

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00LC/LIS/2006/0025

Property: Flat 25,
25 - 30 Sunderland Close,
Rochester
Kent
ME1 3AS

Applicant: Shuttleworth Property Management Limited
c/o Circle Residential Management Limited

Respondent: Ms C.J. Richards

Date of Hearing: 23rd April 2007

Members of the Tribunal: Mr. R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM
Ms L. Farrier

Date decision issued:

RE: FLAT 25, 25 - 30 SUNDERLAND CLOSE, ROCHESTER, KENT, ME1 3AS

Background

1. Shuttleworth Property Management Limited ("the Applicant") is the freeholder of Flat 25, 25 - 30 Sunderland Close, Rochester, Kent, ME1 3AS ("the subject property") and Ms C.J. Richards ("the Respondent") is the lessee of the subject property.
2. The Applicant is represented by Mr. M. Paine FPCS MIOD of Circle Residential Management Limited, the managing agents.
3. The Applicant commenced proceedings in the County Court (Claim No. 6CN00757) and on 15th August 2006 the County Court of its own motion ordered that the claim be transferred to the Leasehold Valuation Tribunal.

4. The Particulars of claim show the sums claimed to be:

Date	Item	Amount £
29.09.05	Interim service charge	162.50
17.10.05	Final reminder letter	29.38
24.10.05	7 day warning letter	29.38
25.11.05	Section 146 notice	440.63
15.03.06	Agents fees	587.50

There is also a claim for the Court fee: 120.00

Making a total of 1,369.39

Inspection

5. On the 23rd April 2007 in the presence of Mr. Paine and the Respondent we inspected the exterior and the internal common parts of the purpose built block of flats of which the subject property forms part.

6. We found that the block of flats (25 - 30 Sunderland Close) is one of a number of purpose built blocks of flats which were previously owned by the local Council. They are surrounded by grassed areas and each flat has a store and a garage separate from the block.

7. Mr. Paine stated to us that the estate roads were not adopted by the local authority and that there was a problem with fly tipping but we could see only a small amount of rubbish. The Respondent stated to us that there were some lights in the common parts which had not been working for some time and that the door entry system had not worked for three or four years. We noted that grass was being cut near another block of flats on the estate which Mr. Paine stated was managed by Circle Residential Management Limited.

Determination

8. We found that the quarterly interim service charge of £162.50 due in arrear on 29th September 2005 was a reasonable sum to demand as an interim service charge and consequently, within 28 days of the date of issue of this determination the Respondent is to pay to the Applicant c/o Circle Residential Management Limited £162.50 in full satisfaction of this claim.

Reasons

9. Before the hearing a defence had been filed by the Respondent at the County Court and submissions and evidence had been made by Mr. Paine. Copies of those documents were in the possession of the parties and we had considered them.

10. The hearing was attended by Mr. Paine and the Respondent and we heard evidence and submissions from them both.

11. Mr. Paine reiterated that he understood that the estate roads were not adopted by the local authority. The Respondent gave evidence that the local authority did appear to be maintaining the roads and that when there had been proposals to build a school nearby, the roads as far as the garages in Sunderland Close had been shown on plans as public roads. Mr. Paine stated that no money had been spent by the Applicant on roads and as there appeared to be no provision in the budget for any such expenditure the adoption or otherwise of the estate roads did not have a bearing on our determination. No doubt before the Applicant considered carrying out any work in relation to the roads or in making any budgetary provision for such work the Applicant or managing agents would clarify the situation.

12. The Respondent agreed that there was some rubbish on the estate and that it was mainly residents who were responsible for it.

13. The Respondent stated that on the morning of our inspection a man had arrived asking which lights were not working and saying that he had been told to repair them because some people were inspecting the property. He did not know which lights were not working and the Respondent did not tell him because she thought he should have been instructed on this by the managing agents. Mr. Paine's evidence was that as to the lighting and door entry system he had "spoken to maintenance on Friday", by which we took him to mean the 20th April 2007, and that both were in hand and being dealt with. The Respondent also stated that the cleaning was not to a good standard as the cleaners only cleaned round the mats.

