

# **Southern Rent Assessment Panel**

## **Leasehold Valuation Tribunal**

Tribunal

ref L25/03/DT

A J Mellery-Pratt FRICS (chairman)  
P Harrison FRICS.

Applicant

New Era Investments Ltd

Respondent

Ms J L Kenyon

**Re: 31a Stanfield Road Bournemouth, BH9 2 NL.**

### **1.0 Preliminary**

1.1 This application was originally made to the Winchester County Court, subsequently transferred to the Bournemouth County Court and finally referred to this Tribunal for a determination under section 19(2A) of the Landlord and Tenant Act 1985 ("The Act") as amended by the Landlord and Tenant Act 1987 and by the Housing Act 1996.

1.2 Section 19(2A) states:-

"a tenant by whom, or landlord to whom, a service charge is alleged to be payable may apply to a Leasehold Valuation Tribunal for a determination-

- (a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,
- (b) whether services or works for which costs were incurred are of a reasonable standard, or
- (c) whether an amount payable before costs are incurred is reasonable."

1.3 On the 6th August 2003, the pre-trial review was held, in the absence of the parties, and a directions order was made and sent to the parties. This order, among other matters, set a revised date of 18th September 2003 for a hearing.

1.4 On the application of the respondent, and confirmation of the chairman, the hearing was subsequently postponed until 15 October 2003.

1.5 In accordance with the directions, the parties had submitted documentation in support of their respective cases and have had the opportunity to comment on the papers submitted by the other party. All correspondence has been copied to both parties.

## **2.0 General**

- 2.1 The applicant is the landlord of the premises, which are held by the respondent under a lease for a term of 99 years from the 24th June 1985.
- 2.2 Under the terms of the lease, the tenant is responsible for paying "a sum or sums of money equal to one half share of the amount which the lessor may expend in effecting or maintaining the insurance of the building comprised of the upper and lower maisonettes....".
- 2.3 Additionally the tenant is required "to pay and contribute to the lessor and his successors in title one half of the costs expenses outgoings and matters mentioned in clause 5 (2) hereof within 14 days of a request in writing for such payment accompanied by receipted accounts or photostat copy of receipted accounts showing the amount or amounts expended by the lessor in complying with the said clause 5 (2) hereof....".
- 2.4 Attached to the original application was a schedule itemising the amounts claimed by the landlord, grouped as insurance, repairs and rent. The directions had noted that the tribunal had no jurisdiction to deal with the claim for rent and consideration was therefore limited to the items noted as insurance and repairs.

## **3.0 Inspection**

- 3.1 At 0945 hours the tribunal viewed the exterior of 31 Stanfield Road Bournemouth in the presence of the lessee, Ms Kenyon and Mr Boon of Eyre and Johnson Ltd, representing the landlord.
- 3.2 The committee found that the property comprised a two-storey detached building, constructed about 1900, with painted brick walls under a pitched slated roof. A number of the windows had been replaced in modern UPVC whilst the remainder were the original timber sash windows.
- 3.3 The building is slightly set back from the road allowing the forecourt to be used as a parking space. The front wall appears to have been rebuilt in concrete blocks. There is a passageway along the right-hand side of the property, which is quite narrow, and the entrance to the passage is constricted by the lobby of the adjoining property which protrudes sufficiently to prevent the passage being used by a car.
- 3.4 At the rear there is a small area of garden, which has been divided between the two lessees.
- 3.5 The roof covering of the property appeared to be in reasonably good condition although it was noted that approximately 20 of the slates, which were visible, had been clipped in place. The pointing to the chimney stack appeared sound but the flashings around the stack appeared to be formed in slates, sealed to the brickwork with a bituminous compound. Four chimney pots were evident and none of them appeared to be capped. It was not possible to determine the state of the haunching.

3.6 At the front of the property, the committee noted that the forecourt had a fairly new concrete surface, apart from an area around the front door which was at a higher level where a step had been formed. The concrete had been laid in sections and a drainage channel appeared to have been formed between two of these sections. A cement fillet had been placed to form the junction between the new concrete and the higher area around the front door. The new concrete appeared to be well laid and in sound condition.

3.7 The side passageway also had a concrete surface, which appeared to be much older than the forecourt.

3.8 The guttering to the property appeared to be made of plastic and in reasonable order. The downpipes were a mixture of plastic and cast-iron and appeared to be serviceable although one downpipe at the rear corner of the property was un-painted and appeared to be in poor order. A rubber connector was noted on one of the branches of the soil pipe.

