

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Case No. CHI/45UE/LSC/2009/0131

Property: 19 Goddard Close
Maidenbower
Crawley
West Sussex
RH10 7HR

Applicant: Ms Clare Heard

Respondent: Sussex Fields (Two) Management Company
Limited

**Date of Final
Consideration** 19th March 2010

**Members of the
Tribunal:** Mr. R. Norman
Mr. N.I. Robinson FRICS

Date decision issued:

**RE: 19 GODDARD CLOSE, MAIDENBOWER, CRAWLEY, WEST SUSSEX,
RH10 7HR**

Decision

1. Ms Heard ("the Applicant") is not liable to contribute towards the cost of common window cleaning in 2008 and 2009. The Tribunal found the remainder of the sums questioned to be reasonable.
2. An order is made that all or any of the costs incurred or to be incurred by Sussex Fields (Two) Management Company Limited ("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 Applicant.

Background

3. The Applicant is the lessee of 19 Goddard Close, Maidenbower, Crawley, West Sussex, RH10 7HR ("the subject property") and the Respondent is the freeholder of the subject property. The lessees including the Applicant are shareholders in the Respondent Company. The managing agents dealing with this matter on behalf of the Respondent are

Residential Management Group, RMG House, Essex Road, Hoddesdon, Herts EN11 0DR.

4. The Applicant made an application under Section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination of liability to pay service charges in respect of the year 2008/2009.

5. As part of her application and statement of case the Applicant asked why she was paying for particular items in her service charges when she did not receive any of those benefits as the subject property is a maisonette attached to the apartment block and has its own electricity and entrance door and has no access to the communal staircase areas. She stated that she had been told by a representative of the managing agents that she does not benefit from those particular items. Also some of those items do not work or are in place only in the apartment block.

6. The particular items are:
Cleaning and interior decorating
Common window cleaning
Lighting
Repairs and light bulbs
Communal door entry system
Electricity – common parts
Water rates for an outside tap which does not work
Fire defence maintenance

7. The Applicant also questioned the rising cost of terrorism insurance and the door entry system charge and stated that there had been a failure to repair the side door gate to the subject property, the communal bin cupboard and the door to the outside cupboard and fascias and soffits and that there had been poor management.

8. The Applicant has also made an application for an order under Section 20C of the 1985 Act 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 Applicant.

9. On 11th September 2009 directions were issued and with those directions the Tribunal gave notice to the parties under Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004, that the Tribunal intended to proceed to determine the matter on the basis only of written representations and without an oral hearing. The parties were given the opportunity to object to that procedure by writing to the Tribunal no later than 28 days from 11th September 2009. No written objection has been received and the matter is being dealt with on the basis only of written representations and without an oral hearing.

10. One of those directions required the Applicant, no later than 12th October 2009, to send to the Respondent and to the Tribunal copies of all correspondence, witness statements, receipts and invoices and all other documents on which she sought to rely in support of her application and to supply a formal statement of case. Those papers to comprise the Applicant's case.

11. Another direction required the Respondent, if it wished to contest the applications, within 21 days of the receipt of the Applicant's documents and statement of case to send to the Applicant and to the Tribunal a statement in writing saying why it contested the applications and the reasons why it did so. Also that the Respondent should accompany the statement with such copy correspondence, documents or other papers as it considered relevant to the matters in issue and that it wished the Tribunal to see in support of the Respondent's case. Such documents should be in date order and numbered consecutively. Those papers to comprise the Respondent's case.

12. A statement of case and supporting documentation were received from the Applicant on 28th September 2009 but by 16th December 2009 nothing had been received from the Respondent.

Inspections and Reasons for Decision

13. On 16th December 2009 the Tribunal, in the presence of the Applicant, inspected the exterior of the subject property which is part of a large modern residential estate consisting of houses, flats and dwellings which are described as maisonettes although they appear to be single storey.

14. The subject property is a single storey ground floor maisonette attached to one end of a block of flats. Above the subject property there is a first floor single storey maisonette. Attached to the other end of the block of flats there are two similar maisonettes.

15. We could see that the soffits and fascias of the first floor maisonette above the subject property, the side door gate to the subject property, the communal bin cupboard and the door to the outside cupboard were in need of repair.

16. There appeared to be a number of sections referred to in the lease as developments within the estate but it was not possible to determine from our inspection and the evidence provided, the extent of the development in respect of which the Applicant is being required to pay service charges. This was partly because at that time the only copy of the plan attached to the lease of the subject property which we had was in black and white and did not show the colouring referred to in the lease.

17. It is important to clearly identify the boundaries of the development of which the subject property forms part because the Applicant is obliged by the lease to contribute to the repair and maintenance of the properties within that development.

18. We did not know if the roads and sewers had been adopted. This is important in determining any liability which the Applicant may have for the maintenance of roads and sewers.

19. The Tribunal considered the documents which had been received and came to the conclusion that the matter could not be dealt with properly without the Respondent having the opportunity to provide a statement of case and supporting documents.

