SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SECTION 168(4)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	**CHI/29UC/LBC/2008/0006**
Property:	**Flat 2 Melbourne House** **23 West Cliff** **Whitstable** **Kent** **CT5 1DN**
Applicants:	**Mr. P.A. Ponder and** **Mrs. J.M. Ponder**
Respondents:	**Mr. R. Sheridan and** **Miss S. Pattwell**
Date of Hearing:	**20th August 2008**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. R. Athow FRICS MIRPM**
Date decision Issued:	

RE: FLAT 2, MELBOURNE HOUSE, 23 WEST CLIFF, WHITSTABLE, KENT, CT5 1DN

Background

1. Flat 2, Melbourne House, 23 West Cliff, Whitstable, Kent CT5 1DN ("Flat 2") is the subject property. The application before the Tribunal is under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 and has been made by Mr. P.A. Ponder and Mrs. J.M. Ponder ("the Applicants") who are the freeholders of Melbourne House 23 West Cliff including Flat 2. Mr. R. Sheridan and Miss S. Pattwell ("the Respondents") are the lessees of Flat 2.

2. The application is for a determination that a breach of a covenant or condition in the lease in respect of Flat 2 has occurred so that Section 168 (2) of the Commonhold and Leasehold Reform Act 2002 can be satisfied and the Applicants may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease.

3. A copy of the lease of Flat 2, statements, correspondence, notices and photographs have been provided by the parties and considered by the Tribunal.

Inspection

4. The Tribunal inspected Flat 2 and the entrance hall and staircase of Melbourne House on 20th August 2008 in the presence of Mr. and Mrs. Ponder, Mr. Sheridan and Mr. North. Mr. Sheridan gave Miss Pattwell's apologies as she was unable to be present and introduced Mr. North as representing Miss Pattwell.

5. Flat 2 is a self contained flat on part of the ground floor of 23 West Cliff. We entered by the front door of the building and saw the communal hall giving access to Flat 1 on the ground floor and to Flats 3 and 4 on the upper floors. We were told that at some time in the past, before the Respondents acquired the lease, access to Flat 2 had been through a door in this hall and we could see a door which was no longer in use and had been closed off. Mr. Ponder and Mr. Sheridan discussed some electrical work which Mr. Sheridan was dealing with in the hall. We gained access to Flat 2 by a passageway to the left of the front door and then through a door to an entrance hall and beyond that a lounge and kitchen. Mr. Sheridan pointed out an area of plaster in the doorway between the lounge and kitchen where there had been a problem with damp and we could see there were cracks in the plaster. Mr. Sheridan considered that the problem was caused by defective or blocked guttering above the doorway where the kitchen joins the main part of the building. Two bedrooms, a bathroom, store and a hallway are contained in a single storey extension to the main building. We could see in that hallway a hole in the ceiling and we were told that it was through that hole that there had been water ingress and a growth of ivy.

Determination

6. We found that there were now no breaches of covenants in respect of the lease. The reasons for our determination appear below.

Reasons

7. Mr. Ponder gave evidence of the three breaches with which the Applicants are now concerned, and Mr. Ponder and Mr. Sheridan answered our questions about them.

8. The first concerns clause 3(4) of the lease. Decoration to the hall inside the main entrance door of the property, the provision of vinyl floor covering in that hall and a new carpet on the staircase.

a. Mr. Ponder stated that the Respondents do not accept that they have any liability for the costs of these works. He explained that with the Applicants' agreement the decoration had been carried out by the lessee of Flat 3 but that no notice of intention to commence the works had been given to the Respondents by the Applicants and that as far

as he knew the lessees of Flat 3 had not given such notice. The Applicants had a verbal agreement with Mr. Sheridan that the Applicants would not charge the Respondents for the decoration to the hall and in return the Respondents would pay for the outside painting but Mr. Sheridan went back on that.

b. Mr. Sheridan maintains that that hall and staircase are not part of Flat 2 and therefore not the Respondents' responsibility because the Respondents have never used that hall for access.

c. It was agreed that the hall and staircase are not part of Flat 2 and that the alteration to the access was made before the Respondents bought Flat 2. We noted that the hall and stairs were used in common with at least two flats and that under the terms of the lease the Respondents were liable to contribute towards the costs of work to the hall and staircase but the lease also required that, except in cases of emergency, notice be given to the Respondents before the work was carried out. After we pointed out the provisions in the lease Mr. Sheridan agreed that even though the hall and staircase were not part of Flat 2 the Respondents have responsibilities concerning those areas. As there was no suggestion that there was any emergency, then in the absence of service of a notice 14 days in advance of the commencement of the work there was no breach of this covenant.

