**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**
**SOUTHERN RENT ASSESSMENT PANEL &**
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/18UB/LIS/2005/0055**

**Re: The Mason's, Chapel Street, Sidmouth, Devon EX10 8ND**

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| | **Tribunal:** | **Mrs T Clark (Barrister at Law) Chairman**<br>**M Woodrow MRICS**<br>**M Creek MBE** |
| **Between:** | **Mr T Fraser** | **Applicant/Landlord**<br>**Represented by Mr R Molyneux of Everys** |
| **And** | **Mrs M Norrish** | **Respondent/Tenant**<br>**Represented by Mr J Bell**<br>**of Beavis & Beckinsale** |

**In the matter of Sections 20ZA and 27A of the Landlord and Tenant Act 1985**

**Applications**

This case arises as a result of the landlord's application, dated 2nd November 2005, for a determination of tenant's liability to pay service charges under Section 27A as above. The service charges in dispute relate to works carried out in the year 2004.

There is also an application made under Section 20ZA as above by the landlord, dated 8th November 2005, to dispense with the so-called "consultation requirements" in respect of the said works.

Directions were issued by the Tribunal on 18th November 2005, and the Committee inspected the property and heard representations from both parties on 10th January 2006.

**Background**

1. The Landlord/Lessor, Mr Fraser, is a man with his own firm of building contractors, who bought the subject property in about 1981.

2. The property is a 200 year-old former public house in the centre of Sidmouth, which has been divided vertically into 2 flats. Flat 1 is occupied by Mrs Norrish, and Flat 2 by Mrs Stump. The building fronts directly onto the pavement, and has one gable end and some extension at the rear.

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3. In June 2004, the tenants jointly wrote a letter to Mr Fraser, (page 64 in the Bundle), pointing out that the building was "in need of painting", and seeking a reply.

4. It appears that extensive redecoration works were carried out during July and August 2004 by the landlord's employees, but without any further correspondence between the parties.

5. On 14th November 2004 the Landlord sent an invoice to the tenants, setting out the total costs of the work at £6,892.03 (page 73 of the bundle) and requesting a half-share from each of them in the sum of £3,446.02.

6. Upon receipt of the invoice Mrs Norrish consulted a solicitor, and correspondence followed thereafter.

7. In February 2005, Mrs Norrish's representatives obtained a quotation for external decoration of "One Masons Cottages" in the sum of £998.75, from Prestige Property Services Ltd Co.

8. In May 2005, Mr Fraser commissioned a report from Philip White Associates, Chartered Surveyors, as to the works done and as to the costs thereof.

**Relevant Law**

1. Under Section 19 of the Landlord and Tenant Act 1985, service charges are only payable by a tenant if the costs claimed are 'reasonably incurred' and if the works were done to a 'reasonable standard'.

2. Section 27A of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, enables any party to apply to an LVT for a determination as to whether a service charge is payable.

3. Section 20 of the 1985 states that, unless the relevant 'consultation requirements' are either complied with or dispensed with (by order of the Tribunal, in this instance), then the landlord's costs of any works over £250 cannot be recovered from the tenant.

4. The consultation requirements are set out both in the Service Charges (Consultation Requirements) (England) Regulations 2003 and in the RICS Guide for leasehold properties. In summary, the landlord is required to give at lease 30 days' written notice of any proposed works, invite comments from the tenants, and (subject to any nominations made by the tenants) obtain at least two proposals in respect of the works, at least one of which must be from a person 'wholly unconnected with' the landlord.

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5. Section 20ZA of the 1985 Act (as amended) provides for applications to be made to the LVT for an order that the above consultation requirements may be dispensed with, if the Tribunal is 'satisfied that it is reasonable' to order such dispensation.

**The Lease.**

1. Under the Vth Schedule of the relevant Lease the Lessee covenants ( under Clause (16)(1)(a) ) to pay one half of the 'Maintenance Expenses' incurred by the Landlord in complying with his obligations under the VIth Schedule.

2. Clause (16)(2)(b) deals with detailed 'accounts, statements and evidence of payment' to be provided by the Lessor/landlord before such payment is made.

3. Under Schedule VI Part II the landlord's obligations for maintenance and repair are set out, and Clause (2) requires him to paint all the external parts of the building at least once every 7 years.

**Evidence and representations.**

**1. The Applicant/Landlord.**

It was contended on behalf of the landlord, Mr.Fraser, that the works had been done at the tenants' behest; that both the cost and the standard of work were reasonable, and that what had been done was 'essential for the maintenance and decoration of the building'. Whilst it was acknowledged that the consultation requirements had not been complied with, it was argued that the tenants had not suffered any loss as a result.

Mr.Fraser, in his evidence to the Tribunal, stated that he was unaware of the legal obligations upon a landlord in such circumstances, and accepted that there had been no consultation with either of the tenants as to likely cost or nature and extent of the operation before the works began. He said that the system had always worked previously 'on trust'.

