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LON/00AX/LSC/2006/0120

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT 1985
(as amended) SECTIONS 27A and 20C**

**PROPERTY: FLATS 1 and 2 KNIGHTS COURT KNIGHTS PARK
KINGSTON KT1 2QL**

APPLICANT: Mr P SKINNER and MR R and MRS L NEWMAN

Represented by: Mr P Skinner

RESPONDENT: WESTHEATH PROPERTIES LIMITED

Represented by: Mr G Bartholomew

TRIBUNAL

Mrs T I Rabin Chairman
Mr D Banfield
Mrs M Colville

Date of Tribunal's decision: 9th June 2006

FLATS 1 AND 2 KNIGHTS COURT KNIGHTS PARK KINGSTON KT1 2QL

FACTS

1. The Tribunal was dealing with an application by the Applicants, Mr P Skinner the long leaseholder of Flat 1 Knights Court Knights Park Kingston KT1 2QL and Mr R and Mrs L Newman the long leaseholders of Flat 2 Knights Court Knights Park aforesaid. The application relates to the liability to pay service charges incurred by the Respondent, Westheath Properties Limited, the Landlord of the block of flats known as Knights Court Knights Park aforesaid. The application has been made under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act") and related to service charge year ending 7th April 2006. The Applicants also made an application for limitation of the Respondent's costs in the proceedings under Section 20(C) of the Act. The Applicant is the long leaseholder of Flat 6 10 Hatherley Grove aforesaid ("the Flat").
2. Copies of the leases of both Flat 1 and Flat 2 were produced to the Tribunal. The Applicants' obligations in relation to the payment of the service charge are set out in Clause 2 (3) of the Lease and the Respondent's obligations in relation to the provision of services are set out in Clause 3 of the Lease.

MATTERS TO WHICH THE APPLICATION RELATES

3. The application was in respect of the costs of removal of old water main and pipe work and the installation of new water mains and the renewal of the flat roof coverings at the Building. The work also included the installation of a communal television system and external decorations and associated works. A specification of the works to be undertaken at the Building was included in the bundle and although the Tribunal were not provided with a copy of the priced specification, the Applicants stated that the cost was £210,000 and the Respondent did not dispute this figure.
4. The Tribunal determined that an inspection of the Building was not necessary in view of the nature of the application which was limited to whether costs incurred were payable by the Applicants. There was no submission that the cost for the works were unreasonable or that the work was not required.

HEARING

5. The hearing took place on 2nd June 2006. The Applicants were represented by Mr Skinner of Flat 1 and Mr and Mrs Newman did not attend. The Respondent was represented by Mr G Bartholomew of Bartholomews, managing agents appointed by the Respondent. The Respondent was a company owned by 19 of the 20 long leaseholders in the Building, including Mr Skinner. The Tribunal was not advised whether Mr and Mrs Newman owned a share in the Respondent.

EVIDENCE

6. The Tribunal's jurisdiction is set out in Section 27A (1) of the Act as follows:-

(1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, as to

- (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 and
- (e) The manner in which it is payable

(2) Subsection (1) applies whether or not payment has been made

7. Mr Skinner explained to the Tribunal that the Building, which contained twenty flats in all, was in two parts. There was a gatehouse at the entrance to the estate which had been converted into two flats, namely Flats 1 and 2, and the remaining eighteen flats, numbers 3-20, were in a separate building. The main building and the gatehouse where Flats 1 and 2 are located are separated by about 15 metres and the two units share some facilities, such as the driveway and parking and the communal gardens. A decision was made to re-roof the main block and replace the water tanks which will involve a substantial cost. Both the long leaseholders of Flats 1 and 2 will be required to contribute one twentieth of the cost without having any benefit from the replacement of the water tanks and the new roof on the main block. Flats 1 and 2 have individual water tanks within the curtilage of their flats and the works do not include these water tanks.
8. Mr Skinner also pointed out that there was no obligation in the leases of Flats 1 and 2 to contribute to the replacement of the water tanks and that accordingly the Respondent was not entitled to seek to recover the costs from the Applicants. Mr Skinner considered that the works would increase the value of Flats 3-20, but would be of no benefit to Flats 1 and 2. He drew the Tribunal's attention to the case of **South London Housing Association and Bamudas LVTP/EC/025/041/98** where the Tribunal had determined that the tenant was not obliged to pay for an entryphone as he would have no benefit from it and compared that case with the present application.
9. Mr Bartholomew told the Tribunal that the Building was erected in the 1930s and that the leases of the 20 flats were created in about 1969. All the leases are in similar for and provide for each long leaseholder to contribute one twentieth of all the costs of maintenance and repair of the Building and that the leases are designed to provide for 100% recovery of the costs incurred by the Landlord. Since Bartholomews were appointed

in 1995, there have been items of repair undertaken at the Building, including repairs to the flat roof of Flat 1 and in every case, each of the long leaseholders has contributed his one twentieth share.

