LEASEHOLD VALUATION TRIBUNAL

OF THE

MIDLAND RENT ASSESSMENT PANEL

BIR/00FY/LVA/2004/0002

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER
(i) PARAGRAPH 5 OF SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002
AND
(ii) SECTION 20C OF THE LANDLORD AND TENANT ACT 1985

Applicant:	Ms A M Cartmill (leaseholder)
Respondent:	Mr P Bostock (landlord)
Subject property:	15 Minster Court Mansfield Road Nottingham NG5 2BQ
Applications to LVT:	24 August 2004
Member of the Tribunal:	Professor N P Gravells MA
Date of determination:	

Applications

1 This is a decision on two applications made to the Leasehold Valuation Tribunal by Ms Cartmill, leaseholder of 15 Minster Court, Mansfield Road, Nottingham NG5 2BQ ("the subject property"). The two applications are, first, under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for the determination of the liability to pay an administration charge; and, secondly, under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") for an order for limitation of costs.

2 The respondent landlord is Mr P Bostock.

3 The parties agreed that the application should be determined without a hearing and on the basis of written representations.

Background to the application

4 The subject property is one of sixteen similar maisonettes in four blocks. The applicant purchased the lease of the subject property in May 2004. Prior to completing the purchase, the applicant, through her solicitors, sought clarification as to whether she could replace the decayed wooden window frames. According to a letter from the vendors' solicitor to the applicant's solicitor dated 2 April 2004, the respondent (who is landlord of the sixteen maisonettes) had confirmed that the leaseholders could replace the windows of their maisonettes on an individual basis.

5 When the applicant took possession of the subject property on 28 May 2004, she found a letter from the respondent dated 10 May 2004, spelling out two options for the individual leaseholders in respect of the windows. Under the first option, the respondent would carry out or arrange the replacement of the windows; and the leaseholder would be required to pay the cost of the work together with an additional 10% administration charge. Under the second option, the leaseholder would engage a contractor to carry out the work; but the respondent would require the leaseholder to purchase a licence to do so at a cost of £351 (which is approximately 10% of the cost quoted by the respondent to carry out the work on an individual maisonette). The applicant, who had decided to adopt the second option, entered into correspondence with the respondent; and, although she questioned whether she required the consent/licence of the respondent, she offered to pay £50 for any licence. In the absence of a response to that offer, the applicant made the present applications.

Representations of the parties

Licence and administration charge

6 Representations were received from the applicant and from Curtis & Parkinson Solicitors, representing the respondent. It is convenient to summarise first the representations of the respondent.

7 The respondent refers to clause 3(i)(c) of the lease, under which the tenant covenants –

"not to make any structural alterations or structural additions to the demised premises nor to ... remove any of the landlord's fixtures without the previous consent in writing of the lessors"

and he argues that the replacement of the windows constitutes a structural alteration of the demised premises (relying on the case of *Irvine v Moran* [1991] 1 EGLR 261) or the removal of the landlord's fixtures, either of which requires his written consent.

8 The respondent further argues that he is entitled under the terms of the lease to charge the applicant for that consent/licence; and that the figure of £351 (which is approximately 10% of the cost quoted by the respondent to carry out the work on an individual maisonette) is a reasonable charge. He relies on three provisions in the lease. Under clause 4(ii) the tenant covenants to –

"contribute and pay one equal sixteenth part of the costs expenses and outgoings and matters mentioned in the Fourth Schedule hereto".

Paragraph 1 of the Fourth Schedule refers to –

"the expenses of maintaining repairing redecorating and renewing ... the main structure ... of the blocks of maisonettes ...."

Paragraph 8 of the Fourth Schedule refers to –

"the fees and disbursements paid to any managing agents appointed by the lessors ... provided that so long as the lessors do not employ managing agents they shall be entitled to add the sum of 10 per cent to any of the above items for administration."

The respondent argues that, pursuant to the above provisions in the lease, where he carries out work or arranges for it to be carried out, and he charges the costs to the leaseholder, he is entitled to add the sum of 10 per cent of the costs incurred as an administration charge. However, he goes further and argues that, where the leaseholder arranges for work to be carried out, the respondent is still entitled to charge a similar administration charge.

9 The applicant argues that the replacement of the windows does not amount to a structural alteration and therefore that there is no requirement for her to obtain the consent of the respondent. Alternatively, she argues that the charge of £351 demanded by the respondent is unreasonable.

Limitation of costs

10 The applicant has applied for an order that none of the respondent's costs incurred in connection with proceedings before the Tribunal should be recoverable through the service charge.

11 The respondent argues that under paragraph 7 of the Fourth Schedule to the lease the applicant covenants to contribute to "all other expenses ... incurred by the lessors in and about the maintenance and proper and convenient management and running of Minster Court"; that the respondent has incurred costs in responding to an application that is made in order to avoid the applicant's obligations under the lease; and that the respondent should therefore be able to recover those costs through the service charge.

Determination of the Tribunal

12 In its determination of the matters in dispute between the parties the Tribunal took account of all relevant evidence and submissions presented by the parties.

