

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Case No. CHI/29UP/LSC/2010/0037

Property: Flat 4 Bridgewood Place
456 Maidstone Road
Chatham
Kent
ME5 9QL

Applicant: Southern Land Securities Limited

Respondent: Ms K. Young LLB Hons

Date of Hearing: 5th August 2010

Members of the Tribunal: Mr. R. Norman
Mr. P.A. Gammon MBE BA

Date Decision Issued: 12th August 2010

**FLAT 4 BRIDGEWOOD PLACE, 456 MAIDSTONE ROAD, CHATHAM,
KENT ME4 9QL**

Decision

1. Ms K. Young ("the Respondent") within 28 days of the date this decision is issued is to pay to Hamilton King Management Limited ("the former managing agent") on behalf of Southern Land Securities Limited ("the Applicant") the sum of £354.26 calculated as follows:

	£
Balance of service charges payable to 30 th November 2009	24.35
Solicitors' fees in respect of collection of monies due to 30 th November 2009	96.60
The former managing agent's fees in respect of collection of monies due to 30 th November 2009	112.70
The Applicant's charges in respect of collection of monies due to 30 th November 2009	89.00
Interest	<u>31.61</u>
Total	354.26

Background

2. The Applicant is the freeholder of Flat 4 Bridgewood Place, 456 Maidstone Road, Chatham, Kent, ME5 9QL ("the subject property") and the Respondent is the lessee of the subject property. On 30th November 2009 Bridgewood Place RTM Company Limited, a Right to Manage Company took over the management of the subject property and other flats in the development of which the subject property forms part. Prior to that date the management of the development was carried out by the former managing agent.

3. The Applicant has applied for a determination of liability to pay and reasonableness of service charges.

4. A statement of case has been received from the former managing agent on behalf of the Applicant setting out the following sums which were claimed:

	£
Former managing agent's fee for retrospective consent	176.25
Excess service charge to 23 rd June 2008	287.32
Former managing agent's fees in relation to collection of Outstanding monies	112.70
Balance of service charges payable to 30 th November 2009	459.88
Solicitors' fees in respect of collection of outstanding monies	370.90
The former managing agent's fees in relation to collection of outstanding monies	112.70
The Applicant's charges in relation to collection of outstanding monies	89.00
Interest	<u>42.63</u>
Total	1,651.38

5. A skeleton argument has been received from the Respondent setting out a procedural history, the Respondent's submissions as to the interpretation of the law and that it would be an abuse of power allowing the Applicant's application to continue. Enclosed with the skeleton argument was a copy of a County Court Claim Form in respect of Claim No. 9CY00484, the Respondent's defence in respect of that claim, her allocation questionnaire, Notice that a defence has been filed and the Order dated 7th October 2009.

Inspection

6. On 5th August 2010 the Tribunal inspected the exterior of the subject property in the presence of Mr. Taylor, Mrs. Tosan and Mrs. Coates of the former managing agent, representing the Applicant. The Clerk to the Tribunal rang the door bell, knocked on the door and rattled the letter box of the subject property but there was no answer and there was no attendance by the Respondent or by anybody on her behalf.

The Hearing

7. The hearing was attended by Mr. Taylor, Mrs. Tosan and Mrs. Coates of the former managing agent, representing the Applicant. There was no attendance by the Respondent or by anybody on her behalf. We were satisfied that the Respondent had been notified of the hearing and proceeded to hear evidence and submissions from those present.

8. We were satisfied that we had jurisdiction to deal with the application but the evidence from the documents provided before the hearing and from those before us was that proceedings had been commenced in the County Court by the Applicant against the Respondent (Claim No. 9CY00484) in respect of ground rent and service charges up to and including 25th April 2009 and that an agreed settlement of that case had been reached. Ground rent is not within our jurisdiction. We concluded that settlement having been reached it was not open to the parties to reopen any dispute as to sums alleged to be owed by either party to the other up to and including 25th April 2009. Similarly, in respect of the claim for a court fee of £65 and Solicitors' fees of £209.30 (which sums form part of the claim for £370.90) for collection of outstanding monies, we found that the court fee and those fees were in respect of work carried out in connection with the County Court Claim (Claim No. 9CY00484) which had been settled and that the settlement should have included any claim for fees and costs.

9. Consequently, in respect of the following items we made no order:

	£
Former managing agent's fee for retrospective consent	176.25
Excess service charge to 23 rd June 2008	287.32
Former managing agent's fees in relation to collection of Outstanding monies	112.70
Solicitors' fees in respect of collection of outstanding monies	274.30

10. As to the remainder of the sums claimed we considered the documents which had been provided in advance of the hearing and the evidence and submissions made at the hearing and reached the following conclusions on a balance of probabilities.

(a) As to the claim for the balance of service charges payable to 30th November 2009 in the sum of £459.88, we asked how this sum had been calculated and it was explained that it was the Respondent's contribution to major works plus interim service charges and ground rent less amounts which had been received from the Respondent or credited to her account. We worked through the figures with those present and when all the credits shown in the accounts were deducted from the sum due the balance to be paid by the Respondent was £99.35. When the ground rent of £75, which is not within our jurisdiction, was deducted it showed that the Respondent owed £24.35 in respect of service charges. That is the same as the figure shown in the closing accounts for the period 24th June to 29th November 2009 submitted by the former managing agent when handing over to the RTM Company. On the evidence before us we found that the Respondent was liable to pay that sum.

(b) As to the claim for £96.60, being the remainder of the claim for £370.90 referred to above, and the claim for £112.70 and £89 being the former managing agent's fees and the Applicant's charges in relation to collection of outstanding monies due after

the settlement of County Court Claim No. 9CY00484, we accepted that monies owing had not been paid when demanded and that costs had been incurred by the Applicant and by the former managing agent in sending reminders and in instructing Solicitors to commence proceedings in the County Court to recover service charges which were reasonable and due to be paid. The Applicant was entitled to recover its own charges, the fees of the former managing agent and the Solicitor's fees.

(c) As to the claim for interest of £42.63, our findings about the settlement of the County Court Claim are set out in paragraph 8 above. Any interest in respect of sums due up to and including 25th April 2009 should have been part of the agreed settlement. As a result of those findings the interest had to be recalculated so as to include only interest in respect of sums due since that date. We found that the sum of £31.61 was payable by the Respondent.

(d) The Respondent has requested a refund of £251.11 in relation to the major works but has provided us with very little to show how she claims to be entitled to such a refund. We found on the evidence before us that a refund of £253.08 was made to the Respondent. She received credit for that and she is not entitled to any further refund.

11. We were asked to consider ordering the Respondent to reimburse the Application fee of £100 and the hearing fee of £150 paid by the Applicant in respect of these proceedings.

12. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides that in relation to any proceedings in respect of which a fee is payable under those Regulations a Leasehold Valuation Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings. Having regard, in particular, to the fact that we found that the Applicant was entitled to recover a sum substantially less than that claimed we consider that it is just and equitable not to make an order requiring the Respondent to reimburse the Applicant's application and hearing fees.

(Signed) R. Norman

R. Norman
Chairman