

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Number CHI/21UC/NAM/2003/0010

Re: 85/87 South Street, Eastbourne, East Sussex BN21 4LR

Comprising:	Flat	Tenant
(i)	Flat 1 (First Floor) (No. 87)	Miss Teresa Pallister
(ii)	Flat 2 (Second Floor) (No.87)	Peter Haugvik & Mrs Avril Haugvik
(iii)	Flat 3 (Third Floor) (No.87)	Miss Beverley Tickner
(iv)	Flat A (First Floor) (No85)	David Rumble

BETWEEN

The Tenants

(Athe Applicants/Tenants@)

and

Mr Palaniammai Vairavan &
Mrs Valliammai Vairavan

(Athe Respondents/Landlords@)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

1. THE APPLICATION

The Tenants made an Application under Section 24(1) Landlord and Tenant Act 1987 for the appointment of a Receiver and Manager. The Applicants proposed Mr John Keith Ross FRICS of Ross & Co 100 South Street Eastbourne East Sussex BN21 4QJ to be the Receiver and Manager.

2. THE STATUTORY PROVISIONS

(A) Section 24(2) of the Landlord and Tenant Act 1987 as amended by Section 85 of the Housing Act 1996 provides that the Tribunal may only make an order in respect of an application for the appointment of a Manager in the following circumstances, namely:

(a) Where it is satisfied:

(i) that the Landlord either is in breach of any obligations owed by him to the Tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent upon notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the Tenant to give him the appropriate notice and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

OR

(ab) Where the Tribunal is satisfied:

(i) that unreasonable service charges have been made or are proposed or are likely to be made, and

(ii) that it is just and convenient to make an order in all the circumstances of the case;

OR

(ac) Where the Tribunal is satisfied:

- (i) that the Landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under Section 87 of the Leasehold Reform Housing and Urban Development Act 1993 (codes of management practice) and
- (ii) that it is just and convenient to make an order in the circumstances of the case;

OR

(b) Where the Tribunal is satisfied that other circumstances exist which makes it just and convenient for the order to be made.

(B) Section 86 of the Housing Act 1996 transferred jurisdiction in respect of the appointment of Managers to the Leasehold Valuation Tribunal.

3. THE PREMISES

The Building comprises two terraced properties in a terrace of buildings in the centre of Eastbourne. The ground floor of both properties are commercial premises formerly run as a Wine Bar and which was at the date of the inspection unoccupied and awaiting refurbishment. Above the commercial premises were 3 Flats in each Building, one Flat on each of the first second and third floors. There was a separate common front door for the 3 flats in Number 85 and another for the 3 flats in No.87. They were not interlinked and there were no common parts shared by the buildings.

4. THE PARTIES

The Applicants were the Tenants of the four leasehold flats in the Premises. The remaining two flats in No. 85 on the second and third floors were owned by the Respondents/Landlords. The Respondents/Landlords did not reside in either of their two flats and were non-resident Landlords.

5. INSPECTION

The Tribunal inspected the Premises on 13th October 2003 by prior arrangement and in the presence of Mr Rumble and Mr Haugvik. Mr Ross, the proposed Manager was also present. . At the entrance to No. 85 there was a large mound of Builders rubble and rubbish which was unsightly. A trench had been dug for the installation of some services and the ground had not been properly re-instated with boards laid over the trench until the ground could be re-instated. Access to No. 85 was severely restricted by this arrangement. Inside the common front door to No.85 the hallway and stairs were covered in builders rubble. The whole of the common hall, stairs and landings needed to be thoroughly cleaned and the walls and ceiling decorated. The second floor stairway was undecorated and there were signs of recent plastering works and the installation of fire doors to form separate second and third floor flats.

The Tribunal inspected Flat 85 A on the first floor in the presence of Mr Rumble, the Tenant. Water stains were noted on the ceiling and there were signs of movement on the ceilings where the plaster had blown due to building work above. In No.87 the Tribunal inspected Flat 2 on the second floor in the presence of the Tenants Mr & Mrs Haugvik. In the middle bedroom there were water stains on the bedroom ceiling and on the outside wall. In the rear bedroom a new window cill had been installed and plaster renewed under the window. There were signs of damp on the chimney breast. In Flat 3 the Tribunal inspected the Flat in the presence of the Tenant

Miss Tickner. Black mould was seen on the ceiling of the rear bedroom. There were also damp stains on the ceiling immediately under the roof. There were also some cracks in the plaster which appeared to have been caused by some movement in the property. The common stairway to No. 87 was carpeted, in reasonable decorative order and in a clean condition.

