THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE MIDLAND LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S27A OF THE LANDLORD AND TENANT ACT 1985

Property: **1 Carver Court, Wake Green Road, Tipton, West Midlands, DY4 0AT**

Applicants: Shaun Charlton, Philip Emlyn Rees, Richard Harris, Helen Dawn Hart and Kantilal Patel (leaseholders)

Respondents: HLM Midlands (landlord) and Bryn Owen

Determination without a hearing under Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Determination by a single member of the Panel under Regulation 13(5)

Tribunal: Lady Wilson

Date of determination: 25 November 2005

Background

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") for the determination of the applicant's and joined applicants' liability to pay a service charge for the proposed recovering of the roof of a block of 12 flats and four shops. The applicant has asked that the matter be determined without an oral hearing under Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 and, since the tribunal has given the parties not less than 28 days' notice of its intention to proceed without an oral hearing, and none of them has asked for an oral hearing, I propose to make the determination on the basis of the written representations received. This decision is made in the week beginning 21 November 2005 as previously directed.

2. The application states, and there is no dispute, that the roof of the block is in urgent need of replacement as it has been leaking for a considerable time. The complaint is that the landlord did not follow the correct consultation procedures, so that the recoverable costs of the works are limited to a maximum of £250 from each leaseholder.

3. The leases of the flats in the block, which I assume to be in standard form, contain in the Sixth Schedule a landlord's covenant to maintain repair and renew the roof and, in Part II of the Third Schedule, a tenant's covenant to contribute one twelfth of the costs set out in the Eighth Schedule, which include the cost of maintaining repairing and renewing the roof. I have not been provided with the leases of the shops in the block, although I directed that they be provided by the landlord, and it is therefore not clear whether they too provide for a contribution to be made to the repair or renewal of the roof, although it seems likely that they do. If the leases of all the properties, both shops and flats, taken together, entitle the landlord to recover more than 100 per cent of the cost of repairing or renewing the roof, it is possible that the residential leases may be variable under Part IV of the Landlord and Tenant Act 1987, but that is not a matter

which is now before me.

4. It appears that on 22 April 2005 the landlord or its agent served on the leaseholders what purported to be a notice under section 20 of the Landlord and Tenant Act 1985 informing them that it proposed to replace the roof, and also to replace the existing timber fascias with uPVC fascias. The notice named four contractors who had apparently quoted for the work and proposed the instruction of 1st Choice Roofing, which had provided the lowest tender, to carry out the work at a cost of £14,400 including VAT.

5. In response to the pre-hearing directions, the following written representations have been received.

6. Mr J D Salmon FRICS and Mrs Salmon, the leaseholders of Flat 10, said in a letter dated 1 October 2005 that the lease contains an arbitration clause which might preclude the tribunal's jurisdiction, that the shop leases should be "excluded" from any hearing, that HLM Limited, named as the respondent to the application, was the managing agent and not the landlord, and that the local council was about to serve a notice on the landlord to carry out repairs to the roof to prevent leaks to their flat. In a further letter dated 2 November 2005 they said that the landlord's notice proposing the works had not been served on them, and they therefore could not comment on its validity. They hoped that the tribunal would make it plain that the work must proceed, because it was essential, although not an emergency because there had been a steady stream of complaints about the leaking roof for two years. They also expressed the hope that the shop tenants would be made to pay a fair proportion of the costs of the works. They said that it appeared that the residential leaseholders were not properly consulted about the works, but the works were essential and had to be carried out as quickly as possible.

7. Mr Bryn Own, the leaseholder of an (unspecified) flat in the block, said in a letter dated 3

October 2005 that the roof had been in desperate need of repair for some time. The managing agent had obtained the required quotations for the works, but the applicant had obtained a quotation from someone who was prepared to do the work for cash, which was unacceptable, and temporary repairs were insufficient.

8. Mr Charlton, the original applicant, agreed in representations dated 20 October 2005 that the roof had been "in desperate need of repair" for some time, and was leaking in many places, including into his ground floor flat. His sole complaint for present purposes was that the landlord had not complied with the Service Charges (Consultation Requirements) (England) Regulations 2003. Whereas, he said, it should have sent the leaseholders an invitation to nominate a contractor and a subsequent notice of proposals, it had simply sent a one stage section 20 notice, nominating the chosen contractor. He said that he had been told by the managing agent that he could not nominate a contractor and that this decision was final.

9. On 24 October 2005 Mr Harold Loasby FRICS, of HLM, the managing agent, wrote to say that the quotation was clear, the letter dated 22 April 2005 gave plenty of time for comments from leaseholders, and that the managing agent had served a notice on all the leaseholders "including the shops who are under an obligation to contribute toward the cost of this work". He said that they considered the application to be a delaying tactic, and that the work was of great urgency.

Decision

10. It is quite clear that the landlord has not complied with the requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"). These Regulations, which came into force as long ago as 31 October 2003, and should now be very

familiar to all managing agents, apply (with certain exceptions of which this is not one) where a landlord intends to carry out qualifying works to which section 20 of the Act applies on or after that date. Part 2 of Schedule 4 sets out the consultation requirements which apply to qualifying works for which public notice is not required, which are the requirements applicable to this case. These, as Mr Charlton quite rightly says, include a requirement that the landlord must invite each tenant to propose the name of a person from whom the landlord should try to obtain an estimate and a duty upon the landlord to try to obtain an estimate from that person provided his name is proposed within the relevant time. The notice served by the managing agent in this case does not comply with the Regulations at all. In fact, it does not even appear to comply with the requirements in force prior to 31 October 2003 because it does not, apparently, enclose copies of the estimates from the landlord's chosen contractors as required by section 20 of the Act before it was amended by section 151 of the Commonhold and Leasehold Reform Act 2002.

11. Accordingly, I determine that, as matters now stand, the maximum sum which the landlord will be able to recover from each leaseholder in respect of the works is £250, in accordance with Regulation 6 of the Regulations.

12. It is open to the landlord to apply to the tribunal under section 20ZA of the Act for it to dispense with all or any of the consultation requirements. If such an application is made, the tribunal may make the determination of it is satisfied that it is reasonable to dispense with the requirements. Alternatively, and assuming that the work has not yet started, the landlord can now, subject to the risk that further delay may lay it open to proceedings to enforce the repairing covenant, follow the correct consultation procedure.

13. In relation to Mr and Mrs Salmon's point about the arbitration clause, by section 27A(4)(b) of the Act, inserted by section 155(1) of the Commonhold and Leasehold Reform Act 2002 with effect from 30 September 2003, the jurisdiction of the tribunal is excluded where a matter "has

been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party". It is not excluded by the existence of an arbitration clause in a lease. As to their point that the respondent is the managing agent and not the landlord, I have previously directed that, should that be the case, the correct landlord should be inserted as respondent. No representations to that effect have been received, but it should be understood that this decision binds the landlord.

14. It is not within the tribunal's jurisdiction to direct that the landlord carry out the works. Only the county court can do that.

15. The application asks for an order under section 20C of the Act that any costs incurred by the landlord in connection with these proceedings should not be the subject of a service charge. The lease does not appear to allow the landlord to place such costs on the service charge in any event, but to protect the tenants' position I determine that it is just and equitable in the circumstances that an order under section 20C should be made, the landlord having clearly failed to comply with the required procedure.

CHAIRMAN.....

DATE.....