RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF SECTIONS 27a AND 20 (2A) OF THE LANDLORD AND TENANT ACT 1985

CASE NO: CH1/24 UF/LIS/2006/0022

BETWEEN:

JULIA MAIDEN

Applicant/Tenant

And

MR M B CARTER

Respondent/Landlord

PREMISES: 175A HIGH STREET LEE ON THE SOLENT ("the Property")

TRIBUNAL: MR D AGNEW LLB,LLM

ORDER AND REASONS

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1. The Application

1.1 On 30th June 2006 the Applicant submitted to the Tribunal an application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination as to the reasonableness of service charges in respect of the Property for the year 2005-2006.

1.2 The basis of the application was that the Landlord or his managing agents had failed to observe the consultation requirements in respect of some repairs which had been effected to the flat roof of the shop premises below the Property which said roof also served as the entrance way to the front door of the Applicant's flat. The Applicant wanted the Tribunal to decide whether the Respondent through his agents had acted "in a fair and reasonable manner" by ignoring the consultation requirements and whether the costs incurred were reasonable.

1.3 Additionally, the Applicant asked the Tribunal to determine whether "a stop should be put on further repair work, even if a leak is reported". She asks this in the light of a history of repair work which has had to be carried out to the said roof over the years.

1.4 She also asked whether she could be "required to remove her conservatory at any point in the future".

1.5 Finally the Applicant challenges Curry and Partners' survey fees of £998.00.

1.6 In the Respondent's statement of case in reply it was stated that the repair works were undertaken as an emergency as there was a danger that the water ingress into the shop below could come into contact with electrical fittings or equipment and create a dangerous situation. As this appeared to be an application to the Tribunal to dispense with the requirements of Section 20 of the Act the Respondent was asked to submit a formal application to that effect which he duly did and to which the Applicant was given the opportunity to respond.

1.7 Both parties indicated that they wished the matter to be decided on paper submissions without a hearing.

2, Inspection

2.1 The Property was inspected externally on 22nd September 2006.
It comprises a two storey residential dwelling above estate agency premises in a parade. The residential accommodation is approached from the rear yard by means of a metal staircase to a flat area which serves as a roof for the rear part of the shop below as well as a platform for the entry to the Property. This flat area is covered partly by paving slabs and partly by asphalt. Outside the entrance door to the Property there has been erected an upvc conservatory or entrance porch. On the day of the inspection there was some ponding in this area. The flat roof is bounded by a parapet wall and railings. An inspection of the ceiling in the shop below showed some staining from water penetration but this did not appear to be of recent origin.

3. The service charges in dispute

3.1 The service charges which were disputed relate to one service charge year only, namely 2005/6. the items challenged are:-

a) Repairs carried out by D Plomer Repairs in May, June and August 2005 in the sum of £468.83, £75.20 and £140.84 (respectively) totalling £684.87.

b) Repairs carried out by Monfared (Builders) Limited in December 2005 totalling £3,113.75 (one half of which is payable by the Applicant) and

c) the fees of Curry and Partners for a survey and professional fees in connection with investigation, site inspection, liaison with contractors of £1,000.00 plus VAT one half of which (£587.50) is payable by the Applicant.

4. The Lease

4.1 By clause 4(2) of the Lease, made between Andrew Duncan McDougall Johnson and Christopher Weeks (1) and Charles Leader Tebbett and Sheila Ann Joyce Tebbett (2) and dated 30th October 1984 the lessee covenants "immediately upon receiving a written request from the Lessor to pay to him such sum as shall represent one half of the total costs of the expenses outgoings and other matters mentioned in the Fourth Schedule" to the Lease - that is the service charge.

4.2 By clause 1 of the Fourth Schedule the costs expenses outgoings and matters in respect of which the tenant is to contribute are stated to be "all costs and expenses incurred by the lessor for the purpose of complying or in connection with the fulfilment of his obligations under sub-clauses (2) (3) (4) and (5) of Clause 5 of the Lease".....

