

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HN/LSC/2009/0147

Re: Flat 1 The Salterns, 15 - 16 Undercliff Road, Bournemouth BH5 1BL

Applicants                      Mr and Mrs K Osborn

Respondent                      Rathley Limited

Date of Application          14 October 2009

Date of Inspection            2 March 2010

Date of Hearing                2 March 2010

Venue                             Royal Bath Hotel Bournemouth

Representing the parties      Mrs Gold for the Applicants;  
   Mr Ian Richards, solicitor, Morris Scott, for the  
   Respondent

Also attending                 Mr Hodgeson, Director of the Respondent;  
   Mr and Mrs Cowling - Flat 4  
   Mr Khazaal - Flat 6  
   Mr and Mrs Dhillon - Flat 8

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
Miss R B E Bray MRICS	Valuer Member
J Mills	Lay Member

Date of Tribunal's Decision:            16 March 2010

**Decision**

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the accounting years 2004/2005 to 2009/2010 inclusive, the reasonable and payable sums for the following items in the service charge account for those years are as follows:
  - a. 2004/2005: insurance premium £2097.38
  - b. 2005/2006: insurance premium £2633.24
  - c. 2006/2007:
    - i. insurance premium: £2841.80
    - ii. roof repair: nil

- d. 2007/2008:
    - i. front elevation painting: £1100
    - ii. front elevation levy: £800
    - iii. insurance premium £3058.17
  - e. 2008/2009:
    - i. building surveyor's fees £1340.83
    - ii. insurance premium £3160.08
  - f. 2009/2010: Proposed roof and other repairs: the demand having been withdrawn, no decision is required.
2. Section 20 C: The Tribunal makes an order under section 20 C of the Landlord and Tenant Act 1985 that any costs incurred by the lessor in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

### Reasons

#### Introduction

3. This was an application made by Mr and Mrs K Osborn (the Applicants) for determination whether certain service charges for the years 2004/2005 to a 2009/2010 inclusive were reasonable and payable. The items set out in the decision are those in which the Tribunal had jurisdiction within the terms of section 27A of the Landlord and Tenant Act 1985. They raised other issues, namely: lack of progress on maintenance of the building; leak over the front door not dealt with; failure to maintain balcony railings; delay in the repair of leak in bathroom from hole in the roof; leaking soil pipe. These items are not within the terms of the Section referred to above because that Section only gives the Tribunal jurisdiction to deal with service charges made or estimated in respect of work done or to be done: not failure to carry out work or to carry it out promptly which may be in breach of the contract of a lease over which courts, and not this Tribunal, have jurisdiction.

#### Inspection

- 4. The Tribunal inspected the internal and external common parts of the property known as The Salterns, 15 - 16 Undercliff Road Bournemouth (the property) in the presence of the Applicants, Mr Khazaal and Mr Richards.
- 5. The property is terraced, comprising 8 Flats in a converted building constructed 100 years or more ago. The basement Flat has a separate entrance. To the main entrance is a flight of external steps with rendered side pillars. To the rear is a small external area bounded on the north side by a very substantial retaining wall.
- 6. The property appears generally to be in poor condition for its age and character, needing significant repairs and/or to the roof, main walls, rainwater goods and soil pipes. We had access to the balcony on the front elevation of Flat 1 on the 2nd Floor which appeared to have been decorated in the last few years but the metal railings of which were severely affected by rust.

#### Hearing & Representations

7. A hearing was held the same day, those attending being noted above. So far as relevant to our consideration and decision we note the evidence and submissions below.

8. Generally.

a. The Respondent contracted about 4 years ago for the management of the property by Professional Property Management Ltd (PPM) and the contact there is Mrs M Tarchetti. She did not attend the hearing, giving health reasons. The Applicants complained of her absence, but having heard all the other evidence, the Tribunal considered that there was little further that she could usefully add to assist the Tribunal so that an adjournment was unnecessary.

b. There appears to have been a history of dissatisfaction by the Applicants and other occupiers/owners with the maintenance of the property since PPM were appointed to manage the property, such that the Applicants have now ceased making service charge payments.

9. Terms of the lease.

a. Amongst our papers we have a copy of the lease dated 22nd of March 1990 between the Respondent and Paul Dominic Race (the then lessee) relating to Flat 1. We understand, and we assume, that all the other Flat leases are in similar terms so far as material to the issues before us.

b. The lease defines that Flat as "Flat number 1 in the building and shown edged red on the Plan B". There is no other definition. Plan B clearly shows the edging to include the balcony of the Flat.

c. The maintenance charge is defined by reference to the 6th schedule which provides for the charge to be paid in half yearly instalments on account and the balance within 7 days of the certificate from the lessor's auditor, the charge to cover all items the subject of this application but in different percentages depending on the nature of the expenditure.

d. The lessor's repairing covenants are contained in the 4th schedule and in terms provide for the keeping in good and substantial repair and condition of roofs, walls and foundations, structure, gutters, drainpipes chimneys, etc and all common parts to the extent that they are "not comprised in this lease or any other leases of the other parts of the building". There is also provision to paint all outside surfaces of the building as usually painted as often as reasonably necessary and in any case at least once in every 5 years. There is also a covenant to insure to the full replacement value of the building, the building being defined as the land and building known as The Salterns.

e. The lessee's covenants are contained in the 3rd schedule and include keeping in repair of the Flat and all fixtures etc. The 5th schedule contains a list of matters agreed between the lessor and the lessee which is intended to clarify what parts are the responsibility of the Lessor and of the lessee. That schedule does not contain reference to the balcony.

