

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

Case Nos. CHI/29UN/LSC/2009/0144
CHI/29UN/LDC/2010/0005

Property: Flat 1
1 St. Peters Road
Broadstairs
Kent
CT10 2AG

Applicant: Westleigh Properties Ltd.
Respondent
Application 1: Mr. A. J. Price

Respondents
Application 2: Mr. A. J. Price
Mr. and Mrs. A. Mustafa
Mr. D. Corder
Mr. J. Collison and
Ms Lancaster

Date of Hearing: 4th June 2010

Members of the Tribunal: Mr. R. Norman
Mr. R. Athow FRICS MIRPM
Mr. T. J. Wakelin

Date Decision Issued:

FLAT 1, 1 ST. PETERS ROAD, BROADSTAIRS, KENT CT10 2AG

Decision

Application 1

1. In respect of the matters transferred from the County Court and which are within the jurisdiction of the Leasehold Valuation Tribunal, the Tribunal determined that:

Mr. A.J. Price is liable to pay £1,563.66 calculated as follows:

		£
25 th March 2006 to 24 th March 2007	Balancing Charge	276.00
29 th September 2007 to 24 th March 2008	Service Charge On-Account	314.16
14 th March 2008	Roof Works	250.00
25 th March 2008 to 28 th September 2008	Service Charge On-Account	314.16
29 th September 2008 to 24 th March 2009	Service Charge On-Account	<u>409.34</u>
Total		1,563.66

2. Matters remaining to be decided by the County Court:

(a) Ground Rent	100.00
(b) Interest	324.65
(c) Court Fee	108.00
(d) Solicitors Costs	80.00

3. In relation to interest payments, the Tribunal makes the observation that on the evidence produced to the Tribunal it was not possible to say from what date any interest should be calculated.

Application 2

4. Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) provides that a Leasehold Valuation Tribunal may make a determination to dispense with all or any of the consultation requirements in relation to any qualifying works if satisfied that it is reasonable to dispense with the requirements. We came to the conclusion that we were not so satisfied and therefore could not make a determination to dispense with all or any of the consultation requirements. Hence Mr. Price’s liability for only £250 in respect of the roof works.

Background

5. Westleigh Properties Limited (“the Applicant”) is the freeholder of 1 St. Peters Road Broadstairs, Kent CT10 2AG (“the subject property”) and Mr. A. J. Price is the lessee of Flat 1 at that address. The Applicant was represented by Mr. B. Meagher MIRPM of Gateway Property Management, the current managing agents. At the time when the sums claimed are alleged to have arisen and when the Claim was commenced in the County Court, the managing agents were BLR Property Management (“BLR”). The Respondent had been represented by a Solicitor but was not represented at the hearing.

6. There are two applications before the Tribunal. The first arises from the commencement by the Applicant of proceedings against Mr. Price in the County Court (Claim Number 9RG03005) claiming payment of ground rent, service charges, administration fees, interest and costs. That matter was transferred to the Tribunal for determination of the matters the subject of the claim which were within the jurisdiction of the Tribunal. The second application was made by the Applicant under Section 20ZA of

the Act for the dispensation of the consultation requirements in Section 20 of the Act in respect of roof works carried out in 2008. The two matters were heard together.

Inspection

7. On 4th June 2010 the Tribunal inspected the exterior of the subject property in the presence of Mr. Meagher. Mr. Meagher did not have keys to the subject property. We could see that the subject property was a semi detached house on four floors which had been converted into flats. At the front of the subject property is a forecourt and at the rear a garden. Although the only inspection we could make of the roof was from the ground we could see that it appeared to be in a condition consistent with having been reslated in 2008. We could see that there was box guttering which appeared to have been painted and that at the front corner of the subject property the base and front of that guttering had come apart.

The Hearing

8. In making an application to the County Court for judgement to be set aside Mr. Price had set out his case against the application for payment of service charges and other sums. Mr. Meagher on behalf of the Applicant had provided a statement and a bundle of documents. The Tribunal considered these matters and at the hearing Mr. Meagher and the Respondent gave evidence and made submissions.

