LVT/SC/020/183/01 & LVT/SCC/020/066/02

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 19(2A) & 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Re: Tudor Parade, Chadwell Heath, Essex, RM 6 6PS

Applicant(s): **Leaseholders** – Mr & Mrs Wheeler (7B), Mrs J Farrelly (8A), Mr M Borisade (8B) and Mrs R Worland (9B)

Respondent: Freshwater Group

Appearances: Mr R Wheeler & Mrs D Wheeler – 7B
Mrs J Farrelly – 8A
For the Applicant

Mr C Hall – Regional Executive Manager
Mr R Osiguwa – Area Manager
Mr M Hutchings of Counsel
Mr S Maher – Solicitor, Pullig & Co
Mr B Sheppard FRICS – Leonard Stace
For the Respondent

Application date: 13th November 2001

Hearing date: 28th & 29th October 2002

Members of the Residential Property Tribunal Service:

Mrs H Kelly LLB
Mr P Casey MRICS
Mr S Carrott LLB

LVT/SC/020/183/01
LVT/SCC/020/066/02

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

FLATS AT TUDOR PARADE, CHADWELL HEATH, ESSEX RM6 6PS

A. Preliminary Matters

This was a application by five lessees, referred to as the tenants in this decision, under Section 19 (2A) of the Landlord and Tenant Act 1985 as amended for a determination whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred and whether such services or works were of a reasonable standard. The disputed charges are set out in the landlord's statement of service expenditure for the year ended 31 March 2001.

Mr K Roberts, the long lessee of Flat 6B, made the original Section 19(2A) application on his own behalf and on behalf of Mr and Mrs B Wheeler of Flat 7B, Mrs J Farrelly of Flat A, Mr M Borisade of Flat 8B, Mrs R Worland of Flat 9B and Mr Egan of Flat 7A.

Mr K Roberts of Flat 6B and Mr Egan of Flat 7A are no longer involved in this application.

The freeholder was Daejan Properties Ltd, referred to as the landlord in this decision.

In her letter dated 13 May 2002, Mrs Wheeler set out the items disputed by the tenants and made the following comments:

1. Cleaning to Common Parts £1576.00

The residents keep the balcony swept clean even when it's wet on a weekly basis. When the cleaning company arrive, once a month the work has been done for them.

2. Refuse Clearance £555.00

As the private car park has no security gate, anyone can dump rubbish and cars. We are then charged for the removal. Much of the rubbish is from the shops and flats 1-5 A/B.

3. Major Works £24120.00

Difference in amount between our surveyor and company who carried out the work. Anti graffiti paint charged at £560. If this was used, why won't the graffiti on the walls come off easily.

Difference in reasons as to why the work had to be done.
Why management fee of £2776.35 charged.

4. Repairs and Maintenance £1840.00

Lighting – Difference between companies.
Emergency repairs to lighting £764.00 no bills
Repairs to garage No.9 nothing to do with flats
Shops pay 1/3rd towards repairs. We pay 2/3rd to shop repairs. why?

5. Insurance £2655.00

What are we covered for?
Why no charge for shops?

6. Accountants Fee £705.00

Why no charge for shops?

7. Management Fee £900.00

Why no charge for shops?

The tenants also applied under Section 20C of the 1985 Act for an order that the costs incurred by the landlord in connection with the Tribunal proceedings were not to be regarded as relevant costs to be taken into account in determining the tenants' service charges.

B. Relevant Statutory Provisions

Section 19 of the Landlord and Tenant Act 1985 has been amended and extended by Section 83(1) of the Housing Act 1996 as follows:

"(2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a LVT for determination –

(a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,

(b) whether services or works for which costs were incurred are of a reasonable standard, or

(c) whether an amount payable before costs are incurred is reasonable.

(2B) An application may also be made to a LVT by a tenant by whom, or a landlord to whom, a service charge may be payable for a determination -

(a) whether if costs were incurred for services, repairs, maintenance, insurance or management of any specified description they would be reasonable,

(b) whether services provided or works carried out to a particular specification would be of a reasonable standard, or

(c) what amount payable before costs are incurred would be reasonable."

Section 20C of the Landlord and Tenant Act 1985 has been amended to enable a tenant to "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 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 application shall be made –

(b) in the case of the proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal."

C. Inspection

The property was inspected in the morning before the hearing of the case. We were accompanied by Mrs Wheeler and Mr Osiguwa.

The subject flats were on the first and second floors of a three storey building which was part of a parade, with shops on the ground floor, and situated on a busy high street. The building was brick built with a pitched tile covered roof and a mock Tudor façade. Its external decorative condition was poor and the building generally had an air of neglect.

The landlord's interest included Flat 6A to 10A on the first floor and 6B and 10B on the second floor, all of them being located in the central section of the parade.

