

11448



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

Case Reference : CHI/29UN/LIS/2015/0001

Property : Flats 1 and 6
39 Spencer Square
Ramsgate
Kent
CT11 9LD

Applicant : Mr. Stephen Thomas

Representative : unrepresented

Respondent : Powell & Co. Property

Representative : Mr. Sean Powell

Type of Application : Liability to pay service charges
Section 27A Landlord and Tenant Act 1985
Limitation of Costs
Section 20C Landlord and Tenant Act
1985
Reimbursement of fees
Rule 13(2) of the Tribunal Procedure
(First-tier Tribunal)(Property Chamber)
Rules 2013
Costs

Tribunal Members : Judge R. Norman (Chairman)
Mr. R.A. Athow FRICS MIRPM

**Date and venue of
Hearing** : 18th June 2015
Margate

Date of Decision : 7th July 2015

DECISION

© CROWN COPYRIGHT 2015

Decision

1. The Tribunal makes the following determinations:

(a) Within 28 days, Mr. Stephen Thomas ("the Applicant") is to receive from Powell & Co. Property ("the Respondent"), or from Mr. Sean Powell on behalf of the Respondent, the sum of £5,256.68 made up as follows:

	£
Refund of service charges in respect of Flat 1, 39 Spencer Square:	2,470.84
Refund of service charges in respect of Flat 6, 39 Spencer Square:	2,470.84
Reimbursement of fees:	<u>315.00</u>
	5,256.68

(b) An order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act") that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

(c) The parties are to bear their own costs.

Background

2. The Applicant is the lessee of Flats 1 and 6, 39 Spencer Square, Ramsgate, Kent CT11 9LD (collectively referred to as "the subject properties") and the Respondent is the freeholder of 39 Spencer Square of which the subject properties form part. Powell & Co. Property Management Limited is the managing agent.

3. The application concerns service charges of £4,941.68 (£2,470.84 in respect of each of the Flats 1 and 6) paid for roof works.

4. Directions were issued, there was a Case Management Hearing and further directions were issued.

5. The Applicant was content for the application to be dealt with entirely on the basis of written representations and documents without the need for the parties to attend a hearing. However, as he was entitled to do, Mr. Powell on behalf of the Respondent requested a hearing and as a result the matter was dealt with at a hearing attended by the Applicant and Mr. Powell.

6. Correspondence and other documents were received from the parties from which the following appeared:

(a) The Applicant's case was that the service charges of £4,941.68 for roof works had been paid but the work had not been completed to a reasonable standard, the contractor had not been paid and those service charges should be refunded to the Applicant. There had been an application to the Leasehold Valuation Tribunal (Case No. CHI/29UN/LSC/2010/0081) concerning Flat 3, 39 Spencer Square in respect of a number of matters including the charge of £2,470.84 for roof works and it was noted in the Tribunal's determination

that after the application had been issued but before the hearing, Mr. Powell had agreed to credit the lessee of Flat 3 with that sum because the work had been carried out badly.

(b) The Respondent's case was that in respect of Flat 6 there had been a settlement agreement which included the sum of £2,470.84 and that therefore the matter could not be re-opened and the Applicant could not make a claim for that sum. As to Flat 1 the Respondent's case was that there were other proceedings outstanding in respect of that Flat and therefore the Tribunal should not make a decision until those proceedings had been concluded.

7. By letters dated 10th and 11th June 2015 Mr. Powell on behalf of the Respondent asked for the matter to be struck out. Copies of both letters are annexed to this decision.

Inspection

8. On 18th June 2015, before the hearing, the Tribunal attended 39 Spencer Square for the purpose of an inspection. From the information supplied to the Tribunal it was unlikely that an inspection would be required but it was right that the parties should be given the opportunity to point out to the Tribunal anything which they considered relevant. The Applicant and Mr. Powell attended for the inspection but neither of them wished to draw anything to the attention of the Tribunal and agreed that an inspection would be of no assistance.

Hearing and Reasons

9. The hearing was attended by the Applicant and Mr. Powell.

10. As Mr. Powell had applied for the application to be struck out that matter was dealt with as a preliminary issue.

11. The discretion to strike out is contained in Rule 9 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the relevant part of which provides as follows:

"...(3) The Tribunal may strike out the whole or a part of the proceedings or case if-

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding....”.

