

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : No. 9 Cheltenham Court,
Dexter Close,
Camp Road,
St. Albans,
Hertfordshire
AL1 5WB

Applicants : Siew Kheong Loke
Betty Yin Ping Wong

Respondent : Dexterfield Limited

Case number : CAM/26UG/LSC/2010/0044

Date of Application : 22nd March 2010

Type of Application : Application for a determination of
liability to pay a service charge,
pursuant to section 27A of the Landlord
and Tenant Act 1985

Date of Hearing : 6th September 2010
(Paper)

Tribunal:

Mrs. Joanne Oxlade
Miss Marina Krisko BSc (Est. Man.) BA FRICS
Mr. Adarsh Kapur

Lawyer Chairman
Valuer Member
Lay Member

DECISION

For the reasons given below the Tribunal finds that

- (a) the Applicants are liable to pay to the Respondent a service charge of £392.50 (less insurance claim) for works done pursuant to the lease to repair a leaking pipe demised to the Applicants as part of the premises
- (b) both parties should bear half of the costs incurred in bringing the application, so that the Respondent should pay to the Applicants £35.

REASONS

The Lease

1. The Applicants are Lessees of the premises, pursuant to a lease dated 26th June 1998.
2. The lease provides maintenance obligations, as follows:

The Lessee to "repair, maintain, renew, uphold and keep the demised premises, all window glass...ceilings drains pipes wires and cables and all fixtures and additions in good and substantial repair and conditions save as to damage in respect of which the Lessor or the Company are entitled to claim under the policy of insurance (clause 4.1.1)

The lease also provides by that "if at any time during the Term the Lessee shall make default in the performance of any of the covenants herein contained for or relating to the repair... or maintenance of the demised premises then to permit the Lessor or the Company at all reasonable times during the Term.. to enter upon the Demised premises and repair decorate maintain or reinstate the same at the expense of the Lessee... and to repay to the Lessor on demand the proper and reasonable cost of such repair" (clause 3.7)

3. The extent of the demise is defined in paragraphs 4 and 5 of the lease and the First Schedule, which includes "(f) All conduits which are laid in any part of the Building and serve exclusively the Flat".

Background

4. In November 2009 the water pipe serving the premises leaked, resulting in a flood which affected the flat below, the ground floor corridor and porter's office. The leak was traced and over several days it was repaired. This was organised by the Managing Agents. A claim was made against the insurance policy, and on 31st January 2010 a demand was made for the Applicants to pay the balance of £724.93.

The Application

5. By letters dated 16th February and 12th March the Applicants disputed liability to pay the sum demanded. The Applicants disputed that the pipe was part of the demise: it was 15 meters away from the flat; it was buried in concrete and so inaccessible; it was sited in a communal cupboard so that the Landlord could turn it off in the event that the water bill was not paid; the cupboard was not locked and so the leak could have been caused by an unauthorised person accessing the

pipes and damaging it; the leak occurred in the common parts and so should be covered by insurance. The Applicants also disputed that the sum claimed was reasonable: the Applicants had been advised that at 12 noon the plumber had located the leak and at 3.30pm that he would need a specific tool which would take 2 days to obtain; the fittings used are not specialist and are readily available; that the Applicants had been advised that it would cost no more than £200 to do the works.

6. The Applicants say that no response was forthcoming, and so an application for determination of liability to pay and the reasonableness of the sum demanded pursuant to 27A of the Landlord and Tenant Act 1985. This provides that

"an application may be made to a leasehold valuation tribunal ("LVT") for a determination whether a service charge is payable and, if it is, as to –

(c) the amount which is payable ...".

Section 19(1) of the 1985 Act provides that "relevant cost shall be taken into account in determining the amount of the service charge payable for a period –

(a) only to the extent they are reasonably incurred, and

(b) where they occurred on the provision of services or the carrying out of works, only the services or works are reasonable standard; and

the amount payable shall be limited accordingly".

Documentary Evidence

7. The parties were content for the matter to be considered on the papers, and both parties filed evidence in accordance with the Directions issued. These included the following documents: for the Applicant, a statement of case and statement of response, relevant extracts from the lease, photographs, internet information about a crimping tool, letters dated 16th February and 11th March 2010, estimates from Turnkey dated 22nd July 2010. For the Respondent: a statement of case and statement of response, relevant extracts from the lease, invoice from PJ Margle dated 10th December 2010, insurance policy and correspondence dated 16th December 2009, 26th January and 8th and 16th April 2010, letter to Applicants dated 31st January and service charge demand, estimate from Derrick Palmer 7th April and 27th May 2010, invoices of Lisa Aston Interiors dated 9th February 2010 and Larnare dated 3rd February 2010
8. The Tribunal convened on 6th September 2010 to hear the matter in the absence of the parties.