9. Mr. Price explained that he was dyslexic and could not read and write very well. We asked if he could find someone to assist him and he told us that he had been unable to do so but that he wanted the hearing to proceed.

10. We decided to deal first with Application 2 (the application for dispensation) and announced this.

11. In his statement produced for these proceedings, Mr. Meagher stated that:
“With regard to the contribution associated with the roof works carried out in 2008 in the sum of £2000, I can confirm that at the date of this statement I have written to the previous managing agents (BLR) to establish more information to substantiate the actions as the undersigned does not have copies of the file which has been passed across by the previous agent. It would appear that an application to dispense with consultation did not take place as set out in the letter proposing the roofing works dated the 12th February 2008 from Edward Hughes, the Property Manager acting for BLR. In the meanwhile and, for the avoidance of doubt, I hereby request dispensation on the basis that having spoken with the solicitors previously acting on behalf of Westleigh Properties Limited, prior to the transfer from the County Court to the Leasehold Valuation Tribunal Messrs. Conway and Conway, it was understood that water was pouring into the top floor flat and a temporary repair could not be effected because of access frustration and therefore scaffolding would have had to be erected at the property.

The writer understands that BLR therefore took immediate action, as set out in their letter dated the 12th February 2008 and I therefore apply on behalf of Westleigh Properties Ltd for retrospective dispensation for the consultation requirements and to help the Tribunal in their decision, I enclose a copy of the Lands Tribunal Decision LRX/81/2007 and would refer to the final page regarding dispensations. The writer understands from Messrs Conway and Conway Solicitors, that the contractor employed to carry out the work was nominated by the leaseholder of the top floor flat, who was suffering immediate ingress of water.”

12. A copy of the letter dated 12th February 2008 from BLR to Mr. Price had been produced. In that letter it was stated by BLR:

“Roof Works

Urgent works needed – Roof slates have deteriorated so badly that to access the areas to temp repair would cause unavoidable cracking of all the slates and subsequently a substantial amount would have to be replaced”

13. The letter referred to the consultation requirements of Section 20 of the Act and the notice periods and stated that in situations such as the one at the subject property where works are urgent there is provision for application to be made to a Leasehold Valuation Tribunal for dispensation of the consultation process. It was also stated in the letter that the procedure of applying to the Leasehold Valuation Tribunal could take a number of months and that in order to facilitate the works required as quickly as possible BLR had already gained three quotes for the required works, the most effective of which was enclosed. As well as that, BLR stated that they had also begun a Leasehold Valuation Tribunal application. In the letter the lessees were asked to sign and date the “Section 20 Sign Off form” and to enclose a cheque for their share of the works. It was also stated that “In order to go ahead with these works, all lessees must agree and send the necessary funds”.

14. In advance of the hearing Mr. Meagher supplied a copy of an email dated 14th January 2010 which he had received from Edward Hughes of BLR. In that email it was stated that as discussed, Mr. Hughes was in the process of obtaining a statement from Broadstairs Roofing (the firm which had carried out the roof works in 2008) regarding the condition of the roof prior to the works starting and that he would forward this to Mr. Meagher once received.

15. Also supplied were copies of emails between Mr. Collison, one of the lessees of the top floor flat at the subject property, and Mr. Hughes and other members of staff at BLR about the roof problems.

16. Mr. Meagher restated the Applicant’s case for a dispensation as provided in his statement and explained that he had taken over from the previous managing agents BLR and that although he had requested further information and evidence from them they had not supplied all that was required and he was unable to provide any further evidence in addition to that included in advance of the hearing.

17. He did add that the lessees had gained a new roof, that the contractor had been nominated by one of the lessees and that in his opinion the problem which the consultation process had been introduced to combat was not present in this case.

18. We noted the following matters concerning the letter dated 12th February 2008 from BLR:

(a) That it was stated that the consultation requirements could take up to 3 – 4 months to complete. A copy of a letter dated 26th June 2008 from Broadstairs Roofing asked for a deposit of £2,000 before starting the roof works. From that it would appear that there would have been time for the consultation process to have been carried out and that the works were not carried out with such a degree of urgency as was implied in the letter dated 12th February 2008 would be the case.

