

**SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**Case Number**      **CHI/29UL/LSC/2005/0072**

**In the matter of Section 27A of the Landlord and Tenant Act 1985  
(as amended)**

**In the matter of Top Flat, 59 Bouverie Road West, Folkestone, Kent,  
CT20 2RN (“the property”)**

## BETWEEN

**Mrs Norma Pocher** **Applicant**

**and**

**Mr P & Mrs H Robinson**                      **Respondent**

**Determination: 21<sup>st</sup> October 2005**

## Background

This matter arises as a result of Mrs Pocher's application under Section 27A, as above, dated 6<sup>th</sup> August 2005, for a determination of liability to pay service charges in respect of the property. Directions were issued on 26<sup>th</sup> August 2005.

Mrs Pocher is lessee lease of the Top Flat in the said property which comprises a total of 4 residential units on a 99 year lease, a copy of which was supplied to the Tribunal. Mr & Mrs Robinson are the landlords of the property and written representations were received from both parties.

### **Applicant's/Lessee's case**

Mrs Pocher is asking for determination of her liability to pay specific items of service charge in respect of 3 years: 2002, 2004, & 2005.

- i) In 2002, the item/cost in dispute was that of £120.00 for a broken window in the ground floor flat.

- ii) In 2004, the item/cost in dispute was £245.00 for renewal of fencing to the private ground-floor flat's rear garden.
- iii) In 2005, the item/cost in dispute was £88.12 for repair of a broken pane of glass in the main entrance-door to the building.

The Lessee contends that the terms of her lease do not make her liable to contribute to any of the above items, and that both broken windows were the result of deliberate acts by other tenants.

### **Landlord's/Respondent's Case.**

- 1) In respect of items (i) & (ii), the landlord's agent, Ian Hopkins of Property Letting Services Ltd appears to concede (in his letter of 2<sup>nd</sup> February 2005) that the Lessee's liability is for "glass and internal repair/decoration of window frames".
- 2) In Mr Robinson's letter of 3<sup>rd</sup> October 2005, he states that he has "agreed to the payment for the glass repairs", and Mrs Pocher agrees that this was done as a "conciliatory gesture".
- 3) Whilst the sums of (i) & (ii) are no longer in dispute, the application remains, and it may be useful for the Tribunal to determine whether or not Mrs Pocher was in fact liable.
- 4) As to the fencing repair at item (ii) above, the landlords rely on the lease, to the effect that they have liability to maintain the building, that the definition of the building includes the "grounds", and that boundary structures should be maintained/repaired out of monies obtained from service charges.

### **The Lease**

- 1) Recital (1) of the Lease states that "the Building .....where the context admits includes the grounds thereof....."
- 2) Clause 1 (a) (ii) defines the "maisonette" demised to Mrs Pocher as including "all windows, window frames, doors and door-frames and all internal non-load bearing walls.....".
- 3) Clause 3 (G) sets out the Lessee's obligation to "repair and keep in good order and substantial repair decoration and condition the interior of the flat..... and all glass in the windows and the window sills and frames.....".
- 4) Clause 4 (4) details the Landlord's covenant to "keep in a good and substantial state of repair and decoration (and where necessary renew) the exterior and structure of the Building.....".

- 5) The Fourth Schedule deals with the matters to be included in the service charge, and with the Tenant's liability to pay one third of the "total service cost" (which includes provision both for actual outgoings and for a reserve or "sinking fund").
- 6) The Fourth Schedule also explicitly provides that the "total service cost" shall include:- "any sums payable by the Landlord towards or in respect of the maintenance upkeep and tending of the ornamental gardens known as "Trinity Gardens".

### **The Issues**

- 1) Is Mrs Pocher liable to pay for the window repair at item (i) in the year 2002, under the terms of the lease?

If so, how much should she be liable for?

- 2) Is Mrs Pocher liable to pay, through her 1/3<sup>rd</sup> contribution to "total service cost", for renewal of the fencing? Is such fencing part of the "Trinity Gardens", and/or covered by the Landlord's obligation to maintain "the Buildings" and therefore are repair costs recoverable by way of service charges?

