RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/45UC/LSC/2006/0080

BETWEEN:

MALCOLM SMITH APPLICANT

AND

ARUN DISTRICT COUNCIL RESPONDENT

PREMISES: 26 ROUNDSTONE CRESCENT EAST PRESTON LITTLEHAMPTON WEST SUSSEX BN16 1DG ("the Premises")

TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MR A O MACKAY FRICS
MR T W SENNETT MA MCIEH

DATE: 26 October 2006

REASONS AND ORDER

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1. **Background**

1.1 On 30th July 2006 the Applicant applied to the Tribunal for a determination as to

a) whether he is liable to pay for roof repairs carried out to the Premises by the Respondent and

b) if he is so liable, the reasonableness of the amount he is being asked to pay.

He also asked for an order under Section 20C of the Landlord and Tenant Act 1985 (the Act) that the cost of the Tribunal procedure should not be added to any future service charge account rendered to him.

2. **The Premises**

2.1 The Premises comprise a first floor flat in a block of four probably built shortly after the War (i.e. World War II). The works in question involved the complete replacement of the concrete tiled roof together with new soffits and fascia boards.

2.2 The Tribunal inspected the Premises immediately before the hearing on 26th October 2006. The newly tiled roof appeared to have been well done. The only problem that the Applicant pointed out to the Tribunal was that on having had his windows replaced with UPVC units recently the soffit was found to be of insufficient depth to key into the building. This has resulted in a slight bowing of the soffit board.

3. **The Law**

3.1 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.

3.2 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.

3.3 By Section 20(1) of the Act the contribution of lessees to service charges is limited in accordance with subsections 6 or 7 of that section unless the consultation requirements have either been complied with or dispensed with by a leasehold valuation tribunal. By Section 27(ZA)(1) of the Act a leasehold valuation tribunal may dispense with all or any of the consultation requirements "if satisfied that it is reasonable" to do so.

3.4 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.

4. **The Hearing**

4.1 This took place at The Manor House, Church Street, Littlehampton. The Applicant represented himself. Arun District Council appeared by counsel, Mr Emmerson. Also in attendance for the council was Ms Franca Curral of the Legal Department, Mr Wyatt, the Leasehold Manager and Mr Jerram, the Finance and Home Ownership Manager.

4.2 At the outset of the hearing Mr Emmerson addressed the Tribunal on the question of the consultation procedure and whether or not the Respondent had complied with the provisions in that regard in Section 20 of the 1985 Act.

4.2.1 He pointed out that the council went out to tender in respect of these works in the summer of 2003. On 8th September 2003 a purported Section 20 letter was sent

to the tenants but this did not comply with the regulations as they then were because no copies of the estimates were supplied. A further letter purporting to be a Section 20 letter was issued on 31st October 2003. This set out the detail of the proposed works and identified the tender which it was intended to accept. Unfortunately from the Council's point of view, however, this letter is dated the very day upon which new regulations came into force which required two additional features: first, the necessity for the works had to be explained and secondly, the tenants had to be given the opportunity and be invited to respond and make representations. This was not done. Mr Emmerson therefore accepted that the correct procedure had not been followed and that no valid Section 20 notice had been served. He asked that the Tribunal exercise its discretion to dispense with the Section 20 requirements under Section 20(1)(b) and Section 20(ZA) of the Act. He submitted that it was reasonable for the Tribunal so to do as the requirements had been substantially complied with, that the omissions were technical and that the tenant had not been prejudiced thereby.

4.3 Not surprisingly, the Applicant did not consider it reasonable for the Tribunal to dispense with the Section 20 requirements. The Council should have been aware of the changes in the legislation he said and indeed they wrote to the tenants referring to the change. He had not responded to the correspondence about the repairs because the letters were addressed to "the leaseholder" and he was under the assumption that the repairs were a matter for the previous tenant and not himself. He did say, however, that he had made a number of telephone calls to the Council to ask why the letters were sent to him and was told that they did not contain a statement or charge and he was asked why, therefore, was he concerned. He said he was told the roof repairs would go ahead whether he

challenged them or not but he said he would probably not have suggested alternative contractors to those actually proposed by the Landlord.

