Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No.	CHI/21UC/LSC/2005/0075
Property:	Flat 3, 63 Carlisle Road, Eastbourne BN20 7BN
Applicant:	Mr Neil Murray (landlord)
Respondent:	Mr P Andrews (tenant)
Appearances:	For the Applicant Mr J Walters (Stephen Rimmer & Co, Solicitors) Mr Ranger, Building Surveyor Mrs C Nightingale, Management Accounts Supervisor (Ross & Co, Managing Agents) For the Respondent: No attendance
Application:	16 August 2005
Directions:	12 October 2005
Hearing:	24 April 2006
Decision:	15 May 2006

Tribunal

Ms J A Talbot MA Solicitor, Chairman
Mr D Nesbit FRICS JP
Mr A O Mackay FRICS

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Application

1. This was an application made by the landlord of 63 Carlisle Road, Eastbourne, Mr N Murray, on 16 August 2005, pursuant to Section 27A of the Landlord and Tenant Act 1985 for a determination as to the payability of service charges for the years 2002 to 2005, by Mr P Andrews, tenant of Flat 3.

Background

2. A Pre Trial Review was held on 12 October 2005 last when directions were made and a timetable set out to bring the matter to a hearing today. The Directions required the Applicant to prepare a Statement of case and for the Respondent to prepare a Statement in reply. Mr Murray, through his solicitors, complied with these Directions but Mr Andrews did not respond in any way.

3. At the time of the Pre-Trial Review, Mr Andrews' whereabouts were unclear. The Applicant's solicitors subsequently served documents by process server on him at 13 Gorringe Drive, Eastbourne, as he had previously returned some items sent by post. As a result, the hearing of this matter has been postponed twice, from 12 January 2006 and 13 March 2006.

4. On the day before the third scheduled hearing, Mr Andrews telephoned the Tribunal office to say that he could not attend the hearing as he would be out of the country. The Tribunal treated this as an application for a further adjournment and dealt with it at the start of the hearing as a preliminary point.

5. In the circumstances the Tribunal was not prepared to postpone the case any further. It was satisfied that Mr Andrews had had ample notice of the hearing date yet did not contact the office until just before the scheduled date. He had not complied with the Directions or given any explanation for failing to do so. It was not in the interests of justice to allow any further delays. Accordingly the case proceeded.

Jurisdiction

6. The Tribunal has power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money payable by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, according to the terms of the lease (S.18 LTA 1985). The LVT can decide by whom, to whom, how much and when a service charge is payable. A service charge is only payable insofar as it is reasonably incurred, so in deciding liability a tribunal also decides the question of reasonableness.

Lease

7. The Tribunal had a copy of the lease of Flat 3. The Lease is dated 21 July 1986 and is for a term of 99 years from 24 June 1984 at a ground rent of £25 per year for the first 33 years and rising thereafter.

8. The provisions relating to the calculation and payment of service charges are to be found at Clause 1(f) and (g), paragraph 15 of the Fourth Schedule and the Sixth Schedule. At Clause 1(g), the tenant is to pay a "maintenance contribution" of one tenth of the total "annual maintenance provision" computed in accordance with the Sixth Schedule.

9. This provides that the annual maintenance provision consists of "the expenditure estimated as likely to be incurred in the maintenance year by the lessor for the purposes mentioned in Clause 3 and the Fifth Schedule together with ... an appropriate amount as a reserve". In addition, a sum of 3% of the total sum is to be paid to the lessor by way of "remuneration".

10. The lessor's obligations at Clause 3 of the Fifth Schedule are "to maintain and keep the reserved property ... in good and substantial repair" and to carry out external decorations. The reserved property is defined in Clause 1(d) as the garden and grounds, entrance hall, staircase and landings, roof, foundations and external walls.

11. There is no provision in the lease for any management or professional costs apart from solicitors and surveyors costs in connection with the preparation and service of a Notice under Section 146 of the Law of Property Act 1925.

Inspection

12. The members of the Tribunal inspected the property before the hearing. It comprised a substantial detached house occupying a corner plot on level ground in a pleasant residential area of Eastbourne. The house was built in the 1890's, of solid red brick construction under a pitched and tiled roof. The windows are mainly of double hung sash type with some modern adaptations. There are two garages and a bin store in the front garden, which is part paved and part lawned. At the time of the inspection, scaffolding was in place around the splayed bay to the south front elevation.

13. The property has been converted into 10 flats: numbers 3-10 in the main part of the building, number 1 in the south part and number 2 on the north side on the corner. Internally the main part is accessed at lower ground floor level with an entrance hall and door to a lift which does not work. A carpeted staircase leads to flats 3, 4 and 5 on the upper ground floor, 6, 7 and 8 on the first floor and flats 9 & 10 on the top floor. The common parts are in fair decorative condition. The carpet is rather worn and grubby.