If so, how much should Mrs Pocher be liable for?

- 3) Is Mrs Pocher liable to pay for the window repair at item (iii) in 2005?  
If so, how much is she liable to pay?

### **The Law**

- 1) Section 19 of the Landlord & Tenant Act 1985 states that "relevant costs" shall be taken into account in determining the amount of a service charge only to the extent that they are "reasonably incurred" and only if the works are ".....of a reasonable standard".
- 2) Section 27A of the 1985 Act, as inserted by the Commonhold and Leasehold Reform Act of 2002, gives The Leasehold Valuation Tribunal Jurisdiction to determine payability of service charges.

Under Subsection (1) the Tribunal may determine "whether a service charge is payable", and under subsection (1) (c) "the amount which is payable".

- 3) As all determinations are subject to the overriding test of "reasonableness", it has been held that a useful point of reference is for the tribunal to consider whether the Landlord would have chosen the particular method of repair "if he had to bear the cost himself". [Plough Investments Ltd v Dorchester City Council {1989} 1 EGLR 244].

## **DETERMINATION AND CONCLUSION.**

### **1) Window – repair at item (i) above.**

Mrs Pocher's lease clearly makes her personally liable for the glass in the window of her own maisonette.

There is no reference in the lease to any liability on the part of the Landlord to repair any window-glass, either in the reference to maintenance of the "exterior and structure of the Building" [Clause 4 (4)] the cost of obligations to be taken into account when calculating "total service cost". [Fourth Schedule, Clause 1 (1)].

It therefore appears that no contribution to the repair to glass in the ground floor flat, (quite apart from the responsibility of the other tenant to pay for the break) can be recovered from Mrs Pocher by way of service charge.

Mrs Pocher is not liable to pay item (i).

### **2) Fencing.**

Unfortunately in the absence of a plan, or further information, it is not possible to say whether the fence referred to is a sub-division purely for the benefit of privacy of the tenant of the ground floor flat, or whether it is part of the main boundary of the property as a whole. (the invoice refers to the "boundary").

It is also not clear whether "Trinity Gardens" is a name for the Building's grounds as a whole, or whether it is a particular area of the said grounds.

The Tribunal determines as follows:-

- a) If the fence is part of the main boundary of the grounds, or of the area known as "Trinity Gardens", it is arguable that the Landlord is obliged to maintain the same, and that he is entitled to recover service charges in respect thereof.
- b) However if the fence in question is actually an internal structure, within the boundary, and not part of "Trinity Gardens", it is arguable that it is not covered by the Landlord's maintenance and repair covenants, and therefore the cost is not recoverable from the Lessee.
- c) Further, if the fence was originally damaged by the Landlord's agent/son in the course of building works, as alleged by Mrs Pocher, the cost of repair would not be recoverable from the Lessee.
- d) The invoice for fence repairs gives a total figure of £490.00. Why was Mrs Pocher asked to pay ½ of this figure, rather than 1/3?

At the most, if the fence in question was part of the boundary as in (a) above, then Mrs Pocher is liable to pay £163.00.

### **3) Repair to glass entrance door.**

As the entrance door is part of the "common parts" of the building, and not covered by any individual lease or tenancy, the Landlord is responsible for repairs/maintenance thereof. General cost of maintenance and repair of this door would be recoverable by way of service charges.

However, deliberate damage caused by another person as described by Mrs Pocher should be paid for by the perpetrator, and not by tenants and Lessees.

This service charge cost is not reasonable and Mrs Pocher should not be liable for it.

### **SUMMARY**

Mrs Pocher is not liable to pay a contribution to either of the glass repairs mentioned in the application, the Landlords were correct in meeting these costs either from others or by themselves.

In respect of the fence repairs, Mrs Pocher is potentially liable to pay 1/3 of the total cost, subject to the considerations referred to above.



**Mrs T C Clark**  
**Chairman**

**Decision dated 21<sup>st</sup> October 2005**