

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/29UL/LSC/2009/0017

Property: 19-21 Rendezvous Street
Folkestone
Kent
CT20 1EY

Applicant: Mr. J. Godden

Respondent: Mr. V. Vairaven

Date of Hearing: 8th July 2009

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

Date decision issued:

RE: 19-21 RENDEZVOUS STREET, FOLKESTONE, KENT, CT20 1EY

Background

1. Mr. J. Godden ("the Applicant") is the freeholder of the building known as 19-21 Rendezvous Street, Folkestone, Kent CT20 1EY. Mr. V. Vairaven ("the Respondent") is the lessee of part of that building namely the first, second and third floors together with separate ground floor/basement entrance ("the subject property").

2. The Applicant commenced proceedings in the County Court (Claim No. 8HI 03254) against the Respondent and those proceedings have been transferred to the Tribunal.

3. On 12th March 2009 a Pre Trial Review was held and directions were given. It was also confirmed on behalf of the Applicant that the matters to be determined by the Tribunal were in respect of an interim demand for service charges dated 1st April 2008 being an amount of £6,215.63 (75% of £8,287.50) and that a claim for arrears of ground rent was outside the jurisdiction of the Tribunal and remained with the County Court to make a determination.

4. One of the directions required the Respondent, by 6th May 2009, to provide to the Applicant and to the Tribunal a full statement in writing. The Tribunal has received nothing from the Respondent.

5. The Applicant provided to the Tribunal a reply pursuant to the directions and a statement from Mr. P. Sulsh of the managing agents.

6. The only information given by the Respondent is in the allocation questionnaire which he returned to the County Court in which he stated "I have not received the details of the money spent on the property nor have I been consulted over the cost. Therefore I am in dispute. Will require this to refer to leasehold valuation tribunal to be determined whether cost are justifiable."

Inspection

7. On 8th July 2009 the Tribunal inspected the exterior of the subject property in the presence of Ms Lanson of Counsel representing the Applicant and Mr. Sulsh. Neither the Respondent nor anyone on his behalf attended. We could see that the building was on four floors. On the ground floor there were shop premises and towards the rear of the building there was a door which we assumed to be the separate ground floor/basement entrance referred to in the lease of the subject property. Also towards the rear of the building were two doors which appeared to be entrances to the floors above the shops which we were told comprised flats.

The Hearing

8. The hearing on 8th July 2009 was attended by Ms Lanson and Mr. Sulsh. There was no appearance by the Respondent or anyone on his behalf.

9. We heard evidence from Mr. Sulsh and submissions from Ms Lanson.

10. Ms Lanson confirmed that, as detailed at the Pre Trial Review, there was a claim in respect of an interim demand for service charges dated 1st April 2008 being an amount of £6,215.63 (75% of £8,287.50) and that a claim for arrears of ground rent was outside the jurisdiction of the Tribunal and remained with the County Court to make a determination. The interim service charges at 1st April 2008 for the whole of the building were as follows:

	£
Insurance	4,700.00
Management fees	500.00
VAT on management fees	87.50
Repairs	2,950.00
Certification of expenditure	<u>50.00</u>
 Total	 8,287.50

11. Ms Lanson informed the Tribunal that a payment of £2,873.69 towards insurance had been received from the Respondent which left £651.31 payable in respect of insurance and reduced the figure of £6,215.63 to £3,341.94.

12. Ms Lanson also informed the Tribunal that, as stated in the reply and in the statement of Mr. Sulsh, the Applicant wished to claim in addition administration charges of £58.75 in connection with attempting to recover the arrears and £146.88 being the fee of a debt collection agency in trying to obtain payment of the outstanding service charges. She explained that these figures were the full charges being claimed against the Respondent not 75% as in the case of the service charges. At the Pre Trial Review no mention had been made of administration costs although administration costs of £146.88 were included in the particulars of claim and the sum claimed in addition to that was stated to be £6,574.38. Deducting from that figure service charges of £6,215.63 and ground rent of £300 leaves £58.75. In the Applicant's reply made in response to the directions £58.75 is referred to as administration charges and the figure of £146.88 is described as the fee of a debt collection agency. The cashbook report shows a different sum, namely £225 paid to that debt collection agency but no explanation could be given for the difference in the figures. Mr. Sulsh suggested that these sums could be charged under the provisions of clause 3 (x) of the lease relating to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 but Ms Lanson stated that that was not the case and submitted that clause 4 (iv)(e) of the lease provided for the recovery of these sums from the Respondent.

