

**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/29UG/LSC/2008/0135

**Property:** 95A and 95B Parrock Street  
Gravesend  
Kent  
DA12 1EX

**Applicant:** Mr. J.S. Gill

**Respondent:** Miss R.J. Egbe

**Date of Hearing:** 13th February 2009

**Members of the  
Tribunal:** Mr. R. Norman  
Mr. C. White FRICS  
Mr. P. Gammon MBE BA

**Date decision issued:**

**RE: 95A AND 95B PARROCK STREET, GRAVESEND, KENT, DA12 1EX**

**Decision**

1. Miss R.J. Egbe is not liable to pay the following service charges and insurance claimed in respect of 95A Parrock Street:

11th September 2003 to 10th September 2004

Service charge: £630

Insurance: £120

11th September 2004 to 10th September 2005

Service charge: £644

Insurance: £136.50

11th September 2005 to 10th September 2006  
Service charge: £652  
Insurance: £146

11th September 2006 to 10th September 2007  
Service charge: £662  
Insurance: £149

11th September 2007 to 10th September 2008  
Service charge: £674  
Insurance: £165

11th September 2008 to 10th September 2009  
Service charge: £685  
Insurance: £172

2. Miss R.J. Egbe is not liable to pay the following service charges and insurance claimed in respect of 95B Parrock Street:

11th September 2003 to 10th September 2004  
Service charge: £630  
Insurance: £120

11th September 2004 to 10th September 2005  
Service charge: £644  
Insurance: £136.50

11th September 2005 to 10th September 2006  
Service charge: £652  
Insurance: £146

11th September 2006 to 10th September 2007  
Service charge: £662  
Insurance: £149

11th September 2007 to 10th September 2008  
Service charge: £674  
Insurance: £165

11th September 2008 to 10th September 2009  
Service charge: £685  
Insurance: £172

3. The following sums claimed are not within the jurisdiction of the Leasehold Valuation Tribunal:

In respect of 95A Parrock Street 11th September 2006 to 10th September 2007 emergency boarding £265 and emergency boarding and entry £550.

In respect of 95B Parrock Street 11th September 2006 to 10th September 2007 plumbing repair £215.

## **Background**

4. Mr. J.S. Gill made an application under Section 27A of the Landlord and Tenant Act 1985 for a determination of Miss R.J. Egbe's liability to pay service charges in respect of 95A the ground floor flat and 95B the first floor flat at 95 Parrock Street, Gravesend, Kent DA12 1EX. The sums claimed in respect of the period from 11 September 2003 to 10 September 2009 are set out in paragraphs 1 to 3 above.

5. On 10th December 2008 Directions were issued and sent to the parties. In response to those Directions the Tribunal received a letter dated 19th December 2008 from Mr. J.S. Gill with which he enclosed what he referred to as "...all relevant information for the hearing." In advance of the hearing the Tribunal had not received any communication from Miss Egbe. On 12th February 2009 the Tribunal received a letter from Mr. J.S. Gill confirming that his colleague Miss Thomas would be attending the inspection and hearing on his behalf.

## **Inspection**

6. On 13th February 2009 in the presence of Miss Thomas and Miss Egbe we inspected the exterior of the front of 95 Parrock Street and the hall, stairs and landings inside the property.

7. No. 95 Parrock Street is an end of terrace house on four floors. At the front there is a small forecourt outside the basement flat and from the footway there are stairs up to the ground floor entrance door. Inside the entrance door is a hall and stairs to the first and second floors with small landings. There was a fire alarm system but we do not know if it was in operation. There was also at least one fire extinguisher. The electric lighting in the hall and stairs did not appear to be working. We could see from inside the building that there was to the rear a small yard and a very small area of garden. There was a carpet on the stairs, hall and landings but it was not in a clean condition and the walls were in need of decoration. The handrail on the top flight of stairs was broken and parcel tape had been wrapped around the break. The handrail was dangerous. We informed Miss Thomas and Miss Egbe of this.