4.4 As the outcome of the Respondent's application would affect the course of the rest of the hearing the Tribunal retired to consider the application.

4.4.1 The Tribunal did consider that much of the requirements had been complied with and that what had been omitted had not actually prejudiced the Applicant as he had accepted that he would not have made representations in any event believing as he did that he was not liable for the repairs in question but that the previous tenant was.

4.4.2 The Tribunal decided therefore that it would grant the Respondent's request to dispense with the Section 20 requirements for the roof repairs although the Tribunal did so with some reluctance as the Council should have ensured that its letter of 31st October 2003 did comply with the new regulations or alternatively that the notice was served prior to the date of the change in the law. Parliament had evidently considered that changes to the regulations were necessary or desirable. In this case, it would not have made any difference if the new requirements had been included in the notice and therefore the dispensation would be granted on this occasion.

5. **The evidence**

5.1 On the question of his liability to pay a contribution towards the cost of the roof repair at all the Applicant's case was as follows:-

a) he purchased the property in 1998.

b) as part of the conveyancing process he became aware from the Seller's Property Information Form completed by his vendor, Ms Sutherland, that roof repairs were due to be carried out in 2003. Further enquiries showed that

Ms Sutherland had disputed the need for these repairs, maintaining that they would amount to an improvement and not a repair.

c) this disclosure also showed that the landlord had offered to defer the work for five years "to enable the Tenant to make arrangements for funding the works" and Ms Sutherland agreed.

d) further, the local search revealed that the landlord had registered a local land charge giving notice to any potential purchaser that the repairs would be carried out and that the cost was estimated at approximately £4,000 per flat.

5.2 The Applicant and his conveyancer took the view that Ms Sutherland had accepted the liability to pay for the roof repairs and he submitted to the Tribunal that she was the person liable to pay for these repairs. Had the work been carried out when originally intended, it would have been prior to the Applicant's purchase and he would not have been asked to pay for the roof repair.

5.3 In answer to Mr Emmerson the Applicant accepted that he had not been able to produce any evidence of the council having agreed that they would be looking to the former tenant to pay for the repairs rather than him.

5.4 In answer to a question from the Tribunal the Applicant confirmed that there had not been a retention of part of the purchase price to cover the cost of the roof repair in the contract of sale to him but he had negotiated a reduction in the purchase price of some £4,000 approximately although this was not specifically for the roof works.

6. Determination as to whether the Applicant is liable to pay for the roof repairs.

6.1 As it was fundamental as to whether there was any need to continue with the hearing for a determination to be made on this point the Tribunal retired to

consider this point and decided that the Applicant was liable to pay for the roof repairs.

6.2 The reasons for the Tribunal coming to this decision were as follows:-

a) the Applicant was fully aware from the answers on the SPIF and from the subsequent disclosure by the vendor and from the local search that the roof was due to be repaired in a few years' time and that the cost was likely to be approximately £4,000.

b) he negotiated a reduction in the purchase price of approximately £4,000. Whilst this may not have been expressed to be specifically for the cost of the roof repairs, the amount of the reduction in the price is too close to the estimated cost to be just a co-incidence.

c) whether or not it is a co-incidence, however, there is no evidence to show that the previous tenant had undertaken personally to pay the cost of the roof repairs whenever they took place and whether or not she was still the tenant.

d) more significantly there is no evidence to suggest that the landlord had ever committed itself to obtaining the cost of the roof repairs from Ms Sutherland as opposed to whoever was the tenant at the time of the repair.

e) the lease assigned to the Applicant made the tenant liable for repair such as that carried out to the roof and the Tribunal found no reason in law why the Applicant should not be liable to the landlord for this cost.

7.1 This left the question as to the reasonableness of the service charge. In particular, whether the repair that was carried out (i.e. the re-roofing) was reasonably required to be done and whether the cost was reasonable.

