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

**Case Reference:** CHI/24UL/PHC/2013/0011

**Property:** 60 Brookside Park, Hawley Lane,  
Farnborough, Hampshire GU14 9BA

**Applicant:** Mr Leslie James Hobson  
**Representative:**

**Respondent:** Farnborough Caravan Site Limited

**Representative:**

**Type of Application:** Section 4 Mobile Homes Act 1983

**Tribunal Members:** Judge M Tildesley OBE

**Date and venue of Hearing:** Paper Determination

**Date of Decision** 18 November 2013

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**DECISION**

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party requested an oral hearing no later than 28 days from the date of the directions. There was no request from a party for an oral hearing.

5. The Tribunal in reaching its determination considered the Application dated 30 July 2013 and accompanying documents, the Respondent's statement of case dated 5 September 2013, and the Applicant's reply dated 24 September 2013.

### **The Facts**

6. The Applicant was the owner of a mobile home and had the right to station the home on a pitch at 60 Brookside Park, Hawley Lane, Farnborough by virtue of assignment for consideration dated 14 August 1993 between Philip Michael Bond of the first part, the Respondent of the second part and the Applicant of the third part. The Applicant's right to station his home was governed by a written agreement which commenced on a date unknown in September 1981 and made between Mr N C Jones, the occupier, and the Respondent.

7. On 24 September 2012 the Applicant wrote to the Respondent regarding a letter dated April 2012 which stated that the Respondent had agreed to pay 10.13pence per unit for electricity for a period of two years. The Applicant said that he would not pay this amount until he was provided with an original invoice showing that the Respondent had actually paid the same amount. The Applicant also pointed out that his fellow residents had received a letter in which the Respondent admitted that it had overcharged for electricity during the period 10 March 2007 to 23 June 2008. The Respondent undertook to adjust the bills for this period and credit the residents with the appropriate amounts.

8. On 1 October 2012 the Respondent replied to the Applicant that there was no requirement under paragraph 22(b) of schedule 1 of the 1983 Act to provide original documents to substantiate the new electricity charges. Instead the Respondent enclosed a copy of the charges from the utility company website, which would also be displayed on the Park notice board. The Respondent stated that it decided to await the Applicant's release from prison before providing him with the adjustment to the electricity charges. The Respondent advised the Applicant that the total credit due to him was £195.97 which less the account due of £17.66 gave a remaining balance of £178.31.

9. On 4 October 2012 the Tribunal released its decision on the Respondent's application for an increase in fees for the pitches 15, 38, 50 and 60 Brookside Park<sup>3</sup>. The Tribunal determined that with effect from the 1 January 2012 the pitch fees should be increased by 5.4 per cent.

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<sup>3</sup> The Applicant's pitch was 60 Brookside Park.

10. After receipt of the Tribunal decision the Applicant arranged to increase his standing order payment for the pitch fee from December 2012 which had the effect of paying off his pitch fee arrears in full and meeting the increased pitch fee from that date.

11. The Applicant's bank statements' extracts showed that the value of the standing order to the Respondent was £148.84 on 1 November 2012 which increased to £237.40 in December 2012, and then reverted to the new figure of £160.84.

12. On 16 November 2012 the Respondent wrote to the Applicant advising him of the increase in the pitch fee to £144.17 from 1 January 2012 which meant that the Applicant owed the Respondent £81.29 for the period 1 January to 1 November 2012. The Respondent informed the Applicant that it had deducted the amount owed of £81.29 from the credit given for the overpaid electricity charges which left a credit remaining of £97.02 on the Applicant's electricity account.

13. The Applicant did not query or challenge the Respondent's letter because he assumed that the Respondent would spot the increased pitch fee in December 2012, and make the corresponding re-adjustment to the electricity account.

14. After 3 December 2012 the Applicant then received three consecutive electricity invoices dated 5 December 2012, 5 March 2013 and 4 June 2013 which failed to show the correct credit adjustment to the electricity account.

15. On the 11 June 2013 the Applicant wrote to the Respondent complaining that the electricity charges for the third consecutive period had been incorrectly calculated. The Applicant pointed out that his patience was now exhausted and demanded that a correct electricity invoice be sent to him forthwith.

16. On 26 June 2013 the Respondent replied stating that the Applicant was required to pay the new pitch fee within 28 days of the Tribunal's decision which he failed to do. Also the Applicant did not inform the Respondent of what he intended to do about the increased pitch fees. The Respondent stated that it would make no further comment on the Applicant's letter. Further the Respondent would re-apply the overpayment of £81.29 to his electricity account and adjust the September 2013 electricity invoice accordingly.

17. The Applicant stated that he did not receive the Respondent's letter of 26 June 2013. In those circumstances the Applicant wrote again on 13 July 2013 to the Respondent stating that he had not received a reply to his letter of 11 June 2013 and that he was now requiring the Respondent to provide documentary evidence in support of the figures shown in the three electricity invoices covering the period 6 September 2012 to 4 June 2013. The Applicant pointed out that he was entitled to this documentary evidence free of charge in accordance with paragraph 25(b) of the 2006 amendment to the 1983 Act. The

Applicant gave the Respondent two weeks to comply with his request otherwise he would take the matter further.

