

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00LC/LSC/2006/0027

Property: Flats 1, 2 and 3, No. 7 Southfields
Rochester
Kent
ME1 3EB

Applicant: Raleigh Close Investments Limited

Respondents: Miss A.E. Cumberland (Flat 1)
Miss A.J. Payne (Flat 2)
Miss L.P.S. McMillan (Flat 3)

Dates of Hearing: 4th August 2006
11th April 2007

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

Date decision issued:

RE: FLATS 1, 2 AND 3, No. 7. SOUTHFIELDS, ROCHESTER, KENT.

Background

1. Raleigh Close Investments Limited ("the Applicant") was, at the time of making this application, the freeholder of Flats, 1, 2 and 3, No. 7 Southfields, Rochester, Kent, ME1 3EB ("the subject property") and Miss A.E. Cumberland, Miss A.J. Payne and Miss L.P.S. McMillan ("the Respondents") are the lessees of Flats 1, 2 and 3 respectively. The Respondents have formed a company which purchased the freehold of the subject property on 8th December 2006.

Inspection

2. On the 4th August 2006 in the presence of the Respondents we inspected the subject property which is a three storey detached house converted into three flats with a block of three garages at the rear.

Determination

3. Within 28 days of the date of issue of this determination:
 - (a) Miss A.E. Cumberland to pay in full satisfaction of the service charges in respect of Flat 1 £1,359.87.
 - (b) Miss A.J. Payne to pay in full satisfaction of the service charges in respect of Flat 2 £508.52.
 - (c) Miss L.P.S. McMillan to pay in full satisfaction of the service charges in respect of Flat 3 £375.55.

Reasons

Hearing 4th August 2006

4. The hearing was attended by Miss Scott of BLR Property Management Limited the managing agents on behalf of the Applicant and by Miss Payne and Miss McMillan on behalf of the Respondents.
5. The Applicant originally applied for a determination of the reasonableness of a sum of £52,848.79 in respect of the estimated cost of building works and external decorations. At the beginning of the hearing on 4th August 2006 that sum was revised by Miss Scott to £51,674.79 because there was an error of £900 in the specification which resulted in a reduction in the surveyor's fee and VAT.
6. Evidence was given on various points concerning the proposed building works and in the course of that evidence it was discovered that there were other errors and that works had been included which were not the Applicant's responsibility and as a result the sum claimed was further reduced.
7. On examination of the leases supplied it was found, and agreed by Miss Scott, that the Applicant did not have the right under the terms of the leases to demand even the reduced sum in advance.
8. This brought into question the sums claimed for 2005 and 2004 and from an examination of the documents produced it became apparent that there was some confusion as to the figures for previous years.
9. The hearing was adjourned and further directions were given including the following:
 - “1. By the 18th August 2006 BLR Property Management Limited are to supply to the Respondents corrected service charges so as to be in accordance with the terms of the leases and up to date.
 2. By the 1st September 2006 the Respondents are to respond to BLR Property Management Limited in respect of the corrected service charges.”
10. BLR Property Management Limited provided accounts for the years ended 2004 and 2005 but did not provide accounts which were up to date even though they had, in connection with the proposed sale of the freehold to the company formed by

the Respondents, prepared a completion statement which included a figure for service charges they considered to be outstanding. It was clear that that figure needed to be revised as Miss Scott at the hearing had stated that the completion statement could no longer be relied upon.

11. Further documents have over the course of the period from September to December 2006 been supplied by the parties or on their behalf and we have now been informed that the freehold has been sold to the company formed by the Respondents and that the matter remaining to be determined by the Tribunal is the amount of service charges outstanding and to be paid by the Respondents.

12. The latest information from the Applicant is that the Applicant is now claiming the following: Flat 1 £2,277.73, Flat 2 £1,426.38 and Flat 3 £971.90. A claim for a late payment fee of £65.80 in respect of each flat has been conceded.

13. The latest information from the Respondents is that while they agree those figures as opening balances they submit that a number of sums should be deducted from them and that after those deductions are made £444.51 would be owed by Flat 1, that the Applicant should refund to Flat 2 £406.84 and that the Applicant should refund to Flat 3 £219.17.

Hearing 11th April 2007

14. Written submissions and documents in support of their cases had been produced by the parties or on their behalf and were considered by the Tribunal on the 11th April 2007. The parties expressed their consent to the matter being dealt with in this way without the need for them to attend or be represented on that day.

15. The following matters required a determination:

(a) Insurance.