7.2 The Applicant's evidence was that a letter from the Council's surveyors stated that the tiles were worn and needed replacing and that the underlying roofing felt was worn and degraded. The Applicant said he had, however, been up in to the

roof space and he considered that this was so only under the water tanks where there had been condensation and that this could have been mended without replacement of the whole of the roof.

7.3 As far as the actual cost was concerned, Richard Soan was supposed to be the contractor but he saw little evidence of that firm on site. The people doing the majority of the work were moonlighting and only there one or two hours per day. They took just under two weeks to complete the job. They left equipment in the drive without permission and left nails lying about. It took three days to clear the debris after they had left. He accepted that they had done a reasonable job save for the soffit, mentioned above. The Applicant considered that a reasonable cost would be £2,000. This was the figure he had been told the previous tenant had been quoted for the job. He was not able to produce a copy of this quotation, nor did he know the date it had been given. In response to Mr Emmerson the Applicant said he had not thought of instructing a surveyor to report on whether the roof needed a complete replacement or not or to give an estimate of the cost. In response to a question from the Tribunal the Applicant accepted that he did not have any qualifications or experience in the building industry. He accepted that the actual cost was less than the estimate he had originally been given but he said that work was done in replacing the soffits and fascias to meet current building regulations, although this was not necessary for this particular building.

7.4 Mr David Wyatt, the Respondent's new leasehold manager was tendered for cross examination but he had no knowledge of the case other than what he had read in the files and indeed could add so little that he did not even bring those files to the hearing. He did know the Premises as he lived nearby and was able to say that they were concrete tiles and that the Premises would have been built in the early 1950s. Such tiles when replaced today with similar tiles only have a

guarantee for twenty-five years. He was able to confirm that the cost of the works sought from the Applicant was £3581.67.

7.5 Mr Smith queried why, on his service charge statement, the works are described as "minor works". Mr Wyatt thought that this must be a mistake as the work would be classified as major works.

7.6 Mr Emmerson gave an undertaking that the Council would investigate the problem with the soffit and that if it was found that this had been caused by defective workmanship then it would be rectified at no cost to the tenant. As far as the Section 20C application was concerned, Mr Emmerson said that the council had no intention to add the cost of the Tribunal procedure onto a future service charge.

8. The determination as to reasonableness of the service charge.

8.1 The Tribunal accepted the evidence that the roof tiles were worn and needed replacement. On a building over fifty years of age it was likely that such replacement would be necessary. If the underfelting had been damaged the only effective way of repairing it would be to strip off the roof. It was sensible for the soffits and fascia boards to be replaced at the same time and to comply with current best practice in the industry.

8.2 The price of £3581.67 the Tribunal found to be reasonable. It was in fact less than had been estimated as the cost some five years or so previously. This was a major repair and no doubt the lessees benefited from the fact that not only this block but the block next door was done at the same time. There may have been some inconvenience to the Applicant during the progress of the works but the resulting new roof had been done well and at a reasonable price.

8.3 The Tribunal found that the repair work had been carried out to a reasonable standard. If the defect to the soffit was due to poor workmanship on the part of the Respondent's contractors then this was a relatively minor matter which the Respondent had undertaken to rectify. The problem had only recently come to light when the Applicant had his windows replaced and he had not had the opportunity of mentioning the problem to the Council prior to the hearing.

8.4 In the light of the Respondent's undertaking with regard to the costs of the proceedings, the Tribunal decided that an order under Section 20C would be appropriate.

ORDER

Upon hearing the Applicant in person and Counsel for the Respondent it is ordered:-

1. That the Applicant is liable to pay the Respondent the sum of £3581.67 in respect of roof repairs to 26 Roundstone Crescent East Preston Littlehampton West Sussex BN16 1DG which said charge was reasonably incurred and in respect of which £3581.67 is a reasonable sum.
2. That an order shall be made under Section 20C of the Landlord and Tenant Act 1985 so that the Landlord may not recover its costs incurred in connection with these proceedings as part of the service charge.

Dated this 4th November 2006

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D Agnew LLB LLM
Chairman