

**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/29UD/LSC/2008/0114

**Property:** 29 Milestone Road  
Dartford  
Kent  
DA2 6DW

**Applicant:** Mrs. A. Coates

**Respondent:** Dartford Borough Council

**Date of Hearing:** 7th January 2009

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

**Date decision issued:**

**RE: 29 MILESTONE ROAD, DARTFORD, KENT, DA2 6DW**

**Decision**

1. Mrs. Coates is liable to pay the annual service charge of £814.22 in respect of the period from 1st April 2008 to 31st March 2009.
2. No Order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act")

**Background**

3. Mrs. Coates made an application under Section 27A of the Act for a determination of liability to pay service charges and an application for an order under Section 20C of the Act that all or any of the costs incurred or to be incurred by Dartford Borough Council ("the Council") 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 Mrs. Coates.

4. The Council is the freeholder of the property known as 29 Milestone Road, Dartford, Kent, DA2 6DW ("the Flat") which is one of a block of four flats numbered 29-35 Milestone Road ("the Block"). On 22nd October 2007 a lease of the Flat was granted by the Council to Miss Ann-Marie Coates under the Right to Buy Scheme. Sadly Miss Coates died in January 2008 and her mother Mrs. Coates is now the lessee.

5. Written submissions were made by Mrs. Coates and by the Council and these were considered by the Tribunal.

6. Mrs. Coates does not dispute any of the items of service charge except for:

(a) The "Provisions for Future Liabilities". Under this heading, for the first 5 years of the lease, there is a sum of £50 per year which is a provision for the external painting of the Block and £393.85 per year for the cost of the entrance door system, giving a total of £443.85 per year for 5 years.

(b) The "Management Fee" of £106.20.

### **Inspection**

7. On 7th January 2009 in the presence of Mrs. Coates, her son Mr. Coates, and Mr. Webb and Miss Haines from the Council we inspected the exterior of the Block and the hallway inside the Block. We could see the front and rear entrance doors and entry system referred to in the submissions made by the parties. The doors were substantial and appeared to be in accordance with the specification.

### **The Hearing**

8. The hearing was attended by Mrs. Coates, her son Mr. Coates who said he would be speaking on behalf of Mrs. Coates, and by Mr. Webb and Miss Haines from the Council and we heard evidence and submissions from those present.

9. In summary Mrs. Coates' case is that she objects to:

(a) Paying for the door entry system because neither she nor her daughter were consulted about it and did not agree to it. She points out the information provided by the Council with the service charge demand in which it is stated that if the landlord, in this case the Council, proposes works on a building or any other premises that will cost any tenant more than £250 or proposes to enter into an agreement for works or services which will last for more than 12 months and will cost any tenant more than £100 in any 12 month accounting period then the tenant's contribution will be limited to those amounts unless the landlord has properly consulted on the proposed works or agreement or a leasehold valuation tribunal has agreed that consultation is not required.

(b) Making an extra payment of £50 per year for five years for the external painting of the Block because there is also in the service charges a sum of £75 under the heading "Repair and Maintenance of Buildings" and she considers that the external painting of the Block should come out of that sum. However, at the hearing Mr. Coates did suggest that perhaps the sum under the "Repair and Maintenance of Buildings" heading should be increased by £50 to £125 so as to provide for the external painting.

(c) Paying the management fee because she does not need to be managed as she owns the lease of the Flat and in any event the management is carried out to a poor standard.

