SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, SECTION 19 (2A)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	**CHI/29UV/NSI/2003/0043**
Property:	**92 Nelson Road** **Whitstable** **Kent**
Applicants:	**Ms C.E. Dear** **Ms B.J. Phillips**
Respondent:	**Mercia Investment Properties Ltd.** **c/o Webber Steinbeck & Company**
Date of Hearing:	**12th May 2004**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. R.T. Athow FRICS, MIRPM** **Ms L. Farrier**
Date decision Issued:	2nd June 2004.

RE: 92 NELSON ROAD, WHITSTABLE, KENT

Background

1. The application before the Tribunal is under Section 19 (2A) of the Landlord and Tenant Act 1985 ("the Act") and has been made by Ms C.E. Dear and Ms B.J. Phillips, the leaseholders of the first floor flat and ground floor flat respectively at 92 Nelson Road, Whitstable, Kent ("the subject property"). The application is for a determination of reasonableness of service charges, standard of works/services and the amount payable before costs are incurred in respect of the three years 2001 to 2003 inclusive. There is also an application under Section 20C of the Act for an order limiting the inclusion of landlord's costs of proceedings in the service charge.

2. Documents have been submitted by the Applicants and on behalf of the Respondent and we have considered all those documents.

3. Our determination appears at paragraphs 24 to 30.

Inspection

4. The subject property comprises the ground floor and first floor flats and on the 12th May 2004 before the hearing we inspected the interior and exterior in the presence of the Applicants.

The hearing

5. On 12th May 2004, the hearing was attended by:

Ms C.E.Dear
Ms B.J. Phillips
Mr. S Phillips
Mr. M. Paine FPCS of Webber Steinbeck & Co. the agents for the Respondent ("the Agents").

6. We heard evidence from the Applicants and from Mr. Paine and some further documents were produced.

7. It was accepted by the Applicants and by Mr. Paine that there had been a breakdown in communication between the Applicants and the Agents.

8. The Agents had made an offer to settle the matter by the reduction of management fees, the crediting of audit and accountancy fees and interest and the correction of a window repair cost but the offer included the provision that future interim service charges would be based on £800 per annum (£400 per flat) and the offer was not in the clearest of terms. A copy of figures from a spreadsheet served only to confuse. The offer was not accepted.

9. The window repair cost which needed to be corrected occurred in the following way. Ms Dear paid for a new window (£352) and a roof repair (£90). The Agents then reimbursed her for that expenditure. They have now realised that under the terms of the lease she was responsible for the cost of the window and she should have been reimbursed only £90 for the roof repair. That £90 should then be included in the service charges payable by the Applicants; each of them being liable for half the service charges.

10. The Applicants need to appreciate how leasehold property works. In general terms the landlord (lessor) and the tenant (lessee) when they sign the lease enter into covenants. Some of those covenants are promises to do things and some are promises not to do things. If those covenants are broken then the other party can enforce them through the courts and it can result in the lease being forfeited and the landlord taking possession of the property.

11. In most leases there are covenants by the landlord, for example, to carry out certain repairs and to insure the building and there is usually a provision that the landlord can then reclaim the cost of those repairs and that insurance from the tenants by way of service charges. There is often a provision that the landlord can employ an agent to manage the property and for that agent to charge for doing so and again there is usually a provision that the landlord can then reclaim the cost of employing the agent from the tenants by way of service charges. Although the agent's management charges are part of the service charges and therefore in the end the agent's charges are being paid by the tenants, the agent is the

agent of the landlord and his first concern is to look after the interests of the landlord, not the tenants. Leases usually provide for the landlord to estimate how much money will be required to cover the cost of, for example, the repairs he is responsible for, the cost of insurance and the agent's management charges and for the tenants to have to pay that sum in advance. At the end of the year if it turns out that the landlord underestimated, a further sum will be required from the tenants to make up the shortfall but if he has not spent as much as he expected then there will be a sum to be credited to the tenants.

12. The Agents appear not to have fully considered the provisions of these particular leases and the erroneous reimbursement of the cost of the window caused confusion.

13. The Applicants and the Agents need to carefully examine the leases so that they appreciate the rights and responsibilities of the landlord and the tenant.

14. In dealing with this application and in order to understand some of the figures before us we had to look at some matters which were not strictly within the terms of the application.

