

**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/21UD/LSC/2008/0092

**Property:** 104 Queens Road  
Hastings  
TN34 1RL

**Applicant:** Reasonstates Limited

**Respondent:** Mr. J.C. McCarthy

**Date of Hearing:** 15th December 2008

**Members of the  
Tribunal:** Mr. R. Norman  
Mr. B.H.R. Simms FRICS MCI Arb  
Mr. R. Athow FRICS MIRPM

**Date decision issued:** 12 JANUARY 2009.

**RE: 104 QUEENS ROAD, HASTINGS, EAST SUSSEX, TN34 1RL**

**Background**

1. Reasonstates Limited ("the Applicant") made an application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability to pay service charges and an application for an order under Section 20C of the Act.
2. Mr. J.C. McCarthy ("the Respondent") is the freeholder of the property known as 104 Queens Road, Hastings, East Sussex, TN34 1RL ("the subject property"). The Applicant is the lessee of the maisonette on the ground and first floors of the subject property.
3. On 10th October 2008 a Pre-Trial Review was held. It was attended by the Respondent but there was no appearance by anyone on behalf of the Applicant.

4. At the Pre-Trial Review:

(i) The Respondent pointed out that Sussex Independent Financial Advisers Limited had, on his behalf, written to the previous lessee of the subject property and to his mortgagees Derbyshire Home Loans demanding payment of outstanding ground rent and service charges. In particular a letter dated 6th September 2007 was sent by recorded delivery to Derbyshire Home Loans demanding £1,092.36 made up as follows:

	£
Six monthly maintenance charge	600.00
Ground Rent for 2006/2007	50.00
Ground Rent for 2007/2008	50.00
2/3rds of the Building Insurance	<u>392.36</u>
Total	1,092.36

(ii) The Respondent explained that as far as has was concerned ground rent of £100 and insurance of £400.21 had been paid by the Applicant but paid late and that all that was outstanding as at the 10th October 2008 was what he described as the maintenance charge of £592.15. That figure was requested to create a fund to finance future maintenance. No such fund exists because no payments towards such a fund have been received from the previous lessee or from the Applicant. However the Respondent went on to state that the building insurance was due for renewal on 31st October 2008 and that that would result in the Applicant being liable for a contribution towards the premium.

(iii) The Respondent accepted that in the lease it is provided that the charge for registration is £10 + VAT for each document produced and not £100 as had been demanded.

5. No explanation was given at the Pre-Trial Review or at the hearing for the difference of £7.85 between the sum of £392.36 claimed from Derbyshire Home Loans in respect of insurance and £400.21 paid by the Applicant in respect of insurance. However, the Respondent had deducted the additional £7.85 from his figure of £600 with the result that he was claiming £592.15 in respect of the maintenance charge and it was that sum which he claimed to be outstanding from the Applicant plus the Applicant's contribution towards insurance renewed on 31st October 2008.

### **Inspection**

6. On 15th December 2008 the Tribunal inspected the exterior of the subject property in the presence of Mr. M. and Mr. D. Rothbart, on behalf of the Applicant, and the Respondent and Mr. Karl Hopper-Young, the Respondent's financial adviser. We were also able to inspect the rear garden and rear elevation having been given access by the basement occupier.

7. The subject property is a middle terrace building on three floors and we were told that the building comprised a basement flat and a maisonette on the ground and first floors. We were told that the flat and the maisonette were self contained, that the garden belonged to the basement flat and that there were no common parts but that the occupier of the maisonette needed access to the electricity and gas meters which were within the entrance to the basement flat.

8. We could see that a good deal of maintenance and external decoration was required. This was agreed by all those present, indeed Mr. Hopper-Young pointed out a number of matters which required attention including the damaged corbels and the guttering above which had vegetation growing in it. Mr. M. and Mr. D. Rothbart indicated that the guttering had not been cleared for some time. Mr. Hopper-Young also pointed out the damaged render and the condition of the steps which he considered to be dangerous and gave his opinion that moisture would be entering the building as a result of the lack of repair.

### **Evidence**

9. Written representations were received from and on behalf of the parties and these were considered by the Tribunal.

### **The Hearing**

10. The hearing was attended by Mr. M. and Mr. D. Rothbart, on behalf of the Applicant, and by the Respondent and Mr. Karl Hopper-Young and we heard evidence and representations from all those present.

11. We confirmed with those present that the matters for consideration by the Tribunal were:

(i) The £592.15 arrears of maintenance charges which the Respondent said was owed by the former lessee of the maisonette and which the Respondent now considered to be the liability of the Applicant as the purchaser of the lease of the maisonette.

(ii) The payment by the Applicant of the proportion of the insurance premium in respect of the insurance renewed on 31st October 2008.

