



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

**Case Reference** : CHI/OOML/LIS/2014/0011

**Property** : 3a Church Close, Brighton, East Sussex BN1  
8HS

**Applicant** : Frobisher Development  
Company Ltd

**Respondents** : Mr Ian Furr  
Mrs Theresa Furr

**Type of Application** : Section 27A

**Tribunal Members** : Judge D Dovar  
Mr N I Robinson FRICS

**Date of Decision** : 5th August 2014

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**DECISION**

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1. This is a paper determination under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the TPR') in respect of the payability of service charges for the year ending 2013. Although the application is for the year end 2013, in its application form, the Applicant claims the sums of:
  - a. £2,136.73 for exterior redecorations for the period 25<sup>th</sup> December 2009 to 23<sup>rd</sup> June 2010; and
  - b. £2,136.73 for exterior redecorations for the period 24<sup>th</sup> June 2010 to 24<sup>th</sup> December 2010.
2. On 5<sup>th</sup> March 2014, the Tribunal gave directions which provided for the matter was to be dealt with on the papers unless either party objected in writing within 28 days of receipt of the directions. Neither party objected either within that timeframe.
3. The directions also provided for the Respondents to set out in schedule form each item in dispute and the reason for that dispute by 30<sup>th</sup> April 2014. The Applicant was directed to respond by 14<sup>th</sup> May 2014.
4. A telephone case management hearing was held on 17<sup>th</sup> June 2014 at which the Respondents confirmed that their evidence consisted of a without prejudice letter dated 25<sup>th</sup> April 2014. They also confirmed that their main concern was that sufficient reserves had not been built up in previous years to cover the cost of expenditure; no proper breakdown of the costs had been provided; and they hadn't approved the contractor and the work was of a poor standard. Both parties confirmed their agreement to a paper determination and the Respondents requested an inspection.
5. The Applicants relied on the witness statement of Mr Mee dated 13<sup>th</sup> May 2014.

6. The Tribunal inspected the Property on 2<sup>nd</sup> July 2014 accompanied by Mr Furr and for the Applicants, Mr Greil, Property Manager, and Ms Williams, trainee solicitor of Healys LLP. Numbers 3 and 4 Church Close are a pair of semi-detached houses, which at some stage in the past, have been converted into two self-contained flats each and for the purposes of maintenance and service charges are dealt with as a single building. Flat 3a comprises the upper part of the northern house with a rear external staircase giving access to its garden.
7. The Tribunal noted some defects at the rear of the property. The top rail of the external handrail was loose and the balustrade was not fully stable. Damage was noted on one of the window sills and there were evident problems with guttering. The Tribunal's attention was drawn to a section of cast iron downpipe on the north east (rear) corner of the building which was said to need replacing and the Tribunal also noted a missing drain cover on the first floor balcony. With regard to the front, the Tribunal noted the poor condition of the front path and there was a small area of defective pointing to the brickwork below the first floor landing window.

### **Issues**

8. On 9<sup>th</sup> June 2014, the Tribunal received the written representations of the Applicant. They identified three issues for determination:
  - a. Whether service charges of £3,968.94 arising out of the Major Works in April 2013 were payable;
  - b. Whether the administration charges claimed due to service charge arrears were payable; and
  - c. Whether the Respondents were entitled to withhold payment pending provision of accounts.
9. The Respondents did not respond to this document.

### **Major works**

10. The Tribunal were provided with the original specification for works drawn up when it was first intended to carry out the repairs in 2009/2010.
11. Although the application was for a total of £4,273.46, the actual cost of the works were less and therefore the Applicant only seeks a determination that £3,968.94 is payable in respect of the major works. The Tribunal does not know the reason for the reduction in amount, it appears that it could be because not all of the work was actually carried out; for instance the cast iron down pipe was not replaced (as referred to above).
12. On behalf of the Applicant, Mr Mee exhibits two statements of account. However whilst one refers to the amount of £3,968.94 the other states it is £4,121.20. The original amounts claimed in 2009/2010 were credited to the account on 28<sup>th</sup> March 2014 and the new amount was demanded on that date. Given that the Applicant has asked for £3,968.94, that is the sum that Tribunal will consider.
13. This makes sense of the apparent contradiction in the application form, in that although the original demands related to the year end 2009/2010 the sums actually claimed fall in the year end 2013.
14. The Respondents' letter of 25<sup>th</sup> April 2014, being the document provided by them in accordance with the Tribunal's directions, accepted that the works needed to be done and could be done under the provisions of the lease. The issue in dispute was whether the costs of the works should have been paid for out of contributions already made. Alternatively that the Applicant should have built up larger reserves over a longer period of time and not levied as an addition to the usual half yearly demands. Passing reference was made to the quality of the works in that letter, but no details were given.
15. In respect of the main issue taken by the Respondents, being the way in which the charges had been levied, the Tribunal's view is that the lease allows for this. Clause 19 of the lease is in wide terms and provides for

the Respondents to pay for 25% of the costs incurred by the Applicant in carrying out their obligations. The Tribunal considers that this clause permits the Applicant to recover sums it has expended. Further, clause 20 provides for an on account payment and for the setting up of a reserve. Therefore the Applicant was entitled to seek the costs in advance of the works under this clause. Clause 21 then provides for a balancing charge to be made if the interim demand was not sufficient. In this case too much was demanded by way of interim amount and that explains why a lesser sum is now pursued.

