

**NORTHERN RENT ASSESSMENT PANEL  
Decision / Reasons of a  
LEASEHOLD VALUATION TRIBUNAL**

**LANDLORD AND TENANT ACT 1985 SECTION 27A and  
COMMONHOLD AND LEASEHOLD REFORM ACT 2004 SECTION 168(4)**

**PROPERTY:** 5 Low Skellgate, Ripon, North Yorkshire

**APPLICANTS:** Mercia Investment Properties Limited

**RESPONDENTS:** (1) Mrs. Jeanne Bramley tenant, second floor flat  
(2) Mr. J. Wheeler tenant, ground floor flat  
(3) Mrs. Sarah Scaife tenant, first floor flat  
(4) Mr. John Baldini tenant, ground floor flat

**TRIBUNAL MEMBERS:** Mrs. C. Hackett  
Mr. A. Robertson

**1. Background**

- 1.1** On 9<sup>th</sup> August, 2005 Mr. M. Paine of Circle Residential Management Limited made application on behalf of the freeholders Mercia Investment Properties Limited to the Tribunal under section 27A of the Landlord and Tenant Act 1985 (the Act) and section 168(4) of the Commonhold and Leasehold Reform Act 2002 (CALRA). The applications were made in respect of the second floor flat at 5 Low Skellgate, Ripon, the upper of three flats at the property. The respondent was Mrs. Jeanne Bramley.
- 1.2** A Hearing was held at 12.30 p.m. on 8<sup>th</sup> December, 2005 at the Ripon Spa Hotel, Ripon (the First Hearing). Mrs. Bramley was present with her solicitor Mr. Ian McLellan of Simon Crosfield & Company, Solicitors Ripon. The applicant lessor was represented by Mr. Paine. The Hearing was adjourned late in the afternoon of that day, the parties having agreed that matters not discussed could be dealt with by written representations. The Tribunal subsequently decided that the hearing should be continued to hear further argument on outstanding issues and a further hearing was arranged, and held (after various adjournments) on 22<sup>nd</sup> June, 2007.
- 1.3** At the First Hearing Mr. M. Davey was Chairman and sat along with Mrs. Hackett and Mr. Robertson. Mr. Davey was unable to attend the Second Hearing and the other members of the Tribunal heard the remaining evidence and make this determination based upon the written submissions and the evidence/submissions heard at both Hearings.
- 1.4** The application under the Act was in respect of the service charge years 2001-2005, but at the First Hearing the parties agreed that those for the year 2005, which at that time were in interim form, should be removed from the Application.
- 1.5** By a letter dated 30<sup>th</sup> March, 2007, Simon Crosfield & Company of Ripon, the solicitors of the Respondent asked that Mr. J. Wheeler and Mrs. S. Scaife, tenants of the ground and first floor flats respectively, be joined as respondents to the section 27A application. By a letter dated 23<sup>rd</sup> April, 2007 Simon Crosfield & Company

requested that Mr. J. Baldini, former tenant of the ground floor flat, be joined as a respondent. The Tribunal granted these requests.

1.6 The Tribunal issued further directions on 1<sup>st</sup> May, 2007.

1.7 The Second Hearing was held at 11.00 a.m. on 22<sup>nd</sup> June, 2007 at the same venue as the first. Mrs. Bramley and Mr. Baldini were present with Mr. D. Dow of Simon Crosfield & Company for the respondents, although there was some uncertainty as to whether his firm was still acting for Mrs. Bramley, and Mr. Paine represented the applicant lessor.

## **2. The Inspection**

2.1 The Tribunal inspected the property 5 Low Skellgate, Ripon at 10.45 a.m. on 8<sup>th</sup> December, 2005 in the presence of the first respondent, Mrs. Bramley and Mr. M. Paine of Circle Residential Management Limited.

2.2 It is a three storey mid-terrace building in three self-contained flats. The front and side elevations are of brick and the rear elevation is of stone. It is a grade II listed building.

2.3 The second floor flat, which was the only part inspected internally, was approached by flights of stairs from the side (access to which was from the rear) and comprised a living room, a kitchen/dining room, bedroom and a bathroom and WC.

2.4 The building is in the centre of Ripon, close to shops and facilities. There is no car parking provision.

## **3. The Lease**

3.1 The lease under which the first respondent holds the second floor flat of the Property was originally granted on 18<sup>th</sup> October, 1991 from J.E.R. Seeger to Mr. and Mrs. R.P. Michelson for a term of 999 years from 1<sup>st</sup> August, 1989 in consideration of a premium, a reviewable yearly rent of £50 and an annual service charge.