10. In summary, the Council's case is that Mrs. Coates is liable to pay service charges as set out in the terms of the lease. Also that under the Right to Buy Scheme and under the terms of the lease the Council is entitled to charge for the new entry system and doors, the external painting and management fee. As to the specific items in dispute:

(a) The new entry system and doors were required and because the contract for the work was entered into before Miss Coates became a leaseholder the requirement to consult her did not arise. Also that Miss Coates purchased the lease of the Flat on the understanding that she would have these charges to pay. The new entry system and doors have been provided to a reasonable standard and the cost has been reasonably incurred. The law requires as part of the Right to Buy Scheme that the Council make a prospective purchaser aware of the estimated annual service charges so that the prospective purchaser is in a position to make an informed decision about whether or not to buy. The figures for service charges are estimates and are subject to, for example, inflation. The Council have produced a copy of a letter to Miss Coates dated 9th August 2007. In that letter the estimated annual service charge is stated to be £807.79 and there is a breakdown of that sum. Included in that breakdown is the sum of £443.85 in respect of "Provision for Future Liabilities" and £105.36 in respect of "Management Fee". There is also information that it is expected that two specific repairs will be required during the first five years of the lease namely external painting every five years and "New Entry System & Doors". As to external painting the total cost for the block is given as £1,000 with Miss Coates' contribution being £50 per year for 5 years. The contribution is therefore calculated by dividing the total cost of £1,000 by 4 (the number of flats in the Block) giving a figure of £250 per flat and then dividing that figure by 5 to give an annual figure of £50. In this way the lessee will pay a total of £250 (£50 per year for 5 years). No time has been directly specified in respect of the "New Entry System & Doors" but the total cost is stated to be £7,877 and by applying the same calculation i.e. £7,877 divided by 4 gives £1,969.25 and then dividing that sum by 5 gives a contribution of £393.85 per year for 5 years. To describe the door entry system as a specific repair expected to be required during the next five years was correct as at 9th August 2007, the date of the letter, because although the contract had just been awarded on 8th August 2007 the work had not been done. It has now been completed but the sum of £393.85 per year for five years is still included within the "Provisions for Future Liabilities" heading for administrative reasons and to allow Mrs. Coates to pay the sum of £1,969.25 by instalments over five years rather than demanding immediate payment of the whole sum of £1,969.25, which could have been done at the time of purchase of the lease as part of the purchase price.

(b) The management fee is charged at 15% of the other service charges and is to cover the Council's cost of managing the Block. Miss Haines in her statement dated 22nd December 2008 which was provided to the Tribunal and to Mrs. Coates set out what was involved in managing the Block. It included arranging buildings insurance and making arrangements for such matters as repairs and maintenance.

11. Mr. Coates told us that his sister Miss Ann-Marie Coates could not read or write and that therefore he had assisted her when she was purchasing the lease. He could not recall seeing the letter dated 9th August 2007 setting out the terms of purchase of the lease but Mr. Webb and Miss Haines produced a form headed "RIGHT TO BUY - TENANT'S NOTICE OF INTENTION" and Miss Haines explained that that form would have been sent to Miss Coates with the letter dated 9th August 2007 and that it had been returned signed by her stating her intention to go on with her right to buy application and giving the name and address of her Solicitor. Mrs. Coates and Mr. Coates confirmed that the signature on the form was that of Miss Coates.

12. Mr. Coates accepted that it appeared that the letter dated 9th August 2007 had been received by his sister and that if that were the case then he would have read it but he did not recall any reference in that letter to a sum of £443.85 in respect of provision for future liabilities. He told us that he would not have advised his sister to purchase the lease if the letter dated 9th August 2007 had contained such a figure. When the Council's bundle of papers for this hearing had been received he had looked at the papers but had not thought to try to find the original letter dated 9th August 2007 which his sister had received in order to check the contents of it against the copy provided by the Council. He and his mother did not know if they still had the letter but thought it could be at Mrs. Coates' home among papers which she had which related to the purchase of the lease. It was also possible that the Solicitor who had acted for Miss Coates would have a copy. Mr. Coates was offered the opportunity to go to Mrs. Coates home to see if he could find the letter and to contact the Solicitor but he stated that he did not have the time to look for it or make enquiries of the Solicitor and return to the hearing because he had a hospital appointment to keep. He made the point that the copy letter was not on the Council's headed paper.

