Eastern Rent Assessment Panel
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Residential Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Landlord & Tenant Act 1985 Sections 27A and 20C

Premises: 1-33 and 35-54 Regatta Court, Oyster Row, Cambridge CB5 8NS
Our ref: CAM/12UB/LSC/2006/0007

Applicants: Regatta Court Residents Association Limited ('RCRAL')
Represented by: Mr Jeremy Wager MRICS of CPML
Managing Agents: Cambridge Property Management Limited ('CPML')
Landlord: H C Moss (Builders) Limited

Respondents: The leaseholders of 1-33 and 35-54 Regatta Court
Present:

Flat 17	Mrs H Farkas	Flat 32	Revd Julia Popp
Flat 20	Mrs Sandra Round (for Mrs Molly Newman)	Flat 42	Miss M Peachey
		Flat 44	Mrs Penelope Gaine

Miss E M Faid (Flat 15) made written representations through Mr John Adamson of Tucker Gardner, her letting agent. Other leaseholders also made written representations.

Members of Tribunal: Mr G M Jones – Chairman
Mr J R Humphrys FRICS
Ms C St Clair MBE BA

Hearing: 25 August 2006

Decision: The Decision of the Tribunal appears at paragraph 5.6 of these Reasons.

0. BACKGROUND

The Property

0.1 Regatta Court comprises two blocks of flats dating from the early 1980's set in landscaped grounds near the River Cam. Both blocks are of brick and tile construction with pitched roofs. Block I is 'L' shaped and contains Flats 1-33 on two floors. Some flats have their main entrance doors in a central corridor. Some of those also have glazed garden doors opening onto the communal gardens. Other flats have their only entrances (in the form of glazed exterior doors) opening directly onto the central garden area, or onto a common balcony. Block II is basically rectangular and contains Flats 35-54 and a house No 34, which remains in the ownership of the landlord. All of these flats have their main entrances opening onto a central corridor. Some of them also have glazed garden doors opening onto the gardens. The windows are all wood-framed. Those of Block I are single-glazed, while those of Block II are double-glazed, apart from the garden doors. The flats are of various designs, with either one or two bedrooms. There are two car parks.

0.2 Upon inspection the Tribunal found the two blocks to be generally in reasonable structural condition. However, there is clearly a severe problem in some flats with condensation, exacerbated by the fact that the windows provide poor insulation. The double-glazed windows are little better than the single-glazed windows in this respect, as the gap between the two layers of glass is very narrow. Many leaseholders have retro fitted trickle vents. The windows and window frames have not been painted externally for a number of years, apparently because external decorations were suspended while discussions about their wholesale replacement continued. There is rot in the bottoms of some garden doors and incipient rot in some window frames. The Tribunal noted that the original woodwork was painted or stained black, with red doors. In Flat 7 (Mr J Kerr) and Flat 17 (Mrs Farkas) the windows have been replaced with dark brown UPVC double-glazed units. The standard of workmanship appears to be generally reasonable and the new windows are in reasonable condition, though in places the making good to brickwork was poor.

0.3 The Tribunal was invited by Miss Peachey to inspect the interior of her flat. She complained of excessive condensation around her garden door and the floor to ceiling window beside it. The bottom rail of the door was in a very poor state. Miss Peachey pointed out that the kitchen alcove in her living room (and in the living rooms of other flats of the same design) has no extractor fan. This was surprising, particularly as the internal bathroom of the flat was fitted with an extractor. It would have been relatively simple and cheap, during initial construction, to route the outlet for a kitchen extractor via the same outlet. To retro fit an extractor would, however, be more difficult and more expensive, though it would surely be a valuable aid to the reduction of condensation.