12. In order to decide whether or not to strike out the proceedings it was necessary to consider the contents of the letters dated 10th and 11th June 2015 from Mr. Powell and all the other documents received by the Tribunal, and to hear from the Applicant and from Mr. Powell on behalf of the Respondent.

13. At the hearing Mr. Powell made the following points:

(a) He referred to the Directions dated 20th March 2015, and in particular Direction 13 which required the Applicant by 10th April 2015 to send his statement of case to the Respondent. As that Direction had not been complied with Mr. Powell could not respond. He had not received a copy of the letter dated 8th April 2015 from the Applicant to the Tribunal. On 11th June 2015 he received documents but they could not be described as a bundle. Proof of payment had not been supplied. There had been no evidence. He had not had time to respond.

(b) As to Flat 6, there had been a settlement agreement. The Applicant was a party to it and cannot go behind it. The settlement agreement was full and final and should not be opened-up. Even if the Applicant was not listed as one of the parties he would have been party to all the facts and so consulted by the bank and its solicitors.

(c) As to Flat 1, there was a further dispute. It was not directly between the Applicant and the Respondent but it involved the freeholder who must give consent to anything.

(d) Time is valuable. Directions should be complied with. If the Applicant cannot be bothered then it is a waste of time. On 11th June 2015, Mr. Powell received what purported to be a bundle. It was sparse and lacking fundamental documents and virtually everything else.

14. The Applicant made the following points:

(a) He stated that he believed he had complied with the Directions by his letter dated 8th April 2015 to the Tribunal, which he had copied to Mr. Powell. In that letter he had covered each of the points.

(b) He stated that the works were not undertaken and that the contractor appointed was never paid or completed the works and that the matter had been contested by another lessee, Mr. Tasker, before a Leasehold Valuation Tribunal (Case No. CHI/29UN/LSC/2010/0081). That case concerned Flat 3 and the Tribunal has a copy of the decision. At paragraph 4 it is stated that: “Again, after the application had been issued but before the hearing the Landlord agreed to credit the applicant with the amount that he had been charged for roof works that had been carried out badly for which the applicant had been charged as part of the 2007/8 service charge. The amount of this credit is £2470.84.”

(c) The Applicant is aware of the settlement agreement but he was not a party to it and DLA Piper UK LLP, the solicitors representing the Bank of Ireland, were not the Applicant's solicitors. He had requested that some of the service charges should not be paid but they paid them to reach a settlement, for the bank to have security and to get the property registered. The Applicant was not a party to the agreement. The funds were just added to his mortgage and DLA Piper UK LLP suggested that the Applicant apply to the Leasehold Valuation Tribunal.

(d) The Applicant understood that, based on the previous case brought by Mr. Tasker, there was no longer any argument from Mr. Powell that a refund was due in respect of the works or that payment had been made in full for both Flat 1 and Flat 6 as this was confirmed at the Case Management Hearing.

(e) The Applicant stated that the Respondent sold the leasehold interest in the lower level of Flat 1 to a third party and Mr. Powell states that he has nothing to do with it so there is no current dispute with the Respondent in that respect. The Applicant's solicitor is pursuing settlement with the new owner, an insurance company and the solicitor who represented the Applicant in the purchase of Flat 1. As confirmed by Mr. Powell, the Respondent is not involved and the Applicant does not see why this present application cannot go ahead.

(f) Mr. Powell had been given many opportunities to get his thoughts together to deal with these matters but had refused.

15. With his letter dated 8th April 2015 the Applicant had included the following:

(a) A copy of a letter dated 21 February 2012 from the Respondent in which, in respect of Flat 6, it was stated that "You say in your letter that you were not responsible for the Section 20 Notice issued in 2007. It was agreed by DLA Piper on behalf of the Bank of Ireland that you were and so payment was made on your behalf by the bank."

(b) A copy of a letter dated 10 June 2014 from DLA Piper UK LLP, solicitors representing the Bank of Ireland, stating that in relation to the settlement agreement they were entitled to rely on the Respondent's confirmation as to the sums due and that if the Applicant chose to refute those figures then his remedy would be to challenge them via a Leasehold Valuation Tribunal.