## **Hearing**

8. The hearing was attended by Miss Thomas and Miss Egbe. We confirmed what we had found on our inspection of the property as set out in paragraph 7 above. Miss Thomas confirmed that she had authority to represent Mr. J.S. Gill, that she worked for him on a consultancy basis, that he is the freeholder of 95 Parrock Street and that he retains the top and basement flats. Miss Egbe confirmed that she is the lessee of 95A and 95B Parrock Street.

9. We asked Miss Egbe why we had not received any response to the Directions and she stated that she had sent four copies of her response, which ran to five pages, to the Tribunal Office by post on 14th January 2009. She had not sent a copy to Mr. Gill as she assumed he would be sent a copy by the Tribunal Office. At the hearing she provided two copies. One was given to Miss Thomas and the Clerk to the Tribunal arranged for further copies to be made for the Tribunal.

10. The hearing was adjourned to give the Tribunal and Miss Thomas an opportunity to consider Miss Egbe's written response.

11. We were particularly concerned that Miss Thomas should have an opportunity to carefully consider Miss Egbe's response as Mr. Gill and Miss Thomas had not seen it in advance of the hearing.

12. After forty minutes the hearing resumed and we asked Miss Thomas if she was prepared to proceed. She stated that she was. We explained that we were concerned that she may wish to contact Mr. Gill for further instructions but she stated that she did not need to do that. The hearing therefore proceeded.

13. We pointed out that neither of the parties had properly complied with the Directions.

(a) Mr. Gill had been required to send a written submission in support of the application and to send with it copies of all other documents he wished the Tribunal to consider at the hearing. The Directions also required that the submission include copies of all estimates, specifications, consultation notices, insurance renewal notices, annual budgets or statements of anticipated expenditure, management charges, and details of all other costs included in service charge demands, details of the lease terms and the basis of payment by the lessee, together with an audited or signed statement with regard to any unpaid service charges and arrears. His letter of the 19th December 2008 and the papers enclosed therewith fell far short of complying with those Directions. Mr. Gill in that letter stated that he enclosed all relevant information for the hearing. He also stated that this was an ongoing dispute with Miss Egbe since 2003, that he had tried various means to recover the money which involved instructing solicitors and serving notices (Section 166) and advising Miss Egbe's mortgage company of the situation, that the mortgage company had been unable to get a response, that he had sent all appropriate invoices and statements to Miss Egbe but she had only paid £200 per flat, that during September 2007 a fire broke out in the property and that emergency repairs had to be carried out to secure the building.

(b) We accepted the evidence of Miss Egbe that she had sent four copies of her response to the Tribunal Office and that those copies must have been lost in the post but the Directions required Miss Egbe to send a copy also to Mr. Gill and this she had not done.

14. Miss Egbe stated that she recognised that service charges had to be paid but she had not received details of insurance or details of amounts demanded. She had not received the invoices included in Mr. Gill's bundle on or near the dates on those invoices. She had not received

demands for service charges or insurance until she received copies of the invoices from her mortgage company after Mr. Gill had sent them to the mortgage company. Miss Egbe also stated that she had received the invoice/statements dated 22nd October 2008 but only when they were included in Mr. Gill's bundle of documents.

15. Miss Thomas stated that as far as she was aware she believed that the invoices had been sent by post each year to Miss Egbe on the dates shown on the invoices. She had no personal knowledge of that but stated that Mr. Gill had said he had sent them.

16. It was agreed by Miss Thomas and Miss Egbe that Miss Egbe had paid £200 ground rent in respect of each flat.

17. We asked Miss Thomas about the first invoice with the date 11th September 2003 which appeared to be demanding service charges in advance for the year September 2003 to September 2004. Miss Thomas confirmed that that was indeed the case. The service charges had been demanded in advance for the whole year. We asked her where in the leases there was a provision for demanding service charges in advance. Miss Thomas said that she did not believe the leases did provide for that. She explained that the demands were made in advance so that Miss Egbe would be aware of the cost for the year and she could then contact Mr. Gill if she wanted to pay by instalments. All the invoices were according to their dates demands for service charges to be paid in advance. We drew attention to clause 4 (d) of the leases where the lessee covenants to "contribute and pay a one quarter share of the expenses of managing the property and maintaining cleaning, repairing, redecorating, renewing and keeping tidy and in good order the items mentioned in the Fourth Schedule hereto (including the cost of maintaining any fire alarm system in the building and also including any architects' surveyors' and legal fees reasonably incurred) within fourteen days after the expenditure thereof by the Lessor." Miss Thomas stated that she did not believe there was any other provision in the leases as to payment of service charges.