20. After the inspection the Clerk to the Tribunal telephoned the managing agents and was informed that they had not received the Applicant's statement of case and supporting documentation and that they had written to the Clerk about this. However, that letter had not been received at the Tribunal Office.

21. To avoid delay, rather than asking the Applicant to send a further copy to the managing agents, the Clerk sent to the managing agents a copy of the Applicant's statement and supporting documents.

22. In order that the matter could proceed directions were issued.

23. As a result, the Respondent's statement of case was received by the Tribunal and apparently by the Applicant because she then sent to the Tribunal an email dated 24th January 2010 raising a number of points.

24. The matter was further considered by the Tribunal and it was decided that the Respondent should provide a response to the points raised in that email and further directions were issued. Further evidence was received and considered by the Tribunal and in view of all the evidence which had been supplied and in particular now that a coloured copy of the lease plan had been provided and it was possible to identify the boundaries of the development in respect of which the Applicant is obliged to pay service charges, we decided that we should carry out a further inspection of the subject property and the development of which it forms part before making a final decision.

25. On 19th March 2010 we inspected the exterior of the subject property and the development. The Applicant attended that inspection but nobody attended to represent the Respondent.

26. The Applicant had complained about the repair to the side door gate, the outside cupboard and the door of her bin store. It appeared that repairs had been carried out at some time in the past but there was again need for repair. Of greater significance was her complaint about the state of the soffits and fascias of the first floor maisonette above the subject property which we could see were in a very poor state when we inspected on 16th December 2009. It was only after that inspection when evidence was supplied on behalf of the Respondent that we were surprised to see an invoice dated 11th December 2009 in respect of the following works to numbers 19 – 40 Goddard Close:

“To carry out temporary repairs to rotten soffits/fascias including fitting and preparation of new timber

To repair all broken guttering/downpipes
To clean all guttering
To tidy loose satellite cables around the exterior walls
'High Lift' hire from 04/12/09 to 07/12/09
'High Lift' associated safety equipment
To supply all materials required"

27. Clearly no repair had been carried out to the soffits and fascias above the subject property. By 19th March 2010 when we inspected again we then knew which properties were included in the development and we therefore looked at the exterior of the 18 flats and 4 maisonettes concerned. We could see other soffits and fascias were deteriorating and in need of repair and at first it was difficult to see where the temporary repairs referred to in the invoice had been carried out. However, we noted that there were bay heads which were not white as were all the others and assumed that they had been the subject of the temporary repair. Having incurred the expense of hiring a 'High Lift' we would have thought that it would have been cost effective to effect permanent rather than temporary repairs and to deal with all the soffits and fascias which needed attention. On 19th March 2010 we also noted down pipe joints which had pulled apart, that a stop end of a length of guttering was missing and that a concrete fillet from a roof edge was resting partly in and partly over the edge of a length of guttering creating a potential danger. We also noted woodwork which was clearly in need of painting and it seemed to us that the longer that work is delayed the greater will be the cost to the lessees. These matters indicated weakness in the general state of management and maintenance of the development and although not within the matters detailed in the present application they may warrant some investigation in respect of service charge demands for actual expenditure in 2009 when these are finalised and service charge demands beyond 2009.

28. As to the items questioned by the Applicant in her application we considered all the evidence presented to us and found that with the exception of the charges for common window cleaning the sums estimated were reasonable and payable by the Applicant.

29. As to the common window cleaning, the Applicant has stated that she had been told by the property manager that external window cleaning is not relevant to her as the subject property is not part of the communal parts of the development. The only evidence produced on behalf of the Respondent in respect of external window cleaning is in the form of invoices. We accepted the evidence of the Applicant and on a balance of probability found that the outside windows of the subject property had not been cleaned and that as a result the charges for external window cleaning were not reasonable. There is now no dispute that the Respondent is responsible for cleaning the outside of the windows, not just of the flats, but of all the properties in the development including the outside of the windows in the subject property and that the Applicant is liable to contribute towards that. There should be no misunderstanding of this in the future.

30. The Applicant was, understandably, concerned that she should be contributing towards services which were of no benefit to her and the information she received from the property manager only reinforced that concern.

31. The position is that by the terms of the lease the Respondent is obliged to insure and to provide certain services and the Applicant is obliged to contribute towards the insurance and those services. As to common window cleaning (provided it is carried out), terrorism cover, water rates and fire defence maintenance (because the subject property is attached to a block of flats) and repairs the Applicant does derive some benefit from those services and insurance. She derives no benefit from cleaning and interior decorating, lighting, electrical repairs, light bulbs, door entry system, and electricity common parts which refer only to the flats but this is offset by the fact that the lessees of the flats each pay 4.742% of the charges whereas the Applicant pays only 3.6615%.

32. The Tribunal considered the application for an order under Section 20C of the 1985 Act. The Tribunal may make such order on the application as the Tribunal considers just and equitable in the circumstances. We were satisfied that the Applicant was justified in making her application for a determination of the liability to pay and reasonableness of service charges because of the misleading information she had received from the property manager. We considered that in all the circumstances it was just and equitable to make such an order.



R. Norman
Chairman