



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

Case Reference : **LON/00BB/LSC/2014/0118**

Properties : **Flats 1 & 2, 28 Bignold Road, Forest Gate, London E7 0EX**

Applicant : **Chamber Estates Limited**

Representative : **Circle Residential Management**

Respondent : **Mr Anthony Niako**

Representative : **Haringey Law Centre**

Type of Application : **Section 27A Landlord and Tenant Act 1985 – determination of service charges payable**

Tribunal Member : **Judge John Hewitt**

Date of Decision : **29 May 2014**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:
 - 1.1 Service charges by way of a contribution to the cost of insurance are payable by the respondent to the applicant as follows:

Flat 1	£638.47
Flat 2	£638.48
 - 1.2 The date by which the said service charges were payable by the respondent to the applicant was 2 April 2014;
 - 1.3 The service charge claim for a premium credit charge £58.82 is not payable by the respondent to the applicant;
 - 1.4 The respondent shall by **5pm Friday 27 June 2014** reimburse the applicant the sum of £125 being fees paid by the applicant to the tribunal in connection with these proceedings;
 - 1.5 In all other respects the applicant's application for a costs order pursuant to Rule 13 is refused.
2. The reasons form my decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to me for use in my determination of the application.

Procedural background

3. On 28 February 2014 the tribunal received an application pursuant to section 27A Landlord and Tenant Act 1985 (the Act) [67]. The applicant sought a determination that the respondent was liable to pay £1,276.95 being the cost of insuring the building containing the two subject flats for the period 3 November 2013 to 2 November 2014 plus £58.52 described as a premium credit charge.
4. Directions were given on 6 March 2014 [64] and made provision for the parties to serve statements of case. The parties were notified that the tribunal proposed to determine the application on the papers and without an oral hearing, pursuant to Rule 31. The tribunal has not received any objection to it doing so.
5. The insurance certificate relied upon by the applicant is at [8]. The respondent's submissions are at [11-24] with the applicant's response at [25-39]. Copies of the leases are at [40-63].

Background matters not in dispute

6. The property, 28 Bignold Road, was originally constructed as a three bed-room terrace house. Subsequently it was converted to comprise two one bed-room self-contained flats.

7. Both flats have been sold off on long leases. Both leases are dated 20 October 2005 and were granted by Jeymini Nagla to Cheryl Andrews.
8. On 12 February 2010 the applicant was registered at Land Registry as proprietor of the freehold interest [1]. On 19 May 2008 the respondent was registered at Land Registry as proprietor of flat 1 [4] and on the same day he was registered at Land Registry as proprietor of flat 2 [6].
9. The leases are in common form. They grant terms of 99 years from 1 January 2004 at ground rents commencing at £250 pa, subject to review.
10. Clause 5(b) reads:

“to pay and indemnify the Landlord and the owner of the Other Premises, a one half cost against all outgoings and the Mutual Charges, payable in respect of the Property...”

Mutual Charges are defined as being:

“those shared obligations and expenses imposed by the terms of this Lease (whether imposed upon them separately as Lessees, or jointly as the Landlord) as to the repair decoration maintenance renewal and insurance of the Building...”

11. Clause 7(e) is a covenant on the part of the landlord to keep the building insured in such office in such name against fire and such other risks in the full reinstatement value ... and such other risks as the landlord shall require.

Facts found

12. At [8] there is a certificate of insurance issued by Aviva Insurance Limited to the applicant. It is dated 27 September 2013. It specifies the risk address is 28 Bignold Road, the occupancy of which is stated to be 2 residential flats. The sum insured is stated to be £618,058. The period of cover is 3 November 2013 to 2 November 2014. The premium is stated to be £1,276.95 made up as to:

Premium	£1,039.85
Terrorism Premium	£ 164.82
Insurance Premium Tax @ 6%	£ 72.28

13. No evidence was provided by the applicant as to when the applicant paid the insurance premium. I infer it was prior to the 27 September 2013, the date of the certificate, because at the top of the certificate it states: *“This is to certify that insurance is in force as follows”*
14. No evidence was provided by the applicant as to when it made demands on the respondent to reimburse the cost of insurance. I note that letters dated 20 March 2013 (probably mistyped for 2014) were sent by the applicant’s managing agents to the respondent sending to him a copy of

the insurance certificate “*in accordance with the Directions issued on 6 March 2014.*”

