

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Case No. CHI/29UD/LAC/2010/0007

Property: Ground Floor Maisonette
85 Weardale Avenue
Dartford
Kent
DA2 6LF

Applicant: Ms M. Pascua

Respondent: G & O Properties (London) Limited

Date of Hearing: 20th October 2010

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

Date Decision Issued:

**GROUND FLOOR MAISONETTE, 85 WEARDALE AVENUE, DARTFORD,
KENT DA2 6LF**

Background

1. Ms M. Pascua (“the Applicant”) is the lessee of the Ground Floor Maisonette, 85 Weardale Avenue, Dartford, Kent DA2 6LF (“the subject property”). G & O Properties Limited (“the Respondent”) is the freeholder of the subject property and the managing agents are Urbanpoint Property Management Limited (“Urbanpoint”).
2. Four applications have been made:
 - (a) An application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for a determination of liability to pay and reasonableness of an administration charge.
 - (b) An application under Section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination of liability to pay and reasonableness of service charges.
 - (c) An application under Section 20C of the 1985 Act for an order that all or any of the costs incurred or to be incurred by the Respondent 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 lessees of the subject property.

(d) An application under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 for the Respondent to reimburse the Applicant for the fees of £250 paid by the Applicant in respect of the proceedings.

3. A Pre-Trial Review was scheduled for 3.00 pm on 12th July 2010. The parties or their representatives were notified of the date, time and place of the Pre-Trial Review but neither the Applicant, nor anyone to represent either of the parties attended. Directions were issued on the basis of the documents supplied by the parties. On 16th September 2010 further directions were issued which were not fully complied with by the Respondent.

The Hearing

4. The hearing on 20th October 2010 was attended by Mr. Woodhouse of Cook Taylor Woodhouse, Solicitors, representing the Applicant and by Mr. O'Dell representing the Respondent.

5. Mr. O'Dell apologised for failing to comply fully with the directions. He confirmed that the contents of the letter dated 11th June 2010 from the Applicant's Solicitors as to the wording of the lease were agreed. The Tribunal had received from Mr. O'Dell by fax a copy of the County Court judgement dated 25th October 2008 to which the Respondent had referred but he had not supplied and did not have with him a copy of any of the papers that were supplied to the County Court in connection with those proceedings. He accepted that he had had in excess of two months to deal with the matter and said that he had sent to Morrisons Solicitors LLP, the Respondent's Solicitors, either an e-mail or a fax on 14th October 2010 and had left them a telephone message but had received no response. He knew of no reason why Morrisons should not provide the documents. He had not realised what was required.

6. The Respondent's submission was that the Leasehold Valuation Tribunal did not have jurisdiction to deal with the applications because the matter had been determined by a court.

7. The failure of the Respondent or anybody on behalf of the Respondent to comply with the directions meant that Mr. Woodhouse was prevented from properly preparing his case and the basis of the Respondent's submission was put in doubt.

8. Mr. Woodhouse stated that his firm had represented the Applicant when she purchased the leasehold interest in the subject property from Ms Rogers and Ms Cackett. Completion had taken place on 27th October 2006. The Applicant had received from Urbanpoint a statement dated 2nd October 2007 indicating an amount due of £1,880.63. It included a balance brought forward of £1,041.96 but no details of that sum were given. The statement showed amounts of ground rent debited and credited to the account and there was a debit of £23.50 dated 7th May 2002 described as an "Admin fee: 1st Reminder letter". The remainder of the sums debited were in respect of insurance. However, the lease provided that insurance was the responsibility of the tenant and not the landlord and there was correspondence about the non-payability of the sums claimed. Despite the fact that Urbanpoint had written to the Applicant at the subject property and that the Solicitors representing the Respondent were aware that the former lessees Ms Rogers and Ms Cackett were no

longer at the subject property, judgement in default was obtained against them. As their address on the Court Order was the subject property it could only be assumed that that was the address given for service of proceedings on them. The judgement had been obtained in circumstances where the judgement creditors had no opportunity to defend.

9. Mr. Woodhouse accepted that notice of the purchase had not been given in accordance with the terms of the lease. However, Urbanpoint had demanded registration fees of £211.50 whereas the lease provided for payment of two guineas per document. In a letter dated 28th September 2007 Urbanpoint had additionally demanded administration costs of £238.00 but the lease did not provide for the payment of such costs.

