

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/29UD/LSC/2008/0105

Property: 9 The Terraces
Dartford
Kent
DA2 6BX

Applicants: Mr. M. Turpin and Mrs. D. Turpin

Respondent: Mr. S. Pariser
c/o Circle Residential Management Limited

Date of Consideration: 26th November 2008

**Members of the
Tribunal:** Mr. R. Norman
Mr. C. White FRICS

Date decision issued:

RE: 9 THE TERRACES, DARTFORD, KENT, DA2 6BX

Decision

1. The Tribunal made the following decision:
 - (a) In respect of the service charges demanded as estimates for the period ended 28th September 2008 the amount for building repairs be reduced from £186.25 to £100 and the amount for management fee be reduced from £205.63 to £100 plus VAT.
 - (b) In respect of the service charges demanded as estimates for the period ended 28th September 2009 the amount for building repairs be reduced from £169.84 to £100 and the amount for management fee be reduced from £221.25 to £100 plus VAT.
 - (c) An order be made under Section 20C of the Landlord and Tenant Act 1985 ("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 Applicants.

Background

2. In the application under consideration and in the service charge application and statements the subject property is described as No. 9 The Terraces but in the lease it is described as Flat No. 8 Roman Manor Way. It appears and we assume that this is the same property and that No. 8 Roman Manor Way refers to a plot number and that No. 9 The Terraces is the postal address.

3. Mr. and Mrs. Turpin (“the Applicants”) are the lessees of the subject property and have made an application under Section 27A of the 1985 Act for a determination of liability to pay two elements of the service charges demanded by Circle Residential Management Limited (“the Managing Agents”) on behalf of the landlord Mr. S. Pariser (“the Respondent”) in respect of each of the years ended 28th September 2008 and 28th September 2009. Those two elements are in respect of building repairs and management fee.

4. The Applicants have also made an application for an order under Section 20C of the 1985 Act.

5. On 26th September 2008 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 the 26th September 2008. No written objection has been received and the matter is being deal with on the basis only of written representations and without an oral hearing.

Inspection

6. On 26th November 2008 the Tribunal inspected the exterior of the subject property and found it to be part of a modern purpose built block of 8 flats or maisonettes. The block appeared to be in good repair. From what we could see there were no common parts within the building and that would appear to be confirmed by the service charge demands which include no amounts for cleaning or lighting of, for example, common halls or stairs. There were small areas of garden around the block which were tidy but no charge has been made for gardening.

Evidence

7. We received written representations from the Applicants and from the Managing Agents and those representations were considered by us.

8. There were only four elements included in the service charges namely: building repairs, buildings insurance, year end accounting and management fee and it is only the sums demanded in respect of building repairs and management fee with which the Applicants take issue.

9. The Applicants' case is set out fully in their statement of case but in summary is that:

(a) The lease provides at clause 3. (A)(i) that the lessee covenants to pay to the Management Company such sum per annum as may be notified to the lessee by the Management Company from time to time as representing a fair and proper proportion (as thereafter calculated) of the reasonable estimated amount required to cover the cost and expenses incurred or to be incurred by the Management Company in carrying out its obligations under the lease. It is the Applicants' contention that no 'reasonable estimated amount' has been arrived at in the case of the two disputed elements.

(i) The management fee is not reasonable because no evidence has been provided of any work undertaken or moneys expended by the Management Company in carrying out its obligations under the lease since assuming responsibility in May 2006 and no explanation or breakdown of costs has been provided to back up the single yearly estimate figure given.

(ii) The building repairs sum is not reasonable because no evidence has been provided of any building work either having been carried out or planned to be carried out since the Management Company took over in May 2006, other than £95 paid for fencing. The Applicants consider that moneys paid under this heading for the year ending September 2007 continue to provide a sufficient cushion for work in subsequent years.

(b) The Applicants also point out:

(i) That statements of service charge estimates giving the barest minimum detail have been provided by the Management Company together with various applications for payment and that no qualified accountant's certificate has ever been provided to support any of these documents under Section 21 of the 1985 Act despite being requested in writing.

(ii) That no detailed accounts have been supplied in accordance with clause 4(ii) of the lease and that clause 4(iii) of the lease, which provides that an allowance will be made or a credit given to the lessee for any overpayment in respect of management charges, has not been complied with.

10. The Respondent's case is fully set out in a submission dated 13th November 2008 made by Mr. Paine of Circle Residential Management Limited but in summary is that:

(a) The application should have been made under Section 27A(3) of the 1985 Act rather than Section 27A(1).

(b) The building repairs and management fees are reasonable in respect of the 2008 and 2009 periods.

(c) These sums cannot be taken in isolation and that the overall service charge budget must be considered.