(iii) The application under Section 20C of the Act.

(iv) The applications for costs made by both parties.

12. As to the arrears of maintenance charges, Mr. Hopper-Young explained that the Respondent had obtained judgement in default against Derbyshire Home Loans for payment of a sum representing the arrears of maintenance charges but he believed that the judgement could well be set aside and he also believed that in fact it was the Applicant that was liable for that sum.

13. It was clear that the Respondent and Mr. Hopper-Young on his behalf wanted to raise money from the Applicant to help finance the maintenance and repairs required before undertaking the work. Both the Respondent and Mr. Hopper-Young stated that they were fully aware of the need to comply with the consultation requirements under Section 20 of the Act and the Regulations.

14. As to the proportion of the insurance premium, Mr. M. and Mr. D. Rothbart confirmed the contents of a letter written to the Respondent in which it was said that if Zurich Insurance confirmed that the insurance was provided on the understanding that the subject property comprised two flats then the Applicant would pay the proportion of the insurance premium demanded. Mr. M. and Mr. D. Rothbart also confirmed that they were content with the premium and agreed that the Applicant was liable to pay two thirds of it.

15. Mr. Hopper-Young tried to convince us that by considering a combination of some of the documents produced, the insurers had in fact made it clear that insurance was provided on the basis that the subject property comprised two flats.

16. He also pointed out that the Applicant had originally made the application on the basis that the premium was too high and that it was only now that another objection had been raised.

17. The claims for costs had been set out in the written representations.

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

18. It was clear from the evidence of the Respondent and Mr. Hopper-Young that they did not understand some of the provisions in the lease. An example of the Respondent's lack of knowledge or misconstruction of the lease is contained in the evidence provided by him or on his behalf where in support of the Applicant paying two thirds of the cost of insurance a part of the lease is quoted which refers to rent. The quote is said to come from the lease Clause 1 (1). There is a Clause 1 but that clause does not have any sub clauses. Also a more careful examination of the words in the lease which precede those quoted in the written evidence shows that the two thirds is a reference to a reduction in the rent if at any time the rent is in excess of two thirds of the rateable value. In those circumstances the rent is to be reduced to an amount equal to two thirds of the rateable value less one pound. It does not refer to the contribution to be made by the Applicant in respect of insurance. The Respondent in his letter dated 15th November 2008 addressed to the Applicant purports to quote from the lease as follows: "two thirds-paying a sum towards the amount the Lessors may pay for maintaining the insurance of the building etc." In that letter the words are presented as a quotation from the lease and are even more misleading than in the written evidence. Not only are the words which precede the purported quotation omitted but so are words which follow it in the lease and words which appear in the lease between "two" and "building" are not included in the purported quotation. The Applicant has accepted that a two thirds contribution to the

insurance is appropriate and therefore we do not need to make a decision on the proportion but to rely on the purported quotation as justification for the Applicant's contribution to the cost of insurance is totally misconceived. Further examples are the Respondent's lack of knowledge of when the Applicant is liable to contribute to the cost of insurance and when the Applicant is liable to contribute to the cost of repairs carried out by the Respondent. There is also a lack of knowledge of the provisions of the Act as to how service charges can be demanded and the consequences of failing to comply with those provisions.

19. We explained to those present our interpretation of the lease in respect of the lessee's liability to contribute towards insurance and service charges.

20. Clause 1 provides that the lessee has to pay "...by way of further or additional rent from time to time a sum or sums of money towards the amount which the Lessors may expend in effecting or maintaining the insurance of the building.....such sum to be a proportionate part of the annual premium as hereinafter provided and such last mentioned rent shall be paid without any deduction on the date for the payment for rent next ensuing after the expenditure of the said premium." Rent is payable on 25th March and 29th September. This means that the lessor has to pay the insurance premium and then recover a proportionate part from the lessee on the next rent day. As the insurance was renewed on 31st October 2008 the proportionate part (which Mr. M. and Mr. D. Rothbart agree should be two thirds) is payable by the lessee on 25th March 2009.

21. As to service charges, clause 3 (1)(a) of the lease provides that the lessee is to pay all rates taxes assessments charges impositions and outgoings which may at any time be assessed charged or imposed. This does not include the liability to pay service charges which is dealt with elsewhere in the lease.

22. Under clause 4 (2) of the lease the lessee covenants to "Pay to the Lessors without any deduction by way of further and additional rent a sum equal to one half towards the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto (hereinafter called "the Service Charge") PROVIDED ALWAYS that the lessee shall pay to the Lessors on the Twenty fifth day of March in every year the sum of ONE HUNDRED POUNDS in advance and on account of the Service Charge". This means that every 25th March the lessee is to pay to the lessor £100 in advance on account of the Service Charge and on 25th March and 29th September to pay half towards costs expenses outgoings and matters mentioned in the Fourth Schedule. That Schedule lists the costs expenses outgoings and matters in respect of which the lessee is to contribute: "1. All costs and expenses incurred by the Lessors for the purposes of complying or in connection with the fulfilment of their obligations under Clause (4) and (5) of Clause 5 of this Lease provided 2. The reasonable and proper costs of management of the said property". It should be noted that the reference is to costs incurred not costs proposed to be incurred.

