RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 : SECTION 27A

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/21UC/LIS/2004/0018
Property:	**Victoria Court** **Burlington Place** **Eastbourne** **East Sussex BN21 4AR**
Applicants:	Nationspaces Developments Ltd G M Clyde Esq
Respondents:	Lessees of Victoria Court
Date of Application:	25 May 2004
Date of Hearing:	14 September 2004
Members of the Tribunal:	Mr P B Langford MA LLB (Chairman) Mr B H R Simms FRICS MCIArb Mr T W Sennett MA MCIEH

Date decision issued: 26/10/2004

VICTORIA COURT, BURLINGTON PLACE, EASTBOURNE

1. The Application

This is an application by Nationspaces Developments Ltd and Mr G M Clyde, the joint freeholders of Victoria Court, under Section 27A Landlord and Tenant Act 1985 to determine whether the leaseholders of Victoria Court should together pay the sum of £7,276.19 service charge in respect of investigating and remedying the ingress of water into Victoria Court and the consequential damage caused by that in the year 2002. The Respondents to the application are the leaseholders of the ten flats named in the application.

2. Inspection

We attended at the property on 14 September 2004 but were not able to obtain access to it at the appointed time prior to the hearing. We did however observe the building from the outside and later, during the lunch adjournment, we were able to inspect internally. From the road, we saw a double fronted house with two front doors which provided accommodation on five floors, including the basement. The house formed part of a terrace of similar properties built at the end of the 19th century. The front was cement rendered and the paintwork on the render was cracked and peeling. There was a pitched roof with slates. The rainwater goods appeared to be rusty and there was a rusty lintel over the entrance porch. When we inspected internally, Mrs J Ashby of Flat 6 introduced us to Ms R E Norman of Flat 7. The sitting room of Miss Norman's flat had been redecorated but she pointed out to us where she had first noted a patch of moisture just below the ceiling in the south west corner of the sitting room.

3. The Hearing

At the hearing at Eastbourne Town Hall, which followed immediately after our external inspection of the property, the Landlords were represented by Mr A French of SPMC, the Landlords' managing agents. Of the Respondent Leaseholders, only Mrs Jean Ashby from Flat 6 was present. Mr French submitted a bundle of

documents in support of the Landlords' application and proceeded to go through these documents with us.

4. History of the Matter

On 19 October 2000 Mrs Ashby telephoned the then managing agents, John Bray & Sons, to report water leaking from the ceiling into her lounge, the leak coming from Flat 8 above her flat. Mrs Ashby intervened to say that she believed her neighbour, Mrs Jane Simkins from Flat 5, had previously reported the ingress of water into her flat. The managing agents inspected the property and decided to instruct Mr John Purle, a self-employed surveyor, in February 2001. It appears that Mr Purle in turn instructed a firm of consulting civil and structural engineers, HTP (Surveys) and they carried out an initial inspection on 27 February. HTP visited the premises again on 4 May 2001 to make a further investigation and to report. In their conclusion to the report they stated – "It is therefore concluded that the water ingress must be due to a failure of the gutter arrangement. In particular the loose connection between the gutter outlet and the concealed pipe". They recommended that the area around the gutter and outlet should be opened up to confirm the construction and verify that that was the source of the damp penetration. On 23 May 2001 John Bray & Sons intimated in correspondence that, having received HTP's report, they had now asked for a specification and quotations for the works. However HTP in a letter dated 27 July 2001 to John Bray & Sons stated that they were then enclosing their report and recommending that the area be opened up from the inside in order that a more detailed inspection could be undertaken. On 9 October 2001 HTP sent their draft specification to John Bray & Sons. Tenders were received by HTP on 12 December 2001 and on 22 February 2002 HTP submitted their tender analysis to John Bray & Sons. Estimates were obtained from D Carter who submitted a tender of £3,367.55 including VAT with a provisional sum of £500 and further provisional items quoted of £2,112.65 including VAT. The other contractor submitting a tender was Multiserve (UK) Ltd who submitted a tender for £4,324.13 including VAT with a provisional sum of £500. Additional provisional items were not quoted as this was not the lowest estimate. On 25 March 2002 all the leaseholders signed a letter to John Bray & Sons giving their response to the Section 20 consultation letter. They considered that a claim should have been made against the Landlords' insurers of the

property. They pointed out that it had taken nearly two years to obtain two tenders. They considered that the surveyor's fees were extremely high and they maintained that the managing agents had been negligent in allowing the premises to deteriorate so sharply because of their inaction over the period of nearly 2 years. There was correspondence between April 2002 and November 2002 with the Landlords' insurance brokers but the result was that the insurers, the Norwich Union, maintained their refusal to accept liability under the policy for two reasons – first, the fact that the damage was due to wear and tear and not an insured peril, and secondly because of the delay in dealing with the matter. In this context the insurers drew attention to the term in the policy ".....to take all practical steps to avoid, minimise or check any injury, loss, destruction or damage". The necessary work was undertaken by D Carter commencing on 6 June 2002 and finishing on or around the end of June 2002. During the year 2002, SPMC were appointed managing agents by the Landlords to take over from John Bray & Sons Ltd, whose business they acquired. SPMC made further efforts to get the Norwich Union to change their mind about accepting liability under the policy but in January 2003 the Norwich Union made clear that they would not alter their position. SPMC then took up the matter with the Financial Ombudsman but this approach proved to be fruitless. The Financial Ombudsman indicated in a letter to SPMC that he could only deal with a claim about an event that occurred before 1 December 2001 if the insurance policy was taken out in the name of a private individual rather than a business or trade organisation. The Leaseholders have declined to make payment of the money demanded.

