



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

Case Reference : CHI/00HE/LSC/2016/0021

Property : The Ground Floor Flat, Millhouse,
Poltair Terrace, Heamoor, Penzance,
Cornwall TR18 3EG

Applicant : Ms Louise Nicholls

Representative :

Respondent : Mr Colin Stephenson

Representative :

Type of Application : Service charges: section 27A
Landlord and Tenant act 1985

Tribunal Members : Judge D Agnew

**Date and venue of
Hearing** : Paper determination 20th July 2016

DETERMINATION

1. By an application dated 10th March 2016 the Applicant asked the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 (“the Act”) as to the liability of the Respondent for, and the reasonableness of certain service charges levied on the Respondent. The Applicant is the landlord and the Respondent the tenant of the Ground Floor Flat, Millhouse, Poltair Terrace, Heamoor, Penzance, Cornwall TR18 3EG (“the Premises”). The Respondent’s lease is dated 15th February 1988 and is for a term of 999 years from that date.
2. The service charges sought by the Applicant comprise a contribution of approximately one half of the costs of the buildings’ insurance paid by the Applicant for the years 2014, 2015 and 2016 in the sum of £100 per year.
3. Directions were issued on 16th March 2016 requiring, amongst other things, the parties to serve statements of case and for the matter to be determined on the papers rather than by an oral hearing under Rule 31 of the Tribunal Procedure (First-tier Tribunal (Property Chamber) Rules 2013 if neither party objected within 28 days. Neither party did object.
4. The Applicant complied with the directions in supplying copies of the demands for payment accompanied by a copy of the summary of rights and obligations served with the demands. The Respondent did not respond to the application in any way.

The relevant lease terms

5. Clause 2(j) of the lease contains a covenant on the part of the lessee: “to insure and keep insured the demised premises.....in a comprehensive policy in the joint names of the Lessee and Lessor with an Insurance Company of repute to be approved of in writing by the Lessor for such an amount as the Lessor may from time to time prescribe and whenever required to produce to the Lessor the Policy or Policies of such insurance and the receipt for the last premium of the same.....”

The Applicant’s case

6. It is the Applicant’s case that on numerous occasions she has asked the Respondent to produce evidence of him having insured his part of the building but he has failed to do so. Understandably, therefore, she proceeded to insure the whole of the building under her own insurance and has sought to reclaim approximately one half of the cost thereof from the Respondent who has failed to make any payment. She therefore asks the Tribunal to determine that the sum of £100 is payable by the Respondent for each of the years 2014,2015 and 2016 in respect of the insurance premium she has had to pay as she had no evidence that the Respondent had effected the necessary insurance.

The Tribunal's determination

7. Regrettably the Tribunal is unable to find in the Applicant's favour. It understands why the Applicant felt obliged to effect the insurance herself and it is not right that the Respondent should avoid having to pay for his share of the cost of insuring the building. However, the lease is unhelpful to the Applicant. The lease puts the responsibility for insuring the part of the property demised to the Respondent upon the Respondent. There is no provision for the Applicant to insure and recover part of the cost from the Respondent as would usually be the case. The buildings insurance for the Ground Floor Flat is not a service charge item that can be reclaimed by the Landlord from the Lessee. A service charge is defined in section 18 of the Landlord and Tenant act 1985 as:
"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.....insurance..., and*
 - (b) the whole or part of which varies or may vary according to the relevant costs."*
8. In this case the cost of insurance is not payable as part of or in addition to the rent because the scheme is for the insurance to be effected by the Lessee himself and so no costs ought to be incurred by the Lessor in respect of insurance for the Ground Floor Flat.
9. Accordingly, the Tribunal has no option but to determine that the Respondent is not liable to re-imburse the Applicant the three amounts of £100 claimed as service charges because they are not service charge items for which the Respondent is liable under the lease.
10. In conclusion, the Tribunal has every sympathy with the Applicant because she has every reason for wanting to ensure that the building is properly insured. There may be other routes that the Applicant can take to try to ensure that the Respondent complies with his covenants under the lease, upon which she may well think it appropriate to seek some legal advice, but unfortunately for her a determination under section 27A of the Act is not available to her.

Dated the 20th July 2016

Judge D. Agnew

Appeals

1. A person seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal.
2. An application must be in writing and must be sent or delivered to the Tribunal so that it is received within 28 days of the date that the Tribunal sends these reasons for the decision to the person seeking permission to appeal.
3. The application must –
 - (a) identify the decision of the Tribunal to which it relates
 - (b) state the