

Case No: CHI/00MM/LSC/2007/0095
Cumbernauld, Higher Erith Road, Torquay, Devon, TQ1 2NQ

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00MM/LSC/2007/0095

Re: Cumbernauld, Higher Erith Road, Torquay, Devon, TQ1 2NQ

Between:

Cumbernauld Management Company Limited
(Torbay Management Services Limited)

(“the Applicant/Landlord”)

and

Mr A.P. Van Crump & Ms S. Heathershaw (Flat 1)

Mr & Mrs R.J.D. Bennett (Flat 2)

Mr M C. Eastmond (Flat 3)

Miss R.J. Swain & Mr M.M.B. Swain (Flat 4)

Mr P. & Mrs P.A. Hunt (Flat 5)

Mr John F. Walker (Flat 6)

Miss S. Vinnicombe & Mr P.J. Vinnicombe (Flat 7)

Mr Jon Williams (Flat 8)

HomeSelect Finance (No. 3) Limited (Flat 9)

Mr Colin Bleach (Flat 10)

Mr J.E. Bowen (Flat 11)

(“the Respondent/Tenants”)

In the matter of an Application under Section 27A Landlord & Tenant Act 1985
(Liability to pay service charges)

Tribunal

Mr T E Dickinson BSc FRICS IRRV (Chair)

Mr A Cresswell

Mr W H Gater FRICS ACI Arb

Inspection & Paper Determination

12 February 2008

PAPER DETERMINATION AND REASONS

DETERMINATION:

1. The demand for payment on account of service charges for the 1 October 2007 to 30 September 2008 in the following sums is reasonable, namely:

2 bedroomed apartments at 10.72%	£5,436.44
1 bedroomed apartments at 7.14%	£3,620.91

Following Section 20 Consultation and Competitive Tender, Edwards Building Services have been chosen as the selected contractor for the structural repair and replacement of the defective flat roof above Flat 7 and the provision of a damp proof course along a subterranean wall serving Flat 7 only in the sum of £50,713 inclusive of VAT. The Tribunal finds this charge to be reasonable.

The Tribunal also considered the retention of the services of a Chartered Building Surveyor is a reasonable expenditure and that total surveyor's costs of £5,198.80 inclusive of VAT are reasonable.

REASONS:

Background

2. By an Application dated 10 October 2007 the Applicant, through their Managing Agents Torbay Management Services Ltd, made an Application to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 for a Determination as to the reasonableness of the sums demanded on account for the year 1 October 2007 to 30 September 2008.
3. Directions were issued on 26 October 2007 requiring the Parties to file and serve Statement of Case by 26 November 2007 on the part of the Applicant and, if the Respondent intended to contest the Application, by a date 21 days from the receipt of the Applicant's Statement of Case.
4. The Claimant submitted a Statement of Case with supporting documents in October 2007. The Respondents did not submit any evidence to the Tribunal which proposes to deal with the Application on the Paper Track on the basis only of written representations and documents without a formal hearing.

Inspection

5. This took place immediately prior to the Paper Determination by the Members of the Tribunal.
6. Cumbernauld is a detached Victorian building converted into eleven residential flats in the 1980's and the Tribunal confined its inspection to the interior and exterior of Flat 7.
7. The HM Land Registry Plan indicated that the living room and bedroom to Flat 7 faced in a south westerly direction. In the living room the internal walling on the south eastern side was found to be mainly beneath the external ground levels, with evidence of penetrating dampness and black spot moulding. Plaster was found to have fallen away beneath the arch on the south western side of the living room following rainwater penetration. Damp penetration was also noted to the northernmost corner of the living room.
8. In the kitchen beyond the living room some perished plasterwork and dampness was found to the south corner.
9. In the bathroom, back lobby area and airing cupboard no significant dampness was found to the walls, although black spot moulding was evident in some areas.
10. In the bedroom extensive dampness was found to the north western wall, with further damp penetration to the eastern corner to the ceiling, wall head and to the wall below. Also in the bedroom plaster was found to have fallen away beneath the archway on the south western side exposing some of the brickwork and rusting steels. Temporary repairs have been carried out to the ceiling in the bedroom.
11. Externally the Tribunal noted that the rear slab patio to the south western side was close to the ground floor level of this garden level flat. The concrete pathway to the north western side appeared to be slightly below the external ground levels. On the south eastern side the external ground level was close to the ceiling level of the living room.
12. The Tribunal Members noticed a downpipe discharging directly onto the ground on the south eastern side of the building above the ceiling level of Flat7.
13. Externally parts of the terracing over the south western end of the flat had been temporarily covered by a tarpaulin.

