

Flat 3, 36 Chatsworth Road Brighton

THE SOUTHERN AREA RENT ASSESSMENT COMMITTEE
and LEASEHOLD VALUATION TRIBUNAL

Case no: CHI/00ML/LSC/2004/0035 and CHI/00ML/LSC/2004/0003

DECISION

APPLICANT LANDLORD: Sussex Property Development Ltd

REPRESENTED BY: Mr D Ideh , Counsel

RESPONDENT TENANT: Miss R Amin

REPRESENTED BY: Mr J

McCullagh , Solicitor

THE PROPERTY: Flat 3, 36 Chatsworth Road , Brighton ,BN1 5DA East Sussex

THE PANEL: Mrs F J SILVERMAN LLM (Chairman)

Mr R Wilkey FRICS FICPD (Valuer)

Mr D Wills (Member)

HEARING DATE: The hearing took place at Hove Town Hall on 12 January 2005

INSPECTION DATE 29 November 2004

REASONS

1 THE ISSUES

The landlord made an application under s 27A Landlord & Tenant Act 1985 seeking a declaration that the tenant was liable to pay service charges incurred in the financial years/periods 25 October 2002- 31 March 2003 and 1 April 2003- 31 March 2004.

The tenant made a cross-application under s 35 Landlord and Tenant Act 1987 for the variation of her lease, and, at the hearing itself an application under s 20C Landlord and Tenant Act 1985 to limit costs and under Schedule 12 of the Tribunal Rules of Procedure for costs. .

This decision deals with all four applications.

2 THE PROPERTY

The property comprises a semi-detached brick built house probably built in the early twentieth century which has been divided into four self contained flats each now let on long leases. Situated in a residential street a few minutes direct walk to the town centre, the property thus has the benefit of the local shops and amenities . On street parking is difficult in this area and the property does not appear to have vehicular access.

3 INSPECTION

We inspected the property on 29 November 2004, the date fixed for the substantive hearing of the landlord's application. The Tribunal was unable to proceed with the hearing on that day for the reasons given in the Directions which were issued following the adjourned hearing. Further inspection on the day of the resumed hearing was deemed unnecessary.

The exterior of the property was in reasonable condition, having recently been repaired and repainted . A few areas of paint work were not weathering well and may not have been painted to an acceptable standard.

We were shown the small new brick built extension at the ground floor rear of the property which had been constructed (with appropriate planning permission) after demolition of an existing smaller extension in order to enlarge the floor area of a ground floor flat.

The interior of the property also showed signs of having recently been refurbished and repainted and was in a good condition. There were some scuff marks on the paintwork which had probably occurred since the repainting had taken place.

4 BACKGROUND

The Landlords had become the legal owners of the property on 25 October 2002 and had proceeded to renovate the property after their acquisition. They had also re-arranged the lay-out of the ground floor enabling them to sell off a two bedroomed flat and a studio on the ground floor and a further two bedroomed flat on the first floor. The Tenant's flat is situated on the top floor (second floor) of the building and had not been altered in the renovation works. When the tenant bought her flat, she was the only long leasehold tenant in the building, the remainder of the building being vested in the landlord who let the other flats to short term tenants.

5 THE EVIDENCE

A large file of documents was submitted to the Tribunal in connection with the applications. This was an agreed bundle which had been prepared in accordance with the Directions previously issued by the Tribunal. Various supplementary documents were also supplied to the Tribunal on the day of the hearing. The Tribunal had read the bundle prior to the hearing, including the witness statements of both parties and these documents and statements were taken into account in the Tribunal's decision. We heard representations from both parties' representatives and were directed to various documents in the bundle in support of assertions made by each of the parties.

6 THE LAW

Section 27A Landlord and Tenant Act 1985 applies to the property which is the subject of this application . Under that section either party may seek a determination from the Tribunal as to whether a service charge is payable and if so , by whom , how much , and the date and manner of payment.. The landlord referred the matter to the Tribunal by an application which was dated 13 July 2004 . Section 35 Landlord and Tenant Act 1987 allows a tenant to apply to the Tribunal to seek a declaration varying the tenant's lease in the circumstances set out in that section.