16. The Tribunal therefore does not consider that there is any basis for a challenge to the payability of the costs of the major works on the grounds that they should have been met by the reserves or that greater reserves should have been built up.
17. However, as referred to above, the Tribunal noted the poor quality of the works that had been carried out and considered whether any reduction should be made in accordance with section 19 of the Landlord and Tenant Act 1985. The Respondent had provided very little detail on this issue. The Applicant has not therefore been able to consider and comment on the points made at the inspection and the Tribunal took this into account when considering this issue. With the exception of the cast iron downpipe, none of the other defects identified above were actually in the specification. Therefore although there were issues with the Property, they did not fall within this determination. The Tribunal was only considering the cost of the works carried out in accordance with the specification. Further, whilst the damage to the sill and the problems with the guttering may have arisen in the course of the works, that is a matter that the Applicant should remedy at no cost to the Respondent, but again it is not a matter impacts on the cost of the works that have been carried out.
18. Furthermore, in the absence of a hearing, when questions could be asked of the parties in more detail, the Tribunal does not know why the contractor, having held his price for over two years, then reduced his

price by a further £1,732.00 plus VAT in the final invoice at the end of the contract. Something, or things, in the specification were actually removed or a reduction was negotiated for a reason.

19. For those reasons the Tribunal makes no deduction in the sum sought by the Applicant.

### **Administration charges**

#### *Legal Costs*

20. In his statement, Mr Mee claims a total of £234 as administration charges demanded between 7<sup>th</sup> March 2012 and 11<sup>th</sup> July 2013. Further by letters dated 14<sup>th</sup> November 2013 and 4<sup>th</sup> December 2013 a further £390 was claimed for legal expenses.
21. In their written submissions at paragraph 25, £234 is claimed in total for administration charges. The Tribunal therefore takes this sum as the sum claimed in this application, being the sums incurred in the period up to 11<sup>th</sup> July 2013.
22. The Applicant relies on paragraph 24 of the 6<sup>th</sup> Schedule in respect of administration charges. That provides that  
  
*'the Lessees shall pay all expenses (including solicitors costs and fees of any surveyor) incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding the forfeiture is avoided ...'.*
23. In order to rely on this clause, the Applicant must show that they intended to enforce the failure to pay by way of forfeiture.
24. There is no evidence that the Applicant considered or intended to forfeit as opposed to enforcing a determination in the County Court until before 14<sup>th</sup> November 2013. In fact, most of the evidence points the other way, for example in their letter of 25<sup>th</sup> April 2013, it was stated that proceedings would be begun to recover the balance. In the Tribunal's

view this is inconsistent with those sums being incurred incidental to the preparation and service of a section 146 notice.

25. It was not until their letter of 14<sup>th</sup> November 2013, that the Applicant expressed an intention to proceed by way of forfeiture because of the non-payment.

#### *Interest*

26. The Applicant also claims interest on the outstanding sums. Clause 21 provides for interest to be payable at the rate of 15% per annum if it is outstanding for more than 21 days after a demand has been made. Accordingly, the Tribunal considers that the interest claimed is recoverable. Further, at the time the interim demands were made, they were valid demands under the terms of the lease and so interest is payable on those amounts (being £4,273.46). The only interest calculation provided by the Applicant is in their letter of 4<sup>th</sup> December 2013, when they claim interest of £373.27 on the sum of £3,968 (not the £4,273.46). Given that the Applicant has claimed interest at the lesser amount, the Tribunal allows the interest claimed of £373.27 in full.

#### **Sections 21/22**

27. Section 21 of the Landlord and Tenant Act 1985 requires a summary to be provided on request. If a landlord fails to comply with this section, a tenant can withhold payment of service charges. However, the summary was provided by the Applicant and this is accepted by the Respondents in their letter of 25<sup>th</sup> April 2014. The Respondents complaint is that only basic information was provided, but what was provided was sufficient to comply with the section. Therefore there was no basis for withholding payment.
28. The Respondents further complain that they have not been afforded access to the underlying vouchers and invoices for the works. Section 22 permits an inspection of vouchers and invoices. The Applicant offered inspection during working hours; that was refused by the Respondents.

The Tribunal considers that the offer of inspection was sufficient to satisfy the section. In any event, unlike section 21, a failure to comply with section 22 does not prevent sums from being payable.

### **Costs**

29. The Applicant has made an application for costs under schedule 12; the Tribunal takes this as request under Rule 13 of the TPR on the grounds that the Respondent acted unreasonably in defending these proceedings. Whilst the Tribunal has not found that the Respondents main complaint had merit, it does not consider that it is deserving of a cost order, not least because it is conscious of some issues with the works that were eventually carried out.

### **Conclusion**

30. The Tribunal determines that the following sums are payable:
- a. For the year end December 2013, the sum of £3,968.94;
  - b. Interest of £373.27.

Judge D Dovar



## **Appeals**

1. 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.
2. 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.
3. 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 time or not to allow the application for permission to appeal to proceed.
4. 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.