

10078



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

Case Reference : **LON/00AH/LSC/2014/0195**

Property : **Flat 1, 3 Newhaven Road, London
SE25 6JQ**

Applicant : **Mr Dennis Alonzo Adams**

Representative : **Terence Flynn & Co. Solicitors**

Respondent : **Mr Carlton Russell**

Representative : **None notified**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal : **Judge Goulden**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **29 May 2014**

DECISION

Decision of the tribunal

- (1) The Tribunal determines that the sum of £371.55 is payable by the Respondent being his proportion of insurance in respect of the service charges for the years 2010/2011.
- (2) The Tribunal determines that the sum of £407.40 is payable by the Respondent being his proportion of insurance in respect of the service charges for the year 2011/2012.
- (3) The Tribunal determines that the sum of £417.33 is payable by the Respondent being his proportion of insurance in respect of the service charges for the year 2012/2013.
- (4) The Tribunal determines that the sum of £423.98 would be payable by the Respondent being his proportion of insurance in respect of the proposed service charges for the year 2013/2014.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of his proportion of insurance for the service charge years 2010/2011, 2011/2012, 2012/2013 and the estimate for 2013/2014. An application was also made for reimbursement of fees.

The background

2. The property which is the subject of this application is a ground floor flat, being Flat 1, 3 Newhaven Road, South Norwood, London SE25 6JQ. It was described in the application as a one bedroom flat in a building converted into two flats.
3. A copy of the Respondent's lease dated 30 March 1994 and made between Kenneth Adams (1) and Paul Hope (2) was in the case file. With no evidence to the contrary, it is assumed that both leases are in essentially the same form. In the application it was stated that the Respondent paid one half share of the insurance, as did the tenant of the other flat in the building.
4. The lease of the property requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The issues

5. The Applicant has applied for a determination of the liability of the Respondent to pay service charges for the financial year 2013 (January to December) and relates to the Respondent's proportion of the insurance charges in the sum of £371.55 in respect of the service charge year 19 November 2011 to 18 November 2012; £407.40 in respect of the service charge year 19 November 2012 to 18 November 2013; £417.33 for the service charge year 19 November 2013 to 18 November 2014 and the sum of £423.98 for the service charge year 19 November 2014 to 18 November 2015.
6. Directions of the Tribunal were issued on 8 April 2014.
7. The matter was listed for a paper determination, as requested by the Applicant. Neither side requested an oral hearing.

The Applicant's case

8. In the Applicant's supplementary statement of case dated 24 April 2014, prepared and signed by his solicitors, and in pursuance of the Tribunal's Directions, it was stated, inter alia "*since the date of purchase of the freehold of the property...in 1983 the Applicant insured the property with Co-op Insurance and has continued to do so to the present day. There have been no claims arising under the policy over the past five years. No commission has been paid or received by the Applicant or any party connected with the Applicant in respect of the four years premium in issue. The Applicant make (sic) application to the Tribunal for an Order to be made for the reimbursement of fees paid to the Tribunal*".

The Respondent's case

9. No written submissions were received from or on behalf of the Respondent.

The Tribunal's decision

10. The burden of proof is on the Applicant. In this case the Tribunal's Directions of 8 April 2014 were quite clear. The Applicant was requested to set out the means by which the Applicant ensures that a competitive premium for insurance was obtained. The Applicant's reply in this regard, as set out in paragraph 8 above, was insufficient. The Case Officer was requested to make further enquiries. In a reply, dated 29 May 2014 it was stated "*The Applicant chose to continue renewal of the insurance with the same company based upon an initial competitive premium. Upon renewal he did not thereafter seek quotes from other insurance companies having done so previously and*

obtained a competitive quote". Presumably, this means that no competitive quotation has been obtained since 1983, which cannot be good practice. The Applicant is advised to review his position in this respect.

11. However, no written submissions have been received on or behalf of the Respondent and he has not engaged with the Tribunal process.
12. Without evidence to the contrary, the Tribunal determines that the amount payable by the Respondent in respect of his proportion of the insurance for the year 2010/2011 in the sum of £371.55; for the year 2011/2012 in the sum of £407.40; for the year 2012/2013 in the sum of £417.33 and for the year 2013/2014 in the sum of £423.98 are all relevant and reasonably incurred and properly chargeable to the service charge account.
13. In respect of the application for reimbursement of fees of £125 paid to the Tribunal, the Applicant's case went no further than as set out in paragraph 8 above. The Case Officer was requested to make further enquiries. In the same reply to the Tribunal dated 29 May 2014, it was stated *"The Applicant would like an Order for the payment of the Tribunal fee by the Respondent by reason of his failure to deal with the claim or at all thus necessitating these proceedings"*.
14. This is a discretionary power. In the circumstances of this case, the Tribunal does not order the Respondent to refund any fees paid by the Applicant to the Tribunal.

Name: J Goulden

Date: 29 May 2014