5. The Landlords' Submissions

Mr French had persevered with the claim against the Norwich Union because he felt they should have accepted liability under the policy. Asked by the Tribunal what the "peril" was which caused the Norwich Union to be liable under the policy, Mr French said that it was "ingress of water". He said that he was present officially on behalf of the Landlords to ask for payment of the money for the building work undertaken and the surveyor's fees involved. He was theoretically representing the Landlords but morally he felt that the demands should never have been sent out to the Leaseholders. This was firstly because of the attitude of the insurance company and also he felt that John Bray & Sons had been very slow to get things done. Asked by the Tribunal

whether he considered that the cost of the work would have been any less if John Bray & Sons Ltd had not been so tardy, he said that in his view the cost would be the same.

6. The Case for the Leaseholders

Mrs Ashby said that in October 2000 she had complained about the ingress of water and she believed that Mrs Simkins had complained before her regarding ingress of water. She said that she did not remember any particular storm at the time of her telephone call to the managing agents but the weather was often rough with wind and rain because of the proximity of the property to the seafront. She was certainly aware that the damage in the individual flats affected increased very much due to the delay in dealing with the problem of the leaking water (a fact which Miss Norman also emphasized on our visit to her flat, Flat 7). Mrs Ashby had been one of the signatories to the letter dated 25 March 2002 to John Bray & Son to which we have referred already. The criticisms made by the Leaseholders and their reasons for non payment were set out in a statement from Mrs Simkins of Flat 5, in which she maintained that the matter should be dealt with as an insurance claim; the delay in the commencement of the work was unacceptable; the surveyor's fees were extortionate; and the managing agents had been negligent in their duty. "Had the work been undertaken when first reported the damage would not be so extensive and the costs would not be so high". Mrs Ashby said that she would have to leave it to the Tribunal to assess what costs were correctly chargeable to the Leaseholders.

We asked Mr French whether he wished to be present when we inspected the interior of the property during the lunch adjournment and he said he did not want to attend as he would have nothing to contribute and instead he would return to his office in order to obtain further documents for the hearing in the afternoon.

7. Consideration

We considered that there was no foundation for the insurance claim. SPMC were mistaken in thinking that a claim could be made simply on the basis of "ingress of water". The question was whether the initial damage which caused the water ingress was due to a storm or not. Significantly there was no contemporary letter or other

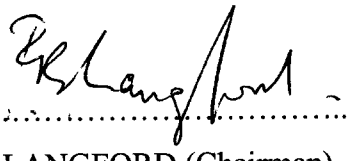
document which referred to a storm. None of the Leaseholders had claimed that there was a storm. There was no other evidence in the form of a meteorological report, or even a local newspaper report, about a storm. The normally adverse weather conditions which often afflict properties close to the seafront would not be sufficient to give rise to liability under the policy. The letter to the insurance brokers dated 15 October 2002 from SPMC (Mr Harrod-Edwards) mentions the problem as being due to "damage to a lead flashing, probably caused by a falling slate". The freeholders themselves acknowledged the weakness of the claim in a letter to Mr French dated 17 February 2003 when they said "there is no possibility of the insurance company changing their mind even although we have suggested they look at the claim again". This claim was in our view misconceived from the outset, on the basis of the evidence produced to us.

8. The most significant document in the bundle of documents produced to us was in our view the specification given to the contractor, Mr Carter. A study of the specification showed that it was almost entirely concerned with remedial work to the interiors of Flats Nos 3, 5 and 7. The only external work appeared to be item 4.7 of the specification which provided for a concealed pipe which had become loose, creating an opening for water to pass through, to be sealed at the joint by welding. A provisional sum of £250 had been allowed for this plus VAT. We did not know whether this work had been undertaken but, since there had been no further complaint about water ingress, we assumed that this must have been the case and that this cost of £250 plus VAT was therefore incurred. The remainder of the work appears to be connected solely to putting right the consequential damage in the flats. The evidence before us showed that the original ingress of water had been slight, causing some patches of moisture. However the delay in taking effective action between October 2000 and June 2002 was clearly responsible for the damage within the flats becoming very substantial indeed. In our view it appeared that the managing agents were at fault in the first place in instructing their Mr Purle to look into the matter and then allowing him to instruct a firm of consulting civil and structural engineers for a straightforward problem of ingress of water. We would have expected a building surveyor to have been instructed and we would have thought that he would soon have detected what the problem was. Had it been tackled immediately, we anticipated it could have been done with very little cost, in the light of Mr Carter's tender and the

provisional sum of £250 plus VAT allowed. There would be no need to undertake the lengthy Section 20 consultation procedure, as the sum which would have been involved would have been less than the threshold figure for a Section 20 consultation. Furthermore, in a case where there was obviously some urgency, it is highly likely that, had the figures gone above the threshold, the Landlords would have succeeded in securing a dispensation from the Section 20 requirements. We consider, not only that the consulting engineer's fees were too high, but also that the managing agents were at fault in instructing a firm with their expertise and background in the first place. The problem of water ingress could and should have been remedied with minimal expense within weeks of the problem being reported. Accordingly we have concluded that the fees of HGP were not reasonably incurred by the Landlords and that the only part of D Carter's bill which was reasonably incurred was that relating to external work, namely £250 plus VAT of £43.75.

9. **Decision**

For the reasons we have given, we have determined that the Respondent Leaseholders should pay to the Applicant Landlords the sum of £293.75 in the proportions defined in their respective leases.



P B LANGFORD (Chairman)