

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**SOUTHERN RENT ASSESSMENT PANEL  
& LEASEHOLD VALUATION TRIBUNAL**

**THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

<b>Case No.</b>	<b>CHI/29UH/LAC/2005/0004</b>
<b>Property:</b>	<b>Flat 3 Ground Floor Dickens Court Station Road Staplehurst Kent TN12 0QH</b>
<b>Applicants:</b>	<b>Mr. I. Clark and Miss G. Shenton c/o T.N. Davis Chartered Surveyors 32 King Street Maidstone Kent ME14 1AZ</b>
<b>Respondent:</b>	<b>Southern Land Securities Limited c/o Hamilton King Management Ltd. Central Accounts Office P.O. Box 300 Altrincham WA15 0GD</b>
<b>Date of Hearing:</b>	<b>26th October 2005</b>
<b>Members of the Tribunal:</b>	<b>Mr. R. Norman (Chairman) Mr. R. Athow FRICS, MIRPM Mr. T.J. Wakelin</b>
<b>Date decision Issued:</b>	<b>11<sup>th</sup> NOVEMBER 2005</b>

**RE: FLAT 3 GROUND FLOOR, DICKENS COURT, STATION ROAD,  
STAPLEHURST, KENT**

**Background**

1. The Applicants are the lessees of the subject property and the Respondent is the freeholder.
2. In the lease of the subject property the premises demised to the lessee include the walls or partitions which are not load bearing or do not form part of the main structure.
3. The lease contains a covenant by the lessee not to make any structural alteration or structural addition to the demised premises or any part thereof or remove any of the landlord's fixtures without the previous consent in writing of the landlord.
4. The Applicants stated that they had taken down a non load bearing wall and had constructed two non load bearing walls to make a study and did this without the consent of the Respondent. They had previously produced plans (not to scale) to illustrate this.
5. The Applicants considered that the alterations which they made were not structural alterations or additions because they were alterations or additions to non load bearing stud walls and as such did not require consent.
6. When the freehold was sold and Hamilton King Management Ltd became the managing agents they telephoned the Applicants to introduce themselves and asked if any alterations had been made to the premises. Miss Shenton told them about the alterations but no comment was made by the managing agents about this. It was only when the Applicants were considering selling the subject property that the question of consent was raised. The Applicants considered that consent was not required but thought that the simplest way of dealing with the matter was not to contest the need for consent but to apply for it.
7. In that way the consent of the Respondent was sought and the Respondent proposed a deed of variation to give consent retrospectively in return for £3,785, changes to the lease and the payment of the Respondent's costs and disbursements. The description of the works in the deed of variation is not complete and by a letter dated 13th April 2005 Solicitors acting for the Respondent stated that the other items could be included but at an increased total consideration of £3,985. That figure was later reduced to £3,785.
8. The Applicants made an application to the Leasehold Valuation Tribunal for a determination as to whether or not the consent of the Respondent was needed for alterations which had been made to the subject property, if so a determination as to the reasonableness of the administration charge and for an Order under Section 20C of the Landlord and Tenant Act 1985 that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicants.
9. Hamilton King Management Ltd. provided a copy of a letter dated 8th July 2005 which they wrote to Andrew Lee and Co. (licensed conveyancers acting for the Applicants) in

which Hamilton King Management Ltd. stated that the Respondent agrees to either a deed of rectification or a side letter confirming consent has been given for the alterations with each party to pay their own legal costs. There had not been time for the Applicants to respond to that letter before the Pre-Trial Review and therefore the Pre-Trial Review continued on the basis that a determination by the Leasehold Valuation Tribunal would be required.

10. The Pre-Trial Review was held on the 13th July 2005 and was attended by the Applicants. There was no attendance by anyone on behalf of the Respondent.

11. Directions were made but the first two were not complied with by the Respondent and as a result the Applicants could not comply with directions 3, 4 and 5.

12. Our determination appears at paragraphs 19 to 26 below.

### **Inspection**

13. On the 26th October 2005 we inspected the subject property in the presence of the Applicants. There was no attendance by anyone on behalf of the Respondent. We saw that the alteration was in accordance with the plans previously provided by the Applicants.