4.3 The relevant sub-clause of Clause 5 in this case is (3) which states:-

"the Lessor will maintain and keep in good and substantial repair and condition
(i) the main structure of the building including the walls and foundations and the roof and main timbers thereof and its gutters and rain water pipes".

5. The Law

5.1 Section 27A of the Landlord & Tenant Act1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

(a) the person by whom it is payable

(b) the person to whom it is payable

(c) the amount which is payable

(d) the date at or by which it is payable

(e) the manner in which it is payable.

5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

5.3 The consultation provisions are contained in The Service Charges (Consultation Requirements) (England) Regulations 2003. These are detailed and comprehensive and it is not proposed to reproduce them in these reasons.

6. The Evidence

6.1 The Applicant stated that water ingress to the shop below from the flat roof area outside the Property had been a constant problem for many years. The Respondent agreed that this roof had had to be repaired on a number of occasions since the current Landlord acquired the Property in April 2002. In July of that year the Applicant had sought the managing agent's assistance in recovering from the ground floor tenant a 50% contribution towards the costs she had incurred in respect of roof works to the Property. The following year the roof leaked again. In 2004 the managing agents obtained an engineer's report which identified the source of the problem as being the conservatory which had been erected on the flat roof and the report recommended its removal.

6.2 During the course of 2004/2005 D Plomer was called to carry out repairs to the roof on three occasions. Full details of the work carried out were not contained within the papers but it included applying mastic to the point where the conservatory joined the building, and the application of a sealant. The applicant did not say that she challenged the cost of this work in itself but this work was evidently not successful in curing the leak and further work was required.

6.3 In August 2005 the Landlord's managing agent's building surveyor inspected the Property and prepared a report and two alternative solutions were proposed. Estimates were obtained from D Plomer and H Monfared in respect of one of the options and H Monfared was engaged to carry out the work.

6.4 It is not disputed that the Landlord's managing agents did not carry out the consultation procedure as required by Section 20 of the Act. The Respondent says that this was because the ingress of water constituted a hazard to electrical installations and the situation was therefore dangerous and could not await the consultation period before being rectified. The Respondent therefore seeks a dispensation from the Tribunal in these circumstances. The Applicant says that the managing agents had time to instruct the contractor to proceed and so had time to consult with her before the works were put in hand.

6.5 The work carried out by Monfared involved fixing a tray to each side of the conservatory and to each side of the conservatory roof, fixing lead flashing above the conservatory roof and the flat roof, taking down a dividing wall, replacing a section of pipe, rebuilding a double skin wall, rebedding the concrete capping stone and rebuilding screen block walling.

6.6 It is the Respondent's case that he inherited a building with a history of problems with leaks from the flat roof, that emergency repairs were effected when necessary and that after several attempts a solution has been found which has avoided the Applicant having to take down her conservatory. It looks as though Monfared's work has been effective to cure the leak, as there have been no reports of problems since the work had been carried out. The managing agents contended that they had dealt with a complex, long-running situation in a fair and reasonable way to both the Applicant and the commercial tenant.

7. The Determination

7.1 The Tribunal is aware that flat roofs can be problematical and that the cause or causes of leaks are not always easy to detect and cure without undertaking a complete re-surfacing and sealing.

7.2 The Tribunal is only concerned with making a determination in respect of demands for service charge contributions in 2005/6. There is little information as to what was done by D Plomer but from what information was available the cost of what was done by that firm would appear to be reasonable. The Tribunal does not understand it to be the Applicant's case that she challenges the actual amounts charged by D Plomer but if that is not correct the Tribunal does not consider that firm's charges to be unreasonable on the evidence before it.

