precisely as described by the applicant in his application and as seen in the photographs. The mast is badly corroded; it has at some time broken into two parts; and the two parts have been overlapped and bound with tape. It appears that the original communal aerial is no longer in use. Two individual aerals are attached to the mast; but the other leaseholders have installed or relocated individual television aerals elsewhere on the roof, presumably in anticipation of the collapse of the communal aerial mast. The repair to the damaged window consists of the replacement of the broken pane of glass with a piece of plywood.
- 12 The Tribunal finds that the evidence is wholly inconsistent with the installation of a new (or sound) aerial mast, or with the proper repair of the aerial mast, in December 2002. Rather the evidence points to makeshift repair work to the existing corroded aerial mast and to the window. Moreover, in the view of the Tribunal the standard of that work was not merely unreasonable; it was wholly unacceptable. The value of the work to the leaseholders of Rushworth Court was nil.

- 13 Accordingly, the Tribunal determines that none of the costs incurred in respect of the installation/repair of the communal television aerial mast (or in respect of the damaged window) were reasonably incurred; and that those costs are therefore not recoverable from the applicant leaseholder.

Limitation of costs

- 14 In the light of the decision of the Tribunal on the issue of liability to pay the service charge, the Tribunal holds that it would be wholly unreasonable for the respondent freeholder to recover its costs in connection with the present proceedings from the applicant leaseholder.
- 15 The Tribunal therefore orders that none of the respondent freeholder's costs incurred in connection with the present proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the service charge payable by the applicant leaseholder or any of the other leaseholders of the flats in Rushworth Court.

Signed 
(Professor Nigel P Gravells (Chairman))

Dated