3.2 At the Second Hearing the Tribunal was told that the leases of the ground and first floor flats were, in so far as the service charge provisions are concerned, in like terms to that of the second floor flat.

3.3 The tenant's covenants are contained in clause 3 of the lease including (iii) a covenant to 'Contribute and pay annually one equal third part of the costs expenses and outgoings and matters mentioned in the Fourth Schedule hereto'. The landlords covenants are in clause 4 of the lease. The landlord or its managing agent is required to estimate the tenant's contribution on, or as soon as practicably possible after, the first of January each year and the service charge demanded is then payable in advance. Any necessary adjustment in the light of actual costs is made when the following years demand is prepared.

3.4 Mrs. Bramley bought the lease from Mr. and Mrs. Michelson on 25<sup>th</sup> June, 1997. However, she was only registered as proprietor under the Land Registration Act 2002 on 25<sup>th</sup> May, 2005. This delay has proved to be a significant and contentious issue. In 2000 Seeger sold the freehold of the property to Covent Garden Limited who in 2001 sold it to the applicant.

**4. The First Hearing/Submissions/Decision on section 168(4) application**

- 4.1** At the First Hearing, each party supplied its own hearing bundle. On the morning of the hearing Mr. Paine also supplied a supplementary bundle containing correspondence between the date of submission of his main bundle and the hearing date. The Tribunal was dismayed that the respondent's bundle was produced only on the day of the hearing and not within the 14 day pre-hearing period specified in the directions issued by the Tribunal in September 2005. Mr. Payne was willing for the hearing to proceed and did not seek an adjournment. A substantial part of the bundle duplicated material contained in the applicant's bundle. Furthermore, Mr. McLellan said that he only received the applicant's bundle the day before the hearing.
- 4.2** Mr. Paine opened his submission by requesting that the Tribunal first rule on the section 168(4) application. He made reference to clause 2(f) of the lease which contains a covenant by the lessee 'Within one month after the date thereof to produce to the landlord or its agent a copy of each deed or document which assigns creates vests or charges any estate or interest in the premises or is legal evidence thereof .....
- 4.3** Mr. Paine then stated that Mrs. Bramley had not, within one month of the assignment to her, produced to the landlord or its agent any relevant document by way of evidence of the assignment. He produced a letter of 4<sup>th</sup> December, 2002 from Webber Steinbeck & Company (signed by Mr. Paine) to Mrs. Bramley pointing out that their records did not show her to be the owner of the property. This was repeated in a letter from Webber Steinbeck to Simon Crosfield & Company dated, 9<sup>th</sup> July 2004 in reply to a letter from Simon Crosfield informing Webber Steinbeck that they were now acting for Mrs. Bramley.
- 4.4** In response Mrs. Bramley says that when she bought the property in June 1997 her solicitors at the time (Hutchinson & Buchanan, Ripon) wrote to her on 2<sup>nd</sup> July, 1997 to advise of completion and stating that on payment of their bill they would apply for Mrs. Bramley to be entered on the Land Register as the registered proprietor of the lease. (A copy of that letter is in her bundle). This clearly never happened and was only rectified on 25<sup>th</sup> May, 2005 by Simon Crosfield & Company. (The Tribunal was informed that Mrs. Bramley is now suing Hutchinson & Buchanan in negligence).
- 4.5** When questioned by the Chairman as to the purpose of the section 168(4) application, Mr. Paine conceded that there was no intention to seek forfeiture of the lease for breach of this covenant. Indeed he accepted that no court would allow forfeiture for a breach of this kind. He was simply concerned to establish that the legal ownership of the flat did not change until 25<sup>th</sup> May, 2005 and that even after that change no notification of such was given to his client. Thus he says that until that date the lessor was justified in demanding service charges and instigating proceedings for non-payment against the registered owner for the time being. In other words the section 168(4) application in substance relates to the section 27A application. It follows that Mr. Paine is arguing that a breach occurred once one month had elapsed from 25<sup>th</sup> May, 2005 without compliance with clause 2(f) by Mrs. Bramley.
- 4.6** Mr. McLellan's response on behalf of his client was that although the legal title to the flat did not pass to her until 25<sup>th</sup> May, 2005 the equitable title passed on completion in 1997 and that the lessor had constructive notice of this event. Mr. McLellan produced

demands for ground rent and service charge payments by the former freeholder Seegers dating back to 1<sup>st</sup> January, 1998 and a letter from Seeger to Mrs. Bramley, dated 13<sup>th</sup> January, 1998 that begins 'I believe that you are the new owner of the property .....'. Mrs. Bramley produced a copy of a letter to Mr. Payne dated 16<sup>th</sup> January, 2003 pointing all this out and enclosing a copy of a letter of 2<sup>nd</sup> July, 1997 to her from Hutchinson & Buchanan confirming completion of the sale. There was a dispute between Mrs. Bramley and Mr. Paine as to when he first saw that letter but it does not have any bearing on the outcome of the section 168(4) application.