(c) A copy of a statement dated June 2009 from Powell & Co Management which showed that in respect of Flat 1, payment for the roof works had been made in two instalments each of £1,235.41. The total was therefore £2,470.82 rather than £2,470.84 but it is clear that the payments relate to the roof works. The difference of 2p appears to be a clerical error and Mr. Powell did not challenge that the payments were in respect of the works with which this case is concerned.

(d) A copy of a letter dated 3 February 2012 from the Respondent in which it is stated that a lease of the basement was granted to Southern Counties and

that there is no dispute between the Applicant and the Respondent in respect of the property sold to the Applicant as Flat 1. It is suggested that the Applicant may have a dispute with Southern Counties or the Applicant's solicitors.

(e) A copy of a letter dated 20 January 2012 from Powell & Co. Management Limited stating that the Applicant is responsible for 1/6th of the cost of the work due under the Section 20 Notice for each flat and is responsible for paying his service charges in the usual way.

16. In reply, Mr. Powell stated that demands for payment of service charges for roof repairs in the sum of £2,470.84 for each flat had been made and he accepted that the Respondent had received payment in full from the Applicant in respect of Flat 1 and from the Bank of Ireland on behalf of the Applicant in respect of Flat 6 as part of the settlement agreement.

17. Mr. Powell accepted, as he had after Mr. Tasker had made his application, that the works for which the sums of £2,470.84 per flat had been charged had not been carried out properly. Further, Mr. Powell accepted that the Applicant was entitled to a refund of £2,470.84 in respect of Flat 1.

18. In the absence of the Applicant and Mr. Powell, the Tribunal considered all the documents which had been received and all that had been advanced at the hearing and made findings of fact on a balance of probabilities.

19. A copy of the settlement agreement has been supplied to the Tribunal and the parties are: The Governor and Company of the Bank of Ireland (1) Mr. Sean Powell (2) and Powell & Co. Management Limited (3). There had been a dispute concerning the identity of the true owner of Flat 6 and the parties agreed terms for the full and final settlement of the claim. The Applicant and two others were referred to in the agreement as borrowers and it appears that they had been granted mortgages by the Bank of Ireland. It was clear that the Applicant was not a party to that agreement. The Tribunal was satisfied that the settlement sum had included service charges which had been demanded and in reaching the settlement figure reliance had been placed on figures produced by Powell & Co. Management Limited.

20. On the evidence of Mr. Powell, the Applicant had not fully complied with the Directions. Mr. Powell argued that it would be unfair to proceed.

21. It had been necessary to look at the facts of this case in order to decide whether or not the application should be struck out.

22. It was clear that the issues in dispute when the application was made were very narrow and that the Applicant and Mr. Powell were well aware of those issues.

23. It was agreed that the service charges in question had been demanded, that the Respondent had received them, that the work had not been carried

out in a proper manner and that the lessees were entitled to a refund of those service charges.

24. At the hearing, the issues were narrowed even further because Mr. Powell accepted that the Applicant was entitled to a refund of £2,470.84 in respect of Flat 1 and stated that he would pay the Applicant that sum.

25. The only matter to be determined in respect of Flat 6 was whether the settlement agreement prevented the Applicant from obtaining a refund.

26. Mr. Powell, on behalf of the Respondent, needed to be provided with no more evidence by the Applicant in order to deal with the case and no injustice or unfairness would result from continuing with the case.

27. Although the Applicant had not fully complied with the Directions, the scope of the Application was so narrow and Mr. Powell knew from the making of the application everything which was involved. Indeed he had known for a number of years. He was not taken by surprise. The Tribunal was satisfied that there would be no injustice to the Respondent if this matter proceeded.

28. Consequently, the Tribunal was satisfied that the application should not be struck out and should proceed. This was announced to the Applicant and to Mr. Powell and the case proceeded.

29. The Applicant and Mr. Powell were asked if they had anything to add in respect of the sum of £2,470.84 being service charges paid in respect of Flat 6, the application for an order under Section 20C of the Act, the application for reimbursement of fees and costs.

