

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

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

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**Case No.** CHI/29UL/LSC/2010/0101

**Property:** 41 Augusta Gardens  
Folkestone  
Kent CT20 2RS

**Applicants:** Augusta Gardens Management Company  
Limited  
Ms Mercer  
Mr. Hann and Ms Race

**Respondent:** Ms. L. Nolan

**Date of  
Consideration:** 17<sup>th</sup> September 2010

**Members of the  
Tribunal:** Mr. R. Norman  
Mr. R. A. Wilkey FRICS FICPD

**Date decision issued:** 28<sup>th</sup> September 2010

**RE: 41 AUGUSTA GARDENS, FOLKESTONE, KENT, CT20 2RS**

**Decision**

1. The Tribunal made the following decision:

(a) Within 14 days of the date this decision is issued, Ms L. Nolan ("the Respondent") is to pay to Augusta Gardens Management Company Limited ("the Company") c/o Chaine Hunter, the managing agents, the sum of £2,930.75 calculated as follows:

	£
Arrears of service charge for the year 2006:	50.00
Arrears of service charge for the year 2007:	200.00
Arrears of service charge for the year 2008:	916.40
Arrears of service charge for the year 2009:	864.35
Service charge for the year 2010 to 30 <sup>th</sup> September 2010:	<u>900.00</u>
	2,930.75

(b) The sum of £100 per calendar month is not an unreasonable sum to be paid by each of the five lessees at 41 Augusta Gardens, Folkestone, Kent, CT20 2RS ("the subject property") in respect of the current year to 31<sup>st</sup> December 2010.

(c) No order is made in respect of costs or reimbursement of fees.

### **Background**

2. The subject property comprises five flats. The Company is the freeholder and each of the five lessees has a 1/5<sup>th</sup> share in the Company. The Respondent is the lessee of one of the flats: Flat B.

3. Ms Barker, one of the lessees, on behalf of the Company made an application under Section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay service charges demanded in respect of the years 2006, 2007, 2008, 2009 and 2010.

4. An application was also made for the Respondent to reimburse fees paid in respect of these proceedings.

5. At their request Ms Mercer, another of the lessees and Mr. Hann and Ms Race who are joint lessees of one of the flats have been joined as Applicants in these proceedings.

6. In response to directions which were issued, the parties provided statements of case and other documents which were considered by the Tribunal.

### **Inspection**

7. On 17<sup>th</sup> September 2010, in the presence of Ms Barker, Mr. Hann and Mr. John Hunter FRICS MCI Arb of Chaine Hunter the managing agents, the Tribunal inspected the exterior of the subject property facing Augusta Gardens, the hall and staircase and Flat C.

### **Hearing**

8. On 17<sup>th</sup> September 2010 the hearing was attended by Ms. Barker, Mr. Hann, Mr. Hunter, the Respondent and Ms Rae who was assisting the Respondent.

### **Evidence**

9. The main points of the Company's case are set out in the statement of case provided by Ms Barker and the main points of the Respondent's case are set out in her statement of case.

10. Those present gave additional evidence and made submissions to the Tribunal.

11. The Respondent stated that she did not challenge the service charge arrears of £50 for 2006 and £200 for 2007.

12. Ms. Rae stated on behalf of the Respondent that if receipts could be provided for all actual outgoings then the Respondent would pay 1/5<sup>th</sup> of them. She was only challenging the fees of Chaine Hunter.

13. Mr. Hunter stated that receipts could be produced at his office and it was suggested by the Tribunal that the hearing be adjourned until 1.30 pm so that those present could inspect receipts at the office of Chaine Hunter.

14. By 1.45 pm, all those who had been present at the start of the hearing returned and it was confirmed that receipts and a sample of the managing agents' standard terms had been inspected.

15. The Respondent stated that, having seen those documents, she agreed that in respect of the service charges for 2006, 2007, 2008 and 2009 (up to 31<sup>st</sup> December 2009) she had to pay £1,795.55.

16. Mr. Hunter said that he was going to try to reopen an insurance claim which could not previously have been pursued because the Respondent had not sent him an invoice. She had produced that invoice to him at the hearing.

17. The Respondent accepted that she had to pay service charges of £100 per calendar month for 2010 up to 30<sup>th</sup> September 2010 (£900) making the total amount she did not dispute £2,695.55 which she would pay within 14 days.

18. All those present agreed that only the following matters remained to be determined by the Tribunal:

(a) The managing agents' fees of £235.20 for the period up to 31<sup>st</sup> December 2009.

(b) The reasonableness of the service charges of £100 per flat per calendar month for the year 2010.

(c) The application for reimbursement of fees.