(b) That the procedure of applying to the Leasehold Valuation Tribunal could take a number of months. Members of the Tribunal were aware of urgent applications which had been dealt with in a matter of days.

(c) That three quotes had been obtained but only one was said to be enclosed.

(d) That the works proceeded even though Mr. Price did not agree to the work or send any money.

(e) That BLR had not, as stated in their letter dated 12th February 2008, made an application to the Leasehold Valuation Tribunal for dispensation.

19. We noted also the following:

(a) That no statement had been produced from Broadstairs Roofing regarding the condition of the roof prior to the works starting.

(b) That we had not seen any specification of the work carried out.

(c) That we had not been provided with copies of the quotes obtained.

20. We adjourned and considered all the evidence presented to us and the submissions made in respect of the second application. As a result of the matters which we noted in the preceding two paragraphs we could not be satisfied on a balance of probabilities that the lessees had not been disadvantaged by the lack of consultation.

21. Section 20ZA of the Act provides that a Leasehold Valuation Tribunal may make a determination to dispense with all or any of the consultation requirements in relation to any qualifying works if satisfied that it is reasonable to dispense with the requirements. We came to the conclusion that we were not so satisfied and therefore could not make a determination to dispense with all or any of the consultation requirements.

22. The hearing resumed and we announced our decision in respect of the second application. The hearing then continued and we considered the first application.

23. We appreciated that Mr. Meagher was in considerable difficulty in producing evidence in support of the Applicant's claim as he had not been the managing agent at the time and although he had asked BLR to produce evidence very little had been provided.

24. Mr. Meagher had, helpfully, provided a statement and such evidence as he had. He had also set out a list of the "Details of the Original County Court Claim Showing how the claim is broken down showing the element to be decided by the RPTS" and the Tribunal was able to use that list in making a decision on the following items. As the service charge should be paid on 25th March and 29th September we assumed that the references to 24th and 25th September in the list and in the documents prepared by BLR was an error. We also assumed that the sum of £409.34 stated in the list to be Service Charges On-Account from 25th September 2009 to 24th March 2009 was intended to be in respect of the period 29th September 2008 to 24th March 2009.

(a) From 25th March 2006 to 24th March 2007 Balancing Charge £276.00. We accepted the evidence produced in support of this balancing charge for the year ended 24th March 2007 and found it to be payable.

(b) From 25th March 2007 to 28th September 2007 Service Charge Balance Brought Forward. £93.41. No evidence was available to support this item and consequently we found it not to be payable.

(c) From 29th September 2007 to 24th March 2008 Service Charge On-Account £314.16. We accepted the evidence that this sum was reasonably demanded as an interim service charge and found it to be payable.

(d) 14th March 2008 Roof Works £2,000.00. As the consultation requirements in Section 20 of the Act had not been complied with and as a result of the Tribunal's decision not to dispense with the requirements only £250 was payable.

(e) From 25th March 2008 to 28th September 2008 Service Charge On-Account £314.16. We accepted the evidence that this sum was reasonably demanded as an interim service charge and found it to be payable.

(f) From 29th September 2008 to 24th March 2009 Service Charge On-Account £409.34. We accepted the evidence that this sum was reasonably demanded as an interim service charge and found it to be payable.

(g) Ground Rent from 25th March 2008 to 24th March 2009 £100 is for determination by the County Court.

(h) Administration charges of £453.80 calculated as follows:

	£
Arrears late payment fee	65.80
	20.00
	65.80
	3.20
BLR Fee for County Court Summons	<u>299.00</u>
Total	453.80.

Mr. Meagher was unable to produce evidence to satisfy the Tribunal that the demands for service charges had been properly made and therefore charges made for attempting to collect arrears could not be justified. Consequently we found the sum of £453.80 was not payable.

(i) Interest on unpaid balances. This is a matter for determination by the County Court but the Tribunal makes the observation that on the evidence produced to the Tribunal it was not possible to say from what date any interest should be calculated.

(j) The Court Fee of £108.00 and the Solicitors Costs of £80 are for determination by the County Court.

25. All determinations were made on a balance of probabilities after consideration of all the written and oral evidence provided and the submissions made.



R. Norman
Chairman