

**SOUTHERN RENT ASSESSMENT PANEL  
& LEASEHOLD VALUATION TRIBUNAL**

**THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002  
SECTION 168(4) AND THE LANDLORD AND TENANT ACT 1985  
SECTION 27A**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**Case No:** CHI/29UN/LBC/2008/0017

**Property:** Rear Ground Floor Flat  
39 Spencer Square  
Ramsgate  
Kent  
CT11 9LD

**Applicant:** Mr. S. Powell

**Respondent:** Mr. P. Goubel

**Dates of Hearing:** 17th December 2008  
2nd March 2009

**Members of the Tribunal:** Mr. R. Norman (Chairman)  
Mr. R. Athow FRICS MIRPM  
Ms L. Farrier

**Date decision Issued:**

**RE: REAR GROUND FLOOR FLAT, 39 SPENCER SQUARE, RAMSGATE, KENT,  
CT11 9LD**

**Background**

1. The Rear Ground Floor Flat, 39 Spencer Square, Ramsgate, Kent CT11 9LD ("the Flat ") is the subject property. There are two applications before the Tribunal. The first is under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") and the second is under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). Both applications have been made by Mr. S. Powell ("the Applicant") who is the freeholder of 39 Spencer Square including the Flat. Mr. P. Goubel ("the Respondent") is the lessee of the Flat.
2. The application under Section 168(4) of the 2002 Act is for a determination that a breach of a covenant or condition in the lease in respect of the Flat has occurred so that Section 168 (2)

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of the 2002 Act can be satisfied and the Applicant may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease.

3. The application under Section 27A of the 1985 Act is for a determination of liability to pay service charges.

4. A copy of the Deed of Surrender and Regrant, a copy of the lease of the Flat, a statement and correspondence were provided by the Applicant before 17th December 2008 and were considered by the Tribunal. The Clerk to the Tribunal has written to the Respondent at 104 Seymour Place London W1H 1NG which is the address supplied by the Applicant and is the only address which the Tribunal has for the Respondent but nothing at all has been received from him.

5. The Applicant's case as set out in the applications and written evidence is that the Respondent is in breach of his covenant to pay service charges in that he has not paid any service charges and as at the 24th October 2008 owed a total of £3,062. However, the Applicant stated that in the light of the passage of time he was prepared to waive part of that sum and claimed £2,709.80.

### **Inspection**

6. On 17th December 2008 the Tribunal inspected the exterior of 39 Spencer Square. It appeared to us that recently work had been carried out to the roof. With the assistance of a representative of the Applicant who attended the inspection we saw the hall and staircase inside the front of the building. The Applicant's representative told us that the Flat has its own entrance at the rear of 39 Spencer Square and he showed this to us. Neither the Respondent nor anybody on his behalf attended the inspection. The Applicant was notified of the Tribunal's intention to inspect the Flat but in a letter dated 24th October 2008 stated that the Flat was tenanted and that an inspection would cause too much disruption to the tenants.

### **The Hearing 17th December 2008**

7. The hearing was attended by the Applicant and by Mr. Michael Lee from Powell & Co. Management. Neither the Respondent nor anybody on his behalf attended the hearing.

8. At the hearing the Applicant produced copies of the following documents which he confirmed had been sent to the Respondent:

(a) Notices served in connection with the consultation procedure under Section 20 of the 1985 Act and estimates.

(b) Vouchers in support of the amounts claimed in the service charges in respect of drain blockage, fire alarm and roof works.

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(a) Notices served in connection with the consultation procedure under Section 20 of the 1985 Act and estimates.

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9. We were satisfied that the Section 20 consultation procedure had been complied with and that the sums charged for the roof works and in respect of drain blockage and fire alarm had been reasonably incurred.

10. We were also satisfied that demands had been sent to the Respondent in respect of service charges but those demands were not in the form required by the 1985 Act as amended from 1st October 2007 and the consequence of that is that the Respondent would be entitled to withhold payment.

11. We decided that the justice of the situation would be met by not reaching a final conclusion on the 17th December 2008 but by giving the Applicant the opportunity of sending to the Respondent service charge demands in the form now required and by directing that the Applicant send to the Tribunal copies of those demands together with copies of the insurance documentation in respect of the property, the certified accounts for the last financial year and invoices or other documentation in respect of the cleaning at the property. On receipt of those documents we would then consider them and reach a decision. We announced our intention that such further consideration would be carried out by the Tribunal without the attendance of the parties. The Applicant and Mr. Lee agreed to this. They did not wish to attend any further hearings and wanted the matter to be concluded as soon as possible. The Clerk to the Tribunal sent a letter to the Respondent informing him of the Tribunal's intention and asking that if he had any observations to make about that procedure or about any other contents of that letter to let the Clerk have such observations in writing by 14th January 2009. No reply has been received from the Respondent.

