

10476



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

**Case Reference** : **MAN/OOBT/LSC/2014/0101**

**Property** : **Flat 1, 1 Corporation Street Hyde Cheshire  
SK14 1AQ**

**Applicant** : **Jones Lang LaSalle**

**Respondent** : **Messrs Barri Khan and Nawaz**

**Type of  
Application** : **Landlord & Tenant Act 1985 – Section 27A**

**Tribunal Members** : **Judge N Ali  
J Holbrook  
D Pritchard**

**Determined  
without a Hearing** : **1st December 2014**

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**DECISION**

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## **Decision**

The amount payable by the Respondent by way of Insurance Rents for each of the periods in question is as follows:-

- 25.12.2009-24.12.2010 insurance premium of £500
- 25.12.2010 – 24.12.2011 insurance premium of £500
- 25.12.2011 – 24.12.2012 insurance premium of £500;
- 25.12.2011- 24.12.2013 insurance premium of £500; and
- 25.12.2013-24.12.2014 insurance premium of £500.

The Amount payable by the Respondent for Service Charges for:-  
25.12.2011 – 24.12.2012 repair costs of £742.96;

Determination of pay-ability of Ground Rent is not within the jurisdiction of this Tribunal

## **Background**

1. The Applicant is the managing agent of the Property. The Freeholder is Matthew Samuel Camps, Julian Walker, Geoffrey Fallon of Vail Williams (The Receivers). The Respondent are the leaseholders .
2. The development is a purpose built building comprising 27 flats with 27 garages. The flat which is the subject of this application is Flat 24 which is a two bedroom first floor flat.
3. The Applicant made an application to the First-tier Tribunal Property Chamber on the 4th March 2014 for a determination of liability to pay and the reasonableness of the service charges:-
  - 25.12.2009-24.12.2010 insurance premium of £1352.69
  - 25.12.2010 – 24.12.2011 insurance premium of £1393.62
  - 25.12.2011 – 24.12.2012 insurance premium of £1435.16;  
ground rent of £100;  
repair costs of £742.96;
  - 25.12.2011- 24.12.2013 insurance premium of £750.47  
ground rent of £100;
  - 25.12.2013-24.12.2014 insurance premium of £716.34  
ground rent of £100

## **The Lease**

4. A copy of the lease relating to the flat was available to the Tribunal.
5. The Lease is dated 16th October 2006 and was made between The Royal

Bank of Scotland of the first part and Mohammad Mohsin Barri, Fahim Ahmad Khan and Mohammad Nawaz of the second part. It grants a term of 125 years from 16th October 2006 at a premium and a yearly rent.

6. The lease particulars state that the Service Percentage is 52.6% subject to variation as provided in schedule 4
7. Clause 2.1.2 states that the tenant agrees to pay as rent 'the sums the Landlord spends each year during the term to insure the Property... (Insurance Rent).
8. Clause 3.2 states that the tenant is 'is to pay the Insurance Rent...'
9. Clause 4 of the lease sets out the insuring obligations of the landlord.
10. The 4th Schedule clause 1 sets out the costs and expenditure which form the service cost which include the following:-
  - (a) Maintenance and repair of structure and retained parts;
  - (b) Maintenance and repair of conduits....
  - (c) Maintenance and repair of all walls....
  - (d) Decoration and treatment of .... exterior .... of building...
  - (e) Cleaning decoration .....
  - (f) Lift service....
  - (g) Provision and maintenance of..... fire alarms....
  - (h) Tending and maintenance ...of... gardens;
  - (i) Carrying out .... Improvements....
  - (j) Landlord...discretion... any other service....
11. Clause 2 of the 4th Schedule states that ' the tenant shall pay the landlord....the Service Percentage of the Service Cost....

### **The Applicant's Written Representations**

12. The Applicant stated that the Property was a flat above a bank.
13. The Applicant provided for each relevant year within its written submissions copies of the Applicant's broker (Mulberry) insurance invoices and invoices to the Respondents for insurance due and commercial rent and repair works .
14. The Applicant has also provided copy correspondence between them and the Respondent asking for payment of the insurance rent due which is disputed by the Respondent as being too excessive.

## **The Respondent's Written Submissions**

15. The Respondent have been disputing the high value of the premium for the insurance since May 2007 and has repeatedly asked for alternative quotations. ( correspondence dated December 2007)
16. The Respondent have stated that they believe that their proportion of the insurance premium was excessively high for a 1st floor residential flat and provided alternative quotations which they believed to be more competitive (£453.15 for the year 2011-2012)
17. In correspondence dated 12.03.2012 , the Respondents informed the Applicant that they have been independently insuring their flat with the more competitive insurance and will continue to do . The Applicant informed them that under the terms of the lease its was the Landlords obligation to insure the building.

## **The Law**

- 18 Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:
  - (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.

- 19 Section 19 provides that
- (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.
- 20 Section 21 A provides that
- (1) A tenant may withhold payment of a service charge if–
    - (a) the landlord has not provided him with information or a report–
      - (i) at the time at which, or .
      - (ii) (as the case may be) by the time by which, he is required to provide it by virtue of section 21, or
    - (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section....
  - (3) An amount may not be withheld under this section–
    - (a) in a case within paragraph (a) of subsection (1), after the [information or report concerned has been provided] to the tenant by the landlord, or .
 in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.
- 21 Section 27A provides that
- (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 date at or by which it is payable, and
    - (d) the manner in which it is payable.
  - (2) Subsection (1) applies whether or not any payment has been made.
  - (3) ....
  - (4) No application under subsection (1)...may be made in respect of a matter which –
    - (a) has been agreed by the tenant.....
  - (5) But the tenant is not to be taken to have agreed or admitted any matter

by reason only of having made any payment.

### **The Tribunal's Determination**

- 22 The Applicant has provided invoices from the Insurance Broker Mulberry detailing the insurance premium payable by the Respondent. The Respondent is disputing the insurance premium as unreasonable and has provided alternative quotation of insurance premium which they consider to be reasonable and reduces their payment to a third.
- 23 The Applicant has not provided evidence of what the full insurance premium was due and payable for the whole building for any of the years in dispute and the apportionment allocated to the Respondent. As only the invoices showing the apportionment allocated to the Respondent have been provided suggests that insurance premium for the whole building is in the region of £2500.
- 24 The Tribunal considered the terms in the lease and determined that the Service Percentage stated was for the services to be provided to maintain the building and the Insurance Rent (due to the mixed nature of the useage within the building ) has been excluded from this apportionment. The Lease differentiates between Service Rent and Insurance Rent.
- 25 Evidence has been provided by the Respondent that a more reasonable insurance quotation could have been acquired for the years in dispute and this is shown by the reduction by approximately 50% of the insurance premium being demanded by the Applicant in the years 2013 and 2014.
- 26 The Tribunal relying on its own knowledge and experience considered that a more likely insurance premium would be in the region of £500 per annum.
27. The Tribunal determined that the terms of the Lease specify that the Landlord is to insure the building and the Respondent to pay the Insurance Rent.
28. The Tribunal also determined that as the Respondent has not identified any other amounts within the Service Charges as disputed; The Respondent has not raised any issue with respect to the cost of the repair works and so the said Service Charges are due and payable.

29. The Tribunal also determined that the payment of Ground Rent is not within their jurisdiction to determine.