



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

**Case Reference** : **CHI/00ML/LSC/2019/0017**

**Property** : **27A Old Shoreham Road  
Brighton  
BN1 5DQ**

**Applicant** : **Mr N Mitchell**

**Representative** : **In person**

**Respondent** : **Mike Stimpson**

**Representative** : **In person**

**Type of Application** : **Determination of service charges:  
Section 27A Landlord and Tenant Act 1985**

**Tribunal Member** : **Mr B H R Simms FRICS (Chairman)  
Mr N I Robinson FRICS  
(Surveyor Member)**

**Date of Inspection** : **16 May 2019**

**Date and Venue of  
Hearing** : **16 May 2019  
Havant Justice Centre**

**Date of Decision** : **25 May 2019**

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**DECISION & REASONS**

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## **SUMMARY OF DECISION**

1. If the Respondent complies with S.21B of the Landlord & Tenant Act 1985, as amended, the Applicant's share of the service charge for works to the property amounting to £2,344.89 is payable to the Respondent.
2. There is an application for an order under S.20C (tick box at Q.9) but neither party addressed the Tribunal on the matter at the hearing. Accordingly the Tribunal makes no determination.

## **THE APPLICATION & BACKGROUND**

3. The application dated 31 January 2019 seeks a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") of the Applicant's liability to pay a service charge demand of £2,674.84 for external works.
4. The Applicant is the long lessee of the First Floor Flat and the Respondent is the Freeholder of the building and occupier of the Ground Floor office premises.
5. Directions for conduct of the case were issued dated 20 February 2019. As there were some shortcomings in the documents presented Further Directions were issued dated 03 May 2019.
6. Various Documents and case bundles were provided and the Tribunal considered these documents and heard from both parties at the hearing.

## **LEASE**

7. The Tribunal had before it a copy of the lease for the first floor flat at 27 Old Shoreham Road, Brighton dated 11 March 1988 between the Respondent and Keith Branson. The term is 99 years from 01 April 1987 at an initial rent of £50.00 p.a increasing every 33 years.
8. The Tribunal has had regard to the lease but terms relevant to this determination are summarised as follows:
9. The demised premises are described as the first floor flat at the address and further, in paragraph (b) of the First Schedule to the lease as: "... the walls bounding the Demised Premises and the doors and door frames window frames fitted in such walls (other than the external surfaces of such doors or door frames and window frames) and the glass fitted in such window frames ...".
10. The Landlord is required to maintain and keep in good repair and condition parts of the property listed at clause 5.(4)(a), including the main structure and roof, common parts and the painting of the whole of the outside wood and iron work.
11. The Tenant covenants at 4.(1)(a) to: "Repair ... and keep the Demised Premises ... including so far as the same form part of or are within the Demised Premises all windows glass and doors (including the Entrance Door ...) ... in good and substantial repair and condition ...".

12. The lease requires the tenant to pay one half of the total expenditure set out in the Fifth Schedule subject to an annual contribution of £100.00. The service charge arrangements are detailed in the Fifth Schedule.
13. Clause 5. (5) lists all the recoverable costs and expenses which, together with the cost of managing agents and the cost of accountants and surveyors, make up the service Charge.
14. Firstly the Lessor or his agent estimate an amount to be collected on account as a fair and reasonable interim payment. This is collected by two equal instalments in advance on the 24 June and 25 December each year. At the end of each year, accounts are prepared and certified. If there is an excess of the interim charge collected then this balance is carried forward. If the Tenant has paid insufficient on account, any balance is payable within 28 days.

## **LAW AND JURISDICTION**

15. The tribunal has power under section 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.
16. The Tribunal's jurisdiction derives from the Act as amended, it can decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties.
17. S.18 defines the meaning of a service charge as being "*an amount payable by a tenant ... in addition to the rent – (a) which is payable directly or indirectly, for services, repairs, maintenance, or insurance or the landlord's costs of management and (b) the whole or part of which varies or may vary according to the relevant costs*".
18. S.19 limits the relevant costs to be taken into account in determining the amount of service charge only to the extent that they are reasonably incurred and only if the services or works are of a reasonable standard.
19. S.20 requires consultation, in accordance with regulations<sup>1</sup>, when the contribution to the service charge by any lessee for qualifying works exceeds the relevant amount. If the procedure is not followed the amount of any contribution to the service charge is limited to this relevant amount, currently for this type of work £250.00.
20. S.27A provides that a Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, the Tribunal may also determine the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable. These determinations can (with certain exceptions) be made for current or previous years and also for service charges payable in the future.