18. On 23 July 2013 the Respondent advised the Applicant that it had replied to his letter dated 11 June 2013 on the 26 June 2013. The Respondent referred to its letter of 16 November 2012 where it advised the Applicant of the new pitch fee and its intention to collect the arrears from the credit due to the Applicant from the overpaid electricity charges. In view of the information provided by the Applicant the Respondent stated that it would add the credit back of £81.29 to the Applicant's electricity account which meant that the last bill issued for electricity to 4 June 2013 would be negated and that the remaining credit would be brought forward to the next electricity bill. Finally the Respondent pointed out that it had already provided the Applicant with electricity bills for each quarter from 6 September 2012 to 4 June 2013, and that the charges required of residents were reflected in the formal copy of the invoice from the utility company which was also posted on the Park notice board.

19. On 30 July 2013 the Applicant challenged the Respondent's assertions and stated that he had not received the correct electricity invoices for the period 6 September 2012 to 4 June 2013. The Applicant said that he would proceed to refer the matter to the appropriate authorities within the next few days. The Application to the Tribunal was received the following day 31 July 2013

20. On 12 September 2013 the Respondent supplied the Tribunal with a copy of the revised invoice for the Applicant's electricity charges. The September invoice showed the charges for each quarter from 9 March 2012 to 10 September 2013, set against a credit of £195.97 which left an amount of £29.61 to pay.

## **Reasons**

21. This application is brought under section 4 of the 1983 Act which enables the Tribunal to determine questions arising under the Act or any agreement to which the Act applies.

22. The 1983 Act applies to any agreement under which a person (such as the Applicant) is entitled to station a mobile home on land forming part of a protected site and to occupy it as his only or main residence. The 1983 Act provides a degree of security of tenure to occupiers of mobile homes by implying various protective terms into licence agreements falling within the ambit of its provisions.

23. The scope of the Tribunal's jurisdiction under section 4 is potentially wide. It enables the Tribunal to make declarations on the respective rights of the parties under the 1983 Act and in effect constitutes an authoritative statement on the parties' legal positions under that Act. Section 4 as such does not give the Tribunal power to implement the declaration. This power is found elsewhere in section 230 of the Housing Act 2004 which permits the Tribunal

by order to give directions for securing the just, expeditious and economical disposal of the proceedings. Section 230 (5A) allows the Tribunal to make specific directions in respect of Applications involving the 1983 Act.

24. Although the general discretion given to the Tribunal under section 4 of the 1983 Act is wide, I consider that the question to be determined must relate to either a provision under the 1983 Act or a term of the agreement between the site owner and the occupier of the mobile home. Section 4, in my view, does not give the Tribunal carte blanche in respect of every aspect of the relationship between the site owner and the occupier of the mobile home.

25. This Application engaged two specific terms which were implied in the agreement between the Applicant and the Respondent.

26. The first term involved when the Applicant (the occupier) should be treated as being in arrears with the payment of the pitch fee. Paragraph 17(10) chapter 2 part 1 of schedule 1 of the 1983 Act provides that the occupier shall not be treated as being in arrears until the 28<sup>th</sup> day after the date of the Tribunal's order determining the amount of the new pitch fee.

27. The second concerned paragraph 22(b) which required the Respondent if requested by the Applicant to provide (free of charge) documentary evidence in support and explanation of any charges for electricity payable by the Applicant to the Respondent.

28. The Tribunal finds the following facts:

(1) The Applicant was liable to pay the new pitch fee from the date of the Tribunal order which was 4 October 2012.

(2) The Applicant did not pay the new pitch fee and the amount owing from 1 January 2012 until 3 December 2012.

(3) The Appellant was in arrears with the payment of his pitch fee on the 28<sup>th</sup> day after the 4 October 2012 which was the 1 November 2012.

(4) On 16 November 2012 the Respondent informed the Applicant of the amount owing under the pitch fee and of its intention to recover the arrears by setting them off the credit owed to the Applicant for the overpayment in electricity charges.

(5) The Applicant did not advise the Respondent of his intention to include the arrears in the December standing order, and made no response to the Respondent's letter of 16 November 2012. He assumed that the Respondent would spot the increased payment.

(6) The Respondent issued the Applicant with invoices for electricity for the periods 6 September 2012 to 5 December 2012; 6 December 2012 to 5 March 2013, and 6 March 2013 to 4 June 2013. The invoices recorded details of the readings, the units used, and

the rate per unit. The invoices stated the amount due, the brought forward credit and the amount to pay. In view of the credit brought forward the Applicant was not required to pay an amount for the electricity used until the invoice dated 4 June 2013.

(7) The invoices recorded the credit balance in respect of electricity charges as set out in the Respondent's letter dated 16 November 2012. The Respondent did not adjust the credit balance following the Applicant's payment on 3 December 2012.

