IN THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985

DECISION AND REASONS

Case No	CHI/45UH/LIS/2009/0006
Property	Flat 3 18 Belsize Road Worthing
Applicant	Mr Ken May, Landlord
Respondent	Mr Andy West, Tenant, Flat 3
Date of hearing	27 April 2009
Date of decision	28 April 2009
Members of Tribunal	Ms H Clarke (Chair) Mr R A Wilkey FRICS FICPD Mrs J E S Herrington

1. THE APPLICATION
   The Applicant commenced a claim in the Worthing County Court for money said to be due by way of service charges and ground rent from the Respondent. A Defence and Reply to Defence were filed at court. By order of the County Court the claim was transferred to the Tribunal.

2. In correspondence the Respondent agreed that the ground rent and a sum claimed in respect of insurance premium were due. The issue for the Tribunal to determine was whether a sum of £1050 demanded in January 2008 as service charge for the year ending November 2007 was payable by the Respondent.

3. THE DECISION
   The Tribunal determined on the evidence available to it that the sum claimed was not payable by the Respondent.

4. THE LAW
   Section 27A Landlord & Tenant Act 1985:
   "Liability to pay service charges: jurisdiction
   (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, 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.."

5. Section 21B Landlord & Tenant Act 1985:
(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

6. *Section 20 Landlord & Tenant Act 1985:*
20. (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... unless the consultation requirements have been either–
(a) complied with in relation to the works or agreement, or
(b)dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

7. THE LEASE
The Lease between the parties contained provision for the tenant to contribute 30% of the landlord's costs of complying with his covenants; the landlord covenanted to insure, to repair and maintain the structure and the exterior and the roof and gutters, to decorate the exterior, to keep the common parts and passage ways clean and decorated, and keep the garden in a reasonable state of cleanliness and tidiness. The tenant also covenanted to indemnify the landlord against any sums which may be payable by virtue of a statutory provision as a result of any use of the demised premises.

8. THE INSPECTION
The Tribunal inspected the common parts and the exterior of the property immediately prior to the hearing, in the company of the Respondent Mr West. The Tribunal also viewed the interior of the rear room of Flat 3. The property was a substantial brick built semi-detached house converted into 4 flats. Three of the flats shared a common

entrance door, hall and staircase and the other flat was accessed from the rear garden. The exterior of the house showed a lack of decoration and maintenance. Joinery to the front door and to some window frames was rotten, and paintwork was generally peeling and dilapidated. The shared hall and stairs showed no signs of having been recently cleaned or decorated. There was no evidence visible from the ground of any work having been done to the roof in the recent past. To the rear of the property there were signs of water leaks from the gutters and a general lack of maintenance. In the rear garden there was a considerable amount of building debris and rubbish. Inside Flat 3 the Tribunal noted that internal plasterwork adjacent to the chimney breast in the rear room appeared to have been affected by dampness.

9. THE EVIDENCE
The Tribunal issued Directions to the parties. Neither party complied with the Directions and no witness statements were provided to the Tribunal. The documents received by the Tribunal from the County Court comprised the claim form, the Defence and Reply to Defence, an invoice dated 30 January 2008, a letter from the Applicant to all tenants dated 31 January 2008, a letter from Respondent to Applicant dated 7 January 2009 asking for evidence of any maintenance undertaken in the last 5 years, the allocation questionnaires and some additional court orders and correspondence with the court. The Tribunal also had the Lease relating to Flat 3.

10. At the hearing the parties both attended in person. Neither party had prepared a witness statement nor any bundle of documents. The Respondent asked the Tribunal for permission to rely on three documents, an Abatement Notice served on the Applicant by Worthing Borough Council under s80 Environmental Protection Act 1990 requiring him to carry out work to the roof, and two letters from Sanctuary Housing Association, which appeared to have an interest in Flat 1. The Tribunal adjourned for a short period to provide an opportunity for the Applicant to consider the documents, then agreed to admit them. The Applicant did not produce any further documents and said that he relied on the letter of 31-01-08. This letter said that Worthing Borough Council required fire precaution work to be done and "the likely cost of this alone is £3000. In addition the roof of the building requires replacement and we will be obtaining estimates for this work to be done".