18. We asked if any other documents had been sent with any of the invoices to Miss Egbe. Miss Thomas stated that no other documents had been sent with the invoices. We pointed out the requirement in Section 21 B of the Landlord and Tenant Act 1985 that a notice had to accompany demands for service charges from 1st October 2007.

19. Miss Egbe stated that she had met Mr. Gill at the property in 2007. At that time she had given him a copy of the lease and he had showed her a bill for the fire alarm system, which she paid.

20. We asked Miss Thomas if she had any documents in support of the invoices such as invoices from the gardener or the cleaner. Miss Thomas stated she did not have any. As the invoices were in advance of the expenditure being incurred the figures presumably were estimates of expenditure expected to be incurred. We therefore asked what was the actual cost of the items in the invoices but Miss Thomas did not have that information. She had no bills other than the invoices sent to Miss Egbe.

21. We pointed out that all the invoices were dated 11th September irrespective of the year and that in one of the years the 11th September fell on a Sunday. Miss Thomas had no comment to make about that.

22. Miss Egbe was concerned that it was not even clear where payments should be sent. She had sent letters by recorded delivery to Mr. Gill at 6A Saddington Street Gravesend Kent DA12 1ED and 100 C Wrotham Road Gravesend Kent DA11 0QH. She produced a copy of a letter dated 18th October 2007 which she had sent by recorded delivery to both addresses together with proof of delivery to the 100 C Wrotham Road address. Miss Egbe said she had not received a reply to that letter but that on the 18th October 2007 Mr. Gill had written to Miss Egbe's mortgagee, Mortgage Express and in turn Mortgage Express wrote to Miss Egbe sending her copies of invoices which that company had received from Mr. Gill. She received that letter on 1st November 2007 and that was the first time she had seen those invoices.

23. We noted that in addition to the 6A Saddington Street and 100 C Wrotham Road addresses there was another address: 39/43 Wrotham Road Gravesend Kent DA11 0PN. That address was on the Central Services Property Management's headed notepaper on the invoice/statements dated 22nd October 2008. Miss Thomas said that Central Services Property Management was instructed by Mr. Gill and that Central Services Property Management had moved from 6A Saddington Street to 39/43 Wrotham Road about 2 years ago.

24. We noted that all the invoices purported to have been sent to Miss Egbe including the invoices with the date 11th September 2008 were on Central Services Property Management headed paper and gave the address as 6A Saddington Street. Miss Thomas said she would have to check but had no explanation for that.

25. We also noted that Millennium Professional Options, which concern appeared to have had some dealings with insurance of the property, used headed notepaper giving the address 39 Wrotham Road Gravesend Kent DA11 0PN. Miss Thomas had no information about this.

26. In order to assist communication in the future we asked Miss Thomas to make clear which address should be used to contact Mr. Gill. Miss Thomas stated that Mr. Gill's home address: 100 C Wrotham Road Gravesend Kent DA11 0QH should be used and that any payments should be sent to that address.

### **Reasons for the Decision**

27. Mr. Gill is claiming from Miss Egbe payment of service charges and insurance for the years 11th September 2003 to 10th September 2009 in respect of 95A and 95B Parrock Street.

28. It is for him to satisfy us on a balance of probabilities that the expenditure has been properly and reasonably incurred and that demands have been properly made in accordance with the terms of the leases and the law.

29. He has provided a letter dated 19th December 2008 with enclosures as mentioned in paragraph 13 (a) above. That letter and the papers enclosed therewith fell far short of complying with the Directions issued in this case and at the hearing Miss Thomas was able to add nothing to assist.

