

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Case No. CHI/21UD/LIS/2010/0063

Property: 281 London Road
St.Leonards-on-Sea
East Sussex
TN37 6NB

Applicant: Ms R. Akorita

Respondent: Mr. T.G. Wallace

Date of Hearing: 13th October 2010

Members of the Tribunal: Mr. R. Norman
Mr. R. Athow FRICS MIRPM

Date Decision Issued: 25th October 2010

281 LONDON ROAD, ST. LEONARDS-ON-SEA, EAST SUSSEX TN37 6NB

Decision

1. (a) Mr. T.G. Wallace (“the Respondent”) to pay the following sums to the following lessees of 281 London Road, St. Leonards-on-Sea, East Sussex TN37 6NB (“the subject property”) within 28 days of the date of issue of this decision.

| | |
|-----------------|--|
| | £ |
| Ms R. Akorita | 1086.96 (including £250 reimbursement of fees see (c) below) |
| Mrs. S. Swaine | 836.96 |
| Miss K. Painter | 836.96 |

(b) An order is made 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 lessees.

(c) An order is made that the Respondent reimburses Ms R. Akorita (“the Applicant”) the fees of £250 paid by her in respect of these proceedings.

Background

2. The subject property comprises three self contained flats. The lessee of the ground floor flat is the Applicant, the lessee of the first floor flat is Mrs. S. Swaine and the lessee of the lower ground floor flat is Miss K. Painter. The Respondent is the freeholder. On 5th November 2008 a Right to Manage Company took over the management of the subject property.

3. Three applications have been made:

(a) An application under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of liability to pay and reasonableness of service charges.

(b) An application under Section 20C of the 1985 Act for an order 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 lessees of the subject property.

(c) An application under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 for the Respondent to reimburse the Applicant for the fees of £250 paid by the Applicant in respect of the proceedings.

4. The items of service charge which are the subject of this application are:

(a) The year 2007 management fees £1,174.99

(b) The year 2007 accountants' fees £235.00

(c) The year 2008 management fees £1,001.64

(d) The year 2008 surveyor's fees £599.25

5. In addition to the application form, the Tribunal has received from the Applicant a statement of case but nothing has been received from the Respondent or from anybody on his behalf. However, at the Tribunal Office a telephone call was received from the Respondent from which it was clear that he was aware that the hearing of the applications and the inspection were to take place on 13th October 2010.

Inspection

6. The subject property is a middle terrace house which has been converted into three self contained flats. On 13th October 2010 in the presence of the Applicant the Tribunal inspected the exterior of the subject property and the entrance hall common to the ground floor and first floor flats. Miss K. Painter allowed us to have access through her flat so that we could see the rear of the subject property. Neither the Respondent nor anybody on his behalf attended the inspection.

The Hearing

7. The hearing was attended by the Applicant. Neither the Respondent nor anybody on his behalf attended the hearing.

8. The Applicant confirmed the contents of her application and statement and answered questions from the Tribunal.

9. In particular she stated that:

(a) She and the other two lessees had all paid the sums demanded including those which were the subject of this application.

(b) No work had been carried out as a result of the survey for which £599.25 had been demanded and paid. Miss Painter knew that the surveyor had not looked at the rear of the subject property because to obtain access to it he would have had to go through her flat and he had not done so. No specification had been prepared. The Applicant understood that the surveyor wanted to look at the rear of the subject property with a builder before preparing a specification.

(c) On the Right to Manage company taking over, no money had been handed over by the Respondent or managing agents.

(d) The statements of service charges which had been sent to the Applicant and which she had produced with her statement did not make the position clear from year to year.

(e) In relation to the application for reimbursement of fees, this matter could have been settled without the need for an application to the Leasehold Valuation Tribunal but the Respondent or his managing agents could not say how the fees had been calculated.

Reasons

10. In the absence of any evidence from the Respondent or from anybody on his behalf we were left with the evidence from the Applicant contained in her application, her witness statement and her evidence at the hearing.

11. Consequently, we accepted:

(a) That there was no justification for the accountants' fee to be charged to the lessees because no accounts had been supplied to the lessees for the year 2007. Therefore the fee of £235 should be refunded to the lessees.

(b) That very little work had been performed in return for the surveyor's fee of £599.25 and that the sum of £200 suggested by the Applicant for the work that was done was a reasonable figure. Therefore the sum of £399.25 should be refunded to the lessees.

(c) That the management had been to a very low standard and that the sum of £150 for each of the years 2007 and 2008 suggested by the Applicant for the work done was a reasonable figure. Therefore the sums of £1,024.99 in respect of management charges for 2007 and £851.64 in respect of management charges for 2008 should be refunded to the lessees.

12. As to the application for an order under Section 20C of the 1985 Act, it appears to be unlikely that the Respondent will be able to claim under the service charges for any costs in relation to these proceedings. However, for the following reasons and for the avoidance of doubt we decided to make an order. We find that it is just and equitable in the circumstances to make an order because the Applicant was justified in bringing these proceedings to clarify the position and neither the Respondent nor anyone on his behalf complied with the directions given or provided us with any evidence or attended the inspection or the hearing.

13. As to the application for reimbursement of the fees of £250 paid by the Applicant in respect of these proceedings. Under the provisions of Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 the Tribunal is able to make an order for reimbursement and we decided to do so, essentially for the same reasons as we made an order under Section 20C of the 1985 Act.

Signed

R. Norman

Chairman