30. The Applicant stated that he did not have a copy of any correspondence between DLA Piper UK LLP and Mr. Powell. He was not a party to the agreement.

31. Mr. Powell stated that if there was any dispute following the agreement then the Applicant should take that up with the bank and sort it out with the bank. The dispute had lasted several years and was long and drawn out. Mr. Powell's office had been in touch with DLA Piper UK LLP and they had a duty to be in touch with the Applicant. The Applicant said he had done that and referred to the letter dated 10 June 2014 in which the solicitors had stated that his remedy would be to challenge the service charges via a Leasehold Valuation Tribunal. Mr. Powell had convinced DLA Piper UK LLP that all the service charges were justified.

32. As to the application for an order under Section 20C of the Act, the Tribunal explained the effect of such an order and Mr. Powell stated that he had no intention of charging the costs to the service charges.

33. As to the application for reimbursement of fees (application fee £125 and hearing fee £190) and costs, the Applicant reminded the Tribunal that he had been content for a determination on the papers without a hearing but Mr. Powell had requested a hearing. He had taken time off work to attend the

hearing. Mr. Powell reminded the Tribunal that the Directions had not been complied with, there had been no preparation and no proper bundle and submitted that costs should not be awarded.

34. In relation to the applications in respect of service charges, an order under Section 20C of the Act, reimbursement of fees and costs, the Tribunal considered all the documents which had been received and all that had been advanced at the hearing and made findings of fact on a balance of probabilities.

35. The service charges were in respect of the year 2007/2008. At some time between Mr. Tasker making his application and the hearing of that application on 11th August 2011 Mr. Powell had accepted that the roof works for which the lessees had been charged £2,470.84 had been carried out badly and that a credit for that sum was due. Therefore that point was not in issue.

36. It was only at the hearing of this application on 18th June 2015 that Mr. Powell accepted that the payments of the service charges in dispute had been received in respect of Flat 1 from the Applicant direct and in respect of Flat 6 from the Bank of Ireland.

37. Mr. Powell also accepted that the Applicant be refunded the sum of 2,470.84 in respect of Flat 1. Time and money could have been saved if Mr. Powell had accepted that liability much earlier.

38. As to the sum of £2,470.84 in respect of Flat 6, the only matter remaining to be decided is whether the settlement agreement prevents the Applicant being entitled to a refund of that sum. Although the Applicant did not pay that sum direct, there is no dispute that it was paid by the Bank of Ireland and that it was added to the Applicant's mortgage so that he is paying it.

39. Mr. Powell did not dispute that the sum of £2,470.84 had been included in the calculation of service charges paid by the Bank of Ireland in accordance with the settlement agreement. Neither did he dispute that the calculation had been made on the basis of service charges said by Mr. Powell or by Powell & Co. Management Limited to be payable in respect of Flat 6. Exactly when that information was provided is not known but it is noteworthy that the agreement is dated 5 July 2011 and yet sometime before 11 August 2011 Mr. Powell accepted that the roof works had been carried out badly and that the sum of £2,470.84 was to be credited to Mr. Tasker in respect of Flat 3.

40. There is no dispute that the Applicant was not a party to that agreement and there is no evidence that he was bound by that agreement.

41. The Tribunal is satisfied that the Applicant should be refunded the sum of £2,470 paid in respect of Flat 6.

42. There is before us an application for an order under Section 20C of the Act. We find that it is just and equitable in the circumstances to make such an order because the Applicant was justified in bringing these proceedings. At

the hearing the proceedings resulted in Mr. Powell accepting that the Applicant be refunded the sum of £2,470.84 in respect of Flat 1 and the Applicant's application in respect of the other sum of £2,470.84 was successful. Mr. Powell stated at the hearing that he had no intention of charging any of the costs of these proceedings to the service charges but, for the avoidance of doubt, we make an order that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

43. Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 provides that the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor. For the same reasons that an order under Section 20C is made, we find that it is just and equitable in the circumstances to make an order that the Respondent reimburse the Applicant the application fee of £125 and the hearing fee of £190.

44. The Applicant made an application for costs on the basis that he had taken time off work to attend the hearing. However, the claim lacked detail and the Applicant had not fully complied with the Directions. We find that it is just and equitable that the parties each bear their own costs.