The Lease

0.4 The sample lease of Flat 19 shows that flats in Block I were let for a term of 125 years from 29 September 1984 at modest ground rents. The demised premises included external doors, door frames and window glass, but not windows or window frames. By clause 5 the landlord covenanted to repair and decorate the structure and common parts (excluding the demised premises). The leaseholders were required to contribute to the landlord's costs of decoration, repair and improvement through service charge provisions contained in Schedule 3, which authorised the collection and retention of reasonable reserves against future expenditure. The landlord was given power to delegate its repairing responsibilities to the nominated management company (RCRAL) and to direct the leaseholders to pay sums due under Schedule 3 to RCRAL, which power the landlord chose to exercise immediately by clause 7.1.2.

0.5 The leases for Block II are in similar form, with minor differences resulting from the fact that Block II increased the number of units contributing to the landlord's estate costs. The outcome appears to be that the leaseholders of Block I are obliged to contribute 1/33 of the costs attributable to Block I; the leaseholders of Block II are obliged to contribute 1/21 of the costs attributable to Block II; and all are required to contribute 1/53 of the costs attributable to the grounds. This leaves the landlord, as owner of No 34, to bear 1/21 of Block II costs and 1/54 of grounds costs. The landlord in fact makes contributions to the service charge funds managed by CPML on behalf of RCRAL. On the face of it, the landlord does rather well out of the arrangement, as No 34 is probably the largest unit. However, he cannot compel RCRAL to make improvements to his house, nor can he dictate the manner of repair; he must negotiate these matters with RCRAL.

1. THE DISPUTE

1.1 Since 2001, CPML and RCRAL have been discussing the wholesale replacement of the windows, glazed exterior main entrance doors and garden doors. At the AGM in September 2001, it was noted that the seals in some of the double glazed units in Block II were failing. The meeting discussed the issues of liability for the glass and the allocation of contributions towards the cost of replacement. It appears no-one was aware that individual leaseholders were responsible for the glass in their windows and glazed main entrance doors. At an EGM in September 2002 and at AGM's in January 2003; September 2003; November 2004; and October 2005 the issue was further discussed. The level of attendance was reasonable for this type of meeting, though never more than about a third of the leaseholders. Various options were considered. All present agreed that the wooden windows and exterior doors should be replaced. The colour of the new windows was controversial, with Mrs Farkas in particular favouring dark brown. However, a consensus gradually emerged that all windows, exterior main entrance doors and garden doors should be replaced with white UPVC double glazed units.

1.2 Having obtained a good level of support from those who attended the various meetings, the directors of RCRAL decided to obtain quotes. Mr Wager made sure that the statutory consultation requirements were substantially satisfied. It is not alleged that there has been any material failure to consult. The Tribunal is, in any event, satisfied that none of the objectors could reasonably complain of lack of consultation. Planning consent was obtained for a change from black to white, so that both colour options would be available without the risk of legal objection. Three quotations having been obtained, the directors decided to accept the quotation of Milton Windows in the sum of £81,788 inc VAT for white or £88,307 inc VAT for brown units. Adding 10% for fees etc the gross cost would be £89,966 for white and £97,137 for brown. The service charge levy per leaseholder would be £1,447 or £1,583, plus a contribution of £13,250 from reserves. There would be a saving of about £3,400-3,500 (about £65 each) if Flats 7 and 17 were omitted.

2. THE ISSUES

2.1 The Applicant RCRAL seeks a determination from the Tribunal that the above-mentioned costs to be incurred in replacing the windows, main exterior entrance doors and garden doors of both blocks with white UPVC double-glazed units would be reasonably incurred. Alternatively, that costs incurred in replacing the windows and exterior and garden doors of both blocks with brown UPVC double-glazed units would be reasonably incurred.

2.2 The maintenance and repair of "doors and door frames" forming part of a flat is, of course, the responsibility of the leaseholder. It is common ground that the glazed main entrance doors opening onto the garden are "doors" within the meaning of the leases. It does not appear to matter whether the proposed works represent a repair or an improvement. Mr Wager submits that the garden doors are "French doors" and thus to be dealt with as windows; but this is not common ground. Mrs Farkas objects to the change of colour on aesthetic grounds and also objects to paying for the replacement of her perfectly good and relatively new brown windows. Mr Kerr makes no objection.

