

10387



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

Case Reference : **LON/00AG/LSC/2014/0397**

Property : **Flat 36, Matilda Apartments, 4
Earnshaw Street, London WC2H
8AJ**

Applicant : **Lara Rushby**

Representative : **In Person**

Respondents : **Circle 33 Housing Trust Limited**

Representative : **N/A**

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

Tribunal Members : **Judge Amran Vance
Evelyn Flint, FRICS**

Date of Decision : **5th November 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the buildings insurance premium for the period 1st April 2014 to 31st March 2015 (“the 2014/15 premium”) in the sum of £17,779.68 is payable by the Applicant in her apportioned share of 1.9%.
- (2) The tribunal determines that if, and to the extent that, costs of commission on the 2014/15 premium have been demanded from the Applicant, such costs have not been reasonably incurred and are therefore not payable by the Applicant.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent’s costs of the tribunal proceedings may be passed to the lessees through any service charge.

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 payable by her in respect of the service charge year ending 31st March 2015. The Applicant’s specific challenge is to the cost of the 2014/15 buildings insurance premium and any associated commission.
2. Numbers in brackets and in bold below refer to pages in the bundle supplied by the Applicant for the purposes of the tribunal’s determination.
3. The relevant legal provisions are set out in the Appendix to this decision.
4. Directions were issued by the tribunal on 5th August 2014 and amended on 13th August 2014 (“the Tribunal’s directions”). These provided for the exchange of documents and witness statements and for the application to be determined without a hearing, on the papers, unless either party requested a hearing by 5th September 2014. No hearing was requested and the matter has therefore been determined by way of a paper determination.

The background

5. The property which is the subject of this application is a one-bedroom flat in a 15 storey building located at Matilda Apartments, 4 Earnshaw Street, London WC2H 8AJ (“the Building”) built approximately four years ago. There appear to be 53 flats in the Building. The Applicant is

the long lessee of Flat 36 under a shared ownership lease with the Respondent.

6. The freehold owner of the Building is Central St Giles Limited Partnership (“the Head Landlord”) who entered into a lease of the Building with the Respondent (“the Headlease”) dated 11th June 2010 [162].

7. Under clause 3.1.2 of the Headlease the Respondent covenants to pay:

“ a fair and reasonable proportion as determined by the Landlord of the premium incurred by the Landlord in respect of insurance of the Estate and the Tenants use of them.....”.

8. The Head Landlord’s covenant to insure the Estate in which the Building is situated is set out at clause 4.2 of the lease and as well as requiring the Head Landlord to insure against the usual insured risks states (at clause 4.2.4.1.3) that the Insured risks include “such other risks as the Landlord may consider it reasonably prudent to insure”

9. The shared ownership lease between the Applicant and the Respondent is dated 3rd August 2010 [118]. The service charge provisions are set out in clause 7.4 and states that the relevant expenditure to be included in the Service Provision is to include those sums payable by the Respondent to the Head Landlord under clauses 3.12, 3.13 and 3.14 of the Head Lease. The Applicant’s apportioned proportion of the Service Provision is defined in the particulars to the lease [123] as being 1.9%.

10. 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.

11. Having had regard to the evidence; the submissions of the parties and having considered all of the documents provided, the tribunal makes the determinations set out below.

The tribunal’s decision and reasons

12. The Applicant’s challenge concerns the estimated costs of insuring the Building in the sum of £405 per year. These costs were included in a demand sent to her under cover of a letter dated 21st February 2014 [103] and relate to the costs of an insurance premium in the sum of £17,779.68 paid to Aon UK Limited (“Aon”) for insuring the Building. This premium is recorded in a Certificate of Insurance dated 21st March 2014 [117] and includes the sum of £6,522.11 for costs of insurance against a terrorist incident.