10. A section 20 Notice (not included in the bundle) had been served on all the long leaseholders which related to the renewal of the water mains supply, the removal of the old water mains and pipe work, the removal of the external tank housings, renewal of the flat roof covering, installation of a new communal aerial and external decoration. The mains supply will be available to all the flats, as will the aerial installation. The water tank housings have caused a number of problems over the years and need to be removed. The additional advantage of having no tanks on the roof will be that access over the roof will no longer be required and the roof will have a longer life. The external decorations will be undertaken to the main building to take advantage of the scaffolding which is to be erected and it is anticipated that the exterior of Flats 1 and 2 will be decorated later.
11. Mr Bartholomew agreed that the leases did not clearly include the cost of repairing or replacing water tanks. No priced schedule had been produced to the Tribunal but he stated that the cost of the items in paragraph 4.41 of the specification of works in the bundle relating to the removal of the existing tanks and their housings and other related work was £600 in the priced schedule which he had in his possession. The water tanks were not being replaced. Mr Bartholomew referred the Tribunal to the case of Flats 3 & 4 Kingswood Court Redcotts Lane Wimborne Dorset (no case number provided) which was heard in 1998 and where the Tribunal found that service charges were reasonable, even if there was no direct benefit to a tenant, since the lease in that case provided that the cost of the services should be paid by the tenant.

DECISION

12. The Tribunal considered the provisions of the two leases which had been produced. Both were in the same terms and, in Clause 3 (i) (a) provided that the tenant should pay a service charge equal to one twentieth of the expenses of:-
 - (a) Repairing cleansing building and maintaining the main walls and timbers of the building the roof chimney stacks gutters and rainwater pipes used or to be used in common by the occupier of the flat and the occupiers of the other flats in the building
 - (b) Repairing cleansing building and maintaining all party walls or party fences pathways passages sewers drains pipes watercourses and other easements serving the flat and the building
 - (c) Cleansing decorating repairing and lighting of the common passageways staircases entrance halls landings and access ways to all the flats in the building
 - (d) The upkeep of the gardens surrounding the building
13. The landlord's obligations were set out in Clause 3 which provided that the landlord would:-

- (a) Subject to the Lessee paying the contribution towards the cost thereof in accordance with clause 2(3) ...keep in tenantable repair and condition the roof main walls timbers and main entrance of the building together with all party walls or party roads fences pathways and other easements serving the flat and building and all such chimney stacks gutters drains water pipes and sanitary and water apparatus therein as serve two or more flats in the building and the gardens the common entrance hall staircases landings and passages of the building and to keep the said entrance halls staircases landings and passages of the building and to keep the said entrance hall staircases landings and passages clean and tidy and adequately lit.

14. The terms of the leases clearly indicate that the main block and the subsidiary block housing Flats 1 and 2 are defined together as "the Building". It is equally clear that the Applicants are responsible for one twentieth of all the costs incurred under the provisions of the leases. The Tribunal agrees that the leases are not happily worded and there are inconsistencies between the obligations of the landlord to provide services and the obligations of the tenant to contribute towards specific services. Mr Bartholomew has stated that the roof of Flat 1 was replaced some years ago and the cost of that was met by all of the long leaseholders and not merely by the long leaseholder of Flat 1. This would support the Tribunal's view that the long leaseholders regard the whole estate as one unit and are prepared to contribute to costs of repair relating to Flats 1 and 2 where there is no benefit to Flats 3-20.
15. The application before the Tribunal relates to repairs and renewals on the main block, although the long leaseholders of Flats 1 and 2 will benefit directly from some of the items, namely the new main water supply and the communal area. They will also benefit from being in a development where the Building is properly maintained and managed.
16. The Tribunal agrees that there is no specific reference to the repair of water tanks in the tenant's obligations within the leases. However, on a review of the specification of works it is clear that the removal of the water tank and housing is part of the modernisation of the water system and the repair of the roof. Mr Bartholomew informed the Tribunal that the cost for the removal of the tank was estimated at about £600, which is a minimal amount compared to the cost of the works and the Tribunal are of the opinion that the likely cost of repair of the roof would be increased without the removal of the tanks. If this cost was not included in the obligation for payment by Flats 1 and 2, it would fall to be met by the Respondent which is a tenant owned company and the result would be that the work would either not be undertaken or all the shareholders, of which Mr Skinner is one, would be required to contribute.
17. The Tribunal did not find the cases to which they were referred to be helpful. Copies of the relevant leases were not produced and, since each case considered must depend on the terms of the relevant lease, in the absence of the leases, no conclusion could be drawn by the Tribunal on the findings in the two cases.

18. The leases under which the Applicants hold Flats 1 and 2 are contractual documents and each of them is bound by the obligations contained in their own lease. The terms of the leases make it quite clear that the long leaseholders of Flats 1 and 2 are obliged to contribute one twentieth of the cost of the works undertaken to the Building. The works in the schedule, including the water tank removal for the reasons stated in paragraph 16, are within the service charge provisions in the leases and are payable on demand. The cost of scaffolding, mentioned by Mr Skinner, is clearly part of the full specification as scaffolding would be required for all the works to be undertaken to the Building.


Decision

19. The Tribunal determines that the service charges demanded for the works referred to in the Schedule of Works in the bundle are reasonable and payable by the Applicants on demand.

SECTION 20C OF THE ACT

20. The Applicants have asked the Tribunal to make an order that the costs of these proceedings are not to be regarded as relevant costs when the Respondent determines the service charges. The Respondent objected to this application. In view of the outcome of these proceedings no order will be made under Section 20C and the costs of these proceedings will be recoverable by the Respondent insofar as they are properly chargeable under the terms of the leases.

CHAIRMAN.....



T I RABIN JP

DATED: 9th June 2006