13. Miss Haines confirmed that the copy letter dated 9th August 2007 in the Council's bundle of papers at pp 37 - 40 was a true copy of the letter dated 9th August 2007 sent to Miss Coates and, in particular, that it did include as part of the estimated service charge £443.85 in respect of provision for future liabilities. The only difference between the copy produced and the original was that the original would have been on the Council's headed paper and would have been signed by Miss Haines whereas the copy was on plain paper and Miss Haines had initialled it rather than signing it. She explained that it was her usual practice to use plain paper for the file copy and to initial that copy so that she had a record that she had personally signed the original.

14. Mrs. Coates confirmed that with her daughter she had attended a meeting with a representative of the Council prior to Miss Coates purchasing the lease but she could recall no reference to the provision for future liabilities or the cost of the entry system and doors.

15. Mr. Webb produced a statement from Ms Lin Lyu the Right to Buy Administrative Assistant at the Council. He explained that this statement had not been included with the Council's bundle of papers because the statement had not been ready at the time of submitting the bundle. A copy was produced and given to Mr. Coates. In the statement Ms Lyu explained that as part of the Right to Buy process she invites tenants who have applied to purchase a flat under the Right to Buy Scheme to attend a meeting with her to ensure that they understand the Offer Notice (in this case the letter dated 9th August 2007) and the costs of home ownership, prior to purchasing their home. Ms Lyu stated that Miss Coates and her mother had attended the Council Offices at 11.00 am on 7th September 2007 and Ms Lyu could recall going over the Offer Notice and pointing out the high cost of the provision for future liabilities in the service charge estimate in the Offer Notice. Ms Lyu recalled being asked what this was for and explaining that it was for the proposed door entry system as stated in the Offer Notice. Also produced was a copy of a letter from the Council to Miss Coates inviting her to attend the meeting on 7th September 2007. This copy letter was on the Council's headed paper and Mr. Coates asked why in this case the copy was on headed paper whereas the copy of the letter dated 9th August 2007 was on plain paper. Mr. Webb and Miss Haines explained that although the usual practice is to make copies on plain paper sometimes copies are made on headed paper and that that is what must have happened on this occasion. In the Council's bundle of papers there had been references to the meeting with Ms Lyu and a copy of a note of the meeting had been produced but in those references and in the note the date of the meeting had been given as 4th September 2007. The explanation given for this by Mr. Webb and Miss Haines was that the correct date was the 7th September 2007 and that references to the 4th September had been a mistake.

16. We explained to those present that we would not make a final decision on 7th January 2009 but would give Mrs. Coates and her son seven days to send to Mr. Gerard, the Clerk to the Tribunal, the original letter dated 9th August 2007 from the Council to Miss Coates and five days to telephone Mr. Gerard to inform Mr. Gerard whether or not Mr. Coates or his mother had been able to find the letter or obtain a copy of it from Miss Coates' Solicitor. We also suggested that Mr. Coates keep a photocopy of the letter before sending the original to Mr. Gerard.

#### **Reasons for our decision**

17. Mr. Coates has telephoned Mr. Gerard and informed him that the letter dated 9th August 2007 cannot be found. Therefore we must make our decision on the evidence which we received in written form and orally at the hearing. All our findings are on a balance of probabilities.

18. The written submissions from the Council state that the other three flats in this block are occupied by secure tenants of the Council. We explained at the hearing that this means that they pay rent but do not pay service charges. Mrs. Coates as a lessee does not pay rent but pays service charges. It is necessary to look at the lease to find out exactly what are the responsibilities of the Council and Mrs. Coates. But in summary under the terms of the lease the Council has obligations to insure, repair and maintain certain parts of the Block and Mrs. Coates as the lessee of the Flat is liable to pay one quarter of the costs of such insurance, repair and