3.9 The exterior of the building has been redecorated recently, both the brickwork and the timbers.

#### **4.0. The hearing**

4.1. On the same day following the inspection, a hearing was held in the offices of Bournemouth Borough Council at 1100 hours, at which Mr Boon was present, representing the landlord, but Ms Kenyon had indicated that she did not wish to attend and would rely upon the written representations that she had made.

4.2. The chairman introduced the members of the tribunal and noted the presence of Mr McAllister, also a member of the Southern Rent Assessment Panel but who was only in attendance on the day to observe and would not be taking part in the discussions of the tribunal. The chairman explained the background to the dispute and the import of section 19(2A) of The Act.

4.3. Mr Boon had distributed some additional copy correspondence during the inspection, including a copy for Ms Kenyon, who had indicated to the clerk to the tribunal that these were merely copies of old letters and of no relevance and that she did not wish to comment on them. The correspondence was therefore accepted by the tribunal.

4.4. Mr Boon explained the relationships of the various companies associated with the applicant and advised that he had originally been employed by Oakleigh Property Management in 1994 but had been employed by Eyre and Johnson Ltd since 1996. Mr James Tuttiett who was a director of the landlord company, was also a director of Eyre and Johnson Ltd and a director of Newby Associates.

4.5. Mr Tuttiett had been a director of Oakleigh Property Management and as such had negotiated the purchase of 31 Stanfield Road on behalf of the Trustees of Dunning Settlement Trust in 1993, at about the same time as Ms Kenyon was buying her flat. Following the purchase, Oakleigh were employed as managing agents until the property was acquired by the present landlords in 1999, at which time Oakleigh Property Management ceased to be active as a company. Since that time Eyre and

Johnson had been given overall responsibility for the property but had not been given instructions to act as managing agents.

4.6. Newby Associates deal with the administration of the insurance policies but still use Christchurch Insurance Brokers, which is not an associated company, to arrange the insurances.

4.7. With regard to the amounts claimed in respect of the insurance premiums since March 1995, Mr Boon had seen the alternative quotations that had been received by Ms Kenyon, although he noted that these were on the basis that there had been no claims on the policies, which was incorrect. The quotations were also unclear as to the extent of the public liability cover and the amount that could be allocated towards alternative accommodation. He also advised that the sum insured in the year 1995/96, was the figure requested by the mortgagee for Ms Kenyon.

4.8. In response to a request from the tribunal, he confirmed that all properties owned by the landlord were insured under a block policy but was not able to produce documentation confirming the premium for the year 1995/6.

4.9. In dealing with the amounts claimed in respect of repairs, Mr Boon advised the tribunal that Albion Maintenance & Construction Services was another company controlled by Mr Tuttiett and it was later incorporated as London and South Property Services Ltd. Another director of this company was Mr Lawrence who was a property manager with Oakleigh Property Management and when he left Oakleigh, he set up his own maintenance company, which was called Maintenance Direct (Southern) Ltd.

4.10 The amounts now claimed were 50% of the following items:-

Albion Maintenance	£140.00
Albion Maintenance	£98.95
London and South ( with adjustments)	£4859.66
Insurance excess	£100.00
Maintenance Direct	£101.05.

Mr Boon confirmed that the voucher for the expenditure sum of £329 could not be found and therefore the claim for this amount was withdrawn. It was also confirmed that the item within the London and South account, of £115 in respect of works to the front wall was also withdrawn as it was accepted that this work was carried out at the request of the ground floor tenant.

1. Under questioning from the tribunal, Mr Boon confirmed that the landlord's files did not contain any covering letters which may have accompanied the priced schedules which were circulated to the lessees with the notice issued under section 20 of The Act. Nor were there any contemporary notes about the works or confirmation of the works having been completed. Mr Boon was unable to assist the tribunal with regard to VAT which was charged by London and South but did not appear to be mentioned on the 2 alternative quotes.

## **5.0. Findings**

### **5.1. Account from Albion maintenance, £140.**

- 5.1.1. The tribunal found that some work had been carried out but that the downpipes needed further attention later that year. The tribunal therefore found that the work was not carried out to a reasonable standard and allowed a reduced sum of £100 in respect of this account.

### **5.2. Account from Albion maintenance, £98.95**

- 5.2.1. This account mainly concerned the breaking up and removal of some kitchen cupboards. This was denied by Ms Kenyon and she claimed that the kitchen had been stripped prior to her purchase of the flat, so there were no cupboards for her to dump. However, amongst the correspondence was a letter from the lessee of the ground floor dated 22nd of August 1994, which complains of the dumping of some original kitchen units in the communal driveway by Ms Kenyon.
- 5.2.2. The tribunal therefore finds that this account was properly incurred and that the costs were not unreasonable.

