RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.27A & S.20C Landlord & Tenant Act 1985 (as amended)

DECISION & ORDER

Residential Property
TRIBUNAL SERVICE

Case Number:	CHI/21UC/LSC/2006/0110
Property:	Flat 5A Eversfield Road Eastbourne East Sussex BN21 2DS
Applicants:	Mr R J Mason and Mrs E Mason
Respondent:	Corro Investments
Application:	09 October 2006
Directions:	30 October 2006
Hearing:	11 January 2007
Decision:	09 February 2006
Tribunal Members:	Ms J A Talbot MA (Chairman) Mr N J Cleverton FRICS Ms J Dalal

Summary of Decision

The landlord Corro Investments failed to follow the statutory consultation procedure pursuant to Section 20 Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002). Accordingly the service charge payable by the tenants, Mr and Mrs Mason, is limited to £250.

Flat 5A Eversfield Road, Eastbourne, East Sussex BN21 2DS

CHI/21UC/LSC/2006/0110

Application

1. This was an application dated 9 October 2006 was made by the tenants, Mr and Mrs Mason, for a determination on the payability of service charges for the year 2005 at 5A Eversfield Road, Eastbourne BN21 2DS.

2. Directions were issued on 30 October 2006 requiring the parties to provide written Statements of case together with supporting documents. Both parties complied with the Directions.

Law

3. The law is to be found at Section 27A of the Landlord and Tenant Act 1985 (as amended by Section 155 of the Commonhold and Leasehold Reform Act 2002) which provides:

> Section 27A(1): An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable, and if it is, as to:-
> (a) the person by whom it is payable,
> (b) the person to whom it is payable,
> (c) the amount which is payable,
> (d) the date at or by which it is payable, and
> (e) the manner in which it is payable.

4. Section 19 of the Landlord and Tenant Act 1985 provides;

> Section 19(1): Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
> (a) only to the extent that they are reasonably incurred, and
> (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
> and the amount payable shall be limited accordingly.

5. In addition, Section 20 of the 1985 Act provides:

> Section 20(1): Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... unless the consultation requirements have been either:
> (a) complied with in relation to the works ... or
> (b) dispensed with in relation to the works ... by a leasehold valuation tribunal.
> (6) Where an appropriate amount is set ... the amount of the relevant costs incurred in carrying out the works ... which may be taken into account in determining the relevant contribution of tenants is limited to the appropriate amount.

6. The appropriate amount is set at £250 in accordance with Paragraph 6 of the Service Charges (Consultation Requirements)(England) Regulations 2003. These Regulations also contain details of the consultation procedure.

Lease

7. The Tribunal had a copy of the lease for Flat 5A dated 5 June 1996. It was granted for a term of 99 years from 29 September 1995 at an initial ground rent of £50 and rising thereafter. The demised premises are defined as "the maisonette being the lower floor of the building".

8. At Clause 3(3) the tenant is obliged to "repair ... maintain renew amend and cleanse ... the demised premises" and at Clause 3(4) to pay on demand "one moiety of the expense incurred by the lessor or the lessee for the time being of the upper maisonette ... in repairing ... the roof of the upper maisonette".

Inspection

9. The Tribunal inspected the property before the hearing. It comprises a large Edwardian house of red brick construction under a pitched and tiled roof, situated in a pleasant residential area of Eastbourne, with gardens to the front, side and rear. It has been converted into two maisonettes. The ground floor, Flat 5A, is accessed by a separate door to the side of the building, and the upper maisonette by the front door. Externally the property is in good condition.

10. Internally, the upper maisonette is arranged over 2 floors and consists of 5 rooms, 2 bathrooms and kitchen. The Tribunal saw evidence of discolouration in the corner of the ceiling of a small box room at the front of the property. It also saw a pitched roof area at the front with an infilled valley between the property and the house next door.

11. The lower maisonette consists of 3 rooms, kitchen and bathroom. It has been recently renovated. Both flats are in good condition internally. The upper maisonette is sub-let to students. The lower maisonette is currently empty.

Issue in Dispute

12. The sole issue before the Tribunal was whether the Masons were liable to pay half of the sum of £3,013.88 in respect of repair works to the roof. The Masons did not dispute the quality and cost of the work, but contended that because Mr Corro had failed to follow the statutory consultation procedure, their liability was limited to £250.

Hearing

13. A hearing took place in Newhaven on 11 January 2007. It was attended by Mrs E Mason and Mr E Corro of Corro Investments.

