

**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/29UN/LSC/2009/0012

**Property:** 11 Wellington Crescent  
Ramsgate  
Kent  
CT11 8JD

**Applicants:** Mr. S. Boulton  
Mr. and Mrs. P. Burton  
Mr. D. Maguire  
Mr. and Mrs. A. Goodyear

**Respondent:** Sarum Properties Limited

**Dates of Hearing:** 20<sup>th</sup> April 2009  
12<sup>th</sup> June 2009

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

**Date decision issued:**

**RE: 11 WELLINGTON CRESCENT, RAMSGATE, KENT, CT11 8JD**

**Background**

1. Mr. S. Boulton made an application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability to pay service charges.

**Inspection**

2. On 20th April 2009 the Tribunal inspected 11 Wellington Crescent Ramsgate Kent CT11 8JD ("the subject property") in the presence of Mr. S. Boulton the lessee of Flat 4, Mr. P. Burton the lessee of Flat 2, Mr. D. Maguire the lessee of Flat 1 and Mrs. F.

Barnett of Remus Management Limited, the managing agents, representing Sarum Properties Limited ("the Respondent"). In addition Mr. and Mrs. A. Goodyear the lessees of the Lower Ground Floor Flat allowed us to go through their flat to view the back of the house and were present for that part of the inspection.

3. We could see that the roof was of slate. We could also see that there was a large crack towards the right hand end of the parapet as viewed from the front of the subject property. Pointing was needed to the building particularly at the front. Outside decoration was needed. At the rear of the property there were a number of pipes, hoppers and soil stacks. We were told that one black plastic hopper and down pipe were a replacement. This pipe emptied into a grate at the foot of a long drop which Mrs. Goodyear said was very noisy. We could appreciate that that would be the case in view of the long straight drop. The lessees pointed out that too many pipes, some of them large, emptied into hoppers which then could not cope with the amount of liquid in the space reduced by the number of pipes and their diameter. We could see there were marks which were evidence of where water had overflowed the hoppers. Water was leaking from a soil stack.

4. Inside the subject property we could see a carpet on the hall, stairs and landings ("the common parts" as referred to in the lease) which appeared to be reasonably new and clean. On one landing there was a store cupboard but the door to it could not be opened without disturbing the carpet. On that door there was a piece of paper fixed with sellotape on which there were faded fire escape instructions. There was no fire extinguisher. There was a good deal of dust on ledges in the common parts. The walls were covered in what appeared to be chipboard paper and emulsion paint. Apart from the dust the paint appeared to be in reasonable condition but some paint had splashed or had been carelessly brushed onto the banisters. There were two electric light bulbs on a timer switch. There were no electric sockets in the common parts.

5. Mr. Maguire stated that he and his wife clean the hall.

6. We were told by Mr. Boulton that access to the roof could be obtained only by a ladder through his flat and therefore we could not inspect the roof except by viewing it from some distance near the railings on the sea front and with the aid of binoculars.

### **The Hearing**

7. A hearing was held on 20th April 2009 and was attended by Mr. S. Boulton, Mr. and Mrs. P. Burton, Mr. D. Maguire and Mr. and Mrs. A. Goodyear ("the Applicants"). Mrs. Barnett of Remus Management Limited, the managing agents, attended to represent Sarum Properties Limited.

8. At the hearing, at their request and with the agreement of Mrs. Barnett, Mr. and Mrs. P. Burton, Mr. D. Maguire and Mr. and Mrs. A. Goodyear were joined as Applicants.

9. At the hearing Mrs. Barnett agreed on behalf of the Respondent that:
- (a) The application should extend back to the roof works in 1998.
  - (b) Any payments which the Lessees are obliged to make in accordance with the provisions of clauses 4 (b) and 4 (c) of the leases are due in arrear.
  - (c) The following items cannot be charged to the Lessees:
    - (i) Management fees
    - (ii) Accountancy
    - (iii) Contingency
    - (iv) Risk assessment
    - (v) Out of hours emergency cover
    - (vi) Professional fees
    - (vii) Roof repairs
  - (d) One of the Respondent's responsibilities is to repair the roof.
10. Mr. Goodyear stated that his lease was different from the other leases in that he did not have to contribute to the cleaning, lighting and repair of "the common parts" as referred to in the leases because he had a separate entrance to his flat and did not use "the common parts".
11. Mrs. Barnett was unable to confirm or dispute this or to provide information about the budget and other aspects of the accounts.
12. The Tribunal considered that there was insufficient evidence to reach a conclusion about the matters in dispute and decided that the case would have to be adjourned and further directions issued. It was announced that a suitable date time and place for the adjourned hearing would be 12th June 2009 at 10.00 am at the Holiday Inn Express, Tothill Street, Ramsgate, Kent CT12 4AU and all those present agreed to that.
13. The directions proposed to be made were outlined so that although written directions would be produced the Respondent would be aware from 20th April 2009 of the matters which were required to be addressed and could start to collect the evidence without waiting for the written directions.
14. Written directions were issued.
15. On 12<sup>th</sup> June 2009 the hearing continued. The same people who had attended the hearing on 20<sup>th</sup> April 2009, with the exception of Mrs. Goodyear, were present. The parties had provided further evidence which the Tribunal had considered and further evidence was given at the hearing.
16. Mrs. Barnett stated that the Respondent wanted reasonableness and contended that the Respondent and the managing agents had been reasonable and that although they had not consulted the lessees in relation to the roof works, the managing agents had kept the lessees informed. This was disputed by the Applicants who gave examples of the lack of information.

17. Mrs. Barnett agreed that:

(a) There was no provision in the lease of the Lower Ground Floor Flat for a contribution towards the cleaning, lighting and repair of the common parts.