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<sup>1</sup> The Service Charges (Consultation Requirements) (England) Regulations 2003 S.I. of 2003 No. 1987

## **INSPECTION**

21. The Tribunal members inspected the exterior of the property prior to the hearing on 16 May 2019 in company with Mr Mitchell the Applicant. The Respondent was not represented as he was delayed by traffic although his secretary allowed the Tribunal members and the Applicant access for inspection of the rear yard area.
22. The Building is a traditional 19<sup>th</sup> century Brighton end-of-terrace corner property with accommodation on two floors built of brick with a pitched concrete tile roof. The exterior walls are painted and there is a mixture of timber and plastic doors and windows. The building is in good general condition although some minor wet rot was identified to the frame of the rear door and one ground floor window.

## **REPRESENTATIONS AND EVIDENCE**

23. Both parties provided written representations, supported by bundles of documents, and expanded on these at the hearing.
24. Mr Mitchell explained that he had received the Notice-of-Intention setting out the proposed works to redecorate the exterior of the property and undertake remedial work to the chimney stack dated 10 May 2017 and this had contained an invitation for observations and for him to nominate a contractor who could be approached to tender for the work. He had misunderstood the process and thought he had to approach a building contractor and get him to provide a written estimate for the work. He emailed Mr Stimpson asking for more details of the work. Because of the requirements set-out in the notes attached to the notice, he did not find a suitable contractor and so he didn't respond within the allowed 30 day time limit. He did not nominate a contractor or make any comments on the proposed work.
25. Mr Stimpson explained that it was his responsibility to obtain the estimates and all the Notice specified was that Mr Mitchell should nominate someone to provide an estimate. The guide to the type of contractor was provided in the notes attached so that the Landlord could be satisfied that the person instructed was suitably experienced and financially sound. No contractor nomination had been received. In response to Mr Mitchell's enquiry he had explained that a contractor would inspect the property having been given a list of the work required and reminded him that he had an opportunity to select a contractor.
26. The Tenant then received a letter dated 15 September 2017 with a list of contractors and their estimates with a request for comments. Mr Mitchell was suspicious of the tendering process and thought that one of the contractors, Mr Eddy was not even a builder but a French polisher. He made no comment to Mr Stimpson.
27. As Mr Stimpson heard nothing from the Tenant he proceeded to instruct Mike Stimpson Properties to proceed with the work in accordance with its estimate and the work was scheduled for September/October 2017.
28. On 03 October 2017 Mr Mitchell emailed Mr Stimpson to say that the work should not proceed as he had not had an opportunity to obtain estimates. By this time scaffolding had been erected and the work had commenced.

29. Mr Mitchell had heard from his tenant occupier worried about damage to the window cills. He produced photographs to the Tribunal showing areas of wet rot. Mr Mitchell has subsequently replaced the window frames in modern plastic material.
30. Mr Stimpson explained that the lease identified the window frames as being the repairing responsibility of the Lessee and any work to the window frames was specifically excluded from the schedule of work. Any work of this nature would be the Lessee's responsibility and at his cost so the redecoration work could not proceed until the rotten wood was repaired.
31. Mr Stimpson invoiced Mr Mitchell with a demand dated 30 November 2017 for the appropriate proportion of the cost of the work, as estimated, £2,344.89 (50% of £4,689.79). Following this Mr Mitchell asked Mr Stimpson for a breakdown of the costs as he felt the cost of the work was high. He had subsequently obtained advice from a painting firm that the job should have cost no more than £2,300. He offered to pay half of his liability which was declined.
32. The matter proceeded to the County Court as Mr Mitchell still refused to pay but the proceedings were not concluded. [It should be noted that the amount identified in the Application form of £2,674.84 is the amount claimed in Court and includes court costs and interest over which this Tribunal has no jurisdiction, the amount demanded as service charge is £2,344.89]. He continued to be concerned about the procedure that had been followed and even visited one of the contractors in July 2018 to check whether he was a builder and concluded that he wasn't. Later in 2018 and early 2019 he obtained estimates from Brighton Décor £1,830 including VAT, J D Decorators £2,300 and P & L Construction £1,200 plus scaffolding at £800.00.
33. Mr Stimpson had to point out that all the comments made and subsequent estimates produced were after the consultation period. Mr Mitchell had plenty of time to make his comments during the statutory consultation period but he did not. The estimates Mr Mitchell obtained followed an inspection by the contractors after the redecoration work had been completed and after the window frames had been replaced. Brighton Décor states that no woodwork requires redecoration and their estimate is confined to the masonry. Mr Stimpson is sceptical that a full inspection was made by these later contractors. He explained that access to the rear area, where most of the work was required, is obtained, only with permission, through his ground floor office and there hasn't been such an inspection.
34. Mike Stimpson Properties is a firm linked to the Landlord but it operates independently and has a professional estimator. He obtained an estimate from a firm that has no link to him, A A Eddy & Son, which is an organisation that Mr Stimpson has used for this type of work and is known to be reliable. In evidence he said that Mr Eddy started out as a French polisher but building and decorating work which are related trades.
35. The Landlord thinks that there was confusion about repairs to the window frames which always remained the Lessee's responsibility. Any repairs to the window frames were specifically excluded from the schedule of works and the estimates as it was always the expectation that Mr Mitchell would undertake the repairs or be responsible for the additional cost.

