

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00ML/LIS/2009/0042

Property: Ground Floor Flat
10 Portland Road
Hove
East Sussex
BN3 5DQ

Applicant: 10 Portland Road Limited

Respondent: St. Mary's Homes Limited

Date of Hearing: 27th July 2009

**Members of the
Tribunal:** Mr. R. Norman (Chairman)
Mr. A.O. Mackay FRICS
Ms. J.K. Morris

Date decision issued:

**RE: GROUND FLOOR FLAT, 10 PORTLAND ROAD, HOVE, EAST SUSSEX
BN3 5DQ**

Background

1. 10 Portland Road Limited ("the Applicant") is the freeholder of the building known as 10 Portland Road, Hove, East Sussex BN3 5DQ. St. Mary's Homes Limited ("the Respondent") was at the material time the lessee of part of that building namely the Ground Floor Flat ("the subject property").
2. The Applicant commenced proceedings in the County Court (Claim No. 9BN00506) against the Respondent and those proceedings so far as they are within the jurisdiction of the Tribunal have been transferred to the Tribunal.

Inspection

3. On 27th July 2009 the Tribunal inspected the front and side elevations of 10 Portland Road and, in the presence of Mr. Bowler a Director of the Respondent, the interior of the subject property. Mr. Bowler told us that the entrance hall was the only common part of the building. He pointed out the double glazed sash windows which he had installed in the subject property, a flat roof to an extension at the rear of the subject property and wood and other items on another flat roof at the rear of the subject property. He told us that the building comprises four units and that the ground floor flat and the maisonette on the first and second floors each contribute 33.3% of the service charges and that the two basement flats each contribute 16.66% of the service charges.

The Hearing

4. The hearing on 27th July 2009 was attended by Mr. Lemcke, the managing agent, on behalf of the Applicant and by Mr. Bowler on behalf of the Respondent.

5. We told Mr. Lemcke that we had inspected 10 Portland Road and outlined what we had seen and been told.

6. We heard evidence and submissions from Mr. Lemcke and Mr. Bowler.

7. We wanted to know from Mr. Lemcke and Mr. Bowler exactly what was being claimed and what was being disputed and we therefore went through the sums being claimed as we understood them from the papers supplied to us.

8. From the Particulars of Claim we could see that there was a claim for the following interim service charges:

date due:	sum due:
25.12.07	£320
24.06.08	£320
25.12.08	<u>£195.84</u>
Total	£835.84

9. From the budget for 2008 we could see that the sum of £320 due 25th December 2007 and the sum of £320 due 24th June 2008 were calculated as follows:

	£
buildings insurance premium	535.00
general repairs	750.00
audit fee	235.00
management fee	<u>400.00</u>
total	1,920.00

One third of that figure: £640.00, was the Respondent's proportion and was payable in two instalments each of 320.00.

10. From the budget for 2009 we could see that the sum of £195.84 due 25th December 2008 was calculated as follows:

	£
buildings insurance premium	540.00
audit fee	235.00
management fee	<u>400.00</u>
total	1,175.00

One third of that figure: £391.66 was the Respondent's proportion and was payable in two instalments each of 195.84. Only the first of those had become payable by the time of issue of the County Court claim

11. From the Particulars of Claim we could see that also claimed was the total expenditure incurred by the Applicant for the year ended 31st December 2007 and due on that date in the sum of £351.70.

12. We could see from the papers supplied that that sum was calculated as follows:

	£
buildings insurance premium	550.11
repairs to flat roof	420.00
rubbish clearance	<u>85.00</u>
total	1,055.11

One third of that figure: £351.70 was the Respondent's proportion.

13. Interest on sums outstanding was claimed.

14. There was also a claim for costs, fees etc. of recovering arrears of rent or other sums due from the Respondent in the sum of £500 + VAT to 29th January 2009 and further costs on an indemnity basis. We asked Mr. Lemcke if he knew how this had been calculated and if this was a claim against the Respondent alone. He stated that he did not know how it had been calculated, that it was claimed against the Respondent alone and he confirmed that it was not service charges. We therefore announced that the Tribunal did not have jurisdiction to determine liability for such costs, fees etc.

15. Mr. Lemcke stated that every time he sent out demands for service charges he sent with the demand the notes which are required to accompany the demand. One copy of such notes had been produced by the Respondent and Mr. Bowler confirmed that he had had demands for the service charges being claimed.

16. However, Mr. Lemcke and Mr. Bowler explained that there had been developments since the proceedings were issued. The Respondent had paid £541.20 in respect of insurance and Dean Wilson Laing, Solicitors on behalf of the Applicant had stated in a letter dated 20th July 2009 that the Applicant would no longer be pursuing the claims for roof repairs and rubbish removal.

17. At the hearing Mr. Bowler stated that the Respondent did not dispute the sum of £750 as an interim claim for general repairs and agreed that the Respondent should pay £250 being the 1/3 rd proportion.

18. As a result, the only matters disputed and within the jurisdiction of the Tribunal were the interim service charges claimed for audit fees and management fees due 25th December 2007, 24th June 2008 and 25th December 2008 and interest.