(b) In relation to the roof works:

(i) She had no evidence as to the obtaining of a scaffolding permit.

(ii) No consideration had been given to any sort of temporary covering of the roof, reliance had been placed on the contractor to assess the situation, a surveyor had not been instructed because it was assumed the work would be covered by insurance but when within a week the managing agents knew that that was not the case still a surveyor was not instructed.

(iii) At p. 150 of the Respondent's additional evidence there is mention of a report from Skillbase. Mrs. Barnett could not find a written report from Skillbase but all she had found was mention of roof repairs.

(iv) Searle Building Contractors had made three attempts to provide figures showing how much of the work was for roof repairs for which the Applicants were not responsible. However, she had to stand by those figures.

(v) Mrs. Barnett had no comments to make on Mr. Burton's calculations except to say that the lessees had had the benefit of all the works.

(vi) She could not find any evidence of site inspections taking place during the course of the works. During negotiations about the grant a colleague from the managing agents met the conservation officer but that was after the works had been completed.

(c) The figures which she had produced were just a quick redraft and the Respondent would await the determination by the Tribunal. Those figures did not produce a final figure as Mr. Boulton's figures did. She was content with Mr. Boulton's figures for the amounts paid by the lessees.

(d) The Respondent's redrafted figures incorrectly included a contribution by the lessee of the Lower Ground Floor Flat to the cleaning, lighting and repair of the common parts and still included a charge for accountancy which Mrs. Barnett believed had to be charged although she agreed such a charge was not permitted by the terms of the leases.

18. It appeared to the Tribunal that there was now a good deal of agreement between the parties and therefore the hearing was adjourned to give those present the opportunity to reach agreement as to as many of the final figures as they were able to and to inform the Tribunal of the figures which were still in dispute.

19. When those present informed the Tribunal that they were ready to proceed the hearing continued and we were presented with a reworking of Mr. Boulton's figures. Mr. Boulton on behalf of the Applicants and Mrs. Barnett on behalf of the Respondent informed us that the reworked figures were all agreed except for the lessees' contribution to the roof works and the number of insurance excesses of £250 which should be included. Mrs. Barnett considered that 3 x £250 insurance excesses were payable by the lessees whereas the Applicants considered that only one excess of £250 was payable.

20. As to the roof works, the reworked figures, and indeed the earlier figures prepared by the Applicants, included a suggestion that each lessee should pay £246.06 towards the works but that sum was disputed. While those present were trying to agree the figures, the Tribunal took the opportunity to consider the position as to the roof works. We had received in both written form and oral evidence all the arguments which the parties had advanced. It was quite clear and was not disputed that the works as dealt with by the managing agents were works which required consultation under the provisions of Section 20 of the Act. It was agreed that such consultation had not taken place and that there had not been any application to a Leasehold Valuation Tribunal for dispensation. It followed that, under the provisions in force at the time, the maximum that could be claimed from the lessees for the works was £1,000 and we announced this. It was therefore necessary to reduce the sum payable by each lessee to £200. We also had to consider the impact on this figure of the grant which had been received. Taking the cost of the repairs as £8,638.60, the grant as £3,441 and the lessees' contribution as £1,000 we calculated that £1,000 represented 11.57594% of £8,638.60 and that that percentage of the grant £398.33 should be credited to the lessees. Deducting £398.33 from the £1,000 leaves £601.67 to be paid by the lessees and dividing that sum by 5 means that each lessee pays £120.33. These figures and calculations were presented to those present and they were asked if they had any comments to make or if they disputed those calculations. They stated they were happy with the figures and calculations.

21. As to the insurance excesses, we heard evidence from those present and considered the documents which had been produced and came to the conclusion, which we announced, that there had been two claims, one each in 2007 and 2008, and that two excesses of £250 each were payable.

22. Those present agreed that the reworked figures should be accepted subject to the reduction of the charge for roof works from £240.06 to £120.33 in respect of each lessee and the addition of £50 in respect of each lessee to account for the additional £250 excess.

23. In relation to insurance premiums, we announced that although the lessees considered that they were disadvantaged by the connection between the managing agents and the brokers and that undisclosed commission had been received, the premiums charged had been reasonably incurred and were payable.

24. Mr. Boulton said that he would email to the Tribunal Office and to the managing agents a better copy of the handwritten reworked figures. That copy has now been received and there is an indication that it has been copied to the managing agents. The figures are different from those on the handwritten sheet and Mr. Boulton has explained that the reason for this is that he has corrected some errors. Normally, the parties having reached agreement and the hearing having been concluded, no further evidence would be received and no alteration would be made to the figures. However, in this case, Mr. Boulton has very properly pointed out the errors and they are in favour of the Respondent. The emailed figures for the corrected charge vary from the handwritten figures by only a

few pence but the sums paid by the lessees, although at the hearing Mrs. Barnett accepted them as being accurate, have been reduced and in some cases make a substantial difference to the sums to be repaid to the lessees. For this reason we find that the justice of the situation is met by using those emailed figures rather than the figures produced at the hearing.

25. The emailed figures require a small adjustment of £0.73 to correct the amount payable by each lessee in respect of the roof works from £119.60 to £120.33.

### **Decision**

26. The determination, noting the figures agreed at the hearing and taking into account the corrections and adjustment mentioned above, is as follows:

£346.33 is payable by the lessee of the Lower Ground Floor Flat to the Respondent.

£2,425.08 is payable by the Respondent to the lessee of Flat 1.

£97.84 is payable by the lessee of Flat 2 to the Respondent.

£2,394.35 is payable by the Respondent to the lessee of Flat 3.

£2,956.19 is payable by the Respondent to the lessee of Flat 4.

All sums are to be paid within 28 days from the date of issue of this decision.



R. Norman  
Chairman.