

9726



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/OOML/LIS/2013/0068**

**Property** : **29A Russell Square  
Brighton  
East Sussex  
BN1 2EE**

**Applicant** : **Christopher Gargan**

**Respondent** : **Highdown Properties Limited**

**Respondent's  
Representative** : **Ms Helen Hyam**

**Type of Application** : **Sections 19, 20, and 27A of the  
Landlord and Tenant Act 1985 (as  
amended) ("the Act")**

**Tribunal Members** : **Judge RTA Wilson (Chairman)  
Nigel Robinson (Surveyor Member)  
Jayam Dalal (Lay Member)**

**Date and venue of  
Hearing** : **2<sup>nd</sup> December 2013  
Holiday Inn Brighton**

**Date of Decision** : **16th December 2013**

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**DECISION**

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## **The Application**

1. This application required the Tribunal to make a determination of the Applicant's liability to pay the service charges as detailed in a demand dated 1<sup>st</sup> November 2012. (the Demand). The amount of service charge in issue was £539.07.
2. The Tribunal gave directions on the 24<sup>th</sup> July and the 10<sup>th</sup> September 2013 for the conduct of the case. The directions provided for the Applicant to file and serve a statement of case with supporting documents and for the Respondent to file a reply with supporting documents.

## **Summary of Decision**

3. The amount set out in the Demand totalling £589.07, (£539.07 plus ground rent of £50) became due on the 1<sup>st</sup> November 2012 and under the terms of the lease the amount outstanding shall bear interest at the rate provided for in the lease as from the 22<sup>nd</sup> November 2012 until payment has been made in full.

## **The Inspection**

4. The Tribunal inspected the subject property on the morning prior to its determination in the presence of Ms Hyam a representative from the Respondent Company. The Applicant did not attend. The property of which Flat 29a forms part, comprised a pair of adjoining five storey (including basement and ground floor) Victorian houses, one end terrace, the other mid terrace, numbered 28 & 29 respectively, which have subsequently been converted into 11 flats. The two houses remain separate in that, other than the basement flats which have their own separate entrances, the flat occupiers in each house use the front door and staircase for their respective house to access their individual flats. Access was available to the communal staircase serving the flats in No. 29, which was noted to have been recently redecorated and with the benefit of a communal fire alarm system. Access was not available to the staircase serving the flats in No. 28 but the Tribunal was advised that it had also been redecorated recently and was awaiting new carpets. The Grade II listed houses had a mixture of painted brick and rendered elevations, in fair condition only, with first floor canopied balconies under a pitched roof. Flat 29a was noted to be one of the basement flats with it's own separate access.

## **The Lease**

5. The Tribunal had before it a copy of the lease for the flat. The lease is dated 17<sup>th</sup> November 1987 and is for a term of 99 years from 25<sup>th</sup> March 1987 at a yearly ground rent of £50 for the first 25 years and rising thereafter.
6. The relevant provisions in the lease may be summarised as follows:

- (a) The lessee is responsible for the repair of the demised premises, which are defined so as to include the ceilings and floors and windows but to exclude any of the main timbers or joists of the building.
- (b) The lessor is responsible for insuring the building and for the repair and renewal of the main structure, the roof, rainwater pipes, drains and common areas.
- (c) The lessee covenants to pay 9% of the lessor's costs as set out in the Fourth and Fifth Schedules. On the 25<sup>th</sup> March and the 29<sup>th</sup> September in each year the lessee is to pay such sum as the lessor shall stipulate is a fair and reasonable amount on account of the lessees annual liability.
- (d) The service charge year runs to the 29<sup>th</sup> September in each year and as soon as practicable after each year end the lessor is to serve on the lessee an annual maintenance account which shall certify the actual amount of the lessees liability for that year taking into account any amounts paid on account in that year.
- (e) Upon receipt of that account the lessee is to pay a balancing charge in respect of any under payment or is entitled to a credit if the amounts paid on account have exceeded actual liability.

### **The Law and Jurisdiction**

- 7. The Tribunal has power under S.27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable.
- 8. By S.19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
- 9. By S.20 of the Act and regulations made thereunder, where there are qualifying works or the lessor enters into a qualifying long term agreement, there are limits on the amount recoverable from each lessee by way of service charge unless the consultation requirements have been either complied with, or dispensed with by the Tribunal. In the absence of any required consultation, the limit on recovery is £250 per lessee in respect of qualifying works, and £100 per lessee in each accounting period in respect of long-term agreements. As regards qualifying works, the recent High Court decision of *Phillips v Francis* [2012] EWHC 3650 (Ch) has interpreted the financial limit as applying not to each set of works, as had been the previous practice, but as applying to all qualifying works carried out in each service charge contribution period. However this case is now the subject of an appeal.

### **Applicant's case**

10. The Applicant's case was set out in only very general terms in the application form to the Tribunal. In his application form the amount challenged was stated to be £500. In his statement of case the amount challenged was stated to be £814.07 including ground rent. No breakdown of these figures had been provided. For this reason directions were given providing for the Applicant to file a particularised statement explaining the detail of his case and providing supporting documents.
11. Despite being given very generous amounts of time to comply with the directions, the Applicant failed to do so and in particular had failed to set out the detail of his case. Contrary to the directions he did not identify exactly which items of service charge he challenged and why. His statement contained only vague statements alleging a failure to comply with the terms of the lease and a failure to consult on expenditure above the threshold for consultation but no particulars of these alleged shortcomings were provided and the supporting documents were of little assistance. There were references in his statement to an alleged water leak and insurance irregularities but again these allegations were not supported by documents and the insurance issue appeared to be outside of the Tribunal's jurisdiction.
12. The Applicant had not helped himself in that he had failed to attend the hearing that he had requested and paid for.

### **Respondent's case**

13. The Respondent's reply was contained in its statement in reply dated 15<sup>th</sup> October 2013, which was developed at the hearing by Ms Hyam.
14. Ms Hyam explained how the contested charges had been calculated and she maintained that the sums due had been properly demanded and were reasonable in amount. In particular she told the Tribunal that during the year in question there has been no need to consult as the threshold for consultation had not been reached. She told the Tribunal that the demand had been accompanied by a tenant's summary of rights and a copy of the demand was included in her hearing bundle together with the annual service charge account for 2012. On this basis she invited the Tribunal to find that the Demand was valid and that the amount set out therein was due as from the 1<sup>st</sup> November 2012.
15. At the hearing Ms Hyam waived a late payment fee of £25 that she had originally claimed. She also accepted that the Tribunal had no jurisdiction over the ground rent.

### **Consideration**

16. The Applicant has not made out his case and has failed to provide evidence and or legal argument to support his vague challenges to the service charges. He did not

attend the hearing and did not contact the Tribunal office following the hearing to explain his absence.

17. In contrast the Respondent attended the hearing and was able to satisfy the Tribunal that the Demand was both statutorily and contractual compliant and that the service charges claimed were reasonable in amount.
18. For these reasons the Tribunal determines that the amounts set out in the Demand excluding the late payment fee became due as from the 1<sup>st</sup> November 2012 and accordingly are payable forthwith.
19. The Tribunal records that it does not possess the jurisdiction to determine the payability of ground rent but it understands that the Applicant does not challenge this figure.

Signed:

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Judge RTA Wilson  
Chairman

Dated: 16th December 2013

## **Appeals**

*A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.*

*The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.*

*If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.*

*The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.*