IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UK/LIS/2005/0016

IN THE MATTER OF 179 LULLINGSTONE AVENUE, SWANLEY, KENT

BETWEEN:

WEST KENT HOUSING ASSOCIATION

Applicant

-and-

MR R WEST

Respondent

THE TRIBUNAL'S DECISION

Background

1. Unless stated otherwise, the page references in bold herein are to the pages contained in the Applicant's bundle of documents.

2. This is an application made by the Applicant under s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Applicant's liability to pay and the reasonableness of the following service charges:

   Y/E March 2003 - £949.39 for repair and redecoration of window frames

   Y/E March 2004 – total balancing charges of £123.63

At the pre-trial review, the Respondent agreed to pay the service charges of £123.63 for the service charge year ending March 2004. It was also agreed by the parties at the pre-trial review that there should be a paper determination of the application by the Tribunal having regard to the relatively small sum involved and thereby avoiding further costs being incurred. The only issue, therefore, to be decided by the Tribunal was the cost of repairing and redecorating the timber window frames ("the windows") in the sum of £949.39 for service charge year ending March 2003.

3. The Respondent occupies the subject property by virtue of a lease initially granted by the Applicant to a Patricia Wright for a term of 125 years commencing on 1 June 1981 ("the lease"). Although only a draft copy of the lease was provided **[p. 26]**, it was not contended by the Respondent that the terms lease of the draft lease were other than the terms of his lease. In her witness statement **[p. 12]**, Mrs Riches, a Legal Services Manager employed by the Applicant, stated that the Respondent took an assignment of the lease on 6 May 2000.

4. The Respondent's liability to pay service charges arises in the following way. By clause 2(16) of the lease the Respondent covenanted to:

"at all times contribute and pay on demand a fair proportion of the general estate management maintenance repair and renewal costs incurred by the Council in respect of the demised premises... ... such proportion to be certified

by the Treasurer for the time being of the Council whose certificate shall be binding".

The costs incurred by the Council in respect of the demised premises for the maintenance, repair and renewal are pursuant to it's repairing obligation to do so under clause 5(3) of the lease.

5. The factual background concerning the necessity and extent of the works carried out to the windows of the property has already been set out in the witness statement of Mr Vernon **[p. 40]**, the Project Manager of the works. However, the salient facts can be set out shortly.

6. An external inspection and survey of the windows by Mr Vernon on 22 January 2002 revealed signs of putty failure and rotting timber frames. He subsequently obtained two estimates for the cost of repairing the windows. By a letter dated 24 July 2002 **p. 60]**, the Housing Services Manger sent the Respondent a copy of the lowest estimate obtained from Lonworld Building for the cost of the repairs. It should be noted that the Tribunal was not provided with a copy of the second estimate obtained by the Applicant. Mr Vernon also offered the Respondent the option of having his wooden windows replaced with UPVC double glazing to reduce future maintenance costs, although the initial cost would be higher. No response was obtained from the Respondent.

7. On 27 September 2002, the Applicant served the Respondent with a s.20 Notice in relation to the proposed window repairs proposing Lonworld

Building as the contractors **[pp. 57 & 59]**. The s.20 Notice stated that the Respondent's estimated liability for the cost of repairs was £949.39, which included surveyor's costs of £41.81and VAT at £141.40. The covering letter serving the s.20 Notice on the Respondent makes express reference to only the Lonworld Building estimate being served with the notice. The Respondent subsequently complained that he could not afford the cost of the works.

8. The works were commenced on or about 24 January 2003 and eventually completed by 29 July 2003. Several demands were sent to the Respondent for payment without success. He continued to complain alternately that he could not afford the cost of the work and that it had not been carried out to a reasonable standard.

Inspection

9. The Tribunal inspected the subject property on 28 July 2005. It is a self-contained ground floor flat on a housing association estate. It is comprised of a bedroom, a bathroom/WC, a kitchen and a living room. The property is one of four flats in a block of flats known as 179-185 Lullingstone Avenue. The block is brick built with a tiled roof and has tiles hung to the upper parts. The windows are single glazed timber casement windows. The property has the benefit of communal parking outside and is located a short distance from Swanley Town Centre.

Decision

10. Both the s.20 Notice and the works pre-date 31 October 2003, which was the commencement date for the relevant part of the Commonhold and Leasehold Reform Act 2002 that amended the consultation requirements imposed on landlords to consult tenants before carrying out any "qualifying works". The relevant consultation requirements on the part of the Applicant in this matter are governed by the provisions of the "old" s.20 requirements.

11. The total cost of the works carried out to the block of flats, of which the Respondent's premises forms part, was £3,064.70 plus VAT **[p. 25]**. The works are, therefore, "qualifying works" within the meaning of s.20(2) of the Act because they are works on the building for which the Respondent is required under the terms of his lease to contribute by payment of a service charge.

12. Section 20(3) of the Act requires a landlord to consult a tenant where the cost of the qualifying works exceeds the greater of £50 multiplied by the number of let dwellings or £1,000. In this instance, it is the financial threshold of £1,000 that applies.

13. The consultation requirements are set out in s.20(4) and it is not necessary to set out here the detailed provisions of the section. All of the requirements of s.20(4) must be met. The sanction for a landlord failing to consult a tenant in accordance with the requirements of s.20(4) are imposed by s.20(1), namely,

that the cost of the qualifying works shall be limited to the relevant financial threshold imposed by s.20(3). As stated above, it is £1,000 in this matter.

14. The Tribunal found that whilst the Applicant's s.20 Notice complied in all other respects, it did not comply with the provisions of s.20(4)(b), which provides that:

"A notice accompanied by a copy of the (two) *estimates shall be given to each of those tenants concerned... ... ".*

15. Both the s.20 Notice and the covering letter serving the notice dated 26 September only refer to the estimate obtained from Lonworld Limited. Indeed, the covering letter **[p. 57]**, at paragraph 2, specifically refers to only serving the Lonworld Limited estimate.

16. By failing to serve a copy of the second estimate on the Respondent, the Applicant failed to comply with s.20(4)(b) and, accordingly, the maximum amount of the cost of the works carried out is limited to £1,000 by s.20(1). Under s.20(9) of the Act, the Tribunal has no jurisdiction to dispense with the consultation requirements as it is not "a court".

17. It was common ground that the Respondent's service charge liability for the total cost of the works was one quarter or 25%. Accordingly, the Tribunal found that the Respondent's liability for the cost of the work is as follows:

Total cost allowed	£1,000
Respondent's contribution	£ 250

Surveyor's costs	£ 41.81
VAT	£ 51.07
Total payable	**£342.88**

Having regard to the extent and the standard of the work carried out the Tribunal did not consider that the sum allowed ought to be reduced further.

18. The Tribunal also directs, under Regulation 9(1) of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, that the Respondent reimburse the fees of £100 incurred by the Applicant it in bringing this application. The Tribunal was of the view that there was little prospect of the Applicant recovering the service charges claimed unless this application was issued. The Tribunal also had no evidence that the Respondent was in receipt of the benefits set out in Regulation 8(1) that prevented it from giving this direction. The Applicant had not made a claim for any costs incurred in these proceedings and, in any event, the Respondent had not made an application under s.20C of the Act.

19. Pursuant to s.27A(1)(d), the Tribunal directs that the total sum of £442.88 awarded to the Applicant be paid by the Respondent within 28 days of this Decision being served on the parties unless the parties agree other terms for repayment.

CHAIRMAN..... J. Mohan .....

DATE..... 19/9/05 .....