19. Mr. Lemcke and Mr. Bowler agreed that that was the situation and we asked them to address us about those matters.

20. Mr. Bowler stated that as to the management fee, the only expenditure on the building is the building insurance and there was not a lot of management in that. The premium had to be paid and that was all. He was not experienced in these matters and was now retired but he suggested that £100 for management of the whole building for the whole year would be sufficient. He also asked where in the lease did it say that the landlord could charge the audit fee to the service charges. He considered that there was not much to audit, the figure seemed slightly high and he questioned what the auditors had done for £235.

21. Mr. Lemcke pointed out that clause 4.5 and Schedule 2 to the lease provided for the audit fee to be charged to the service charges and that the sum charged was only an interim figure. It was the sort of figure charged for an audit. As to management fees, he had written twenty letters to Mr. Bowler and had sent accounts and letters to solicitors on Mr. Bowler's behalf. The basic charge was £100 per flat per annum. It was at the very bottom of the management fee scale. For that he arranged insurance and did what the lease required him to do as managing agent. Substantial repairs were needed and he would deal with those. There was an out of hours telephone service included to deal with emergencies. He did not charge VAT.

22. Mr. Bowler said that Mr. Lemcke had written twenty letters because Mr. Bowler had written twenty one letters to Mr. Lemcke and the claim had now been dropped. He had paid half a dozen cheques to 10 Portland Road Limited because the lease stated that he should pay the freeholder and that was 10 Portland Road limited but when he did this his cheques were returned. He had now paid direct to Dean Wilson Laing a cheque for £541.20 and that had been accepted. Mr. Bowler produced the letter he had received on 25th July 2009 from Dean Wilson Laing. It did not state that the claim was dropped only that the Applicant was not proceeding with the part of the claim relating to repairs to the flat roof and rubbish removal.

23. Mr. Lemcke referred to his letter dated 8th July 2009 to the Residential Property Tribunal Service in which he stated that there had always been as long as he had been managing the property a bank account exclusively for the finances of 10 Portland Road and that the sole purpose of having audited accounts was to ensure, for the lessees, that all monies received and spent for the property had been correctly transacted. The account

is in the name of Peter Lemcke re 10 Portland Road Limited. The lease allows the landlord to appoint a managing agent and this is how the bank works. He could produce statements to the lessees if required but at present the auditors have the statements, invoices etc. Mr. Lemcke stated that cheques must be made payable to "Peter Lemcke re 10 Portland Road Limited".

24. Mr. Bowler accepts that the Respondent has to pay interim service charges and now accepts that cheques have to be made payable to "Peter Lemcke re 10 Portland Road Limited".

25. Mr. Bowler stated that he had assigned the lease to his son but Mr. Lemcke said that no notice of that assignment had been received. Mr. Bowler could not understand why that should be but could not produce a receipted copy of a notice of assignment.

Decision

26. We considered the parts of the claim which were within our jurisdiction and which remained in dispute namely the interim claims for management fees and audit fees due 25th December 2007, 24th June 2008 and 25th December 2008 and interest.

27. As to management fees we had Mr. Lemcke's evidence that his fees of £100 per flat per annum were at the very bottom of the management fee scale and Mr. Bowler's suggestion that management fees of £100 per annum for the whole building would be appropriate. Mr. Bowler produced no evidence, such as quotes from other managing agents, in support of that suggestion. We found that Mr. Lemcke's fees of £100 per flat per annum were at the lower end of the scale of fees usually charged by managing agents and were reasonable. It was therefore reasonable to make an interim demand of £400 for the whole building in respect of management fees for each of the years 2008 and 2009.

28. As to audit fees Mr. Lemcke's evidence was that £235 was the sort of fee likely to be charged for audit. Mr. Bowler considered that there was not much to audit and that the figure seemed slightly high. He questioned what the auditors had done for £235. We found that a figure of £235 was a reasonable sum to demand as an interim charge in view of the fees likely to be charged for an audit where a minimum amount of work would be required.

29. As to interest, a sum of £63.33 had been claimed up to 29th January 2009 and continuing at £0.18 per day until judgement. However, the Respondent had sent cheques at various times in respect of various sums. They were made payable to 10 Portland Road Limited because that was the name of the freeholder and Mr. Bowler considered he was doing as required by the lease. There is some justification for that argument but the view could be taken that once he knew that cheques made out in that way would not be accepted he should have made arrangements for payment to be made in a way which would be accepted. Making allowances for some of the attempts to pay would have an effect on the interest. Furthermore, in the event, part of the claim was not pursued and we were not provided with a revised calculation of interest to take account of that. We

came to the conclusion that any sum in respect of interest would be small but that on the evidence before us we could not make an accurate calculation of it and therefore decided that the justice of the situation would best be met by not ordering the payment of interest.

30. The Respondent is liable to pay £567.49 in respect of outstanding interim service charges due 25th December 2007, 24th June 2008 and 25th December 2008 calculated as follows:

Outstanding interim service charges due in two instalments on 25th December 2007 and 24th June 2008

	£	
general repairs:	250.00	
audit fees	78.33	
management fees	<u>133.33</u>	
Sub-total		461.66

Outstanding interim service charges due 25th December 2008

	£	
audit fees	39.17	
management fees	<u>66.66</u>	
Sub-total		<u>105.83</u>

Total 567.49

31. Payment to be made to the Applicant by the Respondent by a cheque made payable to "Peter Lemcke re 10 Portland Road Limited" and sent to Mr. Lemcke's address: 11 King George VI Mansions, Court Farm Road, Hove, BN3 7QU within 21 days of the date this decision is issued.



R. Norman
Chairman