

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Case No. CHI/29UD/LSC/2010/0063

Property: 9 Barnard Court
Clifton Walk
Bow Arrow Lane
Dartford
Kent
DA2 6RY

Applicant: Bow Arrow Management Company Limited.

Respondent: Mr. C.P. Sinclair

Date of Hearing: 12th July 2010

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

Date Decision Issued:

**9 BARNARD COURT, CLIFTON WALK, BOW ARROW LANE,
DARTFORD, KENT DA2 6RY**

Decision

1. Mr. C.P. Sinclair ("the Respondent") is liable to pay the following:
 - (a) The estimated service charges in respect of the year 2009 in the sum of £836.19.
 - (b) Administration charges of £146.88
 - (c) The hearing fee of £150.00

Total £1,133.07.

Background

2. The Respondent is the current lessee of 9 Barnard Court, Clifton Walk, Bow Arrow Lane, Dartford, Kent, DA2 6RY ("the subject property"). Bow Arrow Management Company Limited ("the Applicant") is responsible for the management of an estate of 414 units of which the subject property is one.
3. The Applicant commenced proceedings in the County Court (Case No. 9DA04063 seeking a declaration under Section 81 of the Housing Act 1996 that service charges of £886.14 and administration charges of £146.88 are payable by the Respondent and for judgement for those sums and costs.

4. By an order dated 23rd April 2010 the proceedings were transferred to the Leasehold Valuation Tribunal.

5. Directions as to the conduct of these proceedings were made and were complied with by those representing the Applicant but were not complied with by the Respondent or anyone on his behalf. In fact nothing at all has been received from the Respondent in respect of these proceedings.

Inspection

6. On 12th July 2010 the Tribunal inspected the exterior of the subject property in the presence of Miss E. Bruce of Counsel representing the Applicant.

7. We could see that the subject property is part of a large residential estate but were unable to gain access to the block containing the subject property so could only carry out an external inspection. The bell push for the subject property was broken and knocking on the window of the subject property brought no response. We tried to gain access by pressing other bell pushes but without success.

8. We could see through the entrance door that there appeared to be a common entrance hall and staircase which were well maintained as were the grounds.

The Hearing

9. The hearing was attended by Miss Bruce of Counsel representing the Applicant and by Mr. Bryant of Carringtons Residential Management Limited the managing agents. Mr. Bryant had supplied a witness statement in advance of the proceedings. There was no appearance by the Respondent or by anybody on his behalf and nothing had been received from him.

10. Miss Bruce referred to a letter dated 8th July 2010 sent by Maddersons, her Instructing Solicitors, to the Tribunal and copied to the Respondent concerning another matter in respect of the same development heard by another Leasehold Valuation Tribunal on 23rd June 2010 in which the sum charged for management had been reduced to 10% of the expenses as provided for in the lease. The position in the present case is similar. Miss Bruce accepted that the lease provided that management fees should be a sum not exceeding 10% of the annual expenditure and that £51,490 shown in the papers provided as the estimated management fee for the estate for the year 2009 was in excess of that percentage. Miss Bruce told us that Mr. Bryant was content with the lease provisions and had adjusted the figure now claimed in order to accord with the terms of the lease.

11. The new figure claimed from the Respondent is £983.07 calculated as follows:

(a) In the papers provided, the estimated total gross management charge for the estate for 2009 is shown to be £420,697. If the management fee of £51,490 is deducted from that it leaves £369,207. 10% of that sum is £36,920.70. 0.206% is the Respondent's share of that sum which is £76.06 and replaces the sum of £106.01 originally claimed from him for the management fee. This reduces the maintenance charge from £866.14 to £836.19.

(b) In addition the Applicant claims administration fees of £146.88 and reimbursement of the hearing fee of £150.

12.	The total now claimed is therefore:	£
		836.19
		146.88
		<u>150.00</u>
	Total	1,133.07

13. At the hearing Miss Bruce produced copies of the accounts for the years 2008 and 2009 which had been sent to the leaseholders. She also produced copies of the summary of tenants' rights and obligations (both the original version which referred to the 'Lands Tribunal' and the amended version which now refers to the 'Upper Tribunal') which Mr. Bryant confirmed are routinely sent by first class post to leaseholders by being printed on the reverse of the invoices.

14. Miss Bruce referred to the statement of Mr. Bryant and to the lease. At clause 5.1:2 there is a covenant to pay the service charge in accordance with the fifth schedule. At clause 8.1:2 there is a forfeiture provision if the Respondent is in breach of a covenant and non payment of the service charge is a breach. Enquiries had been made of the mortgagees and they had asked for a declaration under the Housing Act 1996 to allow them to discharge the amounts and the forfeiture provision would then not be enacted. Also judgement was requested for the sum claimed. The lease, at clause 5.9:3 contains a covenant by the Respondent to pay the landlord's costs in relation to the necessary or attempted recovery of arrears of rent or other sums due from the Respondent. Costs must be reasonably incurred. There had been no contact from the Respondent; no notice of any issues he may have. There is a right to charge a service charge and for 2009 the service charge remains unpaid.

15. As all communication with the Respondent had been at the subject property Mr. Bryant was asked about steps which had been taken to see if the Respondent was still there. Mr. Bryant stated that until 2009 the service charge had been paid by the Respondent, that there had been no visit to the site to look for him and that communication from the estate is minimal. Miss Bruce pointed out that under the terms of the lease the Respondent was obliged to inform the freeholder and the management company if the flat was let out and that no such information had been received. It would have been nice to look for the Respondent but he should pay, he had contracted to pay and to notify change of address. The only address for the Respondent is the subject property.

Reasons

16. We accepted the unchallenged evidence and submissions presented to us on behalf of the Applicant and found on a balance of probabilities that the service charge had been properly demanded and that the sums claimed in respect of the service charge (as now reduced to comply with the terms of the lease) and administration charges were reasonable.

17. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides that in relation to any proceedings in respect of which a fee is payable under those Regulations a Leasehold Valuation Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings. Having regard, in particular, to the fact that the Respondent has not provided any evidence or challenged any of the Applicant's evidence or indeed made contact with the Tribunal at all, the Tribunal considers it just and equitable to make an order requiring the Respondent to reimburse the Applicant's hearing fee of £150 in respect of this hearing .



R. Norman
Chairman