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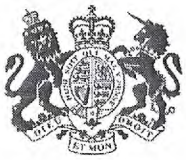

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2013/0505**
Property	:	**Flat 4, 63 Lansdowne Road, Croydon CR0 2BF**
Applicant	:	**Mr M J Pillay**
Representative	:	**Unrepresented**
Respondent	:	**Fable Estates Limited**
Representative	:	**Unrepresented**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mr J P Donegan (Tribunal Judge)** **Mrs A Flynn MRICS (Valuer Member)** **Mr A D Ring (Lay Member)**
Date and venue of Paper Hearing	:	**24 September 2013** **10 Alfred Place, London WC1E 7LR**
Date of Determination	:	**10 October 2013**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the Applicant is liable to pay the following insurance contributions:

24 June 2012 to 23 June 2013 - £219.45

24 June 2013 to 23 June 2014 - £211.08

(2) The Tribunal refuses the application for an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act")

The application

1. The Applicant seeks a determination under section 27A of the 1985 Act of his liability to pay service charges of £219.45 and £211.08, in respect of buildings insurance premiums for the years 2012/13 and 2013/14.

2. The Applicant also seeks an order for the limitation of the Respondent's costs in the proceedings under section 20C of the 1985 Act.

3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The Applicant submitted an application to the Tribunal under sections 27A and 20C of the 1985 Act on 22 July 2013.

5. The application relates to Flat 4, 63 Lansdowne Road, Croydon CR0 2BF ("the Flat"). The Applicant is the lessee (leaseholder) of the Flat. The Respondent is the lessor (freeholder) of 63 Lansdowne Road ("the Building"). The Tribunal did not inspect the Building but understand it to be a semi-detached house that was converted into 4 one-bedroom flats in the 1970s.

6. Directions were given on 29 July 2013 and the application was referred for a paper determination. No request for an oral hearing has been made by either of the parties.

7. The parties filed statements of case in accordance with the directions. The paper hearing took place on 24 September 2013. The Applicant filed bundles of relevant documents that included copies of the statements of case, the lease, the insurance documents and the relevant correspondence passing between the parties. The Tribunal carefully considered the documents in the bundles when making their decision.

8. The Applicant holds a long lease of the Flat which requires the Respondent to provide services and the Applicant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are referred to below, where appropriate.

The lease

9. The Lease is dated 24 May 1976 and is for a term of 99 years from 25 March 1975. The original parties to the Lease were Great Parndon Investment Co. Limited and Miss Jean Crewson Simpkins.

10. By clause 1 of the Lease the Applicant is required to pay *"..by way of further or additional rent on demand a sum of money equal to the amount from time to time paid by the Lessor by way of premium (including any increased premium payable by reason of any act or omission of the Lessee) and all incidental expenses under the power in that behalf hereinafter conferred for keeping the Flat as hereinafter defined insured against loss or damage by fire and such other risks (if any) as the Lessor or its agents may think fit should the Lessee default to pay the insurance premiums..".*

11. The Lease requires the Applicant to insure the Flat under clause 3 (j) (a). In default the Respondent shall *"...insure the same in accordance with his covenant in that behalf contained in the Lease thereof against comprehensive risks including all those referred to in the covenant on the part of the Lessee to insure hereinbefore contained and will insured and keep himself insured against such risk against his liability to pay in respect of each such flat one fourth part of any money required for the reinstatement of the Common Parts such insurances in respect of each such flat initially to be in a sum equal to the said consideration and thereafter in a sum equal to the market value of each such flat as aforesaid with the Finchley Branch of the Sun Alliance and London Insurance Group or such other branch or insurance office as the Lessor or its agents shall from time to time elect.."* (clause 4 (c) (i)).

12. The Flat is insured by the Respondent, as part of the block policy for the Building, rather than the Applicant. It follows that the Applicant is liable to reimburse that part of the annual premium that relates to the Flat, by way of additional rent, subject to the reasonableness requirements in section 19 of the 1985 Act.

The issues

13. The only issues to be determined by the tribunal are whether the insurance contributions for the Flat for the years 2012/13 and 2013/14 were reasonably incurred. In each year the Applicant was asked to pay 25% of the total insurance premium for the Building. The Applicant

does not dispute the manner in which the annual premium is apportioned between the flats but does challenge the amount of each premium.