### **5.3. Account from London and South, £4859.66.**

- 5.3.1. Item 1 on the account comprised the quoted sum based upon the priced schedule of works. Evidence had been given that repairs to the roof were a requirement of the mortgagee for Ms Kenyon and it appeared that there was the possibility that the schedule had been prepared and priced prior to Ms Kenyon having this work carried out. There was also evidence given that the contractor did not have a ladder of sufficient length to reach the roof.
- 5.3.2. The tribunal finds that the charge for the roofing work was unreasonable and the item of £1025 is disallowed.

- 5.3.3. The tribunal was unable to note any areas of the chimney stack pointing which had been patch repaired and it was clear that the repairs to the flashings were of a somewhat temporary nature and did not amount to replacement or reinstatement. The tribunal therefore finds that the charge for this work was unreasonable, and the item of £950 is disallowed.

The tribunal found that the rainwater goods appeared to be in reasonable condition and, although it was impossible to confirm that they were working correctly, it was found that work had been carried out in relation to this item and the tribunal therefore found that the charge of £150 was not unreasonable.

The tribunal noted that the alternative quotation from R Walters, in respect of the concrete surfacing, was only slightly more expensive than the quote from London and South and had been based upon an area of 72 sq m. The report commissioned by Ms Kenyon from Trinick Warr, estimates the front area of concrete to be approximately 25 sq m. The committee noted the estimates

obtained by Ms Kenyon from A1 roofing Co dated 28 February 1995 which included a price of £745 in respect of the concreting works.

5.3.6.

The tribunal found that the concreting work had been carried out but this had only extended to an area in front of the building and a sum of £745 was therefore allowed in respect of this work.

5.3.7.

The replacement manhole cover had been quoted at £100. The tribunal was of the view that the new cover was of sufficient strength to cope with the position and at the time of the inspection there was no evidence of any deflection. The committee noted that the alternative quotation, from R Walters, had included a price of £53 for this item.

5.3.8.

The committee found that the work had been properly carried out but that the quoted price was not reasonable and allowed a figure of £55 in respect of this item.

5.3.9.

The building had been painted earlier this year and it was therefore not possible for the tribunal to assess whether areas of pointing had been carried out. However the pointing did appear to be in reasonably good order and the tribunal found that this item had been properly incurred and that the cost of £175 was not unreasonable.

5.3.10.

There were two additional items on the account from London and South relating to some painting of the rear elevation and of the plinth to the building. The committee accepted that these items were carried out whilst the contractors were on-site and found that the costs incurred were not unreasonable.

5.3.11.

Item 2 on the account showed an addition of £98.88 as instructions had been given outside the fixed price period. No documentation was available to show that the quotation included a fixed price period and the tribunal therefore disallowed this item.

#### **Insurance excess, £100**

Whilst Ms Kenyon denied knowledge of the insurance claim, contemporary correspondence from the tenant of the ground floor flat at the time, had noted Ms Kenyon as suggesting that the damage should be claimed under insurance and the tribunal therefore found that this was a cost which was properly charged. £100 was the excess under the policy and therefore was not unreasonable.

#### **Account from Maintenance Direct, £101.05.**

The account is some years later than the main works and the tribunal accepted that it was not unusual for more work to be required to the gutters and downpipes after this period of time. They found that the costs incurred were not unreasonable.

## 5.6. Insurance premiums

5.6.1. Although the committee had not received a satisfactory answer to their inquiry for confirmation of documentary evidence of the 1995/6 insurance premiums, the tribunal were satisfied that insurance had been in place and that the premium quoted was correct.

5.6.2. The committee noted the evidence submitted in respect of the insurance premiums but considered that the landlord's figures were not unreasonable and therefore found that the 50 percent share totalling £1881.16 was reasonably payable.

## 6.0. Summary

6.1. The summary of the items allowed by the tribunal is as follows:-

Albion Maintenance		£100
Albion Maintenance		£98.95
London and South. Rainwater goods	£150	
Concreting	£745	
Manhole cover	£55	
Pointing	£175	
Extras	<u>£122</u>	

VAT £1247  
£218.22

Insurance excess  
Maintenance Direct

£1465.22  
£100  
£101.05

Total

£1865.22

Amount chargeable @ 50 percent  
Share of insurance premiums

£932.61  
£1881.16

Total

£2813.77

decision

The committee determined that the items and amounts allowed in the summary of the items, totalling £2813.77 were reasonably incurred by the applicant and payable by the respondent under the terms of the lease of the property and in accordance with section 19(2A) of The Act.

*[Signature]*  
29<sup>th</sup> October 2003