14. From the evidence given at the hearing and from the documents supplied, the Tribunal found the following facts.

15. The Masons purchased flat 5A as an investment property in May 2004. Mr Corro owned the freehold and also the upper maisonette. At that time the building was generally in poor condition. The Masons renovated the interior of their flat but were concerned about the state of the exterior. In August 2004 the parties met on site to discuss the extensive maintenance work needed. Mr Corro obtained 3 quotes but the work did not proceed at that stage. It has since been carried out and was not in dispute. In September the Masons put the flat up for sale.

16. On 11 October 2004 Mr Corro wrote to the Masons enclosing a quotation from M W Pyle roofing contractors for roofing works and asking for comments. The cost was stated to be £8,958. He also made an offer for the flat. It was unclear whether at that point the Masons were aware that part of the work was considered by Mr Corro to be an emergency. The letter made no mention of any emergency works. According to Mr Corro, he had telephoned the Masons to tell them that one of his tenants had reported a leak to the ceiling of the front box room. Mrs Mason had not understood that there was any emergency but thought that the work formed part of the overall planned maintenance.

17. Initially Mrs Mason replied on 26 October 2004 agreeing to the work being carried out. Subsequently, however, she became concerned that the cost was too high for just a small part of the overall work, and that she had no control over the possible escalation of costs in the absence of any alternative quotes. She contacted the Leasehold Advisory Service, who drew her attention to the statutory consultation procedure under Section 20 of the 1985 Act. She realised that Mr Corro had not followed the procedure. She then wrote on 10 November withdrawing consent for the works until the correct procedure had been followed.

18. Mr Corro wrote on 17 November 2004 explaining that the works were an emergency roof repair due to water ingress. Mrs Mason did not respond. The work, to the front pitched roof valley, was carried out over the next few months, following a couple of immediate patch repairs to prevent further leaks. There was subsequent correspondence in February 2005 concerning scaffolding at the side of the property and a velux window installed in the 2nd bathroom in the upper maisonette. These were not directly relevant to the issue in dispute and Mr Corro confirmed that he had paid for these items and not charged them to the Masons as service charges.

19. In April 2005 Mr Corro wrote to the Masons' mortgage lender asking for payment. The lender refused because the matter was subject to a dispute. The Masons paid £250 on the basis that this was the appropriate sum and the limit to their liability following the failure to consult. Mr Corro accepted the payment but still contended that the remainder was payable.

20. In answer to questioning from the Tribunal, Mr Corro said that before carrying out the repair he had taken advice from a licensed conveyancer, who advised him (wrongly) that he could carry out the work without consultation if the work was an emergency and necessary to prevent further damage. He was not told that he could apply to the Tribunal under Section 20ZA of the 1985 Act for a dispensation waiving the requirement to consult. He subsequently found out about this but did not make such an application.

21. Mr Corro believed he had acted reasonably and in the best interests of the property in carrying out the emergency repair promptly and he felt he had kept the Masons informed. Mrs Mason contended that she had drawn Mr Corro's attention to the consultation procedure but that he had chosen not to follow it. The Masons had paid their share of the other major works when they had been properly consulted.

Decision

22. The Tribunal considered the oral and written evidence. The central issue was the failure to consult. Whist accepting that Mr Corro believed he was acting to protect the property, it was clear that he had not followed the statutory consultation

procedure in relation to the emergency works. The correspondence between the parties in October and November 2004 did not comply with the statutory requirements. Although the Masons changed their position, they did clearly indicate that they had withdrawn their agreement to the work going ahead.

23. Regrettably, Mr Corro was given incorrect advice, which he somewhat unwisely followed; although he subsequently found out about the correct procedure and the possibility of applying for a dispensation, he took no further steps. This was unfortunate for Mr Corro, but in the Tribunal's view, the train of events did not relieve him of his responsibility as a landlord to consult in accordance with the clear statutory requirements.

24. It is not possible for a landlord to contract out of the statutory consultation procedure where the tenant's contribution to the cost of the works exceeds the statutory limit of £250. Accordingly, the Tribunal has no alternative other than to determine that the amount payable by the Masons is limited to £250, which they have indeed already paid.

Section 20C

25. At the hearing Mr Corro indicated that he did not intend to charge any costs incurred in relation to the proceedings to the service charge account. Accordingly it was not necessary for the Tribunal to make an order under Section 20C.

Determination

26. The Tribunal determines that the liability of the Applicants in relation to the costs of roof repairs of £3,013.88 is limited to £250.

Dated 09 February 2007

J Talbot

Ms J A Talbot
Chairman