36. Mr Stimpson believes he has followed the required statutory procedure for estimates, he has arranged for the work to be completed to a proper standard at the estimated cost and he should be paid the demanded amount.

## CONSIDERATION

37. The Application is limited to the payability of the cost of redecoration and repair work for which the due proportion of £2,344.89 has been demanded.
38. The Landlord believes he has followed the correct procedure as required by the S.20 regulations and issued a Notice of Intention and followed this with a notice of estimates. This is correct in that the spirit of the legislation has been followed but there are errors in the documentation. The Initial Notice quotes the incorrect legislation but the accompanying letter is correct. It sets out details of the proposed works:” ... *Exterior painting of the front and rear elevations, together with any necessary remedial works to the main chimneystack of 27/27A Old Shoreham Road, Brighton.* ... “; it invites written observations within 30 days and quotes the end date of the consultation period; it also correctly invites the Tenant “... *to propose, within 30 days from the date of this Notice, the name and contact details of any person or company from whom we should attempt to obtain an estimate for carrying out the proposed works as described ...* “. On this basis the Tribunal determines that the Tenant had clear information regarding the process and the errors in the documents were not fatal to the procedure.
39. The fact that the Tenant chose to misunderstand the Notice and thought he had to obtain estimates himself is not a fault of the documentation. The notes accompanying the Notice may have misdirected Mr Mitchell but he had a full 30 days to make enquiries or comments. He chose not to make any comment on the proposed work or on the estimates received and chose not to nominate his own contractor. The Tribunal determines that the invitation to make a nomination or comments is clear and in accordance with the S.20 procedure.
40. Although Mr Mitchell believes that the cost of the work is excessive we have no reliable evidence that the original estimates were not properly obtained or are unreliable. The subsequent comments and estimates submitted by Mr Mitchell were obtained well after the consultation period following an inspection, if any, made after the work was completed and new windows installed. Accordingly the Tribunal rejects them as being of use as evidence of cost of the work undertaken.
41. At the time the work was carried Mr Mitchell had not understood his responsibilities under his lease for the repair of the window frames. The Tribunal confirms that the lease requires the long lessee to keep the Demised Premises which includes the window and door frames [see para 8. above] in good and substantial repair. Whilst Mr Stimpson had no obligation to do so, it could have been helpful if he had clearly explained the position to Mr Mitchell when the wet rot to the frames was discovered. However the original estimates clearly explain that work to the woodwork is excluded and Mr Mitchell had an opportunity to raise any questions during the consultation period but chose not to do so.

42. Mr Stimpson has acted reasonably and in accordance with the statute. No evidence has been produced to the Tribunal regarding any unsatisfactory nature of the work carried out and although there has been work undertaken since completion of the decorations the Tribunal did not see anything to particularly concern it.
43. The lease sets out a clear procedure for the estimation and collection of service charges. Mr Mitchell has not raised any objection to the process adopted by the Landlord but the Tribunal notes that it has not been followed to the letter. The Tribunal has a list of each year's expenditure from 2012 showing a credit balance carried forward each year including an amount of £61.22 carried forward to 2018. The maintenance fund following a payment by the Tenant in January 2018 of £500 stands at 30 June 2018 at £438.78. From this the Tribunal deduces that a single on account payment of £500.00 is collected each year and if expenditure exceeds this a further sum is demanded and paid in December of that year. Mr Mitchell has not disputed this account as part of his Application and it is included as an exhibit in his evidence. Mr Mitchell accepts that he is due to pay the correct amount determined.
44. The demand dated 30 November 2017 does not comply with the requirement of S.21B of the Act in that the demand was not accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges in the form and content made in regulations<sup>2</sup>. The Tenant may withhold payment of a service charge which has been demanded if this requirement is not complied with. Accordingly the Tribunal determines that this service charge is not payable unless or until the Landlord complies.

## **COSTS**

45. There is an application for an order under S.20C (tick box at Q.9) but neither party addressed the Tribunal on the matter at the hearing. Accordingly the Tribunal makes no determination.

## **DETERMINATION**

46. If the Respondent complies with S.21B of the Landlord & Tenant Act 1985, as amended, the Applicant's share of the service charge for works to the property amounting to £2,344.89 is payable to the Respondent.

**Mr B H R Simms FRICS (Chairman)**

Date 25 May 2019

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<sup>2</sup> The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 S.I of 2007 No. 1257

## **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.