(d) The only issue to be considered under the application is the reasonableness of the sums claimed.

(e) Mr. Paine considers the specific sums and the overall interim service charge levels in respect of the two accounting periods to be reasonable.

11. There has been a reference in the documents supplied to the requirements imposed by Section 21 of the 1985 Act. In the interests of clarification:

(a) Section 152 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) has not yet been brought into force except for the purpose of making regulations and therefore it is still the existing Section 21 of the 1985 Act which must be complied with.

(b) However, Section 153 of the 2002 Act has been brought into effect from 1st October 2007 and therefore any demand for service charges made on or after that date must comply with the new Section 21B of the 1985 Act which provides that:

21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Reasons for the Tribunal’s Decision

12. Mr. Paine makes the point that it is the overall service charge budget which must be considered but we find that it is difficult to calculate an overall service charge budget without having regard to the individual items for which provision is being made. He has referred the Tribunal to a number of decisions but each case must be judged on its own merits in the light of the evidence provided. In this particular case from the evidence supplied by and on behalf of the parties and from our inspection we found that the management required should be minimal. The block is modern and we could not see that there were any common parts inside the building. We found as a fact that these two factors should reduce the work of management and consequently the cost of management. Those two factors should also result in fewer repairs to the building being required and consequently reduce the amount necessary to include in the budget for building repairs.

13. There is provision in clause 3.A(i) (b) of the lease for putting money to reserve to meet the future liability of carrying out major works but there was no clear evidence that this had been done or of the state of any reserves .

14. We had to consider what would be a reasonable sum to demand from the lessees on the basis of a budget in the two years under consideration. Based on such evidence as we had before us and our inspection we found that it would be reasonable to provide £100 plus VAT for each year in respect of management charges as such charges should not exceed that. We appreciate that some provision must be made for the possibility of building repairs becoming necessary during the year but there was no evidence of any repairs having become necessary in previous years other than the fencing repair. There was no evidence before us that any particular repair was expected or contemplated and the only expenditure in recent years was the small amount in respect of the fencing. Consequently a modest sum of £100 for each year we found was sufficient to provide for such repairs as there might be. The demands in respect of the two years in question are to be reduced to take account of the reduction in these two elements of the service charges.

15. There is before the Tribunal an application for an order under Section 20C of the 1985 Act. We find that it is just and equitable in the circumstances to make such an order because the Applicants were justified in bringing these proceedings to clarify the position.



R. Norman
Chairman

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

SUPPLEMENTAL DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/29UD/LSC/2008/0105

Property: 9 The Terraces
Dartford
Kent
DA2 6BX

Applicants: Mr. M. Turpin and Mrs. D. Turpin

Respondent: Mr. S. Pariser
c/o Circle Residential Management Limited

Date of Consideration: 19th June 2009

**Members of the
Tribunal:** Mr. R. Norman
Mr. C. White FRICS

Date decision issued:

RE: 9 THE TERRACES, DARTFORD, KENT, DA2 6BX

Decision

1. The Tribunal require the Respondent to reimburse the Applicants for the whole of the fees of £100 paid by the Applicants in respect of these proceedings.

Background

2. Mr. and Mrs. Turpin ("the Applicants") made applications under Sections 20C and 27A of the Landlord and Tenant Act 1985 ("the Act"), which were dealt with by the Tribunal and the parties were informed of the Tribunal's decision. However, the Tribunal did not deal with the Application made under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 for Mr. S. Pariser ("the Respondent") to reimburse the Applicants for the fees of £100 paid by the Applicants in respect of the proceedings ("the fees application"). This

decision in respect of the fees application is supplemental to the decision made in respect of the applications made under Sections 20C and 27A of the Act.

3. On 16th February 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 fees application 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 the 16th February 2009. No written objection has been received and the matter is being deal with on the basis only of written representations and without an oral hearing.

4. The parties were informed by the directions that in coming to a decision in respect of the fees application the Tribunal would consider all documents supplied to the Tribunal by the parties in respect of the applications under Sections 20C and 27A of the Act. The parties were also given the opportunity to submit for consideration by the Tribunal any further witness statements or documents in support of their cases but they have not done so.

Evidence

5. In relation to the fees application the Tribunal considered the written representations received from the Applicants and from Circle Residential Management Limited on behalf of the Respondent in respect of the applications under Sections 20C and 27A of the Act.

Reasons for the Tribunal's Decision

6. The Tribunal require the Respondent to reimburse the Applicants for the whole of the fees of £100 paid by the Applicants in respect of these proceedings because the Applicants were justified in bringing these proceedings to clarify the position as to service charges.



R. Norman
Chairman