14. The members of the Tribunal were given access to the common parts by the sub-tenant in occupation of Flat 3 but did not inspect the interior of any of the flats.

Hearing

15. A hearing took place in Eastbourne on 24 April 2006. Mr Walters of Stephen Rimmer & Co attended on behalf of the Applicant. In the afternoon, at the Tribunal's request, Mr Ranger, building surveyor, and Mrs Nightingale, management accounts supervisor, both of Ross & Co, Managing Agents, also attended. The Respondent, Mr Andrews, did not attend and was not represented.

16. At the hearing, Mr Walters explained that in the previous few days Mr Andrews had made 2 payments by cheque, which cleared the service charge arrears apart from an amount of £1,630.05 in respect of exterior decoration works carried out during autumn 2004 and spring 2005. Therefore Mr Walters withdrew the application, apart from the contribution to those works.

17. The sum of £1,630.05 was calculated as one tenth of the estimated project cost of £16,300.48, based on the lowest tender received for the work from Acorn Partnership, as set out in a document prepared by Ross & Co and sent to all the leaseholders under cover of a letter dated 19 April 2004, demanding payment of £1,630.05 as a "provisional contribution".

18. The end of year accounts for 2005 were not available and there was no evidence as to the actual final cost of the works, which had been completed in spring 2005. Mr Walters restricted the amount claimed to the provisional amount, which had not been paid by Mr Andrews.

19. On 26 January 2004, the property manager Mr Priscott of Ross & Co wrote a letter to Mr Andrews headed "Landlord & Tenant Act 1985 – Section 20 Notice – 63 Carlisle Road Eastbourne External Decorations & Repairs". The letter stated that a Specification and Schedule of Works had been prepared and enclosed copies of 3 tenders with an invitation for any observations to be made by 1 March 2004, after which a contractor would be appointed and an account issued for "provisional contributions".

20. At the hearing, on questioning from the Tribunal, Mr Ranger conceded that this letter did not comply with the then new requirements of Section 20 of the 1985 Act as amended by the Commonhold and Reform Act 2002, which came into force on 31 October 2003.

Decision

21. It was not necessary for the Tribunal to make a determination in respect of any service charges for the period in question, in view of Mr Walters' withdrawal, apart from the amount demanded as a provisional sum for the exterior works.

22. In this regard, it was clear to the Tribunal, and conceded by Mr Ranger, that the purported Section 20 Notice dated 26 January 2004 did not comply with the amended requirements that had recently come into force at the material time.

23. The Regulations setting out the new consultation requirements ("The Service Charges (Consultation Requirements) (England) Regulations 2003" SI 2003 No.1987) clearly show that a 2 stage process was required: briefly, an initial Notice of Intention followed later by a further Statement called "the paragraph (b) statement".

24. It appeared likely to the Tribunal that Mr Priscott had simply made an error by sending a letter which complied with the previous Section 20 consultation procedure under the 1985 Act, but not the amended requirements which had recently come into force.

25. As a result of failing to comply with the relevant consultation requirements, the amount the landlord can recover from the leaseholders is capped at £250 each. Therefore Mr Andrews' liability in relation to the exterior works is £250.

Schedule 12 Paragraph 10 and Re-imbursement of Fees

26. At the hearing, Mr Walters applied for an order that Mr Andrews should pay legal costs of £1,992 and re-imbursement of fees of £250. He submitted that Mr Andrews had behaved unreasonably in connection with the proceedings by ignoring all service charge demands and correspondence sent to him for several years, apart from a few sporadic payments. As a result arrears had built up, and Mr Andrews' refusal to co-operate or deal with the matter had necessitated the application to the Tribunal.

27. The Tribunal accepted that Mr Andrews had behaved unreasonably. He had failed to respond not only to the managing agents and solicitors, but also to the application and the Tribunal's Directions. He had also returned mail delivered to his address. He had made no attempt to settle the matter, only making payments at the last minute. His only contact with the Tribunal office had been a hostile telephone call asking for a postponement although 2 previous dates had been adjourned.

28. However, the fact remained that elements of the application were misconceived; the Tribunal considered that those advising Mr Murray should have realised that the Section 20 Notice was defective, and that there was no provision in the lease or power in the Tribunal to award costs, other than the maximum of £500 under Schedule 12.

29. The Tribunal therefore decided to order Mr Andrews to pay £250 costs and £250 re-imbursement of the application fee and hearing fee.

Summary

30. The Tribunal orders that Mr Andrews is liable for and will pay to Mr Murray £250 service charges, £250 costs and £250 re-imbursement of fees: a total of £750.

Dated 15 May 2006

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Ms J A Talbot MA Solicitor
Chairman of the Tribunal