15. We noted that the Agents had written to the Applicants proposing to decorate the exterior of the building. Unfortunately the leases are not entirely clear as to the decoration of the exterior. In clause 5.1 of the leases the landlord covenants "at all times during the said term to take reasonable care to keep in good and substantial repair and in clean and proper order and condition those parts and appurtenances of the Building which are not included in this demise or in a demise of any part of the Building". It is open to argument whether that would include painting the outside masonry and recovering the cost from the tenants. By clause 1.2 "all windows window frames doors and door frames..." are demised (leased) to the tenants and by clause 4.4 the tenants covenant "..... to paint with two coats of good oil paint in a workmanlike manner all the wood iron and other parts of the demised premises heretofore or usually painted as to the external work in a colour scheme to be first approved in writing by the Landlord in every fourth year....". If the tenants have the responsibility to decorate the exterior of the window frames, doors and door frames and they fail to do so then the landlord may be able to do the work and charge the tenants for it. The Applicants and the Agents should try to reach agreement about what work is to be done and by whom.

16. At the hearing Mr. Paine referred to the offer mentioned in paragraph 8 above, and made a new offer which covered also the actual expenditure for 2003. All figures are actual expenditure rather than expected expenditure in respect of the whole building and include where appropriate VAT. Each Applicant would be responsible for half the service charge.

17. As to 2001, the sums for interest, disbursements and audit and accountancy fees would not be claimed and the management fees and expenses would be reduced from £500 to £375. The only sums to be claimed for that year as service charges would be buildings insurance of £255 and management fees and expenses of £375 giving a total of £630.

18. As to 2002, the cost of building repairs would be reduced to £90 (the roof repair), sums for interest and audit and accountancy fees would not be claimed and the management fees and expenses would be reduced from £500 to £375. The only sums to be claimed for that year as service charges would be building repairs of £90, buildings insurance of £263.17 and management fees and expenses of £375 giving a total of £728.17.

19. As to 2003, the sum for interest would not be claimed and the management fees and expenses would be reduced from £500 to £375. The only sums to be claimed for that year as service charges would be buildings insurance of £332.28 and management fees and expenses of £375 giving a total of £707.28.

20. The Applicants stated that the buildings insurance costs were accepted.

21. In addition there were other sums which Mr. Paine stated would not be pursued and this resulted in the Applicants and Mr. Paine agreeing that as at 12th May 2004 the only sums owed for any reason in respect of the subject property were as follows.

22. Ms Phillips, the lessee of the ground floor flat, owed nothing in respect of the subject property and indeed was in credit in the sum of £458.65. Mr. Paine said that sum would be paid to her and as no time for payment was mentioned the implication was that it would be paid forthwith.

23. Ms Dear, the lessee of the first floor flat, owed £2503.58 in respect of the subject property and she and Mr. Paine agreed that that sum would be paid to the Agents within eight weeks from the 12th May 2004.

Determination

24. We found the items of service charges as claimed at the hearing and detailed in paragraphs 16 to 19 above to have been reasonably incurred and the services or works for which costs were incurred to be of a reasonable standard.

25. We noted at paragraphs 21 to 23 above the agreement reached between the Applicants and Mr. Paine, on behalf of the Respondent and the Agents, as to the position as at 12th May 2004.

26. The Applicants made an application under Section 20C of the Act.

27. Mr. Paine addressed us on this. He submitted that there had been fault on both sides but pointed to the Respondent's efforts to settle over the years; that Ms Dear at one stage had received advice from her solicitor to pay but had not done so, and that a settlement had been suggested on the 11th November 2003 which forms the basis of the agreement reached at the hearing. He suggested that the matter could have been settled by open communication and submitted that it would be reasonable for some costs to be recovered. He suggested that the Applicants should pay for a number of hours work, including the drafting of a settlement which was ignored and attending the hearing plus his travelling to the hearing. He stated that about 50% of the costs incurred would amount to £500. He would seek to recover that. He considered that the hearing could have been avoided and there would have been a saving of public money.

28. Ms Phillips stated that it was agreed there had been poor communication but the Applicants had had to pay solicitors to try to get a response from Mr. Paine and that that outweighed Mr. Paine's costs.

29. We considered the evidence we had heard and the submissions made to us and we found as a fact that had the application not been made there was little likelihood that the offer of settlement, which in fact lacked clarity, would have been made and that had the matter not proceeded to a hearing there was very little likelihood that there would have been an improved offer upon which the parties were able to agree.

30. We find that in the circumstances of this case it is just and equitable that all the costs incurred, or to be incurred, by the Respondent in connection with proceedings before this 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 and an order in those terms is made under Section 20C of the Act.

R. Norman
Chairman.