The Lease

14. Firstly, the Tribunal were provided with a copy of the lease to Flat 7 only and have worked on the assumption that terms in the leases are common. Certainly no representations had been received to suggest otherwise.
15. By Clause 3 of the lease made between Design Castle Limited (1), Cumbernauld Management Company Limited (2) and Marcus Anders (3), the tenant covenanted with Cumbernauld Management Company Limited and also with the Landlord to keep the premises and all party walls, sewers, drains, pipes, cables, wires and appurtenances thereto belonging (other than the parts comprised and referred to in Sub-Clause 1 of Clause 5) in good and tenable repair and condition and in particular so as to support shelter and protect the parts of the Estate other than the demised premises and to keep any parking space in the demised premises neat and tidy.
16. By Clause 3(1)(k) the Tenant covenanted in the year 1993 and in every succeeding seventh year and in the last year of the term to paint with two coats of best quality paint and to paper and decorate in a good and workmanlike manner all the inside parts of the flat.
17. By Clause 4(1) the Lessee covenants with the Lessor and as a separate covenant with the Management Company to contribute and pay the proportion mentioned in the Sixth Schedule (7.14%) of the costs, expenses, outgoings and matters mentioned in Part I of the Fourth Schedule and Parts II and III shall also be incorporated in the lease.
18. By Clause 5(1) the Management Company covenants with the Lessees (subject to the contribution and payment as provided) and as a separate covenant with the Lessor to maintain, repair, redecorate and renew (a) the roofs, foundations and main structure of the building; (b) the boundary walls, fences, gutters and rainwater pipes of the Estate; (c) the gas pipes, water tanks and pipes, drains and electric and other cables and wires in, under and upon the Estate other than those serving only one flat comprised in the Estate; (d) the entrance halls, landings and staircases of the building; and (e) the gardens, grounds and access ways belonging to the Estate.
19. By Clause 5(3) the Management Company covenants that as often as reasonably required and at least every seven years to paint the exterior parts of the building.
20. By Clause 5(4) the Management Company covenants that as often as reasonably required to decorate the parts of the building referred to in Sub-Clause 2, i.e. entrances, entrance halls, landing and staircase of the building.

21. By Clause 8(5) the “flat” includes all the windows and window frames and fittings thereof, the floors and ceilings and inside walls (including the inside skin of the exterior cavity walls) and all interior plaster coverings of walls abutting on the exterior or on any other parts of the building, but not to include any part of the foundations of the building or of the roof or main external walls or the main timbers and joists or the concrete floor structures separating the flat from any other part of the building or the main drains leading thereto and therefrom.
22. By Clause 8(6) the word “repair” includes the rectification or making good of any defect in the foundation, roof or structure of the building notwithstanding that it is inherent or due to the original design of the building.
23. By the Fourth Schedule Part I, the costs and expenses, outgoings and matters in respect of which the Lessee is to contribute include the costs and expenses incurred by the Management Company in carrying out its obligations under Clauses 5 and 6 of the lease.

The Law

24. Section 27A of the Landlord and Tenant Act 1985 (“The 1985 Act”) states as follows:

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- 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;
- e. The manner in which it is payable

The Applicant’s Case

25. Written submissions were received from Torbay Management Services Limited representing the Applicant Cumbernauld Management Company Limited. These included, inter alia, a copy of the Memorandum and Articles of Association of Cumbernauld Management Company Limited, a copy of the Lease to Flat 7, Title Plan of Flat 7, sample Deed of Covenant, specifications of works for tender, Section 20 Notices, details of the meetings of Cumbernauld Management Company Limited, general letters to Leaseholders, Section 20 Consultation Notices including a Statement of Reasons for awarding the contract.

