

Introduction

- 1 By an application dated 5th January 2008 the Applicant by her mother Mrs Elaine Kravits sought a determination from the Tribunal under Section 287A of the Landlord and Tenant Act 1985 in respect of service charges payable in respect of major works to the roof of the property at 55/55A Graham Road Wealdstone (“the property”) would be reasonably incurred if carried out in accordance with estimates received from Messrs Coopers roofing contractors in the sum of £5,300
- 2 Directions were given by Ms Hamilton Fairey on 10th January 2008 and the matter came on for hearing before the Tribunal on 25th February 2008

The property

- 3 The property consists of a terraced house converted into two self contained flats. The Applicant occupies the upper flat and the Respondent who is the leasehold owner and occupier of the ground flat. The Applicant purchased the freehold of the property in 2006 following the death of the previous freeholder Mrs Harvey in 2004. In the light of the issues raised in the application the tribunal did not consider it necessary to inspect the property and the parties did not request that it should do so.

The Hearing

- 4 Following the directions the Applicants produced and served a bundle of documents. The Respondent has not produced a bundle of documents but produced one letter dated 24th January 2006 from the deceased freeholder’s executor concerning payments of ground rent and an offer of sale of the freehold.
- 5 The respondent was advised by the tribunal to attend the hearing but indicated that she did not intend to do so. She stated that she was seeking advice from solicitors but no advice had been received by the date of the hearing and no application for a postponement was made. The Applicant appeared by her mother Mrs Elaine Kravitz at the hearing who presented the matter on her behalf and the Respondent failed to appear. The tribunal saw no need to postpone the proceedings, and proceeded to hear the application

The Lease

6 The leases of the upper and lower flats are in identical terms and the lease of the lease of the ground floor flat is included in the bundle. By clause 2(9) of the lease it is provided :-

“to pay or contribute an equal share with the lessee of the other maisonette comprised in the same building of the expenses of constructing repairing, cleansing, building and maintaining the roof, foundations or other party structures as herein after mentionedused or to be used in common by the occupier of the demised premises and the occupier of the other said maisonette “

7 The Respondent's lease is for a term of 99 years from 25th March 1977 at an annual ground rent of £25 per annum... the groundrent appears not to have been paid for many years and the Respondent appears to show no desire to pay it, although the Applicant has attempted to recover it by approaching the Respondent's mortgagee without success. The Respondent does not appear to acknowledge Ms Kravitz's title to the freehold notwithstanding that she has been shown the Land Registry entries in relation to the property.

The Roof Repairs

8 It is clear from the evidence that the roof was leaking and that emergency works had to be undertaken pending the complete replacement of the roof. The Applicant served a Section 20 notice on the Respondent and invited her to obtain a quotation from a contractor. This was ignored by the Respondent

9 Mrs Kravitz then obtained two quotations from roofing contractors Messrs Coopers in the sum of £5,300 and Messrs Croxley in the sum of £6,500. This sum covers works to the main roof and to the flat roof at the rear of the property

10 As a result of the refusal of the Respondent to talk to the Applicant and to attempt to resolve the issue. It was necessary for emergency repairs to be carried out as a temporary measure in the sum of £120

11 In the absence of any evidence from the Respondent the tribunal is satisfied that the estimates obtained were a reasonable estimate of the cost of the works and that the Applicant should be entitled to have the roof fitted in the figure specified by

the lower estimate or some minor adjustment of that figure if the contractor has increased his price since it was obtained.

- 12 The Tribunal determines therefore that if the work is done on the basis of this estimate the costs would be reasonably incurred and half would be recoverable from the Respondent under the terms of the lease.

Reimbursement of Fees

- 13 The Applicant has incurred an application fee of £150 and a hearing fee of £100. These costs were properly and reasonably incurred and should be reimbursed by the Respondent.

Other Costs

- 14 In addition to the fees incurred the Applicant has sought to recover the £120 incurred for the emergency roof works, postage costs of £19 and photocopying costs of £20. These would normally be recovered under the service charge account. However, the Tribunal considered whether such costs might be recovered under Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002 which provides as follows:-
- 15 A Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the cost incurred by another party in connection with the proceedings in any circumstances falling within sub paragraphs (2).
- 16 The circumstances are where – (a) he had made an application to the Leasehold Valuation Tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7 or (b) he has in the opinion of the Leasehold Valuation Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings
- 17 The Respondent in this case has refused to put forward a defence, failed to comply with directions, failed to seek advice as she stated she would and failed to attend the hearing. She also appears to dispute the title of Ms Emma Kravitz notwithstanding that she has been shown the Land Registry entry
- 18 The Tribunal considers that that behaviour is at least unreasonable and probably vexatious and disruptive so that the application of the section applies.

- 19 The Tribunal had considered awarding the sum of £250 under this heading but appreciates that once the fees have been reimbursed the only further costs incurred are the £149 claimed. The Applicant would also have incurred a cost in attending the Tribunal although no figure was given at the hearing. The tribunal considers that the cost would not have been less than £5
- 20 In the circumstances the Tribunal considers that a figure of £150 should be paid by the Respondent in addition to the reimbursement of fees the effect of which will be that the Applicant need make no further claim under the service charge account.
- 21 As a result the Applicant succeeds on the application and is entitled to recover £250 by way of reimbursement of fees and 3150 by way of costs under schedule 12 Paragraph 10 of the 2002 Act. The applicant may need to take further advice and seek enforcement of this remedy through the county court

Chairman Peter Leighton

Date 25th February 2008