12. By the 14th January 2009 no further evidence had been received from the Applicant and he was therefore telephoned by the Clerk to find out if documents had been sent but had perhaps been lost in the post. The Applicant had not sent any further evidence. However following that telephone call he then did so and the Tribunal received the following:

(a) A document headed "SERVICE CHARGE Summary of Tenants' Rights and Obligations". We noted that the address at the head of this document is 153 Praed Street London W2 1RL.

(b) Service charge statement dated 20th December 2008 in respect of the period 29th September 2007 - 25th March 2008 showing a total of £1,274.39. This is a copy of the service charge statement reminder dated 16th April 2008 previously provided and the address at the head of this document is the address of Powell & Co. Management, Unit 10, Beaconsfield Studios 25 Ditchling Rise Brighton BN1 4QL.

(c) Service charge statement dated 20th December 2008 in respect of the period 25th March 2008 - 29th September 2008 showing a total of £320.03. This is a copy of the service charge statement dated 2nd October 2008 previously provided and the address at the head of this document is the Praed Street address.

(d) A final demand dated 20th December 2008 in respect of service charges for 21st June to 29th September 2007 showing a total of £98.88. This is a copy of the final demand dated 5th

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(e) An undated service charge statement for the period 21st June to 29th September 2007 showing a total of £98.88. The address at the head of this document is the Beaconsfield Studios address. The Applicant had previously provided a copy of this document.

(f) A statement of income and expenditure for the year ended 30th September 2008 dated 21st January 2009 prepared without audit by a firm of Chartered Accountants. Had the Respondent requested a written summary of the costs incurred as provided for in Section 21 of the 1985 Act then this statement would not have been sufficient as it does not comply with Section 21(6). We had requested the statement in the hope that it would clarify matters but the statement produced was not helpful.

(g) A Section 20 Notice of Intention to Carry Out Works dated 21st March 2007 in respect of works to the roof. There is a reference to an attached schedule of works but the documents attached are two estimates. One is dated 14th August 2007 and the other is dated 4th September 2007 and therefore neither could have been enclosed with the Notice dated 21st March 2007. However we were satisfied by the documents produced at the hearing on 17th December 2008 that the Section 20 procedure had been complied with.

### **Determination**

13. On 2nd March 2009 the Tribunal reconvened to consider all the documents now produced by the Applicant.

14. On the basis of the documents produced before the hearing on 17th December 2008 we did not have sufficient evidence to determine that there had been a breach of covenant or whether or not service charges had been reasonably incurred or demanded in accordance with the law or to quantify the amount of service charges which were owed. On 17th December 2008 during the hearing further evidence was produced but we still did not have sufficient evidence to make final determinations in respect of those matters. We gave the Applicant the opportunity to serve demands which complied with the 1985 Act and to produce further evidence. We informed him of what was required and he stated that he would be able to produce the evidence but the documents he produced fell short of that which we had requested. There was no evidence as to insurance or cleaning and the certified accounts for the last financial year were not audited and did not assist us.

15. As a result of considering the evidence which was produced to us we found that we were satisfied on a balance of probabilities:

(a) That there had now been a demand made for service charges which complied with Section 21B of the 1985 Act.

(b) That no payment had been made by the Respondent in respect of that demand.

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15. As a result of considering the evidence which was produced to us we found that we were satisfied on a balance of probabilities:

(a) That there had now been a demand made for service charges which complied with Section 21B of the 1985 Act.

(b) That no payment had been made by the Respondent in respect of that demand.



**(c) That the amount owed by the Respondent exceeded £350, the prescribed sum referred to in Section 167 of the 2002 Act and Regulations made thereunder, but on the basis of the evidence produced to us we are unable to quantify the exact amount.**

**(d) That Section 168 (2) of the 2002 Act is satisfied and the Applicant may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease.**

A handwritten signature in black ink, appearing to read 'R. Norman', with a stylized flourish at the end.

**R. Norman  
Chairman**

**(c) That the amount owed by the Respondent exceeded £350, the prescribed sum referred to in Section 167 of the 2002 Act and Regulations made thereunder, but on the basis of the evidence produced to us we are unable to quantify the exact amount.**

**(d) That Section 168 (2) of the 2002 Act is satisfied and the Applicant may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease.**



**R. Norman  
Chairman**