14. Mr. Paine stated that there had been agreement to adjourn other County Court claims against the Respondent pending the determination by the Leasehold Valuation Tribunal of the claim before us today and that there were three claims all together. He explained that the other two claims were identical to the claim before us apart from the period in respect of which the service charges were claimed and that he was trying to clarify in the Respondent's mind her liability in respect of interim service charges and the amount to be paid and that all the claims could be withdrawn if the sums claimed were paid.

15. The Respondent stated that she was not sure how many claims there were but that they were not identical and that there was a claim for ground rent which she maintained she had paid.

16. Later during the hearing Mr. Paine stated that he believed there were two other claims but could not be more specific. He was asking for a determination that the interim service charges for the year 2005/2006 in the sum of £162.50 per quarter were reasonable so that the other claims for other quarterly payments could then be pursued or agreed. He suggested that if agreement could be reached then some of the administration charges included in the other claims could be withdrawn.

17. In respect of the claim before us (Claim No. 6CN00757) Mr. Paine stated that he would withdraw the administration charges which reduced that claim by £1,086.89 to £162.50 being the interim service charge due 29th September 2005 in arrear but he did still wish to claim the Court fee of £120.

18. He accepted that had the claim originally been for only £162.50 then the Court fee would have been lower and he thought it would have been £30.

19. He confirmed that the administration charges and Court fees in respect of the other County Court claims were not withdrawn and still formed part of the sums claimed in those cases.

20. We explained to the Respondent the system under the provisions of the lease by which the Applicant or managing agents on behalf of the Applicant would estimate the expenditure which was expected for the coming year, which in this case runs from 1st April in one year to 31st March the following year, and would then send bills to the lessees for their share of these interim service charges. Then at the end of the year (31st March) the Applicant or managing agents on behalf of the Applicant would look at what had actually been spent and if it was more than had been estimated then the lessees would be asked for more money but if less had actually been spent then the excess would be credited to the lessees. The Respondent stated that she understood that she had to pay service charges but that this was the first time there had been civilised communication about them. She had no objection to paying service charges provided they were reasonable and that the work paid for was done. Mr. Paine had not provided the Respondent with the Leasehold Advisory Service/ARMA leaflet which gives introductory information on living in leasehold property, because the Respondent had taken up residence in 2002 which was before the leaflet had been produced. We considered that it was unfortunate that Mr. Paine had not provided the leaflet when it became available as it could have assisted communication and understanding. The Tribunal provided a copy to the Respondent at the hearing.

21. The Respondent in her defence had stated that she accepted she owed £487.50 to March 2006, being three quarters @ £162.50 each and she confirmed that to us. The Respondent considered that the interim service charges of £162.50 per quarter would have been reasonable at the time they were demanded on the understanding that the work those charges were to pay for would be done. We found the sum of £162.50 to be reasonable.

22. The withdrawal by Mr. Paine of all the administration charges in respect of this claim amounting to £1,086.89 meant that the only other matter remaining to be determined was the Court fee of £120.

23. Mr. Paine had accepted that had the claim been issued for only £162.50 then a smaller fee of, he believed, £30 would have been paid. However, Section 167(1) of the Commonhold and Leasehold Reform Act 2002 provides that:

- (1) A landlord under a long lease of a dwelling may not exercise a right of re-entry or forfeiture for failure by a tenant to pay an amount consisting of rent, service charges or administration charges (or a combination of them) ("the unpaid amount") unless the unpaid amount-
 - (a) exceeds the prescribed sum, or
 - (b) consists of or includes an amount which has been payable for more than a prescribed period.

The prescribed sum and the prescribed period are £350 and 3 years respectively. It is noted that the Section 146 (forfeiture) notice procedure had been used by the Applicant. Had the claim been for only £162.50 it would not have exceeded the prescribed sum and a right of re-entry or forfeiture for failure to pay could not have been exercised. We also noted that even though this claim was made for a sum in excess of £350 a right of re-entry or forfeiture

for failure to pay could not have been exercised if the other sums in this claim were in fact a default charge as defined in the Commonhold and Leasehold Reform Act 2002.