13. The Applicant's principal concern is that her contribution towards the estimated costs of insuring the Building have increased from £81 in the service charge year ending 31st March 2014 to £405 for the period ending 31st March 2015. This, she contends is an unreasonable increase.
14. However, the actual cost of the insurance premiums paid to Aon does not appear to have increased by such a dramatic margin. The insurance premium for 2013/14, as reflected in the relevant certificate, was £17,441.38 [116], a difference of only £338.30. It appears that what has happened is that the 2013/14 estimated charge to the Applicant did not accurately reflect the actual cost of the premium paid. We note that no finalised service charge accounts for the service charge years 2013/14 appear in the bundle and the indication is that these have not yet been finalised. If that is correct, then the final accounts should reflect the actual costs incurred.
15. The Respondent is obliged by virtue of clause 3.1.2 of the Headlease to pay a fair and reasonable proportion of the premium incurred by the Head Landlord in respect of insuring the Building. The tribunal is satisfied that a reasonable proportion, in this case, is the whole of the premium as the address of the insured property stated on the relevant insurance certificate is the Building alone (as opposed to a larger estate or wider portfolio). It appears that the postcode of the Building is incorrect but this appears to be a typographical error as Aon have confirmed that the Building is insured in an email dated 15th October 2014 [115].
16. The tribunal does not consider the cost of the 2014/15 premium to be unreasonable in amount and determines that the sum of £17,779.68 is payable by the Applicant in her 1.9% apportioned share. The Tribunal's Directions directed that the Applicant seek to obtain at least two comparable, like for like, quotations if she maintained that the costs of the premium were unreasonable. No such quotations have been provided and in the absence of any evidence that the cost was excessive the tribunal is not prepared to determine this to be the case. It is also the tribunal's view, applying its own knowledge and experience as an expert tribunal, that the sum is reasonable for a building of this size and nature.
17. The Applicant raised the issue of a 15% administration charge levied by the Respondent. It appears from the description of services attached to the letter of 21st February from the Respondent to the Applicant [108] that this administration charge is applied to all service charges *except* buildings insurance and some other charges.
18. However, at paragraph 5 iii) of the witness statement of Renee De Villiers [31] on behalf of the Respondent, she refers to the buildings insurance premium including a 15% commission which is rebated to

LGP. She provides no explanation and nor has the Respondent as to who LGP are, nor what services they provide in order to justify this commission.

19. The Respondent was directed to provide “full details of any commission or repayment or other benefit out of the insurance premium paid or given to the landlord, the landlord’s agent or any other associated individual or company” in direction 6(a)(iii) of the Tribunal’s Directions. In the absence of any proper explanation as to who received this commission and what services are provided in return the tribunal does not consider it reasonable for the Applicant to have to contribute towards these costs and determines that they are not payable by her on the basis that they have been unreasonably incurred.
20. We do not consider there is any evidence that the cost of the premiums has increased as a result of the claims record for the Building. Aon state that there have been two claims [115] and there is nothing to indicate that these have impacted on the cost of obtaining insurance for the Building.
21. Nor does the tribunal consider there is any evidence, as asserted by the Applicant, that the cost of the insurance premiums fails to provide best value for the residents of the Building. As stated above, the tribunal considers the costs incurred to be reasonable in amount.
22. The tribunal also considers that it was not unreasonable for the Head Landlord to insure for terrorism cover as claimed by the Applicant in her Statement of Case [95]. The tribunal considers that the obligation at clause 4.2.4.1.1 to insure against the risk of “explosion” includes “terrorism” or “terrorist activities” when regard is had to the ordinary meaning of the word. In any event, the Head Landlord has a discretion to insure for risk of terrorism and having regard to the Royal Institution of Chartered Surveyors Code (Second Edition) which provides at paragraph 15.12 that “...serious consideration should be given to the taking out of terrorism insurance” the tribunal considers that the exercise of this discretion, in accord with the RICS Code, is a reasonable one. The tribunal bears in mind the recent decision of the Upper Tribunal in *Qdime Ltd v (1) Bath Building (Swindon) Management Co [2014] UKUT 0261 (LC), 16 June 2014*.
23. Finally, these insurance costs do not amount to a qualifying long-term agreement as suggested by the Applicant as they are not incurred pursuant to an agreement entered into by a landlord for the provision of goods or services for a period of more than 12 months.

Application under s.20C

24. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

25. The evidence indicates that the Applicant has, for some time prior to commencing this tribunal claim, been attempting to clarify why the insurance costs demanded from her have increased from the 2013/14 estimated figures. The email exchanges set out in the exhibit RD6 to Renee DeVeere's witness statement and the need for the Respondent to apply to the tribunal for extensions of time to comply with the Tribunal's Directions indicate that the Respondent has had difficulties obtaining the information from the Head Landlord's managing agent, Broadgate Estates, in order to answer these queries. These problems are not the fault of the Applicant and in the tribunal's view it is incumbent on the Respondent and the Head Landlord to ensure that there is an effective mechanism whereby long lessees of the Respondent can query service charge costs incurred by the Head Landlord which are then passed on to the Respondent.

26. Given this point and the fact that the costs involved are likely to be modest the tribunal considers it just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

Name: Amran Vance

Date: 5th November 2014

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 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.