

LON/00AH/NSI/2003/0108

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 19(2A) OF THE LANDLORD AND TENANT ACT 1985 (AS
AMENDED)**

Court referral from Croydon County Court

Applicant: Quality Managed Homes

Respondent: Mr P Savage

Represented by: Paul Smith & Co. Solicitors

Re: Top Floor Flat, 660 London Road, Thornton Heath CR7 7HU

Hearing date: 24 June 2004

Inspection date: 25 June 2004

Appearances: Ms V Robinson – Proprietor of Quality Managed Homes
Mr D Gale – Book-keeper for managing agents

For the Applicants

Mr P Savage – Respondent in person
Mr P Smith – Solicitor, Paul Smith & Co.

For the Respondents

Members of the Residential Property Tribunal Service:

Mr G F Bowden TD MA FRICS
Mr C White FRICS
Mrs E A V Lewis

TOP FLAT, 660 LONDON ROAD, THORNTON HEATH, LONDON CR7 7HD

1. INTRODUCTION

1.1 This was an application under section 19(2A) of the Landlord and Tenant Act 1985, (the Act), to determine whether service charges were reasonably incurred and whether the services were to a reasonable standard.

1.2 The Applicant was Quality Managed Homes (QMH), who were represented by Ms Veronica Robinson, the 'proprietor' of the company. Mr David Gale, book-keeper of the company was present and gave evidence at the hearing.

1.3 The Respondent was Mr Philip Savage, the long-lessee of the second-floor, top flat in the subject premises. He was represented at the hearing by Mr Paul Smith, of Messrs Paul Smith & Co, Solicitors.

1.4 The subject property was a four-storey, semi-detached, Victorian villa which had been converted into seven residential units. At semi-basement level were two flats, which were thought to be sub-let by the lessees on assured shorthold lettings. On the hall, or raised ground-floor, were two flats, one of which was occupied by the lessee, and the other let on an assured shorthold tenancy. On the first floor were two flats, both of which were thought to be vacant, one pending sale. The top floor constituted a single unit which the Respondent held on a long lease and was occupied as his home. The service charge apportionment was based upon the lease formula - four of the flats paying 10%, and the further three flats, including that of the Respondent, each being liable for 20% of the total service charge.

1.5 The Respondent leaseholder held on 125 year term from 29 September 1985, at a ground rent of £50 per annum.

2. THE APPLICANT'S CASE

2.1 The Applicant's case was set in a statement by Ms Veronica Robinson (bundle p.1).

2.2 Ms Robinson, in presenting the Applicant's case, stated that Quality Managed Homes took over the management of the subject property in 1994. At that time a Mr David Thompson had been in charge. In 1999 she personally took over responsibility for managing the subject property. In the past five year of her involvement she had sought to keep annual management costs and service charges on a level basis. Since a number of the lessees sub let their flats, and were not themselves in occupation, they had little direct interest in the quality of services and the standard of maintenance. Their prime concern had been to keep service charges down to the minimum. The manager had in some instances found the regular payments due from the lessees had been difficult to collect. Over the years the condition of the common parts had deteriorated. The exterior decoration was in a poor state and the external areas, the car parking at the front and the refuse bin area at the side, had been used for dumping unwanted household appliances and other domestic rubbish.

2.3 Ms Robinson recognised that a new maintenance strategy was needed for the long-term efficient management of the property, both for the benefit not only of the freeholder, a Mr Pugh Jones, but also the lessees, in order to maintain and enhance the value of their investments. Such a strategy which would mean an increase in service charges, but, it was argued, such an increase was justified in the common interest.

2.4 The main objectives of the management strategy were to carry out maintenance and redecoration to the exterior of the building generally, and in particular to renovate the mansard roof. There was also the need to recarpet and redecorate the common parts, the hallway, landings and stair cases; to provide high capacity rubbish bins in an attempt to obviate the

dumping of rubbish. A further important aim was to build up a sinking, or reserve, fund to meet future high-cost maintenance expenditure.

2.5 In cross examination from Mr Smith, for the Respondent, Ms Robinson acknowledged that prior to 1999 no regular management accounts had been sent to the lessees. When questioned as to whether service charge demands were in accordance with the several leases, Ms Robinson explained that QMH did not have copies of all the relevant leases. While the leases provided for an 'interim' service charge to be levied, she stated that as managing agent it was not practical to demand an interim services charge. It appeared from question and answer that QMH were not aware that the leases made no provision for the accumulation of a sinking or reserve fund.

2.6 It emerged from Ms Robinson's answers to questions from members of the Tribunal, that while there was no suggestion of financial irregularity, the management of the subject premises was not conducted on the basis of the RICS Code of Management, or indeed any other recognised code. No separate bank account was maintained solely for transactions relating to this property, nor were the premises managed strictly in accordance with the terms of the leases. It emerged during the course of the evidence that no annual audited accounts were provided; there was no authority for establishing a sinking fund; neither was there provision for recovery of legal fees as part of the general service charge.

2.7 It was explained that the main business of GMH was residential lettings. However, the company did now manage three large residential blocks. The basis of the management fee for the subject premises was a charge of £95 + VAT per flat.