Licence and administration charge

13 The first issue raised by the application made under paragraph 5 of Schedule 11 to the 2002 Act is whether the proposed replacement of the windows by the applicant amounts to a "structural alteration" or the "removal of the landlord's fixtures" within clause 3(i)(c) of the lease, with the consequence that the applicant requires the written consent of the respondent.

14 There is limited judicial authority on the meaning of "structural alteration" (as the courts in the few relevant cases have emphasized). In the present case, in arguing that the replacement of the windows amounts to a structural alteration for the purposes of clause 3(i)(c) of the lease, the respondent relies on the decision of the High Court in *Irvine v Moran* [1991] 1 EGLR 261. However, that case concerned the meaning of "the structure and exterior of the dwelling house" (for the purposes of determining the scope of the landlord's repairing obligations under section 32 of the Housing Act 1961 (now section 11 of the 1985 Act)), whereas the issue in the present case is whether the replacement of the windows amounts to a structural *alteration*. In other words, a finding that the windows form part of the structure of the subject property is not conclusive in favour of the respondent. In the later (unreported) High Court case of *Bent v High Cliff Developments Ltd* (1999) the court referred to *Irvine v Moran* but held that the question whether works amounted to a "structural alteration" had to be determined in the context of the particular lease as a whole; and in that case the court held that the replacement of the existing windows with windows of the same size (albeit made of different materials) did not amount to a structural alteration. The lease in the present case provides no clear guidance as to the meaning of "structural alteration" in clause 3(i)(c); but on balance the Tribunal prefers the approach adopted in *Bent v High Cliff Developments Ltd* (1999). Even assuming that the windows are properly regarded as part of the structure of the subject property, the Tribunal holds that the proposed replacement of the windows does not amount to structural *alteration* of the demised premises.

15 The Tribunal also rejects the argument that the replacement of the windows involves the "removal of the landlord's fixtures": windows are not fixtures but part of the original structure of the property: see *Boswell v Crucible Steel Co* [1925] 1 KB 119.

16 For those reasons, it follows that the applicant does not require the consent of the respondent for the proposed replacement of the windows to her maisonette.

17 If the Tribunal is wrong in its conclusion on the first issue, and the proposed replacement of the windows by the applicant does amount to "structural alteration", clause 3(i)(c) requires the applicant to obtain the written consent of the respondent, although, since the alteration would constitute an improvement (see *Woolworth & Co Ltd v Lambert* [1937] Ch 37), by virtue of section 19(2) of the Landlord and Tenant Act 1927 the consent of the respondent is not to be unreasonably withheld. Although a landlord is entitled under that provision to demand the payment of "expenses properly

incurred in connection with such licence or consent", in the present case there is no suggestion that the respondent would (need to) incur more than nominal expenses. Indeed, the respondent (who recognises that the windows require replacement) has indicated that consent would be forthcoming provided only that the applicant pays the £351 "licence fee".

18 The second issue is therefore whether the respondent is entitled to charge for his consent (and by implication to refuse consent if the applicant refuses to pay the charge demanded). In the view of the Tribunal, the argument made on behalf of the respondent (see paragraph 8 above) is misconceived. The provisions of the lease on which the respondent relies relate to the costs incurred by the respondent as landlord in the provision of services, which costs are to be recovered through the service charge payable (in equal proportion) by all the leaseholders of the sixteen maisonettes. In relation to such costs, the respondent is entitled, where he carries out work or arranges for it to be carried out, to add the sum of 10 per cent of the costs incurred as an administration charge. By contrast, the Tribunal finds that the lease makes no provision for the payment of an administration charge where, pursuant to an option offered by the landlord, one of the leaseholders proposes to incur costs directly for works to be arranged by that leaseholder and to be carried out on the property demised to that leaseholder.

19 Furthermore, there is no provision in the lease for the payment of an administration charge for or in connection with the grant of consents.

20 In the absence of any provision for the payment of an administration charge for or in connection with works carried out or arranged by the applicant as leaseholder, or for or in connection with the grant of consents, the Tribunal determines that no such charge is payable in the circumstances of the present application.

Limitation of costs

21 Contrary to the argument made on behalf of the respondent (see paragraph 11 above), the application in the present case was made so that the applicant could obtain a determination that the respondent, in demanding a fee in return for his consent to the proposed replacement of windows, was making an unwarranted financial demand.

22 The Tribunal therefore orders that none of the respondent's costs incurred in connection with the present proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the service charge payable by the applicant or any of the other leaseholders of the maisonettes at Minster Court.

Summary

23 The Tribunal holds that the proposed replacement of windows does not amount to structural alteration of the demised premises nor does it involve the removal of the landlord's fixtures; and consequently that the applicant does not require the consent of the respondent for the proposed replacement of the windows to her maisonette.

24 In any event, the Tribunal determines that, in the absence of any provision for the payment of an administration charge for or in connection with works carried out or arranged by the applicant as leaseholder, or for or in connection with the grant of consents, no such charge is payable in the circumstances of the present application.

25 The Tribunal further orders that none of the respondent's costs incurred in connection with the present proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the service charge payable by the applicant or any of the other leaseholders of the maisonettes at Minster Court.

Signed Nigel Gravells
(Professor Nigel P Gravells (Chairman))

Dated 19 OCT 2004