RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. **CHI/21UE/LSC/2006/0056**

Property: **4 Wiltie Gardens**
Folkestone
Kent
CT19 5AX

Applicants: **Mr. J. Buckhurst (Flat C)**
Mr. N.J. Wheeler (Flat A)
Mr. K. Daly (Flat B)
4 Wiltie Gardens
Folkestone
Kent
CT19 5AX

Respondent: **Direct Surveyor Management Limited**
c/o Pallmore Limited
'Mardon'
Claremont Road
Seaford
East Sussex
BN25 2PZ

Date of Hearing: **6th September 2006**

Members of the Tribunal: **Mr. R. Norman (Chairman)**
Mr. R.T. Athow FRICS, MIRPM
Mr. T.J. Wakelin

Date decision Issued:

RE: 4 WILTIE GARDENS, FOLKESTONE, KENT, CT19 5AX

Background

1. Mr. Buckhurst made an application for a determination of liability to pay service charges. Included is an application for an order under Section 20C of the Landlord and Tenant Act 1985. Mr. Wheeler and Mr. Daly have applied to be joined in the proceedings as Applicants. We confirm that they are so joined and therefore the Applicants in respect of these proceedings are the three lessees at 4 Wiltie Gardens

2. The application concerns a demand for the payment of management charges of £700 in 2004, £800 in 2005 and £800 in 2006 and £5,200 in respect of the replacement of wall ties.

3. We read statements and documents received from Mr. Buckhurst and Pallmore Limited setting out the cases of the respective parties.

Inspection

4. The subject property is a semi-detached property which has been converted into three flats and we inspected the exterior and interior in the presence of Mr. Buckhurst and Mr. Daly. There was no attendance by anyone on behalf of the Respondent.

5. We had been provided with a copy of a report dated 16th March 2004 from KSI Limited, Consulting Structural and Geotechnical Engineers and our inspection confirmed the main contents of that report. Of particular concern were the descriptions of disturbances to the brickwork, the gap at the head of the first floor window openings, the bulge to the brickwork on the front elevation and that roof spread had occurred in that the feet of the rafters had slipped off the wall plate and are now resting on the outer wall. We agreed with the conclusions and recommendations contained in the report. We also noted that pointing was required to various walls and that guttering required to be realigned or renewed. Unlike Mr. Mills of KSI Limited, we were able to gain access to the rear of the property and could see that repair to the rear chimney stack was required. It could well be that once a close inspection of the property is carried out from scaffolding erected to carry out this work further work will be found to be required. It was clear that more than just installation or replacement of wall ties was required.

Hearing

6. The hearing was attended by Mr. Buckhurst and Mr. Daly. There was no attendance by anyone on behalf of the Respondent. A telephone message had been received on the afternoon of the 5th September 2006 from Pallmore Limited that no representative of the Respondent would be attending the hearing.

Determination

7. We made the following determination and our reasons appear below.

8. We found the following in respect of management charges:

(a) That in respect of 2004 they were unreasonably incurred in so much as they exceeded £100 per flat per annum + VAT giving a total of £300 + £52.50 = £352.50.

(b) That in respect of 2005 they were unreasonably incurred in so much as they exceeded £125 per flat per annum + VAT giving a total of £375 + £65.63 = £440.63.

(c) That in respect of 2006 they were unreasonably incurred in so much as they exceeded £125 per flat per annum + VAT giving a total of £375 + £65.63 = £440.63.

9. We found that the sum of £5,200 charged in respect of proposed wall tie replacement was not reasonable and not payable.

10. Within 28 days of the date this decision is issued the Respondent is to repay to the Applicants any sums which they have paid as a contribution to the sum of £5,200 (including the £1,300 paid by the former lessee of Flat A) and any sum which they have paid in excess of their proportion of the management charges in excess of the figures set out in paragraph 8. above.

11. We make an order under Section 20C of the Landlord and Tenant Act 1985 that all or any of the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before this leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Reasons

12. It would have been prudent for the managing agents to inspect the subject property in accordance with the RICS Code of Practice but as far as we are aware from the evidence presented to us the managing agents did not inspect the subject property in four years. Had they done so they would have been aware of all the matters noted in the report from KSI Limited and could have taken appropriate steps to deal with them.

13. Although they did not visit, they were given the information by the Applicants but failed to take action. There was no proactive management. On the basis of such management as the managing agents did carry out we found that only the sums set out in paragraph 8 above were reasonable.

14. In determining those figures we took into consideration that in 2005 and 2006 the managing agents would need to be registered with the Financial Services Agency and as a result would incur additional expense.

15. We must make it clear that we are not saying that £5,200 is not needed to carry out the work required only that it was unreasonable to demand that sum.

16. A notice dated 30th March 2000 was served on the lessees but we were not satisfied that the notice complied with the requirements of the Landlord and Tenant Act 1985 in force at that time. For example there was a reference in clause (e) to a date in clause (d) but clause (d) did not contain a date and on the evidence produced to us the Respondent and the managing agents did not take note of the requirements of the Section 20 consultation in taking notice of lessees comments. On a practical basis the notice even if it was valid at the time is now of no effect as it refers to quotes which are about six years old and out of date and more work is needed than just the installation or renewal of wall ties.

17. The managing agents have pointed out that in 1999 the roof to the property was completely renewed and the exterior was redecorated and that this is not a property that is neglected by the landlord or its managing agents. However, had the renewal of the roof been properly supervised then there would not have been roof spread and its consequences.

18. In spite of the difficulties the Applicants all want the work done. By a letter dated 22nd November 2005 to the managing agents a meeting was requested and that request was ignored. In a statement sent to the Tribunal the managing agents referred to that letter and stated that by his letter Mr. Buckhurst suggested that the managing agents incur further costs by asking them to visit the property which is a considerable distance from their offices and that whilst such large sums remained in arrears with no promise by the lessee to pay, the managing agents would be reluctant to do this. We found that in the circumstances the managing agents should have visited the property.

19. The consultation requirements imposed by the Commonhold and Leasehold Reform Act 2002 and Regulations made thereunder now apply and must be complied with.

20. It would be prudent for the supervising surveyor to have a site meeting with the Applicants to ensure that all items in need of repair are included in the specification and the consultation process should be commenced and carried through.

21. Under Section 20C of the Landlord and Tenant Act 1985 a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application. The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

22. We found that there had been a lack of co-operation and a lack of professional management by the managing agents and therefore it had been necessary for the lessees to bring these proceedings. As a result we found it was just and equitable to make an order under Section 20C.

23. All our findings were made on a balance of probabilities after considering all the evidence put before us by the parties.

R. Norman
Chairman