

11856



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

Case reference : LON/00AT/LSC/2016/0230

Property : 9 Henley Close, Isleworth, TW7
5DQ

Applicant : Ms Sally Bargman

Representative : N/A

Respondent : Mr David Simmons Franks (1)
Mr Alexandra Goodhand-Tait (2)

Representative : Mr Ian McMellin of John
Whiteman & Co Managing Agent

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

Tribunal members : Judge Carr
Ms Coughlin MCIEH

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 6th September 2016

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sums demanded in connection with insurance premiums for the years ending December 2014, 2015 and 2016 are payable by the Applicant.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision

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 relating to buildings insurance premium payable by the Applicant in respect of the service charge years ending December 2014, 2015 and 2016.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. At the CMH it was determined that the matter would be dealt with on the basis of paper submissions unless either party requested a hearing. No such request having been made this determination has been reached on the basis of submissions and related documentation submitted by the parties.

The background

4. The property which is the subject of this application is a 2 bedroom purpose built flat and single garage within a block comprising 20 flats and 8 garages.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. At the CMH the relevant issue for determination were identified as follows:

- (i) The payability and/or reasonableness of service charges for 2014, 2015, 2016 relating to insurance premiums.

The Applicant's argument

8. The Applicant argues that the insurance premiums demanded by the Respondents from the date of her purchase of the property are unreasonably high.
9. She states that she challenged the high costs of insurance premiums during the purchase process of the flat. She was told that there was no negotiation about either the level of the premium nor was she able to proceed on the basis of taking out her own single policy rather than contributing her proportion to the block policy.
10. In December 2014 she paid the insurance premium of £525.61. She states that she challenged the high premium but did not succeed in getting a lower premium.
11. In December 2015 she challenged the insurance demand of £567.16 by producing a far cheaper like-for like quote by a trusted broker – Axa via Brownhills. Following her challenge the premium was reduced to £293.34.
12. The Applicant accepts that her insurance premium may be higher than that of other flats in the block because her lender valued the flat at £145,000 rebuild in March 2014 which was higher than the standard rebuild of other flats in the block. In addition her flat is one of 8 properties in the block with a garage.
13. She also accepts that the Respondents policy allowed for a £1000 excess for subsidence whereas her quote was for £2000 excess.
14. Nonetheless she considers that the premium is unreasonably high. This is on the basis that the Brownhill/Axa quote would result in her premium being £91.35, considerably less than even the reduced figure of £293.34.
15. She also considers that in comparison with the adjusted premium for Mr Gray of 5 Henley Close her premium is high. Mr Gray's adjusted premium is £179.25 for a similar flat without a garage. She suggests that the difference she pays of £114.09 is excessive.
16. Following receipt of the response from the Respondent (set out below) the Applicant made the following further arguments:

17. The costs of the instalment payment scheme for insurance results in higher charges for tenants, which penalises those who pay on time and is therefore not fair.
18. The size of the estate means that managing the insurance is unwieldy, for instance it precludes the shopping around which individuals do when renewing their annual insurance. She suggests that instead the process benefits the insurance companies.

The Respondent's argument

19. The Respondent provided a useful explanation of the provisions of the lease and the process of managing insurance and its apportionment. He pointed out particular issues relating to the management of the insurance which he argued, added to the expense of the policy.
20. Firstly eleven individual flats have to be identified and individually index-linked to ensure that their declared sum insured increases each year in accordance with the requirements of their lenders.
21. Secondly the realistic expectation that not all tenants pay their contributions to the insurance premium on due dates means that it is necessary to put in place instalment arrangements with the insurance company. The costs of paying insurance by instalments has been passed directly to the tenants as they are the beneficiaries. The amount charged to make the arrangements varies, but in 2015 – 16 was 8% and 2014 – 15 was 6%.
22. The Respondent makes a number of points in relation to the argument of the Applicant.
23. First he points out that there is no requirement within the tenant's lease for a policy to be arranged in any specific manner and it is for the freeholder to make the arrangements it considers appropriate subject to any reasonableness requirements. In particular the freeholder is entitled to take into account the reputation of the insurance company and its record of service provision and it is entitled to decide how much risk it is prepared to take when deciding what level of insurance to purchase.
24. Second he points out that the quotation that the Applicant has referred to is not on a like for like basis. The excess is different for subsidence, the property is described as a flat when it is a maisonette, it indicates that the number of occupiers is 1 when the minimum of occupiers is going to be 20 and may be substantially higher. It also does not allow for the payment of the premium by instalments.

25. The Respondent also argues that the quote cannot be taken at face value as it is likely to have been set at a low level in order to attract new business. There is no evidence that the level of premium would be sustained in subsequent years.
26. Thirdly he points out the volatility of the insurance market, the level of competition for new business and the changing levels of taxation.
27. In relation to the specific charges for each of the years the Respondent makes the following arguments.
- (i) In relation to the insurance costs for year ending Dec 2014:
 - (a) The applicant was fully aware of the costs of her portion of the block insurance at the time of her purchase. Part of the reason for the high cost was attributable to the requirements of her lender.
 - (b) No further information has been provided by the Applicant in respect of this premium which would substantiate that it was unreasonable.
 - (ii) In relation to the insurance costs for year ending Dec 2015:
 - (a) Whilst the Applicant questioned the insurance premium she did not provide any comparable evidence of premiums on a like for like basis and therefore the Applicant cannot substantiate her claim that the sum charged was unreasonable.
 - (iii) In relation to the insurance costs for year ending Dec 2016:
 - (a) The Applicant provided a similar but not 'like for like' information. On the basis of that information the Respondent was able to arrange to reduce the premium relating to this part of the group policy

The tribunal's decision

28. The tribunal determines that the amount demanded in respect of insurance premiums for the years in dispute are reasonable and payable.

Reasons for the tribunal's decision

29. The tribunal accepts the arguments of the Respondent that its decisions in connection with insurance are reasonable. In particular it notes
- (i) That the Applicant agreed the initial premium and has no evidence to demonstrate that it was unreasonable
 - (ii) That the Applicant provided no evidence to demonstrate that the amount charge in service charge year ending December 2015 was unreasonable
 - (iii) That the quotation provided is not on a like for like basis. In addition to the issues identified by the Respondent there is no mention of subletting within the quotation which is likely to add to the costs of insurance
 - (iv) The level of the quotation provided by the Applicant appears to the Tribunal to be remarkably low and it therefore accepts the Respondent's argument that it is likely to have been made speculatively with the hope of acquiring new business
30. The Tribunal understands that the Applicant is perplexed by the reduction in premium following her challenge and the presentation of her quote. The Tribunal notes that there is no explanation of the reasoning behind the reduction. However this reflects the competitiveness of the insurance market and substantiates the position of the Respondent.
31. The Applicant is looking for a solution which she considers to be fair. The remit of the Tribunal is to determine whether a charge is reasonable. A freeholder is entitled to decide on which insurance provider he chooses to insure with and to determine the level of risk he is prepared to tolerate. It is also reasonable for a freeholder to provide for the payments of the insurance by instalments.
32. The tribunal notes the willingness of the Responent to negotiate a lower premium when provided with evidence from a competitor.
33. The tribunal considers that the Respondent has behaved reasonably in its decisions about insurance and that the charges demanded are at a reasonable level.

Name: Judge Carr

Date: 6th September 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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).