10. Insurance premiums for all years referred to above.

a. We have evidence from Mr Osborn that he had obtained a quotation on the telephone at a premium of £1000. Mr Hodgeson told us that the property had been revalued by Mr Slade, a valuer, for insurance purposes

taking into account the size of the building, the rear retaining wall and possible slippage, claims record and the number of occupiers resident on short lettings. He also recounted the claims history.

- b. Mr Osborn did not have a written quotation and we very much doubt that, unless the quotation had been made after inspection, it would have been issued on a like-for-like basis. We accepted the Respondent's evidence as to aspects that would be taken into account, not least the very significant liability of the substantial retaining wall. While we did not have any third-party evidence, from our own knowledge and experience we were satisfied that the premiums charged, as set out in the decision, were reasonable and payable.

#### 11. Roof repairs.

- a. In 2008 the Respondent, through PPM, had taken initial steps towards a programme of major works on the property. On 10 November, 2008 Bennington Green Associates (BGA) had prepared a comprehensive report as to the condition of the property, identifying works required to the external elevations and roof, as well as service pipes etc. They estimated the cost would be around £40,000 plus VAT and fees. On the basis of that report a payment on account of such a service charge of £5500 had been requested from each Flat. Subsequently there had been a meeting which was attended by only one or 2 Flat owners but which had decided to phase the work to reduce charges payable by Flat owners in any one year. With a view to tenders, a comprehensive schedule of works had been prepared but providing only for works to the roof, rear elevations and back additions i.e. not the front elevation. Consultation procedures had been commenced but because of one or more tenants ceasing to pay service charge and the commencement of the Tribunal proceedings, consultation procedures had not continued nor the programme commenced, so no service charge payments had been made.
12. At the hearing Mr Hodgeson confirmed that the demand for service charges on account of £5500 per Flat could be treated as withdrawn, while a new programme of works was worked out for the near future to include the front elevation. As a result this item of charge no longer required the Tribunal's determination.
13. The building surveyor's fees 2008/2009. BGA had originally charged £3096.84 for their inspection, report and consequent work. This had been charged on the basis of work being carried out to the entire building for which they had budgeted £40,000 plus VAT and fees. They accepted that because of proposed phasing in which the rear elevation would cost, they estimated, £22,500, their fees should be calculated on that figure and they issued a credit note for £1340.83 resulting in a net charge of £1340.83. The basis of calculation of that fee is very much in line with our own knowledge and experience and is a reasonable sum.

#### 14. Roof repair 2006/2007.

- a. This repair relates to the balcony roof. Despite the repair there had apparently still been a leak between Flats 2 and 4 but the subsequent

inspection had ascertained that it was not the roof which was leaking. The Applicants therefore say that they have paid for work that was unnecessary.

- b. While it seems to have been understood by the managing agent that the balconies were part of the common parts to be maintained by the lessor and charged to service charge, we have noted above our finding that balconies are parts of Flats and therefore maintainable by the lessee of the Flat in question. Accordingly, the cost of the balcony roof repair is not chargeable to service charge and we reduced this item to nil.

15. Front Elevation Painting: £3200.

- a. On 13 June, 2007 Mr Weldon gave a quotation of £3200 for "Exterior repainting of front elevation ... to include scraping down of all surfaces and sanding down, spot prime bare wood, undercoat and gloss finish. Apply two coats exterior paint to wall areas, railings in Hammerite equivalent, colours to choice, inclusive of all labour and materials, to include steps." The lessees consider the work was not done to a proper standard, that the balcony railings were not rubbed down but simply painted over.
- b. We were satisfied that for the nature and extent of the work to be done that the overall figure of £3200 was a reasonable sum. However, from our inspection we did not consider it had been carried out to a reasonable standard. We noted flaking of rendering and cracked rendering on number 15. We did not consider the work had been properly prepared and therefore there had been some waste of money. For the reasons set out above the cost of work to the balcony railings should not form part of service charge and that element of the overall cost we considered reasonably to be £1000. Of the resulting balance of £2200, we considered that the lack of proper preparation resulted in work being done only to a reasonable cost of £1100 and that was the sum we found to be reasonable and payable as service charge.

16. Front elevation levy: £800.

- a. The Applicants complain that they paid their share of this sum for possible repairs but no repairs were carried out to the front elevation.
- b. We found that in the nature of the decoration work to be done to the front elevation, it was reasonable for the lessor, through PPM, to demand an additional £100 per Flat in advance. As it has evidently not been used, the sum must now be held on behalf of the lessees within the service charge funds and is available for use as such. We accordingly found the demand to be reasonable.

17. Section 20C. The Applicants applied for an order preventing the costs incurred by the Respondent in connection with the Tribunal proceedings from being recoverable as service charge. Although there is not a specific reference to such costs as being covered by service charges in the lease, we considered that it would be a reasonable interpretation of paragraph 1(e) of the 6th schedule that the lessor could thereby recover its costs by way of service charge. However, in all the circumstances of the case we were satisfied that the application was justified and that it would be unreasonable to enable the lessor to recover its costs from the lessees. We accordingly made an order under section 20C preventing the lessor recovering any of its costs of these proceedings from the Applicants.

18. We made our decisions accordingly.

[Signed] M J Greenleaves

Chairman

A member of the Tribunal  
appointed by the Lord Chancellor