



**Residential
Property**
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference CHI/00ML/LIS/2010/0047

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER S27A AND S 20ZA OF THE LANDLORD AND TENANT ACT 1985**

Applicant: Sevenbuild Freeholds Ltd

Respondent: Ms C Campbell-Barke and Mr D H Gohil

Premises: 57B Buckingham Place Brighton East Sussex BN1
3PQ

Date of Application: Transferred from County Court on 6 April 2010

Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM
Mr R Wilkey FRICS

Date of hearing : 10 December 2010

Decision

The Tribunal declares that the service by the Applicant of a notice under s20 Landlord and Tenant Act 1985 was validly effected.

The Tribunal determines that the works carried out by the Applicant and charged to the Respondents under the service charge provisions of the lease were of a reasonable standard and at a reasonable cost. The Respondents are therefore liable to pay these costs to the Applicant in the proportion reserved by their lease.

- 1 The Applicants are the freehold owners of the property known as 57 Buckingham Place Brighton East Sussex (the property) which is divided into three self contained flats. The Respondents are the owners of the lease of the basement flat known as 57B Buckingham Place Brighton East Sussex (the premises).
- 2 The lease under which the Respondents hold the premises contains tenant's covenants to pay both an interim and balancing service charge. The Respondents are liable to pay one third of the total service charge in respect of the property.
- 3 On 18 January 2010 the Applicants issued proceedings in the Brighton County court for a determination that the service charges for the year ending 24 June 2009 were reasonable . The disputed sum included charges for qualifying works to which s20 Landlord and Tenant Act 1985 applies. The matter was transferred to the Leasehold Valuation Tribunal on 6 April 2010 and, following Directions made by the Tribunal the Applicants issued a further application under s20ZA of the Landlord and Tenant Act 1985.
- 4 The hearing of both applications (ie that under s27A Landlord and Tenant Act 1985 and under s20ZA of the same Act) took place in Brighton on 10 December 2010 and this Decision relates to both applications. Mr K Pain of Counsel represented the Applicants at the hearing and Mr Gohil

represented the Respondents. A bundle of documents , pages of which are referred to below , was placed before the Tribunal for its consideration.

5 The Tribunal inspected the property on the morning of the hearing. The property is a Victorian mid-terrace house which fronts on to Buckingham Place in Brighton, close to the railway station and town centre amenities. The rear of the property faces Howard Place where there is a limited amount of residents parking. The property appears to be in reasonable condition, exterior redecoration having been completed recently. The premises comprise a basement studio flat whose entrance is in Howard Place. There is no access to the premises from Buckingham Place. The premises are essentially a one room flat with a screened off bedroom area and separate bathroom . Part of the front of the premises is below street level and the Respondents drew the Tribunal's attention to areas of damp penetration principally around the front exterior wall. The premises have the benefit of a small walled garden area facing Howard Place .

6 The parties agreed that the issues before the Tribunal were as follows: (1) whether the Applicant had complied with s20 Landlord and Tenant Act 1985 and in particular whether the requisite notices had been served on the Respondents; (2) if not, whether the Tribunal would grant a dispensation to the Applicant under s20ZA of the same Act; (3) whether the qualifying works had been carried out to a reasonable standard and at a reasonable cost (s27A 1985 Act) ; (4) whether the Applicant was in breach of its own covenants under the lease thereby causing loss and damage to the Respondents and whether the general maintenance of the property had been properly carried out by the Applicant both before and after the acquisition of the premises by the Respondents ; and (5) whether the damp in the premises had been exacerbated by the poor quality of works carried out by the Applicant. These issues are discussed in turn below.

7 **Issue (1).** The Respondent argued that they had never received the first s20 notice which had been served on their predecessors in title and moreover that documents relating to the qualifying works had been sent to the wrong postcode , they had not received them and so had been unable to comment on them. They did however concede that the correct notices had

been prepared and sent by the Applicant. The Applicant said that they had sent the notices to the address and postcode (BN1 3PJ) shown on the Land Registry office copy entries (page 94) and the Post Office web site (page 93) and as stated in a letter sent to them by the Applicant's solicitors (page 258). They argued that under s7 Interpretation Act 1978 this constituted good service of the notices irrespective of the fact that the Respondents had not received them. Having considered the representations made by the parties the Tribunal concludes that s7 Interpretation Act 1978 does apply in this situation and , the Applicant having served the notices on an address which had been verified by three independent sources, they had properly served those notices on the Respondents. This includes the first notice, served on the Respondent's predecessors in title which should have been disclosed to them by their seller in the course of the conveyancing transaction. There being no dispute by the Respondents about the content of the notices the Tribunal therefore holds that there has been compliance by the Applicant with the provisions of s20 Landlord and Tenant Act 1985.

8 The Tribunal is not unsympathetic to the predicament of the Respondents who say that a different postcode (BN1 3PQ) is the correct postcode for the premises . However all the official records as noted above, including a communication from the Respondents' own solicitors indicates that BN1 3PJ is the correct address and that is the address to which the notices were sent and there is no means by which the Applicant could have known that this was wrong. The Respondents have now notified the Applicant of their correct postcode and recent correspondence from them has been received by the Respondents. It was suggested to the Respondents that they should seek to change the official records to show their proper postcode in order to prevent the occurrence of future similar mis-deliveries.

9 The Tribunal having concluded that there was proper compliance by the Applicant with s20 Landlord and Tenant Act 1985 there is no need for it to consider the question of dispensation under s 20ZA (**Issue 2**). For the sake of completeness, the Tribunal notes that Directions issued by the Tribunal had ordered the Respondents to make representations relating to the Applicant's s20ZA application which they had failed to do. That failure is treated by the Tribunal as an implicit consent to the

granting of an order under that section which the Tribunal would be minded to grant if for any reason its reasoning on Issue 1 were found to be defective.

10 **Issue 3.** The Tribunal had the benefit of a joint report by the parties' surveyors (page 394) in which it was agreed that the quality of the works was of a reasonable standard and the costs reasonably incurred. That being so the Tribunal holds that the Respondents are liable for the costs of the works in the proportion (one third of total costs) as specified in their lease.

11 **Issue 4.** The question of whether the Applicant is in breach of its own covenants under the lease and consequent loss and damage caused to the Respondents is not an issue within the jurisdiction of the Tribunal under the present application.

12 **Issue 5.** Page 400 (part of the joint surveyors' report) concludes that the cause of the damp is mainly attributable to the lack of a damp course at the property and that the recent exterior decoration works do not have any significant bearing on the dampness in the premises. Since the joint surveyors' report agreed that the works were of a reasonable standard it follows that the dampness in the premises cannot be attributable to the 'poor quality' of the qualifying works.

Frances Silverman
Chairman



13 December 2010.