IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/43UK/LSC/2006/0119

IN THE MATTER OF STACK HOUSE, WEST HILL, OXTED, SURREY, RH8 9JA

AND IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

BETWEEN:

STACK HOUSE RESIDENTS (OXTED) LTD

Applicant

-and-

(1) MRS DORIS PALMER
(2) MR F A HUDSON

Respondents

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant, as freeholder, pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Respondents' liability to pay service charges arising in the 2005/2006 service charge year. The service charges in issue are the cost of replacing some of the sealed double glazed windows and doors that form part of the two penthouse flats in the subject property. The Respondents are the leaseholders of each of

those flats. The cost of repair is placed at £925.33. The Tribunal was told that the quantum of the cost of repair was not being challenged by the Respondents. The sole issue, therefore, before the Tribunal was the Respondent's contractual liability to pay all or part of the costs claimed by the Applicant.

2. The Tribunal was provided with a copy of the lease granted in respect of the First Respondent's premises. It is assumed that the lease granted in respect of the Second Respondent's premises was on the same terms. The First Respondent's lease is dated December 1977 and was granted by Danesway Property Company Ltd and Lawdon Ltd ("the lessors") to Mr John Hargreve ("the tenant") for a term of 125 years from 29 September 1975 ("the lease").

3. Clause 1 of the lease expressly states the property demised to the tenant by reference to the plan annexed to the lease and shown edged in red. This includes one half part in depth of the structure between the floors and the ceilings together with the internal and external walls between such levels.

4. By clause 3(i)(c), the tenant covenanted with the lessors to maintain and uphold the demised premises other than the parts comprised and referred to in the lessors' covenants for repair. By clause 5(3)(i), the lessors covenanted, *inter alia*, to maintain and keep in good and substantial repair and condition the main structure of the building including the external walls.

Inspection

5. The Tribunal externally inspected the subject property on 12 February 2007. It could be seen that the penthouse flats comprised extensive full depth glazing to the external elevations. It was noted to the lower flats that there was brick infilling and panels beneath aluminium framed windows, some of which had been secondary glazed and that at the rear, there was evidence of full depth double glazed patio doors. The Tribunal did not consider that an internal inspection of the penthouse flats was necessary because the condition of the relevant double glazed windows and/or doors was not relevant to its determination of this application.

Hearing

6. The Tribunal's determination took place on 12 February 2007 and was based entirely on the documentary evidence before it. There was no hearing and no oral evidence was taken. Despite Directions being issued on 10 November 2006, the Respondents did not file and serve any evidence pursuant to those Directions. Only the Applicant did so.

7. As the Tribunal understands it, the Respondents' case is that the cost of repairing and/or replacing the double glazed windows and doors in the penthouse flats should be borne by the Applicant because they amount to external walls within the meaning of clause 5(3)(i) of the lease for three reasons. Firstly, they should be construed as forming external walls because they provide a thermal break

between the outside and inside of the flats, as any exterior wall should do. Secondly, the glazing in the Second Respondent's flat has been replaced and paid for by the lessor in the past thereby creating a precedent. Thirdly, the glazing being replaced is assumed to be part of the original construction by the developer and, therefore, within the lessor's repairing obligation under clause 5(3)(i). The Applicant seeks a determination, not only on the issue of whether the Respondents are contractually liable for the cost of repairing and/or replacing the double glazing in their respective premises, but also the contractual liability in respect of the other double glazed units in the remainder of the property generally.

8. In the Tribunal's view, the terms of the lease are quite clear about the repairing obligations of the lessor and the tenant. Clause 1 of the lease expressly states the extent of the property demised to the tenant by reference to the lease plan. Clause 3(i)(c) provides that the tenant is responsible for maintaining and repairing the demised premises, including the internal and external walls, save for the lessors' responsibility for the main structure of the building provided for by clause 5(3)(i).

9. The reference to external walls in clause 5(3)(i) is a reference to those parts of the external walls that form part of the main structure of the building. In other words, those parts of the building upon which the block as a whole relies upon for support. Within this context, the double glazing within of the Respondents' premises cannot be said to form part of the structure. They are not integral to the structure of the building and, therefore, do not fall within the lessor's repairing

obligation under clause 5(3)(i). For this reason, the fact that they may form a thermal break is irrelevant. The replacement of the glazing in the Second Respondent's flat by the lessor is also irrelevant as it appears that both parties appear to have been acting in error as to their contractual liability. It does not create a precedent or affect the correct contractual position. Whilst the glazing may well have been part of the original construction by the developer, it is quite clear that, under the terms of the lease, future repair and maintenance of certain parts of the building, for example, demised premises is the responsibility of the individual lessee. Accordingly, the Tribunal finds that the cost of repairing and/or replacing the double glazing in this instance falls within clause 3(i)(c) of the lease and is payable by the Respondents. Assuming the terms of the leases granted to the other lessees are identical, the contractual position in relation to other defective double glazed units would be same.

Dated the 12 day of February 2007

CHAIRMAN..... I Mohabir .....

Mr I Mohabir LLB (Hons)