30. There is no doubt that before the hearing Mr. Gill had not received Miss Egbe's statement dated 14th January 2009 or its enclosures. It was for that reason that we gave Miss Thomas an opportunity to read those documents. Having had that opportunity we asked her if she was prepared to proceed and she stated that she was. We explained that we were concerned that she may wish to contact Mr. Gill for further instructions but she stated that she did not need to do that. The hearing therefore proceeded.

31. Mr. Gill's case comprised:

- (a) His letter dated 19th December 2008 and copies of the following documents:
- (b) An invoice in respect of a plumbing repair on 30th November 2006 at 95B Parrock Street
- (c) An invoice in respect of emergency boarding on 15th October 2007 and emergency boarding and entry on 20th October 2007 at 95A Parrock Street.
- (d) A notice of rent due dated 30th October 2008 in respect of each flat.
- (e) A letter dated 30th November 2006 about a leak at 95A Parrock Street.
- (f) An invoice/statement dated 22nd October 2008 in respect of Flat B.
- (g) 2 leases.
- (h) 12 invoices (6 in respect of each flat) for service charges from September 2003 to September 2009 in respect of communal area cleaning and gardening.
- (i) Letters from Mortgage Express dated 1st November 2007 and 11th November 2008.
- (j) 3 pages from a Property Protection Plan Policy Schedule effective from 15th December 2005 to 24th November 2006.
- (k) 3 pages from a Property Protection Plan Policy Schedule effective from 29th November 2006 to 24th November 2007.
- (l) A memo dated 15th December 2008 from Millennium Professional Options.
- (m) Further copies of the letters dated 11th November 2008 from Mortgage Express.
- (n) An invoice/statement dated 22nd October 2008 in respect of Flat A.

32. Items 31 (b) (c) and (e) above relate to matters which, from the evidence before us, we find are charges made to an individual lessee in respect of money alleged to have been spent on behalf of that lessee rather than service charges under the leases. As a result we are not satisfied that the sums of £215 in respect of a plumbing repair, £265 in respect of emergency boarding and £550 in respect of emergency boarding and entry are service charges which come within the jurisdiction of the Leasehold Valuation Tribunal. Consequently we make no determination in respect of them. Miss Egbe in her statement says that she wishes to claim compensation. That too is not within the jurisdiction of the Leasehold Valuation Tribunal. Any claim in respect of those sums or compensation which cannot be resolved by the parties would probably be a matter for the County Court.

33. Item 31 (d) above relates to ground rent. It is not included in the application made by Mr. Gill and in any event is not within the jurisdiction of the Leasehold Valuation Tribunal.

34. Items 31 (i) and (m) above simply state the position from the point of view of the mortgagee.

35. Items 31 (j), (k) and (l) relate to insurance, which is part of the application made by Mr. Gill and is within our jurisdiction. There is in the leases at Clause 5(e) a covenant by the lessor to insure the property and a provision in Clause 1 of the leases that the lessee shall pay a due proportion of the cost of insurance on the next rent day or within fourteen days after the expenditure thereof by the lessor whichever shall be the sooner. Items 31 (j) and (k) appear to show the property being included in a policy schedule from 15th December 2005 to 24th November 2006 and from 29th November 2006 to 24th November 2007 but there is no evidence of similar inclusion in respect of other years. Item 31 (l) provides a list of premiums for the years 2003 to 2008 but there is no indication of how the sums in the list relate to the sums claimed by Mr. Gill. For example he is claiming £120 in respect of insurance for 2003 to 2004, but if £453.68, the figure shown in the list for 2003/2004, is divided by 4 the result is £113.42. There may be an explanation for this but we were not provided with it. In any event there was no evidence that any demands had been made at the appropriate times for contributions towards the cost of insurance. In the absence of demands for the sums claimed to be owing in respect of insurance we could not be satisfied that they were payable.

36. The claims in respect of service charges are within the jurisdiction of the Leasehold Valuation Tribunal.

37. The evidence as to the service of demands for service charges presented to us was as follows:

(a) Mr. Gill in his letter dated 19th December 2008 stated that he had "...sent all appropriate invoices and statements to Miss Egbe...".