3. THE RESPONDENT'S CASE

3.1 The Respondent's case was set out in Mr Savage's statement dated 16 April 2004 (bundle p.70).

3.2 Mr Paul Smith, on behalf of the Respondent stated that there were two main points at issue:-

- i. the service charge increase for the two years 1999 - 2000; and 2001-2002.
- ii. the severe inconvenience and heavy expense incurred by the Respondent as a result of the continuing leaks in the roof of the property.

3.3 With regard to the service charges, the Tribunal's attention was directed to the schedule of the service charges for years 1996-2002 (bundle p.9).

- i. The cost for rubbish clearance and cleaning: 2000 was £226.26; in 2001 - £1,216 (an increase of some 487%); and in 2002 the projected figure was £1,500. However, in the event, the actual figure for 2001 was £490 (bundle p.67).
- ii. Maintenance - General & Garden: in 2000 - £226.26; 2001- £1,216 (an increase of some 438%); and in 2002 this projected figure was £1,500. In the event the actual figure for 2002 was £778.22 (bundle p.67).

It was contended that the overestimation on these items to such a large extent, represented poor budgeting procedures, and poor management on the part of QMH.

3.4 With regard to the leaking roof, it was stated that problems first occurred in 1995-96, and the firm of Messrs R C Ovenell submitted a specification and estimate on 10 February 1995, to the Respondent for the necessary works to remedy the fault in the sum of £5287.50 (bundle p.116&117). This estimate was passed to Mr David Thompson of QMH. Mr Thompson received a subsequent "estimate" from Messrs R E Fowler & Sons, with an outline specification of works, but no costs or estimated figures were included in the "estimate" - (bundle p.121). In the event Messrs R E Fowler & Son carried out work to the roof and issued a "Guarantee" (bundle p. 122) indicating that the work they had done was in accordance with the manufacturer's specification with regard to materials used. However it was noted that this document was unsigned and undated. There was no evidence before the Tribunal as to the extent of these works, their cost, nor why Messrs Fowlers had carried out the work rather than Messrs Ovenell.

3.5 The leaks to the Respondent's flat continued notwithstanding the roof works carried out by Messrs Fowlers. In January 2004, Mr Martin Dobson FRICS, of Messrs Dobson & Poole, prepared an expert's report (21 January 2004) for both the Applicant and Respondent (bundle p.141) on the subject property generally, but with particular reference to the defective roof. Mr Dobson, at the end of his full and well-referenced report stated in conclusion his opinion that "the management applied by Quality Managed Homes is unsatisfactory, and that the direct losses to Mr Savage in relation to the water penetration problem are a direct result of this". (bundle p. 160).

3.6 In identifying the causes of the water penetration Mr Dobson said,

"There is evidence of long term patch repairing to the flat roof areas, and it is therefore our opinion that it was a bad management decision to replace the slated slopes without addressing the poor condition of the zinc, which is currently perforated above the hallway. There is also the risk that works to the chimney stacks and flat roof coverings will

cause some damage to the recently installed slates to the perimeters". (bundle p. 158).

3.7 Mr Dobson made a re-inspection report on 17 February 2004, in which he stated that recent roof repairs undertaken on 22 January and 16 February 2004 are "very much of an *ad hoc* temporary nature and have only been partially successful", and further "longer term permanent repair are required to the whole flat roof area and the chimney stack, and at the time of our visit we noticed that the front rain water pipe was leaking badly and causing staining/moss growth to the brickwork".

3.8 The Respondent, in his oral evidence, said that in general he was happy with the internal works of redecoration that had been carried out to the common parts. He was, however, dissatisfied with the general standard of maintenance and service for the outside area, the cracking-up of the hard-standing parking-area, and the refuse and rubbish disposal arrangements. In answer to question from the Tribunal, he stated that Messrs Ovenell's quotation for roof repairs had been agreed to by the freeholder, however he acknowledge that the said quotation did not take into account full replacement of the flat roof area.

4. INSPECTION

4.1 The Tribunal inspected the subject property on the afternoon of Friday 25 June. It was situated on a busy main road, but set well back with parking spaces for some six or so cars at the front. There was a driveway to the side leading to commercial premises well to the rear. A small garden, but lacking any privacy, was immediately to the rear of the subject block.

4.2 At the side of the driveway were the Eurobins that the QMH hired from Croydon Council for improved refuse management. They were of the standard domestic "wheelie-bin" design only somewhat larger in size.

- 4.3 The concrete hard-standing at the front and side of the building was breaking up, and in a somewhat dangerous condition, constituting a possible safety hazard. There were some shrubs and trees at the front and to one side of the area. The Tribunal wondered, at the time of their inspection, how a limited garden area could incur annual garden maintenance of the magnitude noted in the accounts and quoted at the hearing.
- 4.4 The recent recarpeting and redecoration of the common parts were to a serviceable standard, although as is commonly the case in properties with multiple tenants there was a general untidiness and a profusion of junk mail in evidence.
- 4.5 The Tribunal inspected the roof-leak damage in the Respondent's flat, in particular the hall, where areas of water penetration were noted. Although a greater area had been stripped of wall paper in preparation for redecoration after remedial work had been carried out to the roof.
- 4.6 The roof was inspected. The reslating of the mansard slopes appeared to be of a reasonable standard. However the flat roof area appear to be in a poor condition, with a general deterioration of the overall covering. The patch repairs in many places could only be regarded as emergency first aid measures.
- 4.7 The Tribunal formed the view that the Respondent arranged his flat to a high standard of maintenance and decoration. It was apparent that the old, and possible new leaks, which were likely to occur after heavy rain caused considerable damage and anxiety.