7.3 The work undertaken by Monfared was much more extensive and was the subject of a competitive tender. Monfared's tender was lower than D Plomer's estimate for similar work. The Tribunal finds that the cost of the work carried out by Monfared was reasonable. Furthermore, this work seems to have cured the problem and would appear to have been carried out to a reasonable standard.

7.4 The Tribunal appreciates that the work carried out in 2004/5 was only the latter stages of a longer running saga of roof repairs and, not unnaturally, the Applicant has become annoyed that this problem has persisted for so long and has been so costly for her. As stated previously, however, the Tribunal can only consider the expenditure sought to be re-imbursed in 2005/6. The Tribunal finds that the Landlord's managing agents did take appropriate action following the current Landlord's purchase of the freehold, to remedy the leaks: first on an ad

hoc basis and then by finding what will hopefully be a permanent solution without the Applicant having to remove her conservatory.

7.5 The Applicant has on several occasions asked to be consulted about repair work before the work is ordered or carried out. On occasions she has only been notified as to when the work is to commence. Section 20 of the 1985 Act requires a Landlord to undergo a consultation process with the lessee where the expenditure is going to exceed £250.00 per lessee. The requirements are set out in detailed regulations. The Landlord's agent accepts that this was not done in this case. The reason was stated to be that the water penetration into the commercial premises below constituted a danger in that it could have come into contact with electrical installations. In those circumstances, the Tribunal finds that it was reasonable for the Landlord to proceed with the repair work. The Applicant should appreciate that the consultation procedure, if properly followed, can take several months and the Tribunal finds that in these particular circumstances it would not have been reasonable for the Landlord to have waited so long before carrying out the repairs.

7.6 The Landlord's agents should note, however, that if such a situation arises in future an application to the Tribunal for an order dispensing with the consultation requirements can be expedited on request to the Tribunal. In any event, there was nothing to stop the managing agents from keeping the Applicant informed as to what they were proposing to do and discussing matters, including costs, with her as she requested them to do. It is to be hoped that in future this will be done, should the need for further repairs or even routine decorating and maintenance work be required.

7.7 It is not within the Tribunal's jurisdiction to determine whether or not it might be necessary at some future date for the Applicant to be required to take down her conservatory.

7.8 As for future liability to pay for repairs to the roof the Tribunal is not able to look into the future and predict what may or may not be the situation then. Each application for a service charge payment must be judged on its own merits as to whether the charge was reasonably incurred and the amount requested reasonable.

7.9 That leaves the question as to whether Curry and Partners' fees for investigations, preparing the report, site inspections, liaison with building contractors and preparation of a specification in the sum of £1,000.00 plus VAT (the Applicant's chare being 50% thereof) is reasonable. There was no evidence from the Landlord's agents as to what they had done for this charge other than the report of Mr Rob Hutton of Curry & Partners and the copy estimates received. It is a fairly comprehensive report which came up with two possible solutions. The agents then went out to tender and appointed a contractor. The Applicant says that Curry & Partners did not carry out a site visit to check the work after it had been done.

7.10 Doing the best it can with the available evidence the Tribunal finds that a total of £1,000.00 plus VAT with the Applicant's share being one-half thereof, is a reasonable sum for the Landlord's managing agent on behalf of the Landlord to charge for the work which was carried out in investigating and reporting, seeking tenders and appointing contractors to carry out the work.

8. Conclusion

8.1 The Tribunal finds that the service charges demanded as set out in paragraph 3 above are reasonable. The Tribunal understands that they have been paid by the Applicant (albeit under protest) and so there is no further payment due from the Applicant to the Respondent in respect thereof.

8.2 The Tribunal dispenses with the requirement of the lessor to have undergone the Section 20 consultation procedure in this instance, but trusts that in future there will be greater communication and discussion with the tenant before works are carried out and that either the Section 20 requirements are observed or an application to dispense with these requirements is made to the Tribunal.

Dated this 27th day of October 2006

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D Agnew LLM
A member of the Tribunal
Appointed by the Lord Chancellor