2.3 Thus the Tribunal must determine the following issues: -

(a) Whether it would be reasonable to replace some or all of the windows and doors at all. If so –

(b) Whether it would be reasonable to replace the windows of Flat 7 and Flat 17 and –

(c) Which of the doors (if any) RCRAL is entitled to replace under the terms of the leases.

(d) Whether it would be reasonable to replace existing windows, doors and door frames with white UPVC double-glazed units.

(e) Whether it would be reasonable to replace existing windows, doors and door frames with brown UPVC double-glazed units.

(f) Whether the proposed costs are (in either case) reasonable.

3. THE EVIDENCE

3.1 It is not necessary to dwell upon the oral or documentary evidence, as the relevant facts are substantially agreed. None of the Respondents objected to the replacement of the wooden windows and exterior doors (including garden doors) with UPVC double-glazed units. None complained that the quotation accepted by the directors of RCRAL was unreasonable. The Tribunal has considered all the evidence and all oral and written representations made by or on behalf of the parties. The Tribunal's findings of fact are sufficiently set out in this Decision.

4. THE LAW

Service Charges

4.1 Under **section 18 of the 1985 Act** (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under **section 27A** the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if so, the amount which would be payable.

Consultation

4.3 Under **section 20 of the 1985 Act** (as substituted by **section 151 of the Commonhold & Leasehold Reform Act 2002** with effect from 31 October 2003) and the **Service Charges (Consultation Requirements) (England) Regulations 2003** landlords must carry out due consultation with tenants before undertaking works likely to result in a charge of more than £250.00 to any tenant or entering into long term agreements costing any tenant more than £100.00 p.a. This process is designed to ensure that tenants are kept informed and have a fair opportunity to express their views on proposals for substantial works or on substantial long term contracts. The consultation requirements vary depending upon the circumstances of the case and, in particular, whether the landlord is a

designated public body for the purposes of statutory regulations dealing with public works, services and supplies. Consultation is, however, not in issue in this case.

Costs generally

4.4 The Tribunal has no general power to award inter-party costs, though a limited power now exists to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal as part of the service charge.

4.5 However, under **section 20C** of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case *Tenants of Langford Court –v- Doren Ltd* in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice.

4.6 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees.

5. CONCLUSIONS

5.1 The Tribunal began by considering the wording of the sample leases. A lease must be construed as a whole and, where possible, its words given their natural meaning or, if it is apparent from the document that a particular interpretation is intended, the meaning assigned to them. Recital (B) of each lease defines the boundaries of a flat under five headings of which the last two (insofar as is relevant) read as follows: -

> "(e) Where a flat adjoins a staircase, corridor, passageway or landing the interior of the flat shall include ... the door frames and architraves giving access between such flat and such staircase, corridor, passageway or landing
>
> (f) Where a flat abuts an external wall it shall include all doors frames and architraves [and] the window glass (but not the frames) ..."

The landlord's costs to which the leaseholders are required to contribute under Schedule 3 include (inter alia) costs and expenses "of and incidental to the ... maintenance repair renewal [and] improvement ... of Regatta Court ...". The proportion to be borne by the leaseholder is stated to be calculated "in respect of the Buildings the Common Parts the Refuse Area and the Services (that is to say in respect of anything used exclusively by the lessees of Flats in Regatta Court I [*or* Regatta Court II *as the case may be*]".

5.2 All flats abut an external wall, though their main entrance doors open, in some cases, onto a corridor or landing. The Tribunal concludes that, on a true construction of the lease, the division of flats into those that do or do not abut an external wall relates to the position of the main entrance door. The doors referred to in recital (B) are the main entrance doors only. Thus, in the judgment of the Tribunal, the garden doors, like the full height glazed areas beside them, are treated in the leases as windows and are the responsibility of the landlord. The main entrance doors that face directly onto the communal garden (including the doors opening onto the balcony of Block I) are, however, the responsibility of the leaseholders. They are not all in need of repair, though their replacement will amount to an improvement. If they are to be replaced by RCRAL

(which would be a perfectly reasonable improvement), this must be done with the consent of each individual leaseholder affected and at his or her expense.