6. HEARING

A Hearing was held at The Congress Theatre, Eastbourne on 13th October 2003 when the Following persons attended:

The Applicants/Tenants: David Rumble - Flat 85(A),
Mr & Mrs Haugvik - Flat 87 (2)
Miss Tickner – Flat 87 (3)

Mr J.K. Ross FRICS from Ross & Co the proposed Manager.

The Respondents/Landlords did not attend nor were they represented.

7. BACKGROUND

Various bundles of documents and correspondence had been produced by both sides and these were before the Tribunal. The Applicants/Tenants had served a Preliminary Notice under Section 22 of the Landlord and Tenant Act 1987 setting out the matters complained of and requiring the Landlords to remedy them. That Notice also set out the grounds in support of their Application for the appointment of a Manager and a list of the matters relied on by the tenants in their Application. The Landlords had subsequently instructed a Solicitor to act for them although from the copies of the correspondence before the Tribunal little seemed to have been achieved in that dialogue. At one stage the Landlords had promised to consider appointing a Managing Agent, but had failed to do so by the time the Hearing arrived.

On the 24th September 2003, a few weeks before the Hearing, the Landlords Solicitor had written to the Tenants Solicitors saying “As far as the appointment of Mr Ross is concerned, subject to the above, he (the Landlord) has no problem in that respect and you can take this letter as being a definitive statement on his behalf”. In the absence of any attendance at the Hearing or formal written representations on behalf of the Landlords the Tribunal understood this to mean that the Landlords agreed to the appointment of Mr Ross as Receiver and Manager.

8. TENANTS EVIDENCE

Mr Rumble (the Tenant of Flat 85A) gave evidence to the Tribunal and went through the various complaints that he and the other Tenants had in relation to the Landlords. These included:

- a. The absence of any Service Charge Accounts at all
- b. The Landlords failed to reply to letters or communicate with the tenants
- c. No repairs had been carried out to the structure of the Building, roof or common parts
- d. No cleaning of the common parts was carried out by the Landlords as required by the Leases
- e. The Landlords had failed to supply copies of the fire insurance policy for the buildings or produce evidence that the insurance had been renewed until the day before it expired.

Mr & Mrs Haugvik (the Tenants of Flat 87(2)) also gave evidence to the Tribunal and agreed with everything Mr Rumble had said. They complained that the Landlords had failed to remove rubbish which the Landlords' Tenants had deposited on the rear flat roof over the commercial unit There was also a suggestion that rats had been attracted by that rubbish. The Landlords had failed to communicate with them. The Landlords had failed to carry out any cleaning to the common parts or replace lightbulbs on the stairs and in their default, the Tenants undertook routine cleaning and maintenance themselves.

Miss Tickner (the Tenant of Flat 87(3)) also gave evidence in support of her fellow Tenants. She complained about the noise made by the Landlords Tenants of his Flats at No. 85 and his failure

to communicate or take any action. She reminded the Tribunal about the mould and damp stains on her ceilings which she believes to be due to the poor condition of the roof.

9. Mr Ross, the proposed Receiver and Manager gave evidence to the Tribunal in accordance with a Proof of Evidence which had previously been supplied. He confirmed his charges would be £120 plus VAT per Flat and with additional charges as set out in his written evidence. He said he would make no charge for initial inspection costs.

10. CONSIDERATION

A. The Tribunal then retired to consider the evidence.

First of all the Tribunal reminded themselves of the statutory requirements and the circumstances in which they were empowered to make an appointment of a Manager. These are set out in detail in section 24 of the Landlord and Tenant Act 1987 (as amended by Section 85 of the Housing Act 1996). They had regard to all of the documentary and oral evidence and also what they saw at the inspection. The Tribunal reached the following conclusions.

- i. It accepted all the evidence given to the Tribunal by the Tenants in writing and orally at the Hearing. No challenge had been made by the Landlords to any of the matters complained about and the Landlords had not attending the Hearing, applied for any adjournment, or sent any oral or written representations. The Tribunal was satisfied from the evidence that the Landlords had been in breach of their covenants to repair in the Leases. In particular the evidence pointed to the Landlords failure to repair the roof.
- ii. The letter from the Landlords Solicitor dated 24th September 2003 appeared to agree to the appointment of Mr Ross as the Receiver and Manager.
- iii. The Tribunal was satisfied that the Landlords were in breach of the Service Charge Residential Management Code. In particular they were in breach in respect of:
 - a. Clause 43. – failure to respond promptly and suitably to reasonable requests from Leaseholders for information etc.
 - b. Clause 7 generally – Rent and Service Charges. No Service Charge accounts had been prepared, no Ground Rent or Service Charge Demands had been sent out to the Tenants.
 - c. Clause 8 generally – Services. The common parts had not been kept clean and they needed decoration.