13. A copy of the service charge demand had not been produced and the Tribunal therefore asked to see a copy. Mr. Sulsh produced a typed copy but it did not include the name and address of the landlord. He made enquiries of his office and arranged for copies of that demand and others to be faxed to the hearing. These were produced and did include the name and address of the landlord. He gave evidence that the faxed copies had been produced from the system used to produce service charge demands which is set up to print the name and address of the landlord.

14. Mr. Sulsh stated that he had no detailed analysis of the sums claimed for interim service charges but the figures were based on the expenditure during the previous year and any work expected to be done during the next year including expected redecoration. He explained that the insurance premium was lower than would be expected because the excess on any claim was £1,000. It was with this in mind that the figure for repairs was higher than would be expected. The figure for certification had been included because it

was expected that during the course of the year commencing April 2008 the provision in the Commonhold and Leasehold Reform Act 2002 which requires certification of the service charge accounts by an accountant would be brought into force. There would be the expense of having the accounts certified and the lease provided for such expense to be included in the service charge. In the event, the provision was not brought into force.

15. There was one sum of £453.55 shown in the cashbook report produced which appeared to be in respect of works where consultation under Section 20 of the Landlord and Tenant Act 1985, or a dispensation, would be required. Ms Lanson informed us that no such consultation had taken place and Mr. Sulsh could not say to what the sum related.

Reasons for decision

16. The Tribunal considered the written and oral evidence provided and on a balance of probabilities found the following:

(a) The sums estimated in respect of insurance, management fees, VAT on management fees, repairs and certification were reasonable. The figure for insurance was lower than would be expected and the figure for repairs was higher than would be expected but the explanation given for that was reasonable and was accepted. The figure for management fees was reasonable and the figure for anticipated VAT followed from that. With the benefit of hindsight the sum of £50 for certification was not required because the particular provision in the Commonhold and Leasehold Reform Act 2002 was not brought into force, but at the time of making the demand for interim service charges it was reasonable to take into account that the provision was expected to be brought into force.

(b) Although one item in the cashbook report appeared to be in respect of works where Section 20 consultation would be required before the work commenced or there would be need to apply for a dispensation, the Tribunal was satisfied that consultation had not been required before making a demand for the interim service charges in April 2008.

(c) A proper demand for the service charges had been made.

(d) The sum of £8,287.50 in respect of interim service charges due 1st April 2008 was a reasonable sum and the Respondent was liable to pay £6,215.63 being 75% of that sum.

(e) The sum of £2,873.69 paid in respect of insurance should be deducted from the £6,215.63 leaving £3,341.94.

(f) The Tribunal considered the position as to the sums of £58.75 in connection with attempting to recover the arrears and £146.88 being the fee of a debt collection agency in trying to obtain payment of the outstanding service charges. At the Pre Trial Review the full extent of the claim upon which the Tribunal would make a decision was confirmed and there was no reference to those sums. Ms Lanson had submitted that Clause 4 (iv)(e) of the lease provided for their recovery from the Respondent. That Clause does provide

that the maintenance charge shall include various charges including the cost of computing and collecting rents but these sums have not been charged as part of the maintenance charge. The Respondent is liable to pay 75% of the maintenance charge and the whole of these sums is being claimed from him. The sums claimed were not interim maintenance charges. They were being claimed as money which had been spent rather than money which was part of a budget to be spent in the following year. How the figures, in particular that of £146.88, had been arrived at was not clear. The Tribunal was not satisfied that those sums had been included in a proper demand. Accordingly the Tribunal made no decision in respect of those sums.

Decision

17. The Respondent is liable to pay £3,341.94 in respect of interim service charges for the year commencing 1st April 2008. Payment to be made to the Applicant within 28 days of the date this decision is issued.



R. Norman
Chairman