- 4.7 It is clear in law that where an assignment of a leasehold estate must be registered in order to transfer the legal estate the assignor of the lease remains the lessee as regards the lessor after completion of the assignment until registration. ((i) *Brown & Root Technology Ltd. V. Sun Alliance and London Assurance Company Ltd.* [1997] EGLR 39 CA applying *Genele v Faulkner* [1900] 2QB 267 CA). It follows that Mrs. Bramley did not become the legal owner of the leasehold estate in the property until she was registered as such on 25<sup>th</sup> May, 2005. No evidence has been produced showing that within one month after that date Mrs. Bramley or her agent produced to the landlord or its agent an Office Copy as evidence of the change of ownership. It follows therefore that there has been a breach of clause 2(f) of the lease.
- 4.8 However, the sole purpose of section 168(4) is to provide a preliminary procedural step that needs to be satisfied before a lessor may serve a notice under section 146 of the Law of Property Act 1925 in respect of a breach of covenant, under a long residential lease, other than for payment of rent or service charge. As noted above Mr. Paine says that he has no intention of serving a section 146 notice in respect of the breach of clause 2(f). The technical nature of the breach is also evidenced by the fact that the lessor knows perfectly well that Mrs. Bramley is now the legal lessee albeit only because its agents obtained their own Office Copies of the newly registered title.
5. **The First Hearing continued/the section 27A application/preliminary issue of liability**
- 5.1 By the section 27A application the lessor seeks a determination under the Act (section 27A(1)) as to the reasonableness of the historic service charge costs for 2001-2004, in respect of the second floor flat. (The application initially included interim service charges in respect of 2005 under section 27A(3) but this was withdrawn at the end of the First Hearing). They also seek a determination as to the percentage of the service charge expenditure payable by the first respondent and the actual service charge liability for the periods 2001-2004.
- 5.2 Mr. Paine submitted that the respondent (the first respondent was the only respondent at the time of the First Hearing) was liable to the applicant for one third of the costs and expenses incurred by the applicant pursuant to the landlord's covenants at clause 4 of the lease. Mr. Paine admitted that the respondent paid to the applicant £4000 on account of the service charge expenditure on 12<sup>th</sup> October, 2004. However, it is clear from the letter dated 12<sup>th</sup> October, 2004 from Simon Crosfield to Webber Steinbeck, enclosing the cheque, that the payment was made in respect of the extraordinary building repairs and that other aspects of the service charge remained in dispute.
- 5.3 It should be noted in passing that the section 27A claim sits uneasily with a letter dated 14<sup>th</sup> July, 2004 from Webber Steinbeck to Simon Crosfield which contains the following passage. "In the meantime we enclose for your reference copies of the

2001-2003 service charge accounts together with a copy of the 2004 service charge budget. The provision of these documents should in no way be taken as recognition of your client as tenant of the above property and, of course, only the registered proprietor can dispute service charges". It should also be noted that the section 168(4) application is predicated on the respondent only becoming the legal owner on 23<sup>rd</sup> May, 2005. It would seem that Mr. Paine is seeking to establish that as from that date Mrs. Bramley became liable retrospectively for the service charges that are the subject of the claim.

- 5.4 The first issue therefore is the liability as to payment for service charges for the disputed years. As noted above Mrs. Bramley did not become the legal owner until 25<sup>th</sup> May, 2005. However, it is quite clear that she has been the owner in equity from the date of completion in 1997. It is also clear that she has been accepted as lessee by the previous lessors and their managing agents. Thus it seems clear that Mrs. Bramley is estopped from denying liability for the ground rent and service charge.

**6. The First – Second Hearings/the Section 27A application/submissions/decisions**

- 6.1 There is then the question of the reasonableness and payability of the charges of the years in question. The applicant's claim is set out in Item 4 page 30 of its bundle.

Period	Total Expenditure	R's Liability
2001	1328.26	442.75
2002	1744.40	581.47
2003	2651.95	883.98
2004	24421.07	8140.36
Budget 2005	1800.00	600.00
Total		10648.56
Less payment		4000.00
Liability		6648.56
Less grant aid		3846.33
		2802.23

As stated in 1.3 above the 2005 year was removed from the application so the total becomes £2,202.23.

- 6.2 The breakdown for each year is as follows.