maintenance. Also under the provisions of the lease the Council are able to demand as part of the service charge a sum to set aside each year to make provision for depreciation or future or contingent liability in connection with the cost of maintenance and other obligations of the Council. In other words Mrs. Coates pays not only a quarter of the cost of work done by the Council but she also has to make a contribution to a fund so that when, for example, external painting is required there will be some money in the fund to use towards the cost rather than Mrs. Coates having to find the whole sum when the work is done. In this way provision is made for the future and it is prudent to do this. Included in the service charge is a sum for repair and maintenance of buildings. This is intended to provide for any repairs or maintenance which occur and which may not be expected. For example if a tile is blown off the roof in a gale then it needs to be replaced and this would be repair and maintenance. On the other hand external painting can reasonably be expected to be done every five years and therefore it is wise to collect money towards the cost of it over five years so that when the work is done Mrs. Coates does not have the shock of having to find £250 all at once because she has paid £250 at £50 per year already. The lease also provides that the Council can charge a management fee for the work they have to do in connection with the Block such as arranging insurance, maintenance and repair.

19. We pointed out to Mrs. Coates that although the Council are obliged to take out buildings insurance in respect of the Block they do not insure the Flat's contents and she should arrange insurance for that.

20. We explained to Mrs. Coates that the information given by the Council in the notes accompanying the demand for service charge referred to the consultation procedure required by Section 20 of the Act to be undertaken before the Council make arrangements for major works or long term contracts in respect of the Block. However, the arrangements for the new entry system and doors had been made before Miss Coates purchased her lease and therefore the Council did not need to consult her.

21. Mrs. Coates and her son at no stage in these proceedings questioned the need for the new entry system and doors. We found from our inspection of the Block and the papers produced to us including the tender documents that the cost of the new entry system and doors was reasonable.

22. We found from our inspection of the Block and from our own knowledge of the cost of decorating that the provision made for external painting was reasonable.

23. We found from the evidence we received and from our own knowledge of management fees that the management fee was reasonable.

24. We considered whether the fact that the copy letter dated 9th August 2007 was on plain paper and yet a file copy of the letter inviting Miss Coates to a meeting was on headed paper cast any doubt on the authenticity of the letter dated 9th August 2007. We came to the conclusion that it did not and that the difference arose simply because different but quite usual and accepted methods of keeping copies of letters were used. We were satisfied by the evidence of Miss

Haines that the copy of the letter dated 9th August 2007 which was produced by the Council was a true copy of the letter of 9th August 2007 sent to Miss Coates in which the terms on which she could purchase the lease were set out. In particular we found that the estimated service charge set out in that letter included the sum of £443.85 per year for the first five years of the lease in respect of Provision for Future Liabilities and that those future liabilities comprised £50 per year for external painting and £393.85 per year for the new entry system and doors.

25. We considered the fact that the date of the meeting between Ms Lyu and Mrs. Coates and her daughter was stated in the Council's bundle of papers as having taken place on the 4th September 2007 whereas Ms Lyu in her statement said it had taken place on the 7th September 2007 and that was the date in the letter inviting Miss Coates to the meeting. We came to the conclusion that the reference to the 4th September was a simple error and that it cast no doubt on the accuracy of the statement of Ms Lyu. We noted that there was no dispute that the meeting had taken place. We accepted the accuracy of the statement of Ms Lyu and found that the meeting did take place on 7th September 2007 and that the details of the service charge and in particular the liability in respect of the cost of the new entry system and doors was explained to Mrs. Coates and her daughter.

26. We found that it was one of the terms of purchase of the lease that Miss Coates pay £443.85 per year for five years as her contribution towards the cost of the new entry system and doors and external painting and we found as a fact that she was informed of this both in writing and verbally. As the current lessee, Mrs. Coates is liable for that contribution.

27. We considered the application for an order under Section 20C of the Act that all or any of the costs incurred or to be incurred by the Council 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 Mrs. Coates. We find that it is just and equitable in the circumstances not to make such an order. However, we did note the statement from Mr. Webb and Miss Haines that the Council were not seeking to add the costs of these proceedings to the service charge.



R. Norman  
Chairman