24. On considering these matters we were not satisfied that to award any part of the Court fee was justified.

25. Both Mr. Paine and the Respondent agreed that a payment of £487.50 by the Respondent would mean that she would be up to date with her service charge payments to March 2006. The Respondent also agreed that she owed service charges for the year 2006/2007 and that she wanted to get the matter sorted out.

26. Mr. Paine and the Respondent told us that there was an outstanding claim for ground rent. Mr. Paine stated that a year's ground rent was owed but the Respondent stated that she had paid it. In any event, that is not within our jurisdiction.

27. The matters other than ground rent which we understand from Mr. Paine and the Respondent are still outstanding, after this determination that £162.50 is payable, are the interim service charges for the remainder of the year 2005/2006 due 25th December 2005 in arrear and 25th March 2006 in arrear being £162.50 per quarter giving a total of £325.00, interim service charges for the year 2006/2007 of £175 per quarter giving a total of £700 for the year, administration charges and Court fees.

28. It follows from our determination that the quarterly service charge of £162.50 due 29th September 2005 in arrear was a reasonable sum to demand as an interim service charge, that had the claims for the quarterly service charges due 25th December 2005 in arrear and 25th March 2006 in arrear been before us for consideration we would have found that they also would have been reasonable. In fact that accords with the Respondent's acceptance that she owes £487.50, including the £162.50 determined in this claim, to bring her service charge payments up to date to March 2006.

29. Mr. Paine stated that for the year 2006/2007 the interim service charges were £175 per quarter, making £700 for the year and that a payment of £1,187.50 would bring the Respondent up to date in respect of service charges to March 2007. The claim for interim service charges for the year 2006/2007 is not within the claim brought before us and we make no determination as to whether or not those charges are reasonable.

30. We have no details of the administration charges and Court fees in respect of claims other than the one before us today and we can make no determination in respect of them.

31. Mr. Paine stated that once there had been a determination as to service charges in this present claim, he would do as he had done in 2005 and agree a global settlement with the Respondent for interim service charges, ground rent and costs incurred in issuing proceedings.

32. Mr. Paine and the Respondent were asked if they wished to try to achieve a settlement of all outstanding matters and it was made clear to them that there was no pressure upon either of them to do so, but no settlement could be reached. Perhaps that is not surprising as Mr. Paine did not have full details of the matters outstanding.

33. We must make it clear that our determination is only as to the interim service charge due 29th September 2005 in arrear and the administration charges and Court fee claimed in this case (Claim No. 6CN00757). By implication that means that we also would find that the interim service charges due 25th December 2005 in arrear and 25th March 2006 in arrear were reasonable. Our determination does not extend beyond that. It does not mean that if we were asked to consider the amount of actual service charges calculated at the end of the year (31st March 2006) that we would find that they were reasonable. Neither does it mean that if we were asked to consider the amount of the interim service charges for the year 2006/2007 or the amount of actual service charges calculated at the end of the year (31st March 2007) that we would find them reasonable. If the County Court either of its own motion or at the request of either the Applicant or the Respondent wishes to transfer the outstanding matters, other than ground rent to us then we will deal with them. If either the Applicant or the Respondent decides to make an application to the Leasehold Valuation Tribunal to determine the reasonableness of any interim or actual service charges or administration charges not within the claims already before the County Court then they may do so.

34. Mr. Paine withdrew the administration charges included in this claim and as a result we did not have to consider whether or not those charges were reasonable but, in the absence of evidence as to the reasonableness of the administration charges it is unlikely that we would have awarded more than minimal amounts had Mr. Paine not withdrawn that part of the claim.

35. At the end of the hearing we announced the main points of our determination to Mr. Paine and the Respondent.



R. Norman
Chairman.