<b>2001</b>	
Building insurance	408.00
Interest	151.11
Disbursements	95.00
Audit and Accountancy fees	135.25
Management fees and expenses	500.00
Sundry	38.90
Total	1,328.26

<b>2002</b>	
Building insurance	416.56
Interest	289.09
Audit and Accountancy fees	147.00
Management fees and expenses	500.00
Sundry	391.75
<b>Total</b>	<b>1,744.40</b>

<b>2003</b>	
Building insurance	553.03
Interest	208.50
Building repairs	520.21
Fire safety equipment	723.21
Audit and Accountancy fees	147.00
Management fees and expenses	500.00
<b>Total</b>	<b>2,651.95</b>

<b>2004</b>	
Building repairs	20,371.27
Building insurance	724.07
Interest	843.31
Audit and Accountancy	147.00
Management fees	572.92
Surveyors fees and expenses	1,762.50
<b>Total</b>	<b>24,421.07</b>

6.3 Mr. Paine relied on the fact that these figures were contained in properly audited accounts as sufficient grounds for the tribunal to find that the sums expended were reasonable in the absence of the respondent establishing to the contrary. The tribunal does not accept this proposition. The certified accounts simply certify that the sums stated have been paid. It does not follow from this that (a) the lease permitted the charges in question or (b) even if the lease did so permit, that it was reasonable for the lessor to incur costs or (c) that the costs incurred were in fact reasonable.

6.4 The Tribunal has therefore examined each of the service charge items claimed in turn.

6.5 Whilst the second, third and fourth respondents are now parties to this case, the Tribunal is addressing the issues identified in the original application where the only respondent was the first respondent, Mrs. Bramley. All of the items in the s27A applications apply to each of the 3 flats, although in the case of the ground floor flat Mr. Wheater, the present owner, and Mr. Baldini, the previous owner, share the total liability over the years in question. The Tribunal does not see as its role the determination of the appropriate apportionment between them.

## 7. Building Insurance

7.1 The amounts claimed are as below.

2001	408.00
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2002	416.56
2003	555.03
2004	724.07

- 7.2 Paragraph 5 of the 4<sup>th</sup> schedule of the lease provides as a service charge item "The cost of insuring the Building forming part of the Development against loss or damage by fire and such other risks as the Landlord shall insure against under its obligation contained in clause 4(viii)". When Mrs. Bramley first paid a service charge to Seegers in 1998 her share of the cost of insurance was £36.75. By 2000 this had risen to £60.34. In recent years that share has inexorably increased to an estimated £266.66 for 2005. However at the First Hearing Mrs. Bramley stated, surprisingly, that she did not wish to challenge the reasonableness of the insurance premiums.
- 7.3 At the Second Hearing Mrs. Bramley sought to argue that she had not agreed the amounts payable for insurance at the First Hearing, simply that an amount was to be paid. In any event the other respondents were arguing that the amounts paid for insurance were unreasonable. Mr. Paine said that Mrs. Bramley's agreement of the amounts for insurance was confirmed by Simon Crosfield in their letter of 1<sup>st</sup> March, 2006 to Circle where they say 'our client accepts that building insurance and ground rent were properly incurred expenditure'. Mr. Paine argued that as Simon Crosfield were acting for the new respondents, the latter were estopped from arguing against the amounts charged.
- 7.4 When the Tribunal indicated that they were not persuaded by Mr. Paine's argument, he asked for an adjournment as he had not come to the Hearing prepared to argue on the question of insurance costs and had not brought appropriate papers with him.
- 7.5 After a lunch adjournment, the Tribunal heard evidence for the respondents and were referred to insurance quotes from Schofield Insurance Brokers Limited and McClarren Insurance, each obtained in May 2007 and quoting £346.50 and £340 per annum respectively for £200,000 building insurance cover. The premium charged by the Applicant for 2004 is £724.07.
- 7.6 Mr. Dow argued that a 5% per annum uplift based on the actual charge of £248.29 in 2000 would produce premiums of £260.70 for 2001, £273.74 for 2002, £287.43 for 2003 and £301.80 for 2004. Carrying on with the projections would produce a figure of £349.37 for 2007 and this figure is in line with current quotations of Schofield and McClarren.
- 7.7 Mr. Paine said a 5% uplift basis of increase in premiums is fundamentally flawed as the sum insured is based on rebuilding costs which are not stayed at 5% per annum. Further, the quoted figures do not reflect the higher risk of a multi-occupied building and the quote does not include anti-terrorism insurance.
- 7.8 Mr. Dow said quotes did reflect the multi-occupied nature of the building, but was unable to confirm that anti-terrorism was included.
- 7.9 The Tribunal advised the parties that they proposed to make a determination based on the evidence they had heard.
- 7.10 The Tribunal concluded that the appropriate amounts for the tenants to contribute in respect of insurance premiums for the years 2001, 2002, 2003 and 2004 were £350,

£360, £390 and £480 respectively.