5.3 Decisions as regards the maintenance, repair or improvement of blocks of flats must be made by someone. In this case they are left in the hands of RCRAL, after due consultation in the case of major works or contracts. RCRAL is a company of which all the leaseholders are members, with the right to express their views and vote at General Meetings. In the judgment of the Tribunal, it is reasonable to insist upon uniformity of colour and therefore, if white is the chosen colour, to replace the windows of Flats 7 and 17. Milton Windows is a reputable local contractor and the quotation accepted by the directors is, in the judgment of the Tribunal, reasonable for the proposed works.

5.4 A key element in relation to the choice between white and brown UPVC is the difference in cost. Firstly, brown UPVC costs about 8% more than white. However, if the colour is to be brown, there would, in the judgment of the Tribunal, be no purpose in replacing the existing windows of Flats 7 and 17. The style of the present windows of those flats is in keeping with the original windows and the proposed new windows. This reduces the costs differential to about £3,500 (£67 each). Thus the decision whether to opt for brown or white is substantially a matter of taste. A substantial majority of those interested enough to express an opinion prefer white, which also happens to be slightly cheaper.

5.5 The leases provide that every leaseholder (including Mr Kerr and Mrs Farkas) is obliged to contribute to the overall costs, whether or not work is done which affects their own flat. Of course, an individual leaseholder may come to an arrangement to bear expenses which would otherwise fall upon the landlord or manager, in return for an adjustment of the service charge account; but no such steps were taken by Mr Kerr or Mrs Farkas in this case. It follows that it makes little financial difference to anyone whether the windows are brown or white and whether the windows of Flats 7 and 17 are or are not replaced.

5.6 Accordingly, the Tribunal finds that the proposal to employ Milton Windows to replace the windows, exterior entrance doors and garden doors of Flats 1-33 and 35-54 Regatta Court and of common parts in white UPVC at a cost of £89,966 (inc VAT and fees), is reasonable. That part of the overall cost attributable to the main entrance doors of some flats, is not chargeable to the service charge account (though individuals leaseholders may choose to pay for their doors to be replaced, should they so wish). The remaining costs, if incurred, will be reasonably incurred and will be payable by the leaseholders through the service charge account. This finding will not, of course, prevent any leaseholder from challenging the final account in the event the works are not satisfactorily completed.

5.7 The following comments are offered in the hope that they may prove helpful to the parties for future reference. Where the leases permit the management company to levy charges for reserves, it is incumbent on the management company to formulate a reasonable policy as regards the amounts to be accumulated and the use of reserve funds. The amount held in reserve must relate to anticipated expenditure in some logical way. It would clearly be reasonable to hold in reserve an emergency fund to cover such emergency repairs as are likely to arise from time to time. It would be fairly common to make a pre-estimate of the likely date and cost of major works, such as roof or window replacement, and to put aside annually a proportion of the estimated sums over the relevant period.

5.8 One useful purpose of a reserve fund may be to enable the management company to offer

easy terms of payment to those leaseholders who, being of modest means, find it difficult to raise the necessary sums for major works all at once. If that is done, it is likely to be easier to persuade a future Tribunal that such major costs are reasonably incurred.

Costs

5.9 On the above findings, there is no question of an order under section 20C. It was reasonable for the Applicant management company to seek the determination of the Tribunal in order to avoid potential disputes. Accordingly, the reasonable costs of and occasioned by the Application were reasonably incurred and are payable by the Respondent leaseholders through the service charge account.

Geraint Jones – Chairman

Dated: 31 August 2006