Section 20C Landlord and Tenant Act 1985 allows a party to seek an order from the Tribunal preventing the landlord from adding the costs of the Tribunal proceedings to the tenant's service charge. An application for costs may additionally be made under Schedule 12 of the Tribunal Rules of Procedure where one party has acted (inter alia) vexatiously, maliciously or otherwise unreasonably in bringing or conducting the proceedings .

7 FINDINGS OF FACT

The Tribunal finds as follows:

- 7.1 The parties produced an agreed statement of the service charge items which were agreed or in dispute. Unfortunately this agreed statement proved not to be totally accurate but the Tribunal used it as the basis for discussions on liability.

- 7.2 The Tribunal was satisfied that the tenant's lease contained an appropriate landlord's insuring and repairing covenant and that , subject as below, the items claimed by the landlord fell within the scope of the lease obligations as covered by the service charge provisions in the lease.
- 7.3 The landlords admitted that they had not complied with s 20 Landlord and Tenant Act 1985 which requires them to serve estimates on the tenants where large amounts of expenditure are intended to be undertaken, and to take the tenants' views into account. Recovery of items of expenditure which exceed £1000 are therefore restricted to the upper statutory limit of £1000 as noted below.
- 7.4 In the period 25 October 2003 – 31 March 2003 (incorrectly dated 2004 on the landlord's statement) the Tribunal reviewed the disputed items as follows:
- 7.5 The Tribunal is satisfied that the dry rot treatment effected by the landlords was work which was done to the structure of the building and was necessary. As such it falls within the service charge provisions and the tenant is liable to pay her share of this charge.
- 7.6 The Tribunal disallows the cost of the structural report since this was commissioned before the landlords became the legal owners of the property.
- 7.7 The landlord could not produce satisfactory evidence of estimates or receipts for the external decorations and repairs costing £2350. It was evident from inspection, and not disputed by the tenant that considerable works had been done. No section 20 notice had been served in respect of these items and the amount recoverable is thus limited to £1000.
- 7.8 The replacement of wall plates and joists is structural work within the scope of the service charge clause, but is restricted to recover of £1000 because of lack of compliance with s 20.
- 7.9 Similarly the charge for the scaffolding, which would have been necessary to effect the exterior works and decorations , is limited to £1000 because of non-compliance with s 20.
- 7.10 The Tribunal is not satisfied that the management fee 'repairs and renewals' is properly chargeable since it is not supported by any documentation to show how

the fee is calculated (ie 10% of what amount?) nor by any documentation showing it has been charged and invoiced. This sum is disallowed.

- 7.11 In relation to the period 1 April 2003 (incorrectly dated 25 October 2002 on landlord's copy of document) to 31 March 2004 the Tribunal makes the following findings:
- 7.12 After investigation of the documents and on hearing explanation from the landlord the Tribunal is satisfied that the figure of £1081.51 representing the insurance premium is properly chargeable. It was noted that this sum represents the annual premium and thus should not be apportioned on the next quarter's service charge accounts.
- 7.13 The sum of £6280.38 for external decoration and repairs was not supported by relevant estimates or receipted invoices neither had s 20 been complied with. The landlord is thus restricted to £1000 in total for this item.
- 7.14 The tenant disputed that any work had been done to the front steps in respect of which the landlord was claiming £220. The Tribunal finds on the balance of probabilities that this work was done and the item, being supported by proper documentation and receipts is thus chargeable in full.
- 7.15 The £765 management fee is disallowed for the same reasons cited in paragraph 7.10 above.
- 7.16 Other items on both sets of accounts were agreed by the tenant and so are not further discussed here.