19. The Tribunal then heard evidence and submissions in respect of those matters.

20. Ms Rae told us that the Respondent was exasperated with Chaine Hunter. There were always difficulties in progressing things. Earthquake damage resulted in an insurance claim and the Respondent had a claim which apparently was not part of the earthquake claim and her claim did not progress. In an effort to progress the matter, the Respondent obtained a quote for the work and offered to pay it on the basis that the cost could then go into the service charges for the next year. She asked for insurance

certificates and for a copy of the managing agents' contract but there was no response. Fairly, Ms Rae stated that the receipts seen during the adjournment were in a well kept file. Enquiries by telephone and fax and even threatening proceedings brought no response. After a year repairs happened. It was accepted that it was not all Chaine Hunter's fault. There had been a problem with recent leaks. Getting access had been a problem. The roof terrace of the top floor flat does not form part of that flat and the decking put there may have contributed to the leak. She did not see how the fees could be reasonable in their entirety. There was an expectation of acting speedily and that had not happened.

21. Mr. Hann said that the information required from Chaine Hunter could have been obtained by walking into the office.

22. Mr. Hunter said that he was dealing with the property management and the running of the Company. The lessees could visit his office by appointment but the Respondent had turned up one afternoon without an appointment which was not the best start. There was nothing to say that a managing agent would maintain the subject property and hope to get the money later. The account for the subject property was in credit only because Chaine Hunter paid the insurance premium and it had not yet been collected from the lessees. He had to deal with the company matters and maintain accounts. Monthly payments involved more work than collecting service charges half yearly or annually. He had to reconcile figures with the bank. He has to carry various insurances. In reality he received only £30 or £40 per annum for management. Had money been available it would have been easier but there were arrears. When he called an Annual General Meeting it was usually attended by one or other of the residents; rarely by all. In fact he thinks that was achieved only once. He had received no fee for 3 years. He had covered annual returns, arranging insurance, etc. and had used £2,500 of his own money to pay the insurance.

23. The Respondent had obtained quotes for management from Angela Hirst and from another company. They had looked at the subject property and had given a quote for managing the building but the Respondent did not have copies of the quotes and could not remember how much they were.

24. Ms Barker told us that the increase in the service charge to £100 per calendar month for 2010 had been agreed at the AGM and at the hearing the Respondent had agreed that she should pay service charges of £100 per calendar month up to September 2010. As to the fees in respect of these proceedings, Ms Barker had paid them (£250) and they would be recovered from the Company as part of the service charges if the Tribunal did not order the Respondent to reimburse them.

25. Ms Rae pointed out that if the Respondent had been sent the contract and receipts which she had requested then there would have been no need for these proceedings. The Respondent did not know that she could have gone to Chaine Hunter's office to see the receipts and there had been no response by the managing agents to her requests. Also, as Ms Barker on behalf of the Company had expressed reservations about Chaine Hunter, it

was wrong that the Respondent should have to pay all the fees and would be just for the fees to go onto the management charges.

### **Reasons for the Tribunal's Decision**

26. We considered the Respondent's complaints about the performance of Chaine Hunter as managing agents and that Ms Barker had expressed reservations about it but even if those complaints and reservations were completely justified we were satisfied that Chaine Hunter's fees were very modest and in fact were at the bottom of the scale of charges we would expect to see for management of a block comprising only five flats, especially when the fees were for management and for dealing with company matters. We noted that although the Respondent stated that she had received two quotes for managing the subject property she had not brought details with her and could not even remember the fees quoted. The Respondent also accepted that she was liable to pay the £100 per calendar month service charges for 2010 up to September 2010. In addition we noted the undisputed evidence from Mr. Hunter that Chaine Hunter had received no fees for three years and that there was still owed to Chaine Hunter the cost of the insurance premium in respect of the subject property which Chaine Hunter had paid.

27. On the basis of the evidence before us we were satisfied on a balance of probabilities that the disputed charges of £235.20 for the period up to 31<sup>st</sup> December 2009 were not unreasonable and should be paid and that the service charges of £100 per flat per calendar month for 2010 up to 31<sup>st</sup> December 2010 were not unreasonable and should be paid.

28. As to the reimbursement of fees, we considered that it would be just and equitable in all the circumstances for the fees to be paid as part of the service charges. In that way the cost would fall upon the Company and each lessee would in fact pay one fifth.

29. As at the hearing the Respondent agreed that she was liable to pay £2,695.55 and that she would pay within 14 days presumably she will have paid that sum before receiving this decision and there will remain only £235.20 to be paid. However, for the avoidance of doubt we determine that the full sum of £2,930.75 be paid to the Company c/o Chaine Hunter within 14 days of the date of issue of this decision.

Signed

R. Norman

Chairman