DECISION

5. Management generally

- 5.1 It was acknowledged by Ms Robinson that maintenance and repair of the subject building had, over the years, been neglected by QMH. The majority of the flats were not in fact occupied by their long-lessee owners, but let to short-term tenants who have little interest in the long term management and maintenance of the building.
- 5.2 The new management regime introduced by QMH through Ms Robinson and Mr Gale and supported by the Respondent will hopefully bring improvements for the future. However it is accepted by all that there is much lost ground to be made up.
- 5.3 In considering the proposed new management regime and encouraging this new approach, the Tribunal would draw attention to the need that it must follow the terms of the leases of the individual flats, and should also follow the requirements set out in an established code of management practice, such as that of the Royal Institution of Chartered Surveyors. It is in the context of the terms of the existing leases that any proposals regarding the establishment of a sinking or reserve fund should be considered, and whether legal fees incurred in respect of individual tenants can be charged to the general service charge account. Such arrangements would in the Tribunal's view appear not to be covered by the Respondent's lease, but other leases may differ in their terms. Profession legal guidance should be sought by QMH on this point. With regard to good management practice, QMH should adopt a more accurate forecasting procedure, provide annual audited accounts, and set up the framework for closer communication with the lessees in order to deal with issues more promptly.

6. The Roof

6.1 The Tribunal recognised some uncertainty in not only the documentary evidence before them but also in the understanding of both the Applicant and Respondent as to the cost and extent of the work to the roof that had been carried out. In their estimate of 10 February 1995 (bundle 116) Messrs Ovenells specification and cost did not make it clear what work, if any, was to be carried out to the main flat area of the roof above the mansard slopes. Messrs Fowlers in their "estimate" of 24 March 1995 (bundle p. 121) gave no quotation as to cost, but the specification indicated that the works they proposed did not cover the flat area. Since there was no cost quoted for this work, there was no basis of direct comparison between the two quotations. Messrs Fowler were instructed to carry out the work for which they had quoted. However there was no evidence either by invoice or statement of account as to what their charge actually was, or indeed whether any payment at all had been made to Messrs Fowler. Fowlers on completion of the works provided what purported to be a guarantee (bundle p.122) which appeared somewhat limited on its scope indicating only that in the work done the workmanship and material used had been in accordance with the manufacturers specification.

6.2 Ms Robinson in her evidence could shed no light on the matter as to the actual cost incurred, or why Messrs Fowlers had been preferred to Messrs Ovenell. These events occurred before the date that she took over the management of the subject property on behalf of QMH. The Respondent stated, in his evidence, that he had been given no explanation on this point.

6.3 The Tribunal took careful note of the Martin Dobson's Expert Surveyor's Report, which accepted that the work actually done by Messrs Fowlers, in reslating the sloping sides of the mansard roof had been carried out to a reasonable standard. The Tribunal in making their own inspection of the reslating, concurred in this view. Moreover if the cost of this work had

been at the same price, or lower, than that quoted by Messrs Ovenell (£5,287.50) then that cost would have been reasonable for these works. But without confirmation of the actual costs incurred, the Tribunal could not make a categorical decision on this point.

6.4 The fact remains, however, that the roof generally is in an unsatisfactory state. The flat area is in a defective condition and the Respondent's flat is liable to water penetration, particularly after heavy rain. The Tribunal noted that the flat-roof area was covered with a membrane which had reached the end of its serviceable life. It had been patched in places, over the years, but such works was little more than first aid treatment. This view was expressed in Mr Dobson's re-inspection report on 17 February 2004. (bundle p. 179). The Respondent is entitled to expect that the flat-roof area has a comprehensive overhaul, to ensure that there is no further instance of water penetration to his. It is apparent that since 1985 QMH had failed to take heed of the Respondents complaints, and to take the appropriate remedial action. Moreover when roof works have been put in hand QMH have failed in their duty to adequately supervise these works and ensure that the defects complained of are rectified.

6.5 The Tribunal took note at the Hearing of the statements of Ms Robinson and Mr Gale that QMH now recognised the urgency of remedying the roof defects. They were led to understand that QMH would with the appointment of professional oversight of such works, would find a permanent solution. With such a new approach by QMH to dealing with the matter, it is hoped that the concerns of the Respondent will be allayed, and he will be able to reinstate and redecorate the damaged areas of his flat.

6.6 In summary, The Tribunal considers on the limited information available, that the service charges in the disputed years, were reasonably incurred, and the works carried out were to a reasonable standard.

Chairman: *Cerew Bowden*

Date: *30 July 2004*