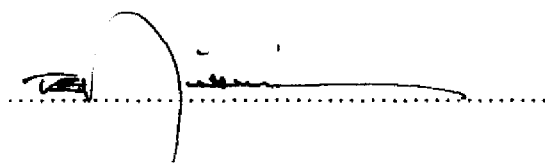
The Determination

26. The Tribunal considered all of the documents in the Applicant's submission and started with a review of the Memorandum and Articles of Association of Cumbernauld Management Company Limited. The Tribunal found nothing in the document that would question the competence or ability of the Company to fulfil its duties.
27. The Tribunal considered the various documents required under the provisions of Section 20 of the Landlord and Tenant Act 1985 amended by the Commonhold and Leasehold Reform Act 2002. The Tribunal have looked in detail at the Notices and accompanying documentation and have found nothing to suggest a failure to comply with the provisions of the relevant section of the Act.
28. The Tribunal reviewed the Minutes of the Extraordinary General Meetings, including the EGM of Thursday 14 June 2007 where the proposal was to discuss, and agree, the mechanics of funding the building's structural repairs required to the flat roof and subterranean wall supporting Flat 7. The proposals are set out in detail on Pages 3 & 4 of the Minutes of that EGM and all five proposals were unanimously supported by the six Members present with no objections or abstentions and therefore the motion was carried.
29. The Tribunal noted that the first proposal was that the project works for Flat 7, which included the damp proof course and roof renovation works, as stipulated in the tender documents drawn up by Haldons, dated May 2007, should be undertaken in full. The Tribunal found as a matter of fact that on the Haldons' work schedule provision had been made for full internal redecoration of Flat 7.
30. The Tribunal found that the specification prepared by Haldons Chartered Surveyors covered each item in some detail.
31. With regard to the tendering process, the Tribunal noted from the letter of 27 July 2007 that, unfortunately, DSC Properties had temporarily ceased trading and therefore had been removed from the tender list. The Tribunal noted that there were sound reasons for the choice of Edwards Building Services as the preferred contractor for the reasons given.
32. A number of questions had been asked of the Tribunal by the Applicants but it is not the Tribunal's role to answer these questions individually but rather to make a determination on the question of payability in accordance with the provisions of the Section of the Act in question, as detailed at paragraph 24 of our determination, above. In complying however with our role, the answers to some of these questions will be clear.

33. Under the terms of the lease, this Tribunal finds that there is an express definition of the word "repair" in that this includes the rectification or making good of any defect in the foundation, roof or structure of the building notwithstanding that it is inherent or due to the original design of the building.
34. Under the provisions of the Fourth Schedule of the Lease, the Lessees are liable to contribute towards the costs and expenses, outgoings and matters incurred by the Management Company in carrying out its obligations.
35. The Leaseholders have been consulted at the Extraordinary General Meeting on 14 June 2007 on the basis of the Schedule of Works prepared by Haldens Chartered Surveyors and all who attended that meeting voted in favour.
36. There was, the Tribunal noted, an apparent conflict between the strict terms of the lease in Clause 3(1)(k), which requires the tenant, in the normal course of affairs, to effect redecoration of internal walls, and the situation facing the parties, which necessitates damage to the internal walls so as to effect the repairs and works which are necessary and which are required of the landlord under Clause 5. The Tribunal noted that the parties had determined upon a pragmatic solution to this apparent conflict, in that at the EGM, the Haldons' work schedule, which includes painting but not paper work was accepted as an integral part of the works to be included in the service charge.
37. This Tribunal therefore concludes that for the reasons stated above, the amounts demanded on account of the service charges for the 2007 / 2008 year are reasonable and payable.

Dated this 15th day of February 2008

Signed:



T E Dickinson BSc FRICS IRRV (Chairman)

A Member of The Southern Rent Assessment Panel and Leasehold
Valuation Tribunal Appointed by The Lord Chancellor