Access to the flats was by way of two staircases at the rear and then along balcony walkways. Although the tenants could use both staircases, only one was within the landlord's demise and the major works which formed part of the tenants' case included expensive works to that stairwell. This was in a three storey brick building with a flat felt covered roof and attached to the rear of the main building. It enclosed a steel staircase and had two louvered windows.

At the rear, there was a concrete service yard with some parking space and a block of ten lock-up garages. Access to the yard was from a rear service road. The landlord's interest did not include the entrance to the yard from the service road.

There was a general lack of security at the rear of the building; that is, the yard and one staircase had no security gates while the other staircase did have a gate which did not have a lock.

We noted some litter in the stairwell, on the treads and on the walkways. The yard, however, appeared to be reasonably tidy at the time of our inspection.

The major works to the stairwell included repairs to the brick work and to the rendering of the internal walls; internal decorations, using anti-graffiti paint; replacement of the louvered windows; installation of a roof light and refelting the roof and extensive repairs to the staircase itself, including repairs to the treads and landing.

During the inspection, the Tribunal formed the view that the repairs to the staircase had been carried out to a reasonable standard. We did however notice that graffiti had once more appeared on the walls, even though the walls had been painted with anti-graffiti paint. This was now peeling.

D. Hearing and Decision

The Tribunal carefully considered all the documents on the file and all the evidence at the hearing, including in particular Mrs Wheeler's representations on behalf of the tenants and on her own behalf.

We were grateful to Mr Hutchings for his presentation of the landlord's case.

During the course of the hearing, the tenants accepted the service charge amounts for refuse clearance, insurance cover, (following the evidence of Ms Susan Alloway, the landlord's insurance manager), the accountancy fees and the annual management fee.

The following items on the service charge statement remained in dispute.

(i) Cleaning to common parts

Mr Hutchings, counsel for the landlord, sought to limit the argument for the tenants to the narrow point included as the first item in Mrs Wheeler's letter of 13 May 2002. He said that, despite the Tribunal's directions, the tenants had not widened the scope of the complaint to include the standard of the cleaning.

The Tribunal was satisfied that the landlord had had sufficient notice that the tenant's case was intended to include a complaint about the quality of the cleaning services.

The cleaning was done by B B Services under a contract (though no copy was provided), which required the company to sweep the balcony walkways and the staircase weekly (currently each Friday) and to sweep the yard once a month. The cleaners were supposed to bag the rubbish from the walkways and stairs, but not to remove the bags from the site.

Mrs Wheeler did not dispute the cost for the service, so long as it was in fact carried out. Neither she nor Mr Wheeler knew that the cleaning was weekly and their observation suggested that the cleaners came from time to time. Mr Wheeler in his letter of 22 September 2000 complained that the cleaning took "all of five minutes," as the cleaners were careless and inefficient. He also said that "the residents do more sweeping of the balconies in one week than the cleaners do in one year".

The landlord replied a month later that he would be meeting the cleaners. No further written complaints were received by the landlord.

Mrs Wheeler accepted that it was difficult to keep the walkways, stairs and yard clean because there were no security gates and local youth

tended to congregate in the stairways with their take-away food and drinks. She also accepted that the landlord had no control over the access from the stairwell which was not included in their demise.

The Tribunal accepted that the cleaning was not always carried out as well as possible. We were, however, of the opinion that, in view of the lack of security, the cleaning was done to a reasonable standard, having regard to the cost and frequency of the service. We felt that a better standard of cleaning would need more frequent visits to the property at an increased cost.

(ii) Repairs and Maintenance

During the hearing, Mr Hutchings conceded for the landlord that the invoices in the B file at page 59 for the sum of £219.72 and at page 100 for the sum of £102.22 related to works carried out to the shops and should not have been included in the service charge.

Accordingly, after an adjustment was made for the shops' contribution of one third of the general repairs, the concession on behalf of the landlord reduced the charge for repairs and maintenance from £1,840 to £1,626.

The tenants accepted that no sum had been charged to them for repairs to the garage No. 9. Mrs Wheeler directed the remainder of her complaints under this heading to various lighting matters.

At the start of the second day of the hearing, the landlord produced a brief report from Ms Loretta Wardley, the regional electrical engineer, which we found helpful. The major item was the replacement of two lights in the stairwell during the works to it.

The landlord's original intention had been to retain the existing lighting and this was the reason why the light replacement had not been included in the consultation process under Section 20 of the 1985 Act.

The Tribunal, after carefully considering the evidence, concluded that the sums expended under various lighting items had been reasonably incurred and the works had been carried out to a reasonable standard.

Accordingly, the amended sum of £1,626 had been properly included in the service charge under this head.

(iii) Major Works

Mrs Wheeler for the tenants disputed the cost of these works, although she did not dispute the need for the work to be done or the quality of the completed job.

