

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 : SECTION 27A & 20C

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case Nos: CHI/46UC/LSC/2005/0023

Property: Flat 3, 2 High Street, Malmesbury, Wiltshire, SN16 0BL

Applicant: Ms K Hotham

Respondent: Brymanor Ltd

Date of Application: 14th March 2005

Pre-trial review hearing: 22nd April 2005

Hearing: 31st October 2005

Members of the Tribunal: Mr G C M Young MA LLM (Chairman)
Mr S Hodges FRICS
Mr C G Thompson

Date decision issued: 11th November 2005

Preliminary

The Chairman opened the proceedings by introducing all persons present and outlining the procedure to be followed.

The hearing lasted from 11am to 1pm and then from 2pm to 3pm when those present indicated that nothing further was to be placed before the Tribunal.

The Issues

- a) Determination as to the reasonableness of the Service Charge to 31-12-04 of £382.82
- b) Determination as to the reasonableness of the Service Charge to 31-03-05 of £5663.16
- c) Whether the costs of the application should be refunded to the Applicant.
- d) Whether the costs of the Respondent should be chargeable under the Service Charges.
- e) Whether the Respondent had acted improperly in its dealings with the Applicant.

The Papers

The Tribunal considered the papers submitted by the Applicant extending to page 148 and to page 49 of attachments, and, submitted by the Respondent, to page 174 together with a copy of the Maryland Estates case, court ref no CCRTF98/0911/2 and sub sections 19 & 20 of the Landlord & Tenant Act 1985 amended as applying to this case where the application was made prior to 31-10-2003.

The Facts

- 1) Ms Hotham, the Applicant is the Tenant of Flat 3 pursuant to a lease dated 18th May 1990, Brymanor Ltd (1) Messrs Chesterman (2).
- 2) Brymanor are the Landlords of the subject property together with the remainder of No 2-4 & 6 High Street / Oxford Street, Malmesbury formerly Units 1,2 & 4 ("the building").

- 3) Certain works were routinely required on The Building by 2003. In respect of certain of those works the local authority, in effect, invited an application for grant aid, such application being successful.
- 4) Notices warning the various Tenants of these works were sent out in October 2003 and those notices were repeated because they did not comply with legislation requiring one months notice. The exact date when these notices were sent out was in doubt but the Tribunal found,
- a) They were sent out in good time whereby the Tenants had more than one month to object prior to 30th November 2003.
 - b) Those notices gave sufficient details of the works including costings contemplated to enable the Tenants to take issue with the Landlords.
 - c) No Tenant objected to the Landlords and in particular Ms Hotham, who confirms that she received both notices, made no objection, nor did the Halifax, occupiers of the major part of the ground floor.
 - d) The work started in February 2004.
 - e) There is no provision for a sinking fund in any of the Leases.
 - f) A demand for the Applicants share of the cost was sent – Page 44. The sum of £40,581 was derived from the calculation at Page 159. The sum of £27,212 was derived from the calculation at Page 160. The VAT follows from the overall cost but the other items were not vouched, nor were certified accounts produced or copies of the bills justifying the demand for Insurance and admin charges in the second demand making up the sum of £352.82. The ground rent was accepted by the Applicant as being within the terms of the Lease.
 - g) Relations between the Applicant and the Respondent deteriorated and finally an application under the LVT legislation was made by the Applicant.
- 5) Although major works and considerable expenditure were anticipated in respect of the Halifax window (see document 123) in the event only £1,708 was spent in respect only in decoration of that window.

Findings- Unanimously

- 1) The notices sent by the Respondent were poorly prepared and distributed, with no proper recording of dates of dispatch, but were, just, sufficient to alert all the Tenants that major works and considerable expenditure were contemplated, some part of which would be demanded of each Tenant,

- 2) The details justifying all parts of the Service Charge to 31-12-2004 have still not been given to the Applicant.
- 3) No challenge in any form was made by the Tenant to the Landlord prior to the works being completed and costs demanded of her.
- 4) Taking a broad brush approach as recommended in eg: Maryland the Tribunal find that to a major extent the works carried out were
 - a) Justified.
 - b) Were either repairs or maintenance.
 - c) The “enhancement” which was a word found in the local authority Grant papers tended to mislead the Applicant and was little more than a reference to a required general tidying up of a listed building, and without such works and others being done no Grant would have been forthcoming.
 - d) The overall cost was justified, including, as it did, extensive scaffolding and detailed work on a listed building requiring a high level of workmanship.
 - e) The cost of doing such works as were, in the event, carried out on the Halifax (ground floor) window was expressly written in the terms of the Lease as being a Tenants responsibility and could and should have been done by that Tenant and were not payable by the Applicant in any part as no scaffolding was required to do this work.. This finding distinguishes Maryland on its facts.
 - f) The work on The Building otherwise than that ground floor window mostly required scaffolding and in so far as some works were individual Tenants responsibility it was sensible for them to be done by the Respondent to save each Tenant putting up scaffolding and no Grant would have been available had that procedure been followed.
 - g) The obtaining of a Grant resulted in a net saving to individual Tenants and the extra work required to be carried out was justified and not excessive in cost or extent.

- 5) We find no impropriety in the conduct of the Respondent. There was some slackness in the administration of the scheme for instance the actual work done on the Halifax window, see Decision para 4(1) and 4(2) below and consultation with the Applicant was minimal. Had there been efforts to discuss the implications of the proposals and why (as we find) a Grant was in the interests of both the Landlord and all the Tenants, and had there been fewer threats, and an approach to the Tenants mortgagee, as to possible litigation, this application could, possibly, have been avoided.

Decision

- 1) That part of the Service Charge relating to the ground floor –Halifax-window is not payable by the Applicant ie: 12% of £1,708 = £204.96.
- 2) Subject thereto the application fails.
- 3) The Applicants costs are not recoverable in whole or in part from the Respondent as her application lacked substantial merit except as set out in para 1.
- 4) The Respondents costs in these proceedings are not recoverable from the Tenants under the Service Charge as:
 - 1) The notices to the Tenants and in particular to the Applicant were poorly prepared and badly actioned.
 - 2) The true extent of the work done on the shop front only emerged at the Hearing.
 - 3) While there were good reasons latterly for the accounts not being certified, they could and should, helpfully, have been properly prepared and provided earlier to assist the Tenant.
 - 4) Essential details of the Service Charge to 31-12-2004 have still not been provided and all details must be provided before that charge becomes lawfully demanded and therefore payable.
 - 5) While not strictly being part of the Decision the Respondents are urged to open discussions with each of the Tenants to establish a

sinking fund and obviate any financial embarrassment if substantial amounts were to be demanded if and when major works on this listed building are proposed to be undertaken from time to time.

Dated 11th November 2005

G.C.M. Young MA LL.M
Chairman