Appeals

45. 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.

46. 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.

47. 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.

48. 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.

Judge R. Norman (Chairman)

POWELL & CO PROPERTY

To TRI 11/6/15.

153 Praed Street
London
W2 1RL

T 02072623885
F 02072620227

SOUTHERN

11 JUN 2015

PROPERTY CHAMBER

Property Chamber
Southern Residential Property
First-tier Tribunal
Ground Floor
Magistrates Court and Tribunals Centre,
6 Market Avenue
Chichester
West Sussex
PO19 1YE

10th June 2015

Your Ref: CHI/29UN/LIS/2015/0001

Dear Sirs

Re; Landlord & Tenant Act 1985 – Section 27A(3)
PREMISES: Flats 1 & 6, 39 Spencer Square, Ramsgate, Kent, CT11 9LD

A hearing has been scheduled for this matter on the 18th June.

Unfortunately Mr Thomas has not complied with any of the Tribunals Directions so no case has been prepared.

As you are aware I believe that the settlement agreement which the Tribunal has already seen is a full and final and subsequently does not allow the matters brought to the Tribunal by the Applicant to be re-opened for Flat 6 at 39 Spencer Square. It is also important to mention that this agreement did involve the Applicant even if he is not listed as one of the parties of it as he would have been party to all the facts and so consulted by the bank and its solicitors.

There is another on going dispute over Flat 1 which is being dealt with by solicitors acting for the Applicant. He informed the Judge during the telephone hearing that they would soon be making an offer of settlement. I believe it makes sense for the dispute regarding the service charge of Flat 1 to form part of the offer as any settlement does require the consent of the freeholder. On this basis the matter can be concluded without having to trouble the precious time of the Tribunal.

Notwithstanding the above the Applicant has behaved unreasonably in this matter by not complying with the Tribunals Directions particularly as it is his Application and so I would like the Tribunal to determine that the matter be struck out and the Applicant be barred from making a similar Application on this property.

A copy of this letter has been sent to the Applicant.

I look forward to hearing from you further.

Yours faithfully,


Sean Powell.

copy to T&I
11/6/15

POWELL & COPROPERTY

153 Praed Street
London
W2 1RL

T 02072623885
F 02072620227

Property Chamber
Southern Residential Property
First-tier Tribunal
Ground Floor
Magistrates Court and Tribunals Centre,
6 Market Avenue
Chichester
West Sussex
PO19 1YE
also by fax on 0870 739 5900

11th June 2015

Your Ref: CHI/29UN/LIS/2015/0001

Dear Sirs

Re; Landlord & Tenant Act 1985 – Section 27A(3)
PREMISES: Flats 1 & 6, 39 Spencer Square, Ramsgate, Kent, CT11 9LD

Dear Sirs,

Following my letter of the 10th June 2015 I have received from the Applicant what purports to be a bundle.

I immediately telephoned the Tribunal who confirmed the hearing on the 18th June 2015 would still go ahead. Personally I am not sure how a hearing is possible when the most important Directions dated the 20th March 2015 have not been complied with as directed.

To be clear,

Direction 13 was not complied with as I have never been sent a statement of case or furnished with the relevant documents.

Direction 14 could not be complied with because 13 had not been.

Direction 15 also could not be complied with.

Direction 16 in my opinion has also not been complied with even though I received today the 11th June (1 week late) what purports to be a bundle. It is sparse and lacking fundamental documents and virtually everything else.

When I spoke to the case officer I made it clear due to work pressure I would not have the time to put together a statement of case based on the bundle received today before the hearing on the 18th June 2015. This means justice cannot be done.

I note from the the last sentence of the Applicants letter to the Tribunal of the 5th June 2015 that he says he received no response from me. Response to what? A non-existent statement of case. The bundle proves he did not send me a statement of case as it is not in there.

This situation is a waste of both the Tribunals and my time. I would really appreciate not having to take a day out of the office for no good reason. As this situation is wholly unfair and unjust I would like to ask the Tribunal to strike the matter out so the hearing can be vacated.

A copy of this letter has been sent to the Applicant.

I look forward to hearing from you.

Yours faithfully,


Sean Powell