- 7.11** Whilst the Tribunal believe the first respondent to have agreed the amounts as charged payable in respect of insurance premiums, they have determined thereafter that relevant costs in respect of this item are as stated in paragraph 7.10 above. Having so decided, the Tribunal do not believe that it is tenable to determine costs at different levels for different respondents where statute and leases are in similar form. The Tribunal's findings on this item therefore extend to the first respondent.

**8. Interest**

The Applicant withdrew his claim for interest shown on service account.

**9. Audit and Accountancy Fees**

The Applicant withdrew his claim for these items of expenditure.

**10. Building Repairs**

- 10.1** The items shown in the accounts in respect of building repairs are £520.21 for 2003 and £20,371.27 for 2004.

- 10.2** At the Second Hearing the parties agreed that the major works in 2004 were appropriate, having regard to the £11,539 grant, leaving a net charge of £8,832.27. The first respondent was allowed two weeks from the date of the hearing to confirm her agreement since she believed there to have been an additional charge in the following year relating to the same work. She subsequently confirmed that she was unable to introduce new information, and the Tribunal endorse the parties' agreement on this item.

- 10.3** The item of £520.21 in 2003 referred to a surveyor's fee. A potential subsidence risk was identified by a surveyor for a potential purchaser of a flat as a result of which the building insurers withdrew subsidence cover in November 2002. It was only by obtaining this surveyor's report (which clearly dismissed the likelihood of subsidence) that the Applicant was able to persuade the insurers to reinstate full cover.

- 10.4** Whilst the respondents did not agree that this item was chargeable, the Tribunal were satisfied that paragraph 5 of the 4<sup>th</sup> Schedule to the lease was sufficient authority for the charge to be made as a 'cost of insuring'. Had the cost not been incurred the premises would have been inadequately insured.

**11. Management**

After discussion, the parties agreed that the management fee should be £400 per annum in respect of each of the four years. The Tribunal confirm this agreement.

**12. Disbursements**

An amount of £95 was charged under this heading in respect of the year 2001 which the Applicant withdrew at the Second Hearing.

**13. Sundry**



13.1 An amount of £38.90 was charged in respect of the year 2001 which was agreed by the parties at the First Hearing.

13.2 An amount of £391.75 was charged in respect of the year 2002 which the Applicant withdrew at the Second Hearing.

#### 14. Fire Safety Equipment

An amount of £723.21 was charged in respect of this item in the year 2003 and agreed as reasonable by the Respondent at the First Hearing.

#### 15. Surveyor's Fees and Expenses

An amount of £587.50 was charged in the year 2004. This charge related to supervision of the major works and was agreed as reasonable by the parties at the Second Hearing.

#### 16. Tribunal's Decision on s27A Application

16.1 To summarise, the Tribunal determines that service charges are payable in respect of the years 2001, 2002, 2003, 2004 as set out hereunder.

<u>Item</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Buildings Insurance	350.00	360.00	390.00	480.00
Interest	-	-	-	-
Disbursements	-	-	-	-
Audit & Accountancy Fees	-	-	-	-
Management Fees	400.00	400.00	400.00	400.00
Sundry	38.90	-	-	-
Fire Safety Equipment	-	-	723.21	-
Building Repairs (Net)	-	-	520.21	8,832.27
Surveyors Fees	-	-	-	587.50
TOTALS	788.90	760.00	2,033.42	10,299.77

16.2 Each respondent will be responsible for a third of the total costs save that Mr. Baldini and Mr. Wheater will together be responsible for a third.

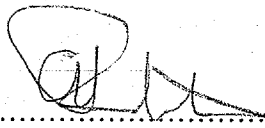
#### 17. Costs

17.1 The respondents applied for an order that the applicant should reimburse their costs and Mr. Dow handed in details of costs for each of the four respondents.

17.2 Costs may be awarded by a Tribunal only against a party who has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings in any event £500 maximum (Commonhold & Leasehold Reform Act 2002, Schedule 12, para.10).

17.3 The Tribunal were unable to find sufficient culpability on the part of the Applicant to conclude that his actions satisfied this test and accordingly deny the respondents' application.

Signed .....



A. Robertson FRICS  
Chairman of the Leasehold Valuation Tribunal

Date 4 October 2007