The gist of the case for the respondent

15. The respondent’s statement of case is dated 2 April 2014. A copy is at [11-24]. It was submitted by Haringey Law Centre. The gist of his case is that:

- 15.1 No planning permission was obtained from the local authority before the property was converted to two flats;
- 15.2 Proceedings are currently afoot in relation to the non-planning permission which the respondent says has affected the insurance premium and property and that the respondent has been paying the insurance premium for two properties when, in effect, it should be for one property and one insurance premium.

There were attached to the statement of case a number of documents which were alleged to evidence no planning permission.

The applicant’s reply

16. At [25-39] is the applicant’s reply. The gist of the reply is that planning position is immaterial and that the conversion was carried out before 2005 and thus falls outside the four year limitation period for planning enforcement.

Decision and reasons

- 17. I find that the applicant has effected insurance for the period 3 November 2013 to 2 November 2014. This was not disputed.
- 18. At the time when the insurance was effected the property was not a three bed-room terrace house but two self-contained one bed-room flats.
- 19. The lease obliges the landlord to insure the building as it stood at that time and the landlord has done so. There is nothing in the lease which provides that the obligation to insure is conditional upon compliance with any planning permission, or indeed, any other statutory or regulatory provision.
- 20. The respondent is the registered proprietor of two leases, one for each flat and each lease requires the tenant to contribute one half of the cost of insurance. I infer that prior to purchase of the two leases in April 2008 the respondent will have made such pre-purchase enquiries as he considered appropriate.
- 21. The respondent has not stated that he did not receive demands for the contributions to the cost of insurance. I infer that he did receive them. The leases are silent as to when the contributions are payable. I find that they are payable on demand and that a demand form them can be made once the landlord has paid the premium and effected the insurance.

22. In the application form the applicant seeks a determination as to the date at or by which the contributions are payable. There is no evidence before me as to the date on which the applicant paid the premium to the insurer and no evidence as to when it made demands on the respondent. I have inferred that the premium was paid to the insurer on a date prior to the issue of the certificate. I infer that demands would have been made on the respondent on a date prior to the date of his statement of case and thus on the basis of the imperfect evidence before me I find that the date by which the contributions were payable is 2 April 2014.

The claim to premium credit charge £58.52

23. The only reference to this expenditure is claim at [76]. The applicant has not provided any evidence that the sum has been expended, was reasonably incurred, is reasonable in amount and that it is payable by the respondent.
24. Looking at the decision a previous decision, LON/00BB/LSC/2013/0091 dated 27 May 2013, it seems that the preference of the applicant is not use to its own funds to pay the premium but to take a loan and to incur a finance cost instead – see paragraph 15.
25. The leases, as drafted, provide for the landlord to incur the cost of insurance and then it has the ability to make a demand on the tenant for the one half contributions. There is nothing in the leases that I can see that obliges the tenant to bear or contribute to finance costs that the landlord might incur in compliance with its obligations under the leases.
26. In the absence of a provision in the service charge provisions in the lease permitting, in clear words, for the landlord to recover interest that it has had to pay or that it has foregone, the landlord is not entitled to recover interest from the lessees.
27. Accordingly, I find that the respondent is not liable to pay the cost of the loan from Premium Credit.

Fees

28. I have made an order requiring the respondent to reimburse the applicant £125 in respect of fees paid to the tribunal. The respondent wrongly failed to pay the insurance contributions and it was not unreasonable that the applicant made its application to the tribunal.

Costs

29. I have refused the applicant's application for costs because the applicant has not provided any detail of any costs alleged to have been incurred.

30. Further, this jurisdiction is a no costs jurisdiction. Rule 13 empowers a tribunal to make an award of costs if a party has acted unreasonably in bringing, defending or conducting proceedings. The applicant has not alleged that the respondent has acted unreasonably in respect of any of these criteria. Still less has the applicant shown that such conduct has increased the costs otherwise incurred or to be incurred in the proceedings.

Judge John Hewitt
29 May 2014