10. Mr. Woodhouse produced at the hearing a clear ground rent receipt supplied in advance of completion and submitted that the Respondent was estopped from bringing actions after giving such a receipt. Mr. O'Dell said he had never previously seen a clear ground rent receipt but having now seen it he accepted that it was dated 9th November 2005 and was issued to Ms Rogers for £12 only. There was nothing on that receipt in the spaces provided for service charges, fees or anything other than ground rent. Mr. O'Dell stated that he was not trying to recover any monies from the Applicant. He was seeking to recover from the previous lessees: Ms Rogers and Ms Cackett. There may have been demands made to the leaseholder but they would not be in the name of the Applicant until notice was received. He maintained that no ground rent or anything else had been demanded from the Applicant and that if the current leaseholder has an issue with sums demanded of previous leaseholders then the Applicant must apply to the court for relief from forfeiture. A default judgement had been obtained but if not sufficient then the solicitors may have to pursue different routes on forfeiture proceedings; it was for them to decide. It had been left to Morrisons to serve on the right person.

11. Mr. O'Dell accepted that:

- (a) Morrisons had accepted that the demand for £211.50 was incorrect and he accepted that it had been a mistake. He thought it possible that Urbanpoint had tried to get a bit more by making it £11.50 and a 2 had been put in by mistake.
- (b) The figure in the claim form would have included insurance and fees.
- (c) There was no provision in the lease which allowed the Respondent to claim the cost of insurance from the Applicant. It was an old lease and was defective. There were no enforcement provisions. He understood that Urbanpoint had agreed historically with the leaseholders and presumably Ms Rogers and Ms Cackett that Urbanpoint would insure. The Respondent could be asked by the other lessees to enforce the terms of the lease. It was important to have insurance dealt with so that the whole of the property was insured but there had to be agreement from the leaseholders. There was no evidence that Ms Rogers and Ms Cackett had agreed so the Respondent had to abide by the terms of the lease.
- (d) The bulk of the brought forward figure in the statement dated 2nd October 2007 would be for insurance.
- (e) All that the Respondent could collect from the lessees under the terms of the lease in addition to ground rent, were registration fees, costs charges and expenses in or in contemplation of proceedings under Section 146 of the Law of Property Act 1925 and the costs of repairs etc. referred to in clause 3 (6) of the lease. However, no such

repairs etc. had been carried out. This meant that almost all the charges contained in the statement dated 2nd October 2007 were not due and payable.

12. Mr. O'Dell suggested that the Admin fee dated 7th May 2002 in that statement might be in contemplation of a notice under section 146 of the Law of Property Act 1925 to be served about six years later and that if that were the case then the lease did provide for fees to be charged in such circumstances. He also pointed out that he was still waiting for notice of the sale to the Applicant and he believed that the sum of £4.20 suggested by the Applicant's solicitors was incorrect as there were three documents: a transfer and two charges, so the sum should be three guineas. Also the lease provided for production of the documents not copies but Urbanpoint had by letter asked for certified copies.

13. Mr. O'Dell stated that he was not requesting any money from the Applicant and that all he wanted to achieve was notice of the purchase and to know that there was insurance.

14. The hearing was adjourned for a short time and the Tribunal was informed that Mr. Woodhouse and Mr. O'Dell had spoken with each other and had reached agreement.

15. Mr. Woodhouse stated that Mr. O'Dell will unconditionally remove all the demanded money from the Applicant's account. Mr. O'Dell will deal separately with any claim against the former lessees. Mr. Woodhouse will ask the Applicant to produce to Mr. O'Dell a copy of the Applicant's current insurance and she will have the opportunity to discuss with Mr. O'Dell or Urbanpoint participation in the block policy now in place. The arrears will not be a charge on the property. Mr. O'Dell confirmed his agreement to this and added that the Applicant can have the opportunity to either instantly participate in the block policy or wait until her current policy of insurance expires.

16. As to the application for an order under Section 20C of the 1985 Act, it appears to be unlikely that the Respondent will be able to claim under the service charges for any costs in relation to these proceedings and Mr. O'Dell stated that he had no intention of trying to do so. However, for the following reasons and for the avoidance of doubt we decided to make an order. We find that it is just and equitable in the circumstances to make an order because the Applicant was justified in bringing these proceedings to clarify the position and the agreement reached at the hearing should have been reached on the basis of the facts known and without the need for a hearing.

17. As to the application for reimbursement of the fees of £250 paid by the Applicant in respect of these proceedings, under the provisions of Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003, the Tribunal is able to make an order for reimbursement and Mr. Woodhouse and Mr. O'Dell agreed that that was the only matter left for the Tribunal to determine. Mr. Woodhouse applied for such an order and submitted that the Respondent's Solicitors and agents knew the facts and that the agreement reached at the hearing should have been reached without the need for a hearing. Mr. O'Dell opposed the making of such an order. We found that there were faults on both sides but accepted Mr. Woodhouse's

submission and on that basis made an order that the costs of £250 be reimbursed to the Applicant by the Respondent within twenty eight days of the date of issue of this decision.

18. There was no application for costs.

(Signed) R. Norman

R. Norman
Chairman