8 SUMMARY

The following is a summary of the items which the Tribunal had found are payable by the tenant:

Accounts to year end March 2003

Insurance	£447.12
Dry rot	£223.25
External decorations	£1000.00
Wall plates	£1000.00

Scaffolding	£1000.00
Management fee	£300.00
Accountancy fees	£200.00

Total	£4170.37

Tenant's share @ 35% = £1459.63

Accounts to year end March 2004

Electricity	£24.93
Insurance	£1081.51
External decoration	£1000.00
Carpet	£1128.00
Tiling front step	£220.00
Entry phone	£470.00
Fire alarm	£399.50
Common parts cleaning	£303.15
Management fee	£600.00
Accountancy fee	£400.00

Total	£5627. 09

Tenant's share @ 35% = £1969.48

Total now payable by tenant = £3429.11

9 VARIATION OF LEASE

The tenant made application under s 35 Landlord and Tenant Act 1987 to vary her lease. Specifically she wished the Tribunal to adjust and reduce the proportion of the service charge payable by her. When she had bought her flat she bought with a 35% contribution to liability for the service charge, the landlord retaining responsibility for the remaining 65% since the remainder of the building was let on short leases. Since the property had been acquired by the present landlords a small extension had been added to the rear of the building which now comprised three two-bedroomed flats and one studio flat, all occupied on long leases. The landlords had divided their 65% liability between the studio flat (15%) and the two two-bedroomed flats (25% each). The tenant's liability thus remains unaltered, and the total service charge proportions payable still add up to 100%. We have seen the leases granted to the other flats and are satisfied that they contain identical service charge provisions to those included in the tenant's own lease. The tenant maintained that the definition of the word 'building' as contained in her lease was now no longer correct because of the extension which had been built on to the ground floor of the property. The extension was 3 sq metres and the Tribunal did not consider that this materially affected the size of the building or proportion of the service charge when compared against the remainder of the building which extended over three floors and comprised four flats. The Tribunal was not satisfied that the tenant was able to bring her application within any of the criteria set out in sub-sections a-f of section 35 (1) and as such the Tribunal had no jurisdiction to entertain her application which fails and is dismissed.

10 COSTS

The tenant made an application for costs under Schedule 12 of the Tribunal Rules of Procedure. Having heard representations from both parties the Tribunal declined to make an award of costs. The proceedings could have been disposed of more expeditiously if the landlord had prepared its documentation more efficiently and if the tenant had paid the sums which were agreed. Both parties

were at fault in causing delay but it could not be said that the landlord , against whom the costs order was sought, had acted vexatiously or maliciously or unreasonably in bringing or conducting the proceedings.

The tenant made an application under section 20 C Landlord and Tenant Act 1985 to prevent the landlord from adding the costs of the present proceedings to the service charge for the current year. Having heard representation from both parties the Tribunal grants the tenant's application. The landlord had failed to comply with s 20 Landlord and Tenant Act 1985 as a result of which a number of items of expenditure are not allowable in full and some (for different reasons) not allowable at all. This point should have been recognised by the landlord at an early point in the proceedings and had it been conceded and had the landlord's case been properly prepared (the landlord having the benefit of legal advice) the costs of proceedings would have been minimised. It is unfair to burden all the tenants with the costs of protracted legal proceedings which could in large part have been avoided or settled at an earlier stage.

11 DECISION

The Tribunal makes a declaration that the tenant is liable to pay to the landlord the total sum of £3429.11 representing her share of the service charges incurred in the accounting years ending in 2003 and 2004 .

The Tribunal makes a declaration that the landlord is not entitled to add the costs of the current proceedings to the tenants' service charge for the current year or any future year.

The Tribunal declines to award costs under Schedule 12 of the Tribunal Rules of Procedure.

The Tribunal finds that the tenant has not established a case within s 35 Landlord and Tenant Act 1987 for variation of her lease and her application under that section fails and is dismissed.



Frances Silverman

Chairman

ISSUED 1st FEBRUARY 2005