9. Having considered the provisions of the lease and the totality of the evidence we make the following decision and for the reasons given.

Reasons

10. The terms of the lease require that the Lessee keep in good repair the demise - which includes "conduits" exclusively serving the flat.
11. We interpret "conduits" as including the water pipe, and we find that it did serve the flat exclusively – noting that it has not been suggested that other flats would be served by this water pipe. That the landlord could turn off the water pipe in the event of an unpaid water bill does not detract from the fact that the water pipe provided water exclusively to the flat. That parts of the water pipe were bedded in concrete (and so inaccessible to the Lessee) does not alter our finding that it is part of the demise or that it falls within the obligation to keep in repair.
12. It is trite law that the requirement to keep in repair is continuous; that the Lessee is in breach of the lease where the premises are out of repair irrespective of his knowledge of the disrepair.
13. The lease provides the Lessor with the power to enter into the demised premises to remedy the Lessees' default, and this is so even where (as here) the Lessee is not aware and could not have been aware of the disrepair. A consequential provision is that the Lessor can recover his costs for doing so against the Lessee.
14. Accordingly, we find that the Lessee failed to keep the demised premises in repair - although through no fault of his own - and that the Lessor did so in his place pursuant to the lease. The Lessor is now entitled to recover his costs.
15. However, the Lessor is only permitted to recover reasonable costs, and so we have looked at the details of the claim. The Lessor initially said that the plumber expended 14 hours labour totalling £700 (equating to £50 per hour), materials of £118.98, and the hire of a tool at £65. This amounted to £883.98 plus vat of £132.60, less insurance claim of £291.65. So the Applicants were asked to pay £724.93. In later submissions the Respondent says that the plumber was paid travelling time because he travelled 30 miles on 4 occasions, and so the labour time net of travel was 5 hours. The Applicants evidence is that a local plumber could have been found and that his quote shows that the work could have been done for under £200.
16. Having considered all of the evidence, and using our knowledge and experience as an expert Tribunal we have concluded that it would be reasonable for an experienced plumber to have taken 5 hours to locate the source of the leak, to dig out the concrete, to fix the leak, and then re-screed. An hourly rate of £50 for a plumber with such experience would have been reasonable, so we consider £250 for labour to be

reasonable. We would expect an experienced plumber to have all necessary tools, and that if he did not have such a tool, then he should provide it without any extra cost to the client. We have seen no evidence to substantiate the cost of materials of £118.98. At best it would amount to a plastic elbow bend and some quick-drying cement, which could not amount to £118.98. In the absence of any evidence we estimate this as £25. We accept that the water leak was an emergency, that an experienced plumber was required for the job, and that efforts were made to find one locally. It was not unreasonable to make use of someone outside the locality, and to pay travel time. However, we find that the time claimed and sum claimed is not reasonable. We consider that 4 journeys of 45 minutes from Bishop's Stortford to St. Albans would be reasonable, at a rate of £25 per hour, amounting to £75.

17. Accordingly, we find that a reasonable sum for the services of a plumber in these circumstances, together with materials would be £392.50 (£250 plus £75, plus £25, plus vat at 15% of £42.50).
18. As the Respondent made a successful claim against the insurance policy in the sum of £291.65, that leaves the Applicants responsible for the balance, namely £100.85 (i.e. £392.50 minus £291.65 = £100.85).
19. The Applicants have made an application for reimbursement of fees, in the sum of £70. The Respondent says that it is amenable to the reasonable Direction of the Tribunal in this regard. We consider that it would be equitable for both parties to bear $\frac{1}{2}$ of the costs of issuing the application: the Applicants have been substantially successful; the Applicants wrote two letters to the Respondent in which liability was disputed, and received no response; the Respondent added a small interest charge, despite the challenge, which resulted in the Applicants making the application; the Applicants wished for a swift resolution, but might reasonably have waited a little longer for a response before issuing the application. Taking into account all of the facts, it would be equitable and reasonable for both parties to bear half of the costs incurred in bringing the application.

Decision

20. We find that the sum claimed by the Respondent of £724.93 is not reasonable, but find that the sum of £392.50 is reasonable.

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 Joanne Oxlade

23rd September 2010