Evidence and submissions

14. The Applicant's grounds for disputing his insurance contribution, as set out in his undated statement of case, can be summarised below:

    (i) There has been a history of high insurance premiums at the Building. A previous tribunal reduced the actual premium charged in 2003/04 and the estimated charge for 2004/05 (LON/00AH/LSL/2004/0064).

    (ii) The insurance premium for 2011/12 was reduced by the Respondent's brokers, Coppergate Insurance Services Limited, when the Applicant produced a cheaper quote from Deacon.

    (iii) The Applicant has queried the increase in the premiums for 2012/13 and 2013/14 by writing to Coppergate (with copies to the Respondent). He has not received a satisfactory response to his queries.

    (iv) The Applicant has obtained a cheaper quote of approximately £115, for 2013/14, from Santander.

    (v) The Applicant has recently discovered that there have been 3 insurance claims, the first of which goes back to 2009 and relates to a faulty gutter. This issue has not been resolved.

15. The Respondent's position, as set out in their statement of case dated 12 August 2013 and reply dated 30 August 2013, can be summarised as follows:

    (i) They do not receive commissions for placing the insurance.

    (ii) There has been no recent insurance valuation for the Building but one has been arranged by the end of 2013.

    (iii) The insurance policies include terrorism cover, which is provided for in clause 1 of the Lease, which commands a premium in itself.

    (iv) The total premium paid in 2012/13 was £877.82, including Insurance Premium Tax. This is in line with the Deacon quote obtained by the Applicant (£789.62). Further the Deacon quote was dated 25 July 2011, almost a year before the insurance year in question.

(v) The total premium paid in 2013/14 was a lower sum of £844.31 (including IPT).

(vi) The Deacon quote is not a proper comparable, as the policies they arrange generally have a restriction on the type of occupants. Further the quote is from Zennor, who are an intermediary rather than an insurer. The quote makes no mention of an insurance claim made on 06 June 2012, for flooding caused by a blocked drain. This would have an impact on the premium.

(vii) The alternative quote for 2013/14, which has been obtained from the AA via the internet, provides very little information. It does not include accidental damage cover, which is provided in the policies arranged by Coppergate. The Respondent cannot use internet based quotations when arranging buildings insurance on a freehold block of flats.

The Tribunal's decision

16. The Tribunal determines that Applicant is liable to pay the insurance contributions of £219.45 and £211.08, in full.

Reasons for the Tribunal's decision

17. In determining this application, the tribunal had regard to paragraph 39 of the Lands Tribunal's decision in **Forcelux Ltd v Sweetman [2001] 2 EGLR 173**:

"The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred".

18. The tribunal considered whether the insurance premiums paid by the Respondent were reasonably incurred having regard to the evidence and their own knowledge and experience.

19. The Applicant has provided two alternative quotes. The AA quote was of negligible value, as it provided very little information and did not even specify if it was for a block of leasehold flats. The Deacon quote was more useful but was for an earlier year. The premium quoted in July 2011 was £88.20 less than that actually paid for 2012/13, a difference of approximately 10%. The quote was only £54.69 less than that paid for 2012/13, a difference of approximately 6%.

20. Based on their own knowledge and experience the tribunal are able to say that the total insurance premiums paid in 2012/13 (£877.82) and 2013/14 (£844.31) are reasonable. They are within an acceptable range

and include IPT and terrorism cover. The decision of the previous tribunal (LON/00AH/LSL/2004/0064) is of limited assistance, given that it relates to insurance premiums for 2003/04 and 2004/05.

21. Given that the tribunal have found that the insurance premiums were reasonably incurred, it follows that the Applicant is liable to pay the insurance contributions for the Flat in full.

Costs

22. The Applicant sought a cost order under section 20c of the 1985 Act. Having regard to the determination above, the Tribunal declines the application. The Respondent has been wholly successful in that the insurance contributions have been allowed in full. For this reason it is not just and equitable to make a section 20c order.

23. In refusing to make a section 20C order, the tribunal makes no finding as to whether the Lease entitles the Respondent to recover its costs of these proceedings from the service charge account for the Building.

Name: Jeremy Donegan (Tribunal Judge) Dated: 10 October 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,

(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
   (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
   (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
   (a) an amount prescribed by, or determined in accordance with, the regulations, and
   (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) An appropriate tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to an appropriate tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of an appropriate tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before an appropriate tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.