

12098



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

**Case Reference** : **MAN/36UD/LSC/2016/0068**

**Property** : **Top Flat, 4 Dragon Parade, Harrogate,  
HG1 5DA**

**Applicant** : **G & O PROPERTIES (LONDON) LIMITED**

**Respondents** : **Mr David Bannister and Ms Diane Clare  
Taylor**

**Type of  
Application** : **Landlord and Tenant Act 1985, section 27A**

**Tribunal  
Members** : **A M Davies LLB  
J Jacobs, MRICS**

**Date of Decision** : **21 December 2016**

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**DECISION**

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## DECISION

1. The audit and accountancy fees, insurance charges, repair and maintenance costs, sinking fund contributions and professional/management fees charged to the Respondents as service charges for the years ending 30 June 2011, 2012, 2013, 2014, 2015 and estimated for the year ending 30 June 2016 are payable by the Respondents as claimed.

## REASONS

### BACKGROUND

1. The Respondents have occupied the Top Flat at 4 Dragon Parade, Harrogate ("the Flat") since purchasing the leasehold interest in 1991. The Applicants purchased the freehold of 4 Dragon Parade ("the Building") prior to 2010 and their agents Urbanpoint Property Management Limited ("Urbanpoint") have managed the property since 2004.
2. The Respondents have not paid service charges since prior to 2010 and the Applicant therefore applied to this Tribunal on 30 August 2016 for a determination as to whether those charges identified in the application had been reasonably incurred and were reasonable in amount.
3. Neither party requested a hearing. Written information and supporting documents were provided to the Tribunal by each party. The Tribunal inspected the common parts of the Building and two rooms of the Flat on 21 December 2016 in the presence of Mr Luke for Urbanpoint and Mr Bannister, and made this decision later on the same day.

### THE LAW

4. The application is made under the Landlord and Tenant Act 1985 ("the Act"). Section 18(1) of the Act defines a service charge as "*an amount payable by a tenant of a dwelling as part of or in addition to the rent –*  
(a) *which is payable, directly or indirectly, for services, repairs, maintenance, improvements 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.....*  
(3) *For this purpose –*  
(a) *"costs" includes overheads....."*

5. Section 19 of the Act limits service charges as follows:  
*“(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*  
*(a) only to the extent that they are reasonably incurred, and*  
*(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*  
*and the amount payable shall be limited accordingly.”*
6. Under section 27A (1) of the Act, the Tribunal may, on application, determine whether a service charge is payable, and, if it is, (among other things) the amount which is payable.

#### THE LEASE

7. In their written submissions, the Respondents denied that they had entered into a lease with the freeholders in 1991 or at any other time, and consequently denied any liability to pay service charges. They claimed that on their purchase they had agreed with the freeholder that they would pay £10 per year ground rent “which would also cover the cost for the lighting on the communal stairs. We agreed that we would not have to pay any other service charges.” Further, they said that they had never received a copy of any lease.
8. The Tribunal has seen a copy of a lease dated 11 January 1991 apparently signed by the Respondents, and also a signed “Deed of Rectification” dated 2004 in which the original division of service charges between three flats was amended to a one quarter contribution from each of four flats in the Building, the basement having been converted for residential use.
9. The Tribunal is satisfied that the Respondents entered into the lease and the Deed of Rectification copied in the application papers.

10. The lease creates a term of 99 years from 1 January 1991 for an annual ground rent of £50. The leaseholders agree to pay the rent and (following the Deed of Rectification) a one quarter contribution of the costs incurred by the lessor of the items listed in the Fourth Schedule. These items include

maintaining, repairing, redecorating and renewing the structure and common parts of the Building;

insuring the Building;

the fees and disbursements paid to any managing agents appointed by the Lessor; and

“all other expenses (if any) incurred by the Lessor in and about the maintenance and proper and convenient management and running of the {building] which the Lessor considers to be reasonably necessary”.

In addition, the leaseholder was to pay into a reserve fund such sum as the Lessor reasonably anticipated would be required to cover future expenditure.

11. The cost of cleaning and lighting the common entrance and stairway is to be divided between the flats on the ground and first floors only, and does not require a contribution by the Respondents as owners of the Flat.

12. There is no provision in the lease for the addition of interest, and no specific reference to administration charges.

## INSPECTION

13. On inspection the Tribunal found the property to be a Victorian stone building under a slate roof, with a flat roof extension to the rear at ground level only. There is a small entrance yard to the front and a yard at the rear, now largely occupied by the steps affording entrance to the basement flat.

14. Internally, there is a small entrance lobby with access to the ground floor flat, and a staircase to the first floor where a landing gives access to the first floor flat and to the Respondents' Flat. The stairs to the second floor therefore form part of the Flat, which further comprises a landing, living room, bedroom, kitchen and bathroom.

15. The Respondents showed the Tribunal areas in the living room and bedroom where they said there had been leaks from the roof since a recent storm. There is also an area of damaged plaster in the bedroom which the Respondents state dates from a period of some 8 years (from November 2004 to May 2013) when the roof leaked and was not repaired by the Lessor.

## STATEMENTS OF CASE

16. Although the service charge invoices for the 6 years referred to in the application include interest payments and administration charges, these were not included in the service charges for which a determination was requested, and no decision is made regarding them.
17. The papers supplied to the Tribunal include documents evidencing a consultation during 2012 under section 20 of the Act regarding roof repairs. The repairs were carried out in 2013.
18. The Respondents have not queried the amount of any of the service charges and have not indicated that they consider them either unreasonably incurred or unreasonable in amount, save that they claim that if the roof repairs had been carried out promptly after the storm damage in November 2004 the cost would have been lower than the roofer's quotation obtained in 2012. The Respondents have not put forward any alternative figures.

## CONCLUSION

19. Since the Respondents were in persistent breach of their leasehold obligations by failing to pay any service charges, the Applicant's hesitation in incurring the substantial cost of roof repairs is understandable.
20. The service charges listed by the Applicant in the application are all found to be reasonably incurred and a one quarter contribution is payable by the Respondents.