

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/29UL/LIS/2006/0008

**Property: 8A Wear Bay Crescent
Folkestone
Kent
CT19 6AX**

**Applicants: Mrs. J. E. Gautam
and
Mrs. J.A.R. Clark**

Respondent: Mr. S. Haslam

Date of Hearing: 8th November 2006

**Members of the
Tribunal: Mr. R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM
Ms L. Farrier**

Date decision issued: 3rd January 2007

RE: 8A WEAR BAY CRESCENT, FOLKESTONE, KENT, CT19 6AX

Background

1. No. 8 Wear Bay Crescent comprises a first floor flat and a ground floor flat. Mr. Haslam ("the Respondent") is the freeholder of the building and holds a lease of the ground floor flat. Mrs. Gautam and Mrs. Clark ("the Applicants") are the lessees of the first floor flat No. 8A Wear Bay Crescent ("the subject property").

2. The Applicants have made two applications. The first under Section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay service charges and the second under Section 35 of the Landlord and Tenant Act 1987 for the variation of a lease.

3. A Pre-Trial Review was held on the 21st June 2006 and was attended by the Applicants and the Respondent. Also present was Mr. R. Wallace the managing agent of other properties owned by the Respondent. At the Pre-Trial Review the parties agreed that the only items in dispute were the half share of £35,000 + VAT for repairs and renovations

and the half share of £1,070 for gardening. The repairs and renovations had not been carried out but the gardening was ongoing.

4. It seemed clear that the repairs and renovations must come within the provisions of Section 20 of the Landlord and Tenant Act 1985 and The Service Charges (Consultation Requirements) (England) Regulations 2003 but the parties had limited knowledge of those provisions and the Respondent was unable to say whether there had been compliance. From such information as was available it seemed likely that they had not been complied with. At the Pre-Trial Review the consequences of failing to comply or to obtain a dispensation were explained to the parties. It was also explained that the Regulations are to be followed by the parties and the parties cannot insist on anything which is not within the Regulations. The Applicants and the Respondent wanted an independent surveyor to say what needed to be done but had been unable to agree who should be instructed. They agreed that the Section 20 consultation procedure should follow the survey by that independent surveyor.

5. At the Pre-Trial Review, in order to progress the matter the parties agreed to select from Yellow Pages a surveyor and they selected Strutt & Parker. Telephone calls were made and a quotation of £2,000 + VAT + expenses and disbursements limited to £150 for a survey was obtained. The parties agreed that the Respondent would appoint Strutt and Parker, that neither the Applicants nor the Respondent should be present while the survey was being carried out and that arrangements would be made for keys to be available to the surveyor. The Applicants agreed to pay half the cost of the survey.

Inspection

6. On the 8th November 2006, in the presence of the parties, we inspected the subject property, the ground floor flat and the gardens. The copy lease of the subject property which we had included a plan in black and white. Mrs. Gautam produced to us and to the Respondent a copy of the lease of the subject property with a coloured plan.

7. We were able to see from our inspection and by reference to the coloured plan that the Applicants had a lease of the first floor flat and the part of the rear garden furthest from the building, with rights of way over the remainder of the rear garden, the front garden, driveway and paths but subject to a right of way in favour of the landlord and the lessee of the ground floor flat over the Applicants' garden. Other rights were also reserved to the landlord and the lessee of the ground floor flat. We could also see that the boundary at the rear of the property was concrete panel fencing and that inside the rear boundary there were trees which were within the Applicants' garden. It follows that the Respondent's liability to maintain the boundary and the Applicants' liability to pay half the cost as part of the service charges related to the maintenance of the concrete fencing and not to the trees. The maintenance of the Applicants' garden was a matter for them. It was clear that there had been some misunderstanding by the parties as to the extent of ownership and this had been partly responsible for disputes as to gardening costs. We could also see that the entrance hall was common to both flats and that the front entrance door was the only communal door, all other doors being individual to each flat.

The Hearing

8. The hearing was attended by the parties.

9. We noted and informed the parties that the draft document to vary the lease which we had seen did not appear to deal adequately with all the matters required by the parties but they stated that they had signed documents varying the lease and there was therefore nothing further for us to determine in that regard.

10. A copy of the survey obtained from Strutt and Parker was produced. Both parties had copies and there was discussion of its contents. Included in the survey was an item for the repair of cast iron guttering. The Respondent suggested as an alternative that the guttering be replaced with UPVC guttering. This seemed to us and to the Applicants to be a reasonable way to proceed. Because instructions had been given for the surveyor to carry out a survey of the whole property there were items included which could not be charged to the service charges and were works which were the responsibility of the Applicants or the Respondent themselves and it was clear to the parties which items came within that description.

11. The Applicants agreed:

- (a) To pay within 14 days of the hearing half the cost of the survey by Strutt and Parker.
- (b) To pay within 14 days of the hearing £400 in settlement of all gardening invoices to the date of the hearing.

12. The parties agreed:

- (a) That a specification for the work which could be charged to the service charges should be prepared and that Section 20 of the Landlord and Tenant Act 1985 and The Service Charges (Consultation Requirements) (England) Regulations 2003 should be complied with.
- (b) That there should be no order under Section 20C of the Landlord and Tenant Act 1985 and that each party should pay their own costs in connection with these applications.



R. Norman
Chairman