



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

Case reference : **LON/00AH/LSC/2015/0393**

Property : **GFF, 243 Holmesdale Road,
London, SE25 6PR**

Applicant : **Mr Stephen Lewis Pariser**

Representative : **Circle Residential Management Ltd
("Circle")**

Respondent : **Mr Ripton Alexander Spencer
Fearon**

Representative : **In person**

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

Tribunal members : **Judge I Mohabir**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **1 December 2015**

DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination that the buildings insurance premium of £1,424.03 for the property known as 243 Holmesdale Road, London, SE25 6PR (“the property”) in respect of the period 11 June 2015 to 10 June 2016 is reasonable and payable.
2. The Applicant also seeks a determination that the Respondent is liable to pay a one third service charge contribution of £474.68 for the buildings insurance premium together with a premium credit charge of £25.40.
3. The property is a three-storey end of terrace house converted into three flats. The Respondent is the long leaseholder of the ground floor flat which he holds pursuant to a lease granted to him by Stonecourt Ltd dated 11 July 2007 for a term of 99 years from that date (“the lease”). The present freeholder of the property is the Respondent.
4. It seems that the Respondent, through his managing agent, Circle, and in turn insurance brokers, insured the property for the period 11 June 2015 to 10 June 2016 and paid a premium of £1,424.03 plus a premium credit charge of £25.40.
5. Apparently, the Respondent disputed that he is liable to pay the contribution claimed because he had effected his own buildings insurance for his flat.
6. On 1 September 2015, circle, on behalf of the Applicant, made this application in the terms sought. On 1 October 2015, the Tribunal issued Directions that included a direction for this case to be decided by way of a paper determination. The Respondent have not complied with any of the directions nor engaged in these proceedings.

Lease Terms

7. Clause 4.2 of the lease obliges the landlord to insure the building. By clause 3.15 the tenant specifically agrees not to insure any part of the property.

8. Clause 2.1 defines the insurance rent as “the sums the Landlord spends each year during the lease period to insure the property as required by this lease”. By clause 3.2, the tenant agrees with the landlord “to pay the insurance rent on the next quarter day after being notified of the amount of it”.

9. However, the lease is defective because it does not contain any express provision as to how the overall insurance rent is to be apportioned between the respective leaseholders. Nevertheless, since the lease was granted, the lessees, including the Respondent, have been content to pay an equal one third contribution towards the buildings insurance premium.

10. The Applicant referred the Tribunal to an earlier decision dated 27 November 2013 (LON/OOAH/LSC/2013/0677) when the same issue fell to be determined and submits that the Respondent’s contribution was held to be one third of the overall premium. That submission is not correct because the Tribunal in that case never had to decide the point. The Respondent had in fact agreed to pay a one third contribution towards the buildings insurance premium. By virtue of that agreement, under section 27A(4) of the Act, the Tribunal no longer had jurisdiction to make any determination on the issue. In effect, the Tribunal simply recorded the Respondent’s agreement to pay. This Tribunal proceeds on the basis that the Respondent’s agreement to pay a one third contribution has not been withdrawn or challenged by him.

Decision

11. The Tribunal's determination took place on 1 December 2015 and was based solely on the documentary evidence filed on behalf of the Applicant, which is unchallenged by the Respondent.

12. On the basis of the evidence before it, the Tribunal makes the following findings:
 - (a) that clause 4.2 of the lease obliges (only) the Applicant to insure the building and clause 3.2 obliges the Respondent to pay a contribution towards the buildings insurance premium on the next quarter day after the cost has been incurred.

 - (b) that clause 3.15 of the lease expressly forbids the Respondent from insuring any part of the building, including his flat, as he has purported to do.

 - (c) that the Respondent, by his agreement, has agreed to pay a one third contribution for the buildings insurance premium in any given year. In this instance, that is £474.68.

 - (d) that the overall buildings insurance premium of £1,424.03 is reasonable. The Tribunal was satisfied that the Applicant's insurance broker tests the market every 3 years for competitive premiums before placing the insurance (see pages 65-67 of the Applicant's bundle). The Tribunal also accepted the submission that the Applicant is not obliged to accept the lowest insurance premium achievable for the reasons set out at paragraphs 7 to 10 of the Applicant's statement of case.

 - (e) that the premium credit charge of £25.40 is not recoverable under the terms of the lease. It is simply the cost to the Applicant of obtaining a credit facility and does not fall within the ambit of clause 2.1 of the lease as being the direct cost of

insuring the building, which is the only cost recoverable under this clause. It is not qualified and does not permit recovery of any indirect costs of insuring the building other than the direct cost of doing so.

Name: Judge I Mohabir

Date: 1 December 2015

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.