23. Clauses (4) and (5) of Clause 5 of the lease list the items which (subject to the contributions and payment as thereinbefore provided) the lessor is liable to maintain and decorate.

24. The Respondent expressed the view that to be in the situation where he had to spend the money, on for example repairs, before receiving more than just the £100 per annum on 25th March was unfair but we must interpret the provisions of the lease and the parties are bound by the provisions of the lease even though they may consider them to be unfair.

25. As to the arrears of service charges we were not satisfied on a balance of probabilities by the evidence produced that work had been done so as to require the payment of the service charges in question. There was no evidence of how the figures of £592.15 or £600.00 had been calculated or that they had been properly demanded in accordance with the provisions of the lease and the Act. Therefore we could not make a determination that either sum be paid by the Applicant to the Respondent.

26. We were not satisfied on a balance of probabilities that the Zurich insurance had been provided on the basis that the subject property comprised two self contained flats. There was a letter dated 2nd December 2008 from CETA to Mr. Hopper-Young in which it was stated that Zurich Insurance Company Ltd was aware that the property was divided into two flats but that letter did not give the address of the subject property or any reference by which that letter could be said to refer to the insurance of the subject property. We were not convinced by Mr. Hopper-Young's argument that it must do so because that was the only insurance policy which the Respondent had with Zurich. Neither were we convinced that the insurance policy obtained was appropriate to the subject property but we noted that Mr. M. and Mr. D. Rothbart had written to the Respondent stating that if Zurich Insurance confirmed that the insurance was provided on the understanding that the subject property comprised two flats then the Applicant would pay the proportion of the insurance premium demanded and therefore, presumably, the situation could be cured to their satisfaction by obtaining from Zurich Insurance a certificate which clearly showed that the subject property comprised two self contained flats. The description in the certificate produced to us could not be construed in that way and indicated that the property was a three bedroom terraced house which was let. In any event on our construction of the lease the proportion was not yet payable by the Applicant. Consequently we could not make a determination that that proportion of the insurance premium be paid by the Applicant to the Respondent at this time.

27. There is before us an application for an order under Section 20C of the Act. We find that it is just and equitable in the circumstances to make such an order because the Applicant was justified in bringing these proceedings to clarify the position and had the Respondent and Mr. Hopper-Young considered the provisions of the lease and the requirements of the Act in relation to service charge demands before making demands then it is likely that there would have been no need for this application.

28. We were not persuaded by the evidence before us that there was any justification for ordering either party to pay the costs and expenses of the other in connection with this application.

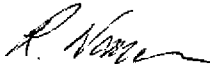
#### **The Decision of the Tribunal**

29. On the evidence provided to us we could not be satisfied on a balance of probabilities that the Applicant was liable to pay the sum of £592.15 claimed as arrears of maintenance charges.

30. The Applicant accepts liability to make a contribution of two thirds of the buildings insurance premium but on the evidence provided to us we could not be satisfied on a balance of probabilities that the insurance obtained was appropriate to the subject property and therefore we could not determine the amount of the contribution. In any event the contribution is not payable until 25th March 2009.

31. We make an order that all or any of the costs incurred or to be incurred by the Respondent 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 the Applicant.

32. No order is made for either party to pay the costs and expenses of the other in connection with this application.



R. Norman  
Chairman

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

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

**APPLICATION FOR PERMISSION TO APPEAL**

<b>Case No.</b>	<b>CHI/21UD/LSC/2008/0092</b>
<b>Property:</b>	<b>104 Queens Road Hastings TN34 1RL</b>
<b>Applicant:</b>	<b>Mr. J.C. McCarthy</b>
<b>Respondent:</b>	<b>Reasonstates Limited</b>

