

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property**
TRIBUNAL SERVICE

S.27A Landlord & Tenant Act 1985 (as amended) ("the Act")

Case Number:	CHI/00ML/LIS/2009/0022
Property:	Basement Flat 14 Denmark Terrace Brighton BN1 3AN
Applicant:	Mr B T Cox
Respondent:	Mr D Connolly
Date of Deliberation	29th June 2009
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman)
Date of the Tribunal's Decision:	6th July 2009

THE APPLICATION

1. This was an application transferred from the Brighton County Court for a determination of the service charge payable by Mr Connolly following a sale of the freehold of the property by Mr Cox on the 11th April 2008.

JURISDICTION

Section 27A of the 1985 Act

2. The Tribunal has power under Section 27A of the Landlord and Tenant Act 1985 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 service charge is payable. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

3. By section 19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charges is claimed are of a reasonable standard.

THE LEASE

4. The Tribunal had a copy of the lease relating to the property, which is dated the 6th November 1989 and is for a term of 99 years from the 24th June 1989 at an annual rental of £50 rising to £100 after the first 25 years of the term.
5. The lease provides for on account service charge payments to be made by Mr Connolly in advance on the 25th June and the 25th December in each year. The lease contains an obligation on Mr Cox to prepare and serve on the Mr Connolly a certificate for each "accounting period" which is defined in the lease as commencing on the 1st January in each year and ending on the 31st December in each year. The certificate must contain details of the total expenditure for that accounting period, give credit for any interim service charge paid by Mr Connolly during that accounting period and show the balance payable or if applicable the credit to be carried forward to the next accounting period. The lease contains an obligation on Mr Connolly to pay any excess service charge within 28 days of the service of such certificate. Mr Connolly's contribution towards the annual service charge for the building is stated to be 18%.

PRELIMINARYS / ISSUES IN DISPUTE

6. Directions were given by the Tribunal to the effect that the issue would be determined by the Tribunal on the basis of written representations only. Neither party objected and both had submitted their statements of case accompanied by the documents upon which they relied.
7. Following the sale of the freehold Mr Cox had served on Mr Connolly a closing statement of account alleging the sum of £792.18 to be outstanding. The account was stated to be for the period ending the 10th April 2008 and was signed by Mr Cox and dated the 23rd April 2008.
8. Mr Connolly made partial payment of this account but claimed a setoff because of damage caused to his flat allegedly by virtue of a water leak coming from the third floor flat owned by Mr Cox. The amount of setoff appears to be a sum not exceeding £220 stated to equate to two days labour costs for workman returning to Mr Connolly's flat to paint and make good the damage caused.

MR COX'S CASE

9. In his written submissions Mr Cox admits that there was a water leak from his flat which occurred on or about the 7th July 2007 but he denies that this leak caused any damage to Mr

Connolly's flat. Even if it was found by the Tribunal that damage was caused to Mr Connolly's flat due to the water leak, then the amount claimed by Mr Connolly to put matters right was too high. A figure of £40 in total was reasonable and no more.

10. Mr Cox asserts that Mr Connolly's flat was undergoing extensive refurbishment at the time of the leak and that the damage complained of by Mr Connolly was caused not by the water leak but by Mr Connolly's own builders.
11. Mr Cox maintains that as the lease does not contain any provisions dealing with a dispute regarding service charge following a transfer of the freehold then the position is that the accounting period effectively came to an end on the date of sale and that on this basis he was entitled to serve an account for the period 1st January to 11th April 2008 which he did. He maintained that this was sufficient to make Mr Connolly contractually liable to pay the balance outstanding as disclosed by that account.

THE RESPONDENT'S CASE

12. In his written submissions Mr Connolly submitted that on the 7th July 2007 his flat suffered damage as a result of a water leak emanating from the third floor flat owned by Mr Cox.
13. Mr Connolly contacted Mr Cox to inform him of the leak and it was agreed that they would leave it a while to allow the water to dry out before assessing the damage. Thereafter delays had occurred in arranging a meeting which eventually took place on site on the 11th February 2008. The meeting was attended by Mr Cox and an employee and Mr Connolly. Mr Connolly alleges that Mr Cox admitted liability but no agreement was made in relation to costs.
14. Thereafter Mr Cox had retracted his admission, sold the property and issued the final statement, which is what he was querying. Despite numerous letters Mr Cox refused to accept that the damage to Mr Connolly's flat was caused by the water leak and was pursuing him for the whole amount.
15. Mr Connolly's written statement makes no comment as to the dating of the final account and it is clear that his main issue of contention is the failure on the part of Mr Cox to accept liability and pay compensation for the water leak.


THE TRIBUNAL'S DETERMINATION

16. It is common ground between the parties that a leak occurred to the top floor flat on or about the 7th July 2007. It is also common ground that the ceiling of Mr Connolly's flat showed signs of damage around the same time. However on the papers submitted to the Tribunal it is not possible to establish beyond reasonable doubt that the leak from the third floor flat caused damage to Mr Connolly's flat. For the Tribunal to be persuaded of this link it would have expected to have seen evidence from a surveyor or similar person concluding that the damage to the flat was caused by water penetration emanating from the third floor flat. No such evidence is included in Mr Connolly's papers. Without this independent evidence the Tribunal is not able to conclude that the damage to Mr Connolly's flat was caused by water penetration from the flat above. The consequence of

this finding of fact is that the Tribunal must reject Mr Connolly's assertion that he is entitled to compensation by way of a reduction in service charge.

17. Mr Cox's evidence contained invoices supporting the amounts charged to the service charge account and the Tribunal is satisfied that the amounts claimed were in respect of work carried out by Mr Cox pursuant to his contractual obligations to repair the common parts as freeholder. The Tribunal is also satisfied that the amounts charged were reasonable and thus recoverable if and when properly demanded. However, the Tribunal is not satisfied that a proper demand has yet been made.
18. There is no provision in the lease for Mr Cox to collect his money early by serving an interim statement of account coinciding with his disposal of the freehold. By clause 1.6 of the lease the accounting period is defined to be a period commencing on the 1st January and ending on the 31st December in each year. The lease provides for annual accounts to be prepared to the 31st December in each year and for the leaseholder to pay any excess to the freeholder within 28 days upon service on the lessee of a certificate showing the excess payable. There is no basis in law to support Mr Cox's assertion that because the lease is silent regarding a transfer of service charge to a new owner of a freehold then it is permissible for the accounting period to be shortened to allow an outgoing freeholder to collect service charge accrued during his period of ownership part way through an accounting period.
19. Having regard to the provisions of the lease referred to above any further amount payable by Mr Connolly for the service charge year ending the 31st December 2008 will only become due when the certificate referred to above is served on Mr Connolly by the new freeholder. At that point it will be for Mr Cox to make arrangements with the new freeholder to receive reimbursement for any amounts of service charge which accrued during his period of ownership. Until these provisions have been complied with there is no obligation on the part of Mr Connolly to make any further payment to Mr Cox.

Chairman



R.T.A. Wilson

Dated 6th July 2009