

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/29UE/LSC/2007/0050

Property: Flat 1 Castle Mount
6 Walmer Castle Road
Walmer
Deal
Kent
CT14 7NG

Applicant: Shuttleworth Property Management
Co. Limited
c/o Circle Residential Management Ltd.

Respondent: Ms V. Moody
c/o Messrs. Girlings, Solicitors

Date of Hearing: 25th July 2007

**Members of the
Tribunal:** Mr. R. Norman (Chairman)
Mr. J.N. Cleverton FRICS

Date decision issued:

**RE: FLAT 1 CASTLE MOUNT, 6 WALMER CASTLE ROAD, WALMER, DEAL,
KENT, CT14 7NG**

Background

1. Shuttleworth Property Management Co. Limited (“the Applicant”) is the freeholder of Flat 1 Castle Mount, 6 Walmer Castle Road, Walmer, Deal, Kent, CT14 7NG (“the subject property”) and Ms V. Moody (“the Respondent”) is the lessee of the subject property.
2. The Applicant has made an application under Section 27A of the Landlord and Tenant Act 1985 (“the Act”) for a determination of reasonableness and the liability of the

Respondent in respect of interim service charges of £640 for the year 2007. An application has also been made for the Respondent to be required to reimburse the Applicant's fees.

3. The Tribunal proposed to deal with the application on the paper track on the basis only of written representations and documents without a formal hearing. Notice was given 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. Neither of the parties objected to this.

4. Directions were given and written representations were received from Circle Residential Management Ltd. on behalf of the Applicant and from Messrs. Girlings, Solicitors on behalf of the Respondent.

Determination

5. We find that the sum of £640 in respect of the interim service charges for 2007 is a reasonable sum and determine that the Respondent pay that sum to the Applicant within 28 days of the issue of this determination. We order that the Respondent reimburse the Applicant its fees in respect of the making of this application in the sum of £70 within 28 days of the issue of this determination.

Reasons

6. The members of the Tribunal met on the 25th July 2007 and considered the evidence received in the form of written representations and documents.

7. The evidence submitted on behalf of the Applicant consists of records of past service charges and based on those a calculation of a sum demanded for interim service charges for the year 2007.

8. The evidence submitted on behalf of the Respondent consists of a statement (together with photographs) about the condition of the subject property, the lack of maintenance and a mention that service charges for previous years are the subject of proceedings in the County Court. We have not been informed of the stage those proceedings have reached but as far as we are aware, at the present time, no decision has been made that those previous service charges are in any way incorrect.

9. We have been asked to determine the reasonableness of the interim service charge demand for 2007 in the sum of £640 and the liability of the Respondent to pay it.

10. Section 19 (2) of the Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

11. If there were evidence before us that the interim service charge for 2007 was not in line with service charges for previous years or that service charges for previous years were

excessive then we would be looking to the Applicant to provide further evidence to support the demand but on the basis of the evidence before us £640 is a sum which would be expected to be demanded as an interim service charge for 2007 as it is in line with service charges for previous years and there is no evidence before us that service charges for previous years are excessive.

12. We would stress that our finding does not mean that when the actual expenditure is calculated after the end of the year, the service charges for 2007 will have been reasonably incurred. At that stage there may be the need for a refund of part of the interim service charge payment or a demand for an additional sum. We have no way of knowing at the present time whether the costs will be reasonably incurred. For example we do not know whether work which is budgeted for will be carried out or whether it will be carried out to a reasonable standard or at a reasonable price.

13. The statement of Mr. Paine, made on behalf of the Applicant, deals at paragraphs 9 to 12 with the provisions in the lease which he considers to be relevant to this application. He is correct when he states that paragraph 8 of the lease particulars specifies the tenant's share of the service charge to be one fifth, that clause 4 (4) of the lease contains a covenant that the tenant pay the interim service charge at the times and in the manner provided in the Fifth Schedule and that Clause (3) of the Fifth Schedule provides that the interim service charge is payable by the tenant in advance on the first day of January in each year. However, his reference to clause c of the Fifth Schedule should be a reference to clause (1) (c) of that Schedule where there is mention of a fair and reasonable interim payment and defines "the Interim Charge" as a sum to be paid on account of the Service Charge and "the Service Charge" is defined in clause (1)(b) of the Fifth Schedule as meaning "...such percentage of Total Expenditure as is specified in paragraph 7 of the Particulars...". Presumably the draftsman intended to refer to paragraph 8 rather than paragraph 7 but he did not do so.

14. Neither of the parties have drawn our attention to this error or to other errors in the lease where there has been an incorrect reference to the paragraphs of the particulars.

15. The parties appear to have conducted business on the basis of the draftsman's intentions rather than the wording of the lease and as we understand that the subject property is one of five flats a one fifth share of the service charges may well be appropriate.

16. It is a matter for the parties but we would suggest that they consider entering into a deed of variation to correct the errors so that the position is entirely clear.

17. We have received a copy of a letter dated 19th July 2007 from Circle Residential Management Ltd. to Messrs Girlings concerning a payment of £350 but we have received nothing from the Respondent or her solicitors to explain how the sum of £350 has been calculated or whether it is in respect of the interim service charge for 2007 or other matters. For that reason we have not deducted £350 from the sum of £640.

18. An application has been made for reimbursement of fees. We find that it is appropriate in the circumstances to order reimbursement for the following reasons. Mr. Paine on behalf of the Applicant wrote a letter to the Respondent and sent e-mails to the Respondent's Solicitors in an effort to negotiate a settlement rather than making an application but the Respondent did not reply and the Respondent's Solicitors replied that they

did not have instructions to correspond with Mr. Paine until there was compliance with the court orders. However, we now understand that a payment of £350 has been made. Had that been made earlier then there may not have been the need for an application.

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R. Norman
Chairman

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