**RE: 104 QUEENS ROAD, HASTINGS, EAST SUSSEX, TN34 1RL.**

1. For the avoidance of misunderstanding the Tribunal will refer to the original Applicant Reasonstates Limited as "the Lessee" and to the original Respondent Mr. J.C. McCarthy as "the Lessor".
2. References to paragraphs are references to the paragraphs in the reasons for the Tribunal's determination in this case which was published on 12<sup>th</sup> January 2009.
3. A letter dated 4<sup>th</sup> March 2009 has been received from the Lessor in which he states that he encloses a copy of an appeal he is lodging. The document enclosed with that letter is a copy of a letter dated 16<sup>th</sup> December 2008 from Mr. Karl Hopper-Young.
4. As the next step in seeking to appeal the decision of the Leasehold Valuation Tribunal in this case is to make an application to the Leasehold Valuation Tribunal for permission to appeal, the letter dated 4<sup>th</sup> March 2009 and the copy of the letter dated 16<sup>th</sup> December 2008 are treated as such an application.
5. The Tribunal has considered the application and has determined that permission should not be granted for an appeal to the Lands Tribunal for the following reasons.
6. The Lessor contends that the Leasehold Valuation Tribunal misread and misinterpreted clauses in the Lease. The Tribunal carefully considered its interpretation of the lease and made its decision.
7. It is noted that the copy letter which the Lessor refers to as a copy of his appeal is dated 16<sup>th</sup> December 2008 and therefore apparently was written before the decision of the



Tribunal was sent to the parties. Consequently, some of the points in that letter do not reflect the contents of the decision.

8. However, the Tribunal will deal with the points in the order in which they appear in that letter.

9. No decision was required in respect of matters which were no longer in dispute by the time of the hearing.

10. The reason that the Tribunal could not order payment of a proportion of the insurance premium at the time of the hearing was explained in paragraph 26.

11. As explained in paragraph 22, the lease provides that every 25<sup>th</sup> March the Lessee is to pay to the Lessor £100 in advance on account of the Service Charge and on 25<sup>th</sup> March and 29<sup>th</sup> September to pay half towards costs expenses outgoings and matters mentioned in the Fourth Schedule. It should be noted that the reference is to costs incurred not costs proposed to be incurred.

12. Ground rent is payable on 25<sup>th</sup> March and 29<sup>th</sup> September, not December as stated by Mr. Hopper-Young in his letter.

13. The quotations from Clause 1 of the lease from "an amount" to the end of Clause 1 are not in dispute and are referred to in paragraph 20. The presumption by Mr. Hopper-Young as to when payments towards insurance have to be paid by the Lessee is correct, except that the date in September is the 29<sup>th</sup> and not the 25<sup>th</sup> and that as the insurance was not renewed until 31<sup>st</sup> October 2008 the proportionate part (which the Lessee agreed should be two thirds) did not become payable until 25<sup>th</sup> March 2009. The position is set out in paragraph 20. However, the reference to an amount equal to two thirds of the rateable value less one pound is dealt with in paragraph 18 and does not refer to the contribution to be made by the Lessee in respect of insurance.

14. The reference by Mr. Hopper-Young to Schedule 3 is incorrect. Schedule 3 does not impose upon the Lessee an obligation to repair and maintain but refers to exceptions and reservations. Clause 3 (1) (c) does deal with such matters but is not within the jurisdiction of the Leasehold Valuation Tribunal in relation to this application.

15. The reference to Schedule 4 is partly correct in that Schedule 4 does mention the costs expenses outgoings and matters in respect of which the Lessee is to contribute but the requirement to pay is in Clause 4 (2). This is dealt with in paragraph 22, as is the requirement to pay £100 on 25<sup>th</sup> March in advance on account of the service charge and on 25<sup>th</sup> March and 29<sup>th</sup> September to pay half towards costs expenses outgoings and matters mentioned in the 4<sup>th</sup> Schedule. There is no suggestion in the decision of the Tribunal that the payment of £100 is all that can be charged.

16. Demands for service charges must be made in accordance with the terms of the lease and the provisions of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002.

17. As stated in paragraph 25, the Tribunal was not satisfied on a balance of probabilities by the evidence produced that work had been done so as to require the payment of the service charges in question. There was no evidence of how the figures of £592.15 or £600.00 (as to which see paragraph 5) had been calculated or that they had been properly demanded in accordance with the provisions of the lease and the statutory requirements. Therefore the Tribunal could not make a determination that either sum be paid by the Lessee to the Lessor.

18. At the hearing it was confirmed with those present that the matters for consideration by the Tribunal were as set out in paragraph 11:

(i) The £592.15 arrears of maintenance charges which the Lessor said was owed by the former lessee of the maisonette and which the Lessor considered to be the liability of the Lessee as the purchaser of the lease of the maisonette.

(ii) The payment by the Lessee of the proportion of the insurance premium in respect of the insurance renewed on 31<sup>st</sup> October 2008.

(iii) The application under Section 20C of the Landlord and Tenant Act 1985.

(iv) The applications for costs made by both parties.

19. Decisions were made in respect of those matters and reasons were given for those decisions.

20. The Tribunal made its determination; making findings of fact on a balance of probabilities after considering all the evidence provided by the parties and considering the submissions made.

21. There is no justification for an appeal and permission is refused.



R. Norman  
Chairman.