11. The case for the Applicant was not made entirely clear. Initially the Applicant said that the sum claimed (£1050) related to the two matters mentioned in the letter of 31-01-08, namely the provision of fire safety measures and replacement of the roof. Subsequently the Applicant said that a deficit figure of £634.26 was carried forward on the service charge account for all 4 flats and the Respondent's liability of £1050 included his share of this sum. On questioning by the Tribunal the Applicant said that the fire safety works gave rise to a liability for the Respondent to pay of £900, and his share of the deficit was £190.28. These figures

alone added up to more than the sum being claimed. No service charge accounts, estimates, quotes, invoices or other documents were provided to support the claim. The Applicant said that he had obtained an oral quote from a contractor in relation to the fire safety works, but had nothing in writing. He said that he had a number of written estimates from builders in relation to the roof work, but had not brought them to the hearing.

12. In response to the Tribunal's questions the Applicant said that he relied on the 31-01-08 letter as being the first stage of consultation with the tenants in relation to the proposed works for fire safety and in relation to the proposed work to the roof. He said that he provided an annual statement to all tenants showing where maintenance money had been spent. In relation to the statutory obligation to provide a summary of the rights and obligations of the tenants in relation to service charges, he said that he had once sent a number of legal documents to the tenants. This was a one-off and had happened 2 or 3 years ago. In order to establish a right to recover service charges for the fire safety works, he relied on the provision of the lease relating to the obligation of tenants to indemnify the landlord against sums payable by virtue of a statutory provision. In relation to the documents produced by the Respondent, he said that the Abatement Notice had been withdrawn and he had had an apology. This appeared to have been connected with the Applicant's position that Sanctuary Housing Association was not the tenant of Flat 1. He had sent correspondence to Shaftesbury Housing Association who he believed to be the tenant, but had not had replies. He refused to correspond with Sanctuary.

13. The case for the Respondent was that the Applicant had not carried out routine maintenance, and that Flats 1 and 3 were affected by dampness as a result of the need for work to the roof. On purchase some 10 years ago his vendor had paid money to the Applicant for roof repairs which had been swallowed up in the service charge. He said that statements of expenditure were sent to him sporadically. He had never been consulted on any matter of expenditure. He refused to pay because maintenance was not being done and he did not know what the money was being charged for.

14. **REASONS FOR THE DECISION**

The Tribunal considered whether the Applicant had demonstrated that the Lease provided that he could recover the sums claimed. In the first place, the Applicant had not established with any clarity what the sums related to. He had not been able to explain to the Tribunal how he had reached the sum of £1050 which he said was payable.

15. A large proportion of the sum appeared to be sought as a payment on account towards fire safety work. The Tribunal strongly doubted that the Lease permitted the landlord to recover this expenditure from the

tenant. Clause 2(21), to which the Applicant referred, was concerned with payments under statute, arising from use of the premises, rather than costs to the landlord of carrying out work. However, as the Tribunal had no detailed information about what work was to be done nor as to the circumstances in which the local authority had apparently required it, it could not make a decision on liability under the Lease. In the absence of any proper evidence either of the need for such works or of the cost of carrying them out, it could not be said that they would be reasonably incurred.

16. Moreover it was clear that no consultation had been carried out in relation to the proposed fire safety works, although the amount which the Applicant sought to claim exceed the statutory maximum of £250. The Applicant had only obtained a single verbal quote, and no steps had been taken to comply with the requirements of s20 and Service Charges (Consultation etc) (England) Regulations 2003.

17. The Tribunal had no information or evidence whatsoever regarding the alleged 'deficit' which was said to be carried forward from previous service charge years.

18. Whilst it appeared to be common ground that work needed to be done to the roof, it was not clear to the Tribunal whether any of the sum claimed related to the costs of doing so. No estimates, quotes, schedules of work or specifications were shown to the Tribunal, nor had they been sent to the tenants by way of consultation.

19. It was also clear on the evidence that the Applicant had not complied with his obligation under the law to send to the Respondent along with the service charge demand a summary of his rights and obligations in relation to service charges. Unless and until such a summary was provided, the demand was not payable in any event.

20. In all the circumstances, the Applicant had not proved that the money was payable either under the Lease or under statute.

Signed... (Chair)

Dated... 28-4-09