

IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CHI/21UG/LSC/2006/0073

**IN THE MATTER OF 56 SACKVILLE ROAD, BEXHILL ON SEA, EAST
SUSSEX, TN39 3JE**

**AND IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985**

BETWEEN:

**(1) MR N HOLLINGTON
(2) Ms A HOLLINGTON
(3) Ms S ROWLEY**

Applicants

-and-

**MR & MRS S HIRSCHLER
AS TRUSTEES OF TOMVILLE PENSION SCHEME
(AS FREEHOLDER)**

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application made jointly by the Applicants pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the reasonableness of the buildings insurance premium demanded by the Respondent for the subject property for the service charge year ending 25 March 2006. The premium in issue is £378 each for the first and second floor flats,

being a third share contribution per flat of the overall buildings insurance premium.

2. The First and Second Applicants are the joint leaseholders of the first floor flat in the subject property. The Third Applicant is the leaseholder of the second floor flat. They occupy the various flats by leases dated 9 April 1980 and 22 April 1981 respectively for a term of 99 years from 29 September 1979 ("the leases"). Both leases were granted in identical terms. The Respondent is the present freeholder. Wingham Estates Limited ("Wingham") is the management company.
3. By clause 3(6)(a) of the leases, the lessee covenanted, *inter alia*, with to pay one third of the costs incurred by the lessor to insure the premises. Clause 3(7)(b) of the leases provides that the service charge year shall end on 25 March in each year. Clause 3(7)(a) provides that an estimated service charge contribution of £20 is payable by two equal instalments on 25 March and 29 September in each year. By clause 4(1) of the leases, the lessor covenanted to insure the subject premises.
4. Mr Hirschler on behalf of the Wingham insured the subject property for the period 30 December 2005 to 29 December 2006 at a total premium of £1,134. The total sum insured for the building was £450,000 based on a verbal valuation for the rebuilding costs provided by Angel Thompson, a firm of surveyors. This was apportioned equally between the ground floor, first floor and second floor premises as a one third contribution. Each of the premises was insured for a value

of £150,000. By a demand dated 25 December 2005, Wingham demanded a contribution of £378 from the First and Second Applicants in relation to the first floor flat and the same amount from the Third Applicant in relation to the second floor flat.

5. For the year 2004-2005, the subject property had been insured by Mr Hirschler on behalf of Wingham for a value of £239,000. However, he realised that the subject property appeared to be under insured when another similar property at 50 Sackville Road was burnt down and the rebuilding costs were estimated to be £460,000.
6. On 29 December 2005, the Second Applicant asking whether he had obtained competitive quotes for the insurance. Subsequently, correspondence ensued between the First and Second Applicants and Mr Hirschler regarding the placing of the insurance policy and the reasons for the significant increase from the previous year's premium. Eventually, Mr Hirschler suggested that the First and Second Applicants obtain their own valuation as to the sum the property should be insured for. The valuation report prepared on behalf of the First and Second Applicants by Standen Associates Ltd, Chartered Building Surveyors, dated 24 February 2006 placed the rebuilding cost at £300,000 including VAT.
7. Mr Hirschler did not agree with the valuation obtained by the First and Second Applicants and consulted another surveyor, Mr Suttley, who valued the property

at £340,000. However, Mr Hirschler did not agree with that valuation either because, in his view, this left him financially exposed on the potential costs of rebuilding the property, especially in view of his recent experience at 50 Sackville Road. In an attempt to resolve this issue, on 27 March 2006, Mr Hirschler wrote to the First Applicant and proposed that they pay a share of the insurance premium based on the valuation provided by Mr Stutley. This equated to a premium contribution of £239.40. Nevertheless, the property would remain insured for the sum of £450,000 and the Respondent would meet the shortfall in the overall premium of £138.60. That offer was not accepted by the Applicants. They proposed that the valuation of the property be agreed at £350,000. Agreement could not be reached by the parties so on 10 August 2006 the Applicants issued this application.

Inspection

8. The Tribunal internally inspected the first and second floor flats and the exterior of the subject property on 26 October 2006. It also inspected the exterior of 50 Sackville Road. The Tribunal noted that the latter was very similar but not identical to the subject property as contended by Mr Hirschler. Materially, 50 Sackville Road appeared to have additional living accommodation in the roof space.

Decision

9. The Tribunal's determination was also made on 26 October 2006. There was no oral hearing in this matter and the determination is based entirely on the statements of case and other documentation filed by the parties.
10. The Applicants valuation evidence is based entirely on the valuation report prepared by Mr Standen of Standen Associated Ltd dated 24 February 2006. He states that in arriving at his valuation figure of £300,000 he has used standard rebuilding costs data produced by the RICS. The RICS annually publishes 3 books covering this topic. One gives a general guide to rebuilding costs of houses and bungalows. The second relates specifically to flats, both purpose-built and conversions. The third covers regional variations in costs. The Tribunal noted that in referring to the Guide to Rebuilding Costs of Flats giving rebuilding costs at January 2005 Mr Standen's figures are confirmed. However, when adjusting these to take into account the increase in rebuilding costs since January 2005 until the relevant date of 30th December 2005, together with a further adjustment to take into account the variance from the national rate to the local rate, this was considered to be too low.
11. Mr Hirschler did not have any formal valuations carried out, but relied on the Loss adjuster's opinion of value on 50 Sackville Road because he felt that the insurance value of both properties were, to all intents and purposes, identical. The Tribunal noted from its inspection that 50 Sackville Road had living

accommodation in the roof space and therefore the respective properties were not identical. The Tribunal considered that if Mr Hirschler's assumption had been adjusted to take this into account it could have been considered to be a more accurate way of assessing the value. The Tribunal therefore concluded that the Respondent's valuation figure could not be relied upon.

- 12 For the reasons stated above, the Tribunal did not prefer the valuation figures relied on by either party. The Tribunal, therefore, determined the rebuilding costs of the subject property based on its own expert knowledge and experience. The Tribunal also had regard to the relevant RICS guides as to rebuilding costs generally for 2005. Having done so it concluded that the rebuilding costs of the subject property at the relevant date was £370,000. Applying its knowledge of insurance premium rates to the valuation figure, the Tribunal found that the buildings insurance premium should be approximately £1,125. Accordingly, the sum of £1,134 demanded by Wingham, on behalf of the Respondent, was reasonable.

Section 20C

13. In the originating application, the Applicants also made an application under s.20C of the Act to *disentitle* the Respondent from recovering any costs it had incurred in these proceedings through the service charge account. The Respondent relied on clause 4(6) of the leases to recover any such costs.

14. Clause 4(6)(a) of the leases entitles the lessor to recover one third of the costs paid to a "Surveyors or Agents in connection with the administration and management of the Building...". It is clear that, not having obtained any formal valuation evidence, the Respondent has not incurred any costs paid to a surveyor or agent. Nevertheless, in his statement of case, the Respondent makes an application for costs. Any costs so claimed are limited to the Respondent's legal costs incurred by it in responding to these proceedings. By a Schedule of Costs dated 18 October 2006 and prepared by solicitor instructed by Mr Hirschler, these are placed at £764.34 including VAT. However, there is no express provision within clause 4(6)(a) that allows such costs to be recovered. It is now settled law that an express provision must exist in a lease that allows a landlord to recover any costs incurred in this way: see *Sella House Ltd v Mears* [1989] 1 EGLR 65, CA. In the absence of any express provision in these leases, the Respondent cannot recover its legal costs. Accordingly, it is not necessary for the Tribunal to make any order under s.20C of the Act.

Dated the 26 day of October 2006

CHAIRMAN.....



Mr I Mohabir LLB (Hons)