He appeared uncertain about his obligations under the lease, and said that he had never decorated the exterior of the building prior to 2004 because previous tenants had 'done it themselves' without his knowledge or approval. Indeed, he claimed that the main reason for the high costs of redecoration was the poor standard of paintwork carried out by previous tenants.

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**2. Expert evidence.**

Philip White's report dated 3rd May 2005, relying (as he acknowledged) upon the description given to him by Mr.Fraser as to what works had been done and upon his inspection of the completed exterior, set out a Bill of Quantities and analysed the costs of the renovations.

He expressed the view that the cost of materials appeared reasonable,(Para.5.01),that £13.50 per hour would be a reasonable charging-out rate for this type of work as at summer 2004, (Para.5.01), and that his final figure for the total job would have worked out at £6,285.86, based upon the information he had.

In oral evidence at the hearing, Mr.White commented further as to the validity of the 'Prestige' quote, as to the intricacies of the work undertaken, and as to the different charging-rates for the same.

**3. Tenant/Respondent.**

On behalf of Mrs.Norrish it was argued that the letter of June 2004 was an inquiry which invited a reply, not an invitation to carry out works, nor an implicit 'carte blanche' approval for anything that the landlord might choose to do.

It was said that there were no discussions about price or detail, and that the tenants had suffered as a result of the landlord's failure to comply with the requirements because they had been denied the opportunity to put the work out for competitive tender.

The overall cost was said to be unreasonably high, and it was said that the present tenant should not be penalised for the landlord's historical failure to maintain the exterior in accordance with his obligations.

Mrs.Norrish was not apparently aware that Mr.Fraser was in the building trade, and did not even know that works were going to start until the contractors actually arrived.

**CONSIDERATIONS.**

1. The Tribunal considered firstly whether or not it was reasonable to dispense with the consultation requirements, and in doing so addressed the following issues:-

i) Were the works urgently required for structural/safety reasons, leaving no time for the full consultation process?

ii) Was the spirit of the legislation complied with, if not the letter of the law; e.g. were there verbal and detailed discussions between the parties, even though the precise notice provisions had not been fully complied with?

iii) Had the tenants suffered any loss or disadvantage as a result of the failures, or had they in fact received 'good value for money'?

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iii) Had the tenants suffered any loss or disadvantage as a result of the failures, or had they in fact received 'good value for money'?

In the particular circumstances of this case, the Tribunal did not consider that this was a situation where it was appropriate or reasonable to dispense with the legal requirements, which are designed to protect the tenant from unforeseen and unexpected expenditure, to allow the best possible price to be obtained, and to ensure that expenses can be met.

Accordingly, the application under Section 20ZA was refused, and the amount which the landlord is entitled to claim from the tenant in respect of the works done is limited to a maximum of £250.

2. Secondly, as stated above, the liability for service charges is still subject to the overriding test of 'reasonableness', and the Tribunal were asked to determine Mrs Norrish's liability to pay the service charges of 2004 in total. We noted the following:-

i) There appeared to be considerable doubt (partly due to Mr Frasers' absence on holiday during much of the operation) as to exactly what works had been done; with uncertainties over which sections of gutter had been replaced, which windows had been repaired, and what mark-up figure (if any) was applied to the materials.

ii) Mileage allowance had been claimed for the attendance of Mr Frasers' employees at the generous rate of 50 pence per mile.

iii) Mr Fraser acknowledged that he had raised Mrs Norrish's 'Administration Charge' from the standard £45 to £80 or £90 because of all the correspondence necessitated by her objection to the charges levied.

iv) Under the Lease, if Mr Fraser acquired the property in 1981, he should have redecorated the exterior at least three times during the 23 years to 2004. The Tribunal found that the majority of the additional preparation work (and extra costs arising therefrom) which we were told about were attributable to the landlord's failure to maintain the paintwork to a reasonable standard in the intervening years.

v) The Tribunal found that it was entirely correct and reasonable for the tenant to have raised queries about the service charges, and that, far from being liable to pay additional Administration Fees, Mrs Norrish would be entitled to apply to the Tribunal under Section 20C of the 1985 Act for an order limiting the landlord's ability to reclaim the costs of these proceedings by way of service charge contributions from the tenants.

The Landlord also admitted that he did not prepare service charge statements or annual accounts of any kind for the tenants, despite the provisions of the Lease, and the Tribunal were surprised that, although we were told that he owned another leasehold property, the landlord did not appear to be aware of good practice guidelines or legal obligations in his position as Lessor.

vi) The charging-rate used by the landlord, at £19.00 per hour for all his workmen, was unreasonably high.

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Whilst it was accepted that it was difficult to ascertain the exact basis of the 'Prestige' quotation, and there was no directly comparable quotation put forward in evidence, the Tribunal felt that, from their own previous knowledge and experience, the costs of these works altogether were unreasonably high.

**CONCLUSION**

In the light of the above, the Tribunal determined that the tenant was not liable to pay the increased Administration Charge in 2004, and that her liability for costs of the decoration works was limited to £250. No dispensation was granted.

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Chairman

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