(b) With that letter he enclosed 12 invoices (6 in respect of each flat) for service charges from September 2003 to September 2009 in respect of communal area cleaning and gardening.

(c) Each invoice was dated 11th September irrespective of the year.

(d) Each invoice was on Central Services Property Management headed notepaper and the address was given as 6A Saddington Street Gravesend Kent DA12 1ED.

(e) Miss Thomas stated that as far as she was aware she believed that the invoices had been sent by post each year to Miss Egbe on the dates shown on the invoices. She had no personal knowledge of that but stated that Mr. Gill had said he had sent them.

(f) Miss Egbe stated that she had not received demands for service charges or insurance until she received copies of the invoices from her mortgage company after Mr. Gill had sent them to the mortgage company. Miss Egbe also stated that she had received the invoice/statements dated 22nd October 2008 but only when they were included in Mr. Gill's bundle of documents.

38. We considered that evidence.

(a) Mr. Gill's letter dated 19th December 2008 does not state when the invoices were sent.

(b) Each invoice bears the date 11th September followed by the year. The location of the date on the invoice appears to indicate that it is the date the debt arose rather than the date the invoice was sent. There is evidence to support this. (i) One of the dates was a Sunday. Although it is



not impossible for an invoice to be sent on a Sunday it is unusual for a property management concern to do so. (ii) The invoice relating to emergency boarding and emergency boarding and entry bears two dates: the 15th and the 20th October 2007. We found that it was more likely than not that those dates related to the work done rather than the date when the invoice was sent.

(c) Each invoice bears the 6A Saddington Street address and yet Miss Thomas stated that Central Services Property Management was instructed by Mr. Gill and that Central Services Property Management had moved from 6A Saddington Street to 39/43 Wrotham Road about two years ago.

(d) We found that we could attach very little weight to the statement by Miss Thomas as to when the invoices were sent as she had no personal knowledge of when they were sent and was simply telling us what Mr. Gill had said to her.

(e) The statement by Miss Egbe made to us at the hearing we found convincing.

39. As a result of our consideration of the evidence we were not satisfied on a balance of probabilities that the invoices had been sent to Miss Egbe on or near the dates given on those invoices.

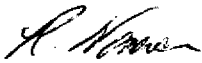
40. Mr. Gill's letter of the 19th December 2008 and the papers enclosed therewith fell far short of complying with the Directions. At the hearing Miss Thomas stated she did not have any documents in support of the sums in the invoices sent to Miss Egbe such as invoices from the gardener or the cleaner. The sums were presumably estimates of expenditure but Miss Thomas had no information as to the actual costs which should have been available at the end of each year. She had no bills other than the invoices sent to Miss Egbe. Consequently there was before us no evidence to support those invoices and in the absence of such evidence we were not satisfied on a balance of probabilities that the sums claimed had been paid, or that they were reasonably incurred or incurred at all.

41. The invoices appeared to be demanding service charges in advance for the year ahead and Miss Thomas confirmed that indeed the service charges had been demanded in advance for the whole year. She did not believe the leases provided for that. Her explanation that the demands were made in advance so that Miss Egbe would be aware of the cost for the year and she could then contact Mr. Gill if she wanted to pay by instalments, confirmed that the demands for service charges had not been made in accordance with the terms of the leases and the sums demanded were not payable.

42. Miss Thomas stated that no other documents had been sent with the invoices. Consequently any invoices sent from 1st October 2007 did not comply with Section 21 B of the Landlord and Tenant Act 1985 and Miss Egbe was entitled to withhold payment of sums demanded by such invoices.

43. For these reasons in relation to the matters within our jurisdiction we were not satisfied (a) that demands had been properly made or made at all in accordance with the leases and the law and (b) that the sums claimed for expenditure had been expended or were reasonably

incurred. All our findings were on a balance of probabilities after consideration of all the evidence presented to us.

A handwritten signature in black ink, appearing to read 'R. Norman', with a stylized flourish at the end.

R. Norman  
Chairman