9. The second concerns non payment of ground rent and insurance due 29th September 2007.

a. Mr. Ponder stated that the sum owed had been paid, not by the Respondents but by their mortgagee Abbey Building Society with reservation. For most of the time the Respondents had been in occupation payments of ground rent and insurance had either not been paid or had been paid late and had mainly been paid by Abbey Building Society. It is stated in the letter dated 17th June 2008 from Abbey Building Society that a cheque for £1,359.27 was being sent to settle the demand for ground rent/service charges. It is also stated in that letter that the payment was being made to protect the mortgage; that the payment does not in any way affect the Respondents' rights to challenge whether the amounts being asked for are appropriate and that if the Respondents are successful in making a challenge the Applicants must pay back the money to Abbey Building Society immediately. Mr. Ponder stated that the sum £1,359.27 had been agreed with Mr. Sheridan and they shook hands on it. The Respondents are now up to date with ground rent and insurance payments except for the payment of £10 ground rent due March 2008.

b. Mr. Sheridan stated that he would not be challenging the sum paid by the Abbey Building Society and Mr. North confirmed that neither would Miss Pattwell.

c. Notices had been served on the Respondents requiring payment of the amounts due 29th September 2007 and 25th March 2008. However both the notices were invalid. Note 2 on the form of notice explains that the date by which payment is to be made must not be *either* less than 30 days or more than 60 days after the day on which the notice is given *or* before that on which the leaseholder would have been liable to make the

payment in accordance with the lease. Both these notices failed to comply with that requirement. In the absence of a valid notice there cannot be a breach of the covenant. The notice in respect of the September 2007 payment was also incorrect in that it stated that the period covered was 26th March to 29th September 2007. The period specified should have been 25th March to 28th September 2007. The correct form was used to demand ground rent but a different form should be used to demand the payment for insurance. Although the lease describes the payment for insurance as a sum payable by way of further or additional rent, Section 166 (7) of the Commonhold and Leasehold Reform Act 2002 provides that 'rent' does not include a service charge within the meaning of Section 18 (1) of the Landlord and Tenant Act 1985. That section defines 'service charge' as meaning an amount payable by a tenant of a [dwelling] as part of or in addition to the rent (a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord's costs of management, and (b) the whole or part of which varies or may vary according to the relevant costs. The insurance element should be set out in accordance with Section 21B of the Landlord and Tenant Act 1985 inserted into that Act by Section 153 of the Commonhold and Leasehold Reform Act 2002. With effect from 1st October 2007 the demand for service charge must be accompanied by a summary in compliance with SI 2007/1257 The Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007. The notice requiring payment of the ground rent due 25th March 2008 was also incorrect in that it stated that the period covered was 29th September 2007 to 25th March 2008. The period specified should have been 29th September 2007 to 24th March 2008.

10. The third concerns clause 3(1) of the lease.

a. Mr. Ponder stated that it was brought to the attention of the Applicants in 2007 by a painter carrying out work who noticed that Flat 2 was in a derelict condition. There was at that time a hole in the roof of the hall in the single storey extension with rain coming straight through onto the carpet and ivy was growing inside the hall. Mr. Sheridan had mentioned to Mr. Ponder that there was subsidence at the rear of the property but it had not been proved or substantiated and in any event the Applicants considered that was nothing to do with holes in the roof and ivy growing up the walls inside the hall of Flat 2. It was purely a matter of neglect. Recently work had been frantically carried out to put matters right but that is after a long period of time. The Applicants are unable to get the Respondents to see that repair and maintenance of Flat 2 is the responsibility of the Respondents, not that of the Applicants. The Applicants are not responsible for the repair of the roof of Flat 2 or the parts of the building which form part of Flat 2.

b. Mr. Sheridan now says the roof is watertight. He regretted the delay in dealing with the repairs but stated that the external wall is on the boundary between Flat 2 and the next door property owned by Canterbury City Council and it was from that property that the ivy came. He needed to get to the ivy on the outside because if he pulled it from the inside there was a danger of pulling down with it more of the ceiling. It had not been possible to deal with the problem without access from the next door property and that once he had consent to obtain access in that way he had carried out repairs and removed