In this context, Mrs Wheeler also challenged the landlord's claim that all the tenants had been served with a notice of works dated 5 February 2002, regarding the consultation process, as required under Section 20 of the 1985 Act. Mrs Wheeler pointed out that the tenants' failure to query the works and their cost or to suggest a different contractor was not due to a lack of interest but to a lack of information.

The Tribunal heard conflicting evidence regarding the service of the Section 20 notice. Since however the Tribunal have no jurisdiction over the limitation of costs under Section 20, we made no finding of fact in respect of this matter.

After the works had been completed, the tenants obtained a report from Mr Lester Rumney of Rumney Associates Ltd, a firm of quantity surveyors. The report suggested that the works could have been carried out for £11,445 excluding VAT, that amount being revised to £12,897 exclusive of VAT, in the light of criticism by the landlord's

expert and after receipt of further information. Mr Rumney was unable to attend the hearing to give evidence or to be cross-examined.

Mr B D Shepherd FRICS of Stace Quantity Surveying giving evidence for the landlord, provided a detailed report analysing the final account submitted by Mitre Construction. This was the company which had carried out the works after providing the lower of the two tenders received by the landlord. Mr Shepherd criticised in detail Mr Rumney's costings, pointing out that these had not addressed the full extent of the works actually carried out and were based on Laxton's Price Guide.

Further, Mr Shepherd pointed out that it was not clear whether any prices in the Guide had in fact been applied by Mr Rumney to a measured area; that the Guide could only give an approximate indication of the cost of a particular job; that the prices shown had to be adjusted to reflect locality, the size of a contract, whether premises were occupied or not, and so on; and it was not clear whether Mr Rumney had made such adjustments.

Mr Shepherd felt that if he and Mr Rumney had considered the costs together, they might well have reached agreement on the issue. He did, however, emphasise that a quantity surveyor's estimate could not be seen as the most persuasive evidence; the landlord had gone out to tender to several independent companies; the lowest successful tenderer was a local contractor whose tender price would be bid in the light of local conditions and labour,cost and availability, and the value of the work; the sum spent was well within Mr Shepherd's own estimate of what such a job should cost; and the amount could not be said to have been unreasonably incurred.

On the basis of the Tribunal's own inspection and the evidence given, the Tribunal decided that the cost of the works ie £21,390 inclusive of VAT had been reasonably incurred.

The tenants also complained of the sum of £2,730 inclusive of VAT in respect of the management fee for the major works on the basis that, since an annual management fee of £900 had been charged, there was no need to include an additional management fee.

The Tribunal accepted that major works of this order would attract additional fees due to the necessity of involving professional advisers to prepare specification and tender documents, to invite and analyse tenders, to supervise the works, to value the works for the purpose of making interim payments, to agree final accounts, to determine post completion defects and to carry out periodic inspections.

Mr C H Hall BSc MRICS, an employee of the landlord's management company, giving evidence on the additional management fee as well as on the major works themselves, stated that his fee of £1,638.40 exclusive of VAT was 9% of the cost of the works and that the balance of the sum of £2,730 as shown in the service charge statement was in respect of the area management team's charges for their administrative work. The Tribunal calculated that balance as being £685 exclusive of VAT.

Mr Shepherd, giving evidence on this matter, said that in his opinion Mr Hall's fees fell well below what was reasonable for professional fees for managing such works. The Tribunal accepted that the fee for Mr Hall's professional work had been reasonably incurred.

So far as the charge for the administrative work by the area management team was concerned, Mr Osiguwa B.Sc said in his evidence that the team's role in such cases was to prepare the Section 20 consultation notices on the basis of information supplied by Mr Hall, to serve them on the tenants and to deal with the correspondence.

Since the fee of £685 represents about three and three quarter per cent of the cost of the works, the Tribunal was of the opinion that this

amount was excessive for the work involved. Having regard to the Tribunal's own knowledge and experience, it was common for managing agents to charge about 2% of the cost of works for dealing with this aspect of the Section 20 consultation procedure. Accordingly, the Tribunal decided that the sum of £335 would be a reasonable administrative charge.

Therefore, the Tribunal reduced the amount of £2,730 inclusive of VAT to £2,320 inclusive of VAT as it was the Tribunal's view that the management fees in respect of the works had been reasonably incurred to that extent alone.

Concessions by the Parties.

At the end of the hearing, Mr Hutchings, counsel for the landlord, conceded that the leases applicable contained no provision for the landlord to recover the costs of the proceedings through the service charge. Therefore the Tribunal had no need to decide the tenants' application under Section 20 of the 1985 Act. Mrs Wheeler then conceded that she would not seek to recover from the landlord the fees charged by the Leasehold Valuation Tribunal for the application and the hearing.

CHAIRMAN ..Henrietta Kelly

DATE ..12..February..2003.