(i) Earlier in the exchange of documents the submission was made on behalf of the Applicant that the quotes obtained by the Respondents were on a 'household' rather than a 'property owners' basis and were therefore not comparable. The Respondents' company as the freeholders having now obtained insurance, the Respondents have provided full details of the policy which is on a property owner basis. The Applicant has not provided full details of the cover but having seen the details of the policy produced by the Respondents we find it unlikely that it includes all the items in the policy obtained by the Applicant. The Applicant produced a report of the Court of Appeal decision in the case of *Berrycroft Management Co Ltd and others v Sinclair Gardens Investments (Kensington) Ltd* [1997] 1 EGLR and the Respondents will therefore be aware of the limitations which the decision in that case places upon the possibility of challenging insurance premiums even where they are considerably higher than other quotes obtained. We had no evidence that there was any feature of the transactions between the Applicant and the insurers which took them outside the normal course of business.

(ii) However, we were not satisfied that the emergency assistance cover which had been included in 2005 and 2006 was recoverable under the terms of the leases as part

of the service charges. We therefore deducted £97.50, being the cost of that cover, from the premium claimed each year.

(iii) We also deducted £49.50 being the proportion of the amount claimed in respect of insurance from 8th December 2006 (the date of sale of the freehold) to 24th December 2006.

(b) Repairs and maintenance.

(i) Two sums were claimed: £180 and £645.07 but on production of further evidence on behalf of the Applicant, the Respondents had accepted that the sum of £180 is payable.

(ii) As to the sum of £645.07, a copy invoice has now been produced. That invoice includes the words "To attend and undertake preparatory works to allow our surveyor to ascertain the correct procedure in preparing the drain at the side of the building where the fire-escape was leaning over. See attached letter". No letter was attached but from the invoice it is clear that these works were claimed to be just preparatory works and not to include the installation of the French drain as stated in paragraph 13 of Miss Scott's submissions dated 8th December 2006. In the absence of further evidence, we found that it would have been reasonable to have the work carried out by a local contractor rather than by a company from Neasden, London and that without further evidence of detail we were unable to quantify the work as justifying more than a charge of £150 including VAT. We therefore made a deduction of £495.07.

(c) Building Works Administration Fee

A claim has been made for £646.24 but on the evidence provided we found that we could justify only a sum of £200 plus VAT giving a total of £235. We therefore made a deduction of £411.24.

(d) The previous Surveyor's fee in 1999.

We found that this was not within the scope of this application.

(e) LVT application fee, hearing fee and agent's cost for attendance.

If the Applicant or the managing agents on behalf of the Applicant had read the leases it would have been realised that the demand for the sum of more than £50,000 in advance for the building works and decorations could not be made and the application would have been unnecessary. Therefore we found that there was no justification for the claim for the hearing fee or the fee for attendance at the hearing and deducted the sums of £150 and £881.24 respectively. However, by making the application other matters came to light which required clarification and we accepted the Respondents' submissions as to the application fee. Consequently, we deducted only £250 rather than the full £350 from the application fee.

16. We have assumed that the percentages payable in respect of each of the flats are those given in the Respondents' submissions namely: Flats 1 and 2 - 37.74% and Flat 3 - 24.52% as we have no information as to the rateable values from which the percentages are calculated.

17. The following table shows our calculations:

Description	Flat 1 £	Flat 2 £	Flat 3 £	total	Flat 1 £	Flat 2 £	Flat 3 £
Net opening balance					2,277.73	1,426.38	971.90
Less:							
Repairs and maintenance 2005	186.84	186.84	121.39	495.07			
Application fee adjustment	94.35	94.35	61.30	250.00			
Hearing fee	56.61	56.61	36.78	150.00			
Agent's fee for hearing attendance	332.58	332.58	216.08	881.24			
Insurance prepaid	18.68	18.68	12.14	49.50			
Insurance 2005	36.80	36.80	23.91	97.50			
Insurance 2006	36.80	36.80	23.91	97.50			
Building works administration fee	155.20	155.20	100.84	411.24			
Closing balance					1,359.87	508.52	375.55

18. The Respondents have asked us to determine that under the terms of the leases the leaseholders are not liable for the maintenance of the boundary wall and to confirm that the staircase to Flat 3 is the responsibility of all leaseholders and not just the lessee of Flat 3 but we have come to the conclusion that both these matters are not within our jurisdiction in respect of this application.



R. Norman
Chairman.