



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

**Case reference** : **LON/00AC/LSC/2018/0375**

**Property** : **250a Ballards Lane, London, N12  
0EP**

**Applicant** : **Mrs Irene Radstone**

**Representative** : **Taylor Chartered Surveyors  
(Managing Agent)**

**Respondent** : **Dina Adel Saleh Makar**

**Representative** : **In Person**

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

**Tribunal members** : **Mr A Harris LLM FRICS FCI Arb**

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

**Date of hearing** : **11 December 2018**

**Date of decision** : **11 December 2018**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £91.52 is payable by the Applicant in respect of the insurance premiums for 2017 and £328.87 for 2018.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision]
- (3) No application has been made under section 20C of the Landlord and Tenant Act 1985.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)] as to the amount of insurance premium payable for the years 2017 and 2018.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The case was dealt with on paper on 11 December 2018.

### **The background**

4. The property which is the subject of this application is a two storey end of terrace house converted to two flats. The respondent is the leaseholder of the upper flat.
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 Respondent holds a long lease of the property which requires the landlord to insure and the leaseholder to reimburse the premiums. The specific provisions of the lease and will be referred to below, where appropriate.

### **The issues**

7. The leaseholder has identified the following reasons for not paying the insurance premium demanded.

- (i) The landlord has not complied with their fire regulation obligations which invalidates the insurance, so the leaseholder should not have to pay.
  - (ii) The lease does not stipulate a proportion of the premium.
  - (iii) The false claim that the premiums demanded are insurance premiums as defined by the lease when they include the landlord's brokers fees.
  - (iv) Refusal of the landlord to join the leaseholder as joint [policy holder.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **The lease**

9. The lease was originally granted for a term from 25 April 1973 to 2 October 1956. The was altered by a Deed of Variation dated 26 January 2001 to a term of 99 years from 25 December 2000.
10. The lease was further amended by a Deed of Variation dated 6 November 2015 which altered the insurance provisions.
11. The lease is in a form which requires the lower flat owner to repair up to one half of the first floor joist level and the upper flat to repair the building above that level. There is no formal service charge. There is a provision for the landlord to the external common parts and the internal entrance hall and lobby subject to payment by the lessee of a proportion of the cost.
12. The original lease required the leaseholder to insure the upper flat and contained a provision for the landlord to insure and recover the cost if the leaseholder did not do so.
13. The 2015 Deed introduced new insurance provisions requiring the landlord to insure the whole building in the landlord's name and to have the leaseholders interest noted on the policy. It does not specify the proportions in which the premiums should be shared.
14. The clause requires insurance against the normal building risks and also public liability and third-party claims in respect of management of the building.

### **The tribunal's decision**

15. The tribunal determines that the sum of £91.52 is payable by the Applicant in respect of the insurance premiums for 2017 and £328.87 for 2018.

### **Reasons for the tribunal's decision**

16. The respondent asserts the Landlord has not complied with fire regulation obligations. However, there is no evidence in support of this. There are no photographs of the wires which the respondent say are exposed and dangerous nor are they mentioned in the Fire Risk Assessment. The Assessment refers to the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 but a long lease is an excluded tenancy for the purposes of the regulations. The tribunal does not find the arguments persuasive as to why the premiums are not payable. There is insufficient evidence that the landlord is in breach of the insurance policy.
17. The lease as originally drafted placed the insurance obligation on the leaseholder and this was subsequently amended by the deed of variation presumably to deal with the difficulty of insuring individual flats as opposed to the whole building. The tribunal does not read the amendments as transferring the liability to pay the cost of insurance to the landlord and indeed this is not argued. The proportions are not set out and it is for the landlord to demand a reasonable proportion. The respondent sets out various arguments relating to the premium and suggests that 10% is appropriate. The tribunal does not accept this. Premiums are normally shared on a floor area basis or in older leases a rateable value apportionment. The suggested figure appears to have no sound basis related to rebuilding costs.
18. The insured risks included in the lease include public liability and third party claims made in respect of the management of the building which is what Property Owners Liability covers. The tribunal finds this part of the premium is recoverable.
19. The tribunal finds that the cost of arranging insurance through a broker is recoverable as part of the premium. There is no evidence that the brokers commission is at an unreasonable level. The tribunal finds it reasonable that a landlord uses a broker to place the insurance.
20. The final argument is that the insurance is not arranged in joint names but this is not required by the lease. The landlord is to insure in its name and to arrange that the name of the lessee is noted on the policy. There is no evidence of the practice of the insurers on this point. Any failure to note the name would not deprive the lessee of the benefit of the policy.

## Application under s.20C and refund of fees

21. There is no application for a refund of fees or applied for an order under section 20C of the 1985 Act.

**Name: Mr A Harris LLM FRICS FCI Arb      Date: 11 December 2018**

**Valuer Chair**

### 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).