### **Hearing**

14. The hearing was attended by the Applicants. There was no attendance by anyone on behalf of the Respondent.

15. The Applicants gave evidence that there had been no settlement of this matter following the letter from Hamilton King Management Ltd. referred to in paragraph 9 above but that in the afternoon of the 25th October 2005 a fax had been received by Andrew Lee & Co. from Hamilton King Management Ltd. Mr. Howard of Hamilton King Management Ltd. had in the afternoon of the 25th October 2005 by telephone informed the Clerk to the Tribunal of the contents of that fax which were as follows:

“Further to our telecon this afternoon, I would like to confirm the following:-

- (1) Retrospective consent for the removal of the wall, by way of a side letter.
- (2) Will arrange for the discharge of Marsdens’ legal fees and our own fees.
- (3) Southern Land Securities Ltd. will reimburse your clients £1,000.00.
- (4) Service Charge Account will not be charged for any of the above.”

16. It was unfortunate that that fax had not been sent earlier so that Andrew Lee & Co. could have had time to obtain their Clients’ instructions and the matter could perhaps have been settled without the need for a hearing. However, subject to clarification that consent was being given not just for the removal of the wall but also for the construction of two walls the Applicants were agreeable to its terms.

17. Because we did not have all the information before us some terms of the fax were not clear to us but the Applicants were able to provide explanations.

18. As to point (3) of the fax, the Applicants explained that they had not paid anything to the Respondent or to Hamilton King Management Ltd. or to Marsdens, the Solicitors

representing the Respondent. The Applicants stated that they had however signed an undertaking to pay the fees of Marsdens and Hamilton King Management Ltd. and had given a cheque to Andrew Lee & Co. to pay for the consent and they thought that Andrew Lee & Co. had given an undertaking to pay those fees. The fees of Marsdens were £250 + VAT and those of Hamilton King Management Ltd. were £165 + VAT. Andrew Lee & Co. were asking for reimbursement of £1,570.88 of fees expended by the Applicants in bringing this matter to the Leasehold Valuation Tribunal. The application fee and hearing fee amounted to £250 and the remainder consisted of the fees of Andrew Lee & Co. and Mr. Davis.

### **Determination**

19. We note that there has been no suggestion by any party that as a result of the alterations there is any diminution in value of the subject property or that its structural integrity has been affected.

20. In the lease of the subject property the premises demised to the lessee include the walls or partitions which are not load bearing or do not form part of the main structure and the lease contains a covenant by the lessee not to make any structural alteration or structural addition to the demised premises or any part thereof or remove any of the landlord's fixtures without the previous consent in writing of the landlord. A non load bearing wall (part of the demised premises) has been taken down and that means that a structural alteration has been made to the demised premises and consent should have been obtained.

21. Two non load bearing walls have been constructed and in that way a structural addition has been made to the demised premises and consent should have been obtained.

22. The Respondent apparently has considered that consent was required only for the removal of the non load bearing wall and not for the construction of two non load bearing walls and no doubt that is why there was mention in the fax of the removal of the wall but no mention of the construction of two non load bearing walls. The draft deed of variation which was proposed by the Respondent similarly made no mention of the construction of walls.

23. We find that both the removal and the construction of the non load bearing walls required consent and that for the benefit of avoiding any doubt the consent which Hamilton King Management Ltd. have proposed should contain consent to both.

24. Clearly a time limit needs to be set for the giving of consent and payment of money in order to bring this matter to a close.

25. Within 14 days of the date this decision is sent to the parties the Respondent should pay £1,000 to the Applicants and send a letter to the Applicants stating that retrospective consent is given for the removal of one non load bearing wall and the construction of two non load bearing walls. The letter should confirm that any fees of Marsdens Solicitors and Hamilton King Management Ltd. in connection with this matter will be paid by the Respondent and that any undertakings given by the Applicants and Andrew Lee & Co. are discharged and that the Service Charge Account will not be charged with any of the fees or payments mentioned in this paragraph.

26. The Applicants made an application under Section 20C of the Landlord and Tenant Act 1985 and the Respondent has agreed that the Service Charge Account will not be charged with any of the fees or payments mentioned in the preceding paragraph. However, for the sake of completeness we make an order that all the costs incurred, or to be incurred, by the Respondent in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

A handwritten signature in black ink, appearing to read 'R. Norman', is positioned above the printed name.

R. Norman  
Chairman.