(8) The Applicant did not challenge the correctness of the amount of electricity used or the rate per unit of electricity. Further the Applicant did not appear to dispute that the Respondent had provided him with the necessary evidence from the utility company to substantiate the rate per unit. The Tribunal understands that this information from the utility company was also displayed on the Parks notice board.

(9) The Applicant did not point out the error with the credit balance in his electricity account to the Respondent until 11 June 2013. In that letter the Applicant requested the Respondent to send a correct electricity invoice forthwith.

(10) The Tribunal is satisfied that the Respondent replied on 26 June 2013 to the Applicant's letter of 11 June 2013 and that the Respondent agreed to reinstate the credit balance due to the Applicant which would be reflected in the September invoice for electricity.

(11) On 13 July 2013 the Applicant sent another letter to the Respondent stating that no reply had been received to his letter of 11 June 2013. In this letter the Applicant requested the Respondent to provide him with documentary evidence in support and explanation of the figures shown in the three electricity invoices covering the period from 6 September 2012 to 4 June 2013.

(12) The Respondent replied on 23 July 2013 repeating the facts as set out in its letter of 26 June 2013, and giving its assurance that the credit balance of £81.29 would be re-instated and reflected in the September electricity invoice.

(13) On 30 July 2013 the Applicant expressed his dissatisfaction with the Respondent's response and as a result instituted proceedings before the Tribunal on the same day.

(14) On the 12 September 2013 the Respondent provided the Tribunal with a copy of the electricity invoice for September 2013 which gave details of the charges for electricity from 9 March 2012 and showed a credit balance of £195.97. The Applicant did not challenge the accuracy of the September electricity invoice.

29. The Tribunal gives the following responses to the questions asked:

***(1) Whether the Respondent was justified in using credit for electricity charges to defray pitch fee charges?***

The Applicant was in arrears with the payment of his pitch fee from 1 November 2012. The Tribunal finds that the Respondent was entitled to take action to recover those arrears after the 1 November 2012. On the 16 November 2012 the Respondent chose to set off the arrears against the credit due to the Appellant for overpayments for electricity. The legitimacy of the set-off is probably outside the Tribunal's remit under section 4 of the 1983 Act. On the facts presented the Tribunal, however, considers that the Respondent's action met the legal requirements for set off, namely, that the amount of the respective debts were ascertainable with certainty when it took the action. At the time the Applicant did not challenge the Respondent's right to set off the debt due against the credit owed.

***(2) Whether the Respondent should have continued doing so after the Applicant paid the outstanding pitch fees on 3 December 2012?***

The Respondent had already set off the debt before the 3 December 2012, and as such the Respondent did not continue to defray electricity charges against the outstanding debt for pitch fees. The Respondent's error was its failure to restore the credit balance in the Applicant's electricity account after he cleared the pitch fee arrears with his standing order in December 2012. The Tribunal, however, is satisfied that the Respondent's error was inadvertent. The Applicant chose not to inform the Respondent about his intention to clear the pitch fee arrears and the incorrect credit balance for electricity charges until 11 June 2013. The Applicant offered no plausible explanation why he waited until 11 June 2013 before informing the Respondent of the errors. After being informed of the error by the Applicant the Respondent took the appropriate action of restoring the credit balance in the Applicant's electricity account.

***(3) Whether the Respondent should have sent the Applicant correct electricity invoices when he first requested the Respondent to do so on 11 June 2013?***

The Tribunal finds the Respondent's response of restoring the credit balance which was reflected in the September 2013 invoice for electricity charges reasonable and appropriate.

***(4) Whether the Respondent should have sent the Applicant supporting/explanatory documentation in respect of electricity invoices when the Applicant asked the Respondent on 13 July 2013.***

The Tribunal considers that the purpose of this implied term is to prevent the site owner profiteering from electricity charges. The Applicant did not challenge the unit rate charged for electricity given by the Respondent. Further the Respondent

provided the Applicant with the requisite information about the unit rate from the utility company. Finally the Applicant appeared to accept the Respondent's calculation of the credit due to him from the past overpayment in electricity charges. Thus the Applicant's contention was restricted solely to whether the Respondent should have re-issued him with the invoices for the three periods before 4 June 2013 showing the correct credit balance carried forward. As indicated above, the Tribunal found the Respondent's response of restoring the credit balance which was reflected in the September 2013 invoice for electricity charges reasonable and appropriate. The Tribunal also noted that the September 2013 invoice contained details of the electricity charges for all the periods from 9 March 2012 and of the adjusted credit balance. In his representations to the Tribunal the Applicant did not challenge the accuracy of the September electricity invoice.

***(5) Whether the Respondent was in violation of paragraph 22(b) of the 2006 Amendment to the 1983 Act in failing to comply with the Applicant's request on 13 July 2013?***

No - for the reasons given in 4 above.

**Decision**

30. In view of the answers given to the questions posed by the Applicant, the Tribunal declines to make the orders requested by the Applicant in respect of electricity invoices and fee reimbursement. Overall the Tribunal finds in this instance the Respondent's actions reasonable and consistent with the implied terms in the agreement.

**JUDGE TILDESLEY OBE**

**RIGHTS OF APPEAL**

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