B. The next question to decide was whether it was just and convenient to make an Order.

The Tribunal reached the conclusion that there was already an atmosphere of distrust between landlord and tenants. There had been lack of consultation over various matters and this again was unlikely to change. Further, the attempts by the Landlord to forfeit the Leases had left considerable hostility in relations. This kind of behaviour by the Landlord was itself sufficient for the Tribunal to decide to appoint an independent Manager to avoid this happening again. The Tribunal also reminded itself of the "mischief" that Parliament had intended the Tribunal to deal with in handling disputes between Landlords and Tenants and of its need to deal fairly between all parties.

v. The parties had all agreed that they would accept Mr Ross as an appointed Receiver and Manager.

11. DECISION

The Tribunal makes its decision in the terms of the attached Order. The Tribunal was satisfied

from the evidence that the Landlord's had been in breach of their obligations under the Leases and in breach of a number of the provisions of the RICS Service Charge Residential Management Code. The Tribunal also found that it was just and convenient to make an Order appointing a Receiver and Manager. For the reasons given above the Tribunal therefore makes an Order as attached

Dated 13th October 2003

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J.B.Tarling MCMI
(Chairman)

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BETWEEN

The Tenants

(Athe Applicants/Tenants@)

and

Mr Palaniammai Vairavan &
Mrs Valliammai Vairavan

(Athe Respondents/Landlords@)

ORDER OF THE LEASEHOLD VALUATION TRIBUNAL

UPON HEARING the Applicants IT IS ORDERED that Mr J.K. Ross FRICS of Ross & Co 100 South Street Eastbourne East Sussex BN21 4QJ be appointed to be the Receiver and Manager of the property known as 85 & 87 South Street, Eastbourne, East Sussex BN21 4LR ("the Premises") the Freehold of which is owned by the Respondents. The terms of his appointment are:

1. He shall carry out his functions in accordance with the terms of the Royal Institution of Chartered Surveyors Service Charge Residential Management Code.
2. He shall be remunerated at a rate of £120 plus VAT for each Flat per annum
3. In addition to the above, in respect of any major building works in excess of £1,000 he shall receive 15% of the contract price between £1,000 and £20,000 and 10% over £20,000 both plus VAT.
4. He shall receive and take all such reasonable actions, including engaging Solicitors to act for him, in the collection of all Service Charge monies and contributions received and held by the Landlords in respect of the Premises including the balance standing to the credit of any maintenance or service charge or sinking funds all of which shall be transferred to him forthwith. Subject to the terms of the next following paragraph he shall discharge all payments due from the date of his appointment from those sums.
5. He shall from the date hereof until further Order collect all future ground rents arising from the Flats at the Premises and pay them to the Landlords/Respondents.

6. He shall prepare a preliminary report to the Tenants indicating the steps that require to be taken for the management of the premises in the interests of all the Tenants having regard to the terms of the Leases. He shall include in it his recommendations in respect thereof, the necessary steps to be taken, and his recommendations for any major investigation he feels is required and the estimates of the likely cost of them. The Report shall be supplied to the Lessees within 28 days of receipt of this Order.

7. Mr Ross shall forthwith prepare and serve on all of the Tenants of Flats in the Building and the Landlords an immediate Interim Service Charge Demand in such sum as he and the Tenants shall agree and collect the same from the Tenants and from the Landlords in respect of the respective Flats they own. These amounts will be credited to a New Service Charge Account.

8. Mr Ross shall prepare and serve an Interim Budget for the period up to the next Accounting Period which ends on 24th March 2004 and shall receive the payments on account of the service charges made in accordance with it under the terms of the Leases.

9. Mr Ross shall in the meantime have leave to apply to the Tribunal in respect of any directions he may at any time require to enable him to carry out the functions assigned to him.

10. Apart from the provisions of Clause 4 hereof Mr Ross shall have no power to demand collect or account for any Service Charge payments or amounts in respect of any period prior to the date hereof. He shall have no power to enter into any correspondence or other communications with the Landlords or any Tenant regarding such matters. Any discussion on such matters shall be dealt with between the Landlords and the Tenants direct or through their respective agents.

11. For the avoidance of any doubt the costs of any previous works for fire doors, sound-proofing and other conversion works to any of the flats shall be the responsibility of the Landlords and the respective Tenants and not payable from the Service Charge Account.

12. Mr Ross shall maintain his existing professional indemnity cover in the sum of £2,000,000 for each and every claim and will not reduce that cover without first having obtained from the Tribunal its consent to the change proposed.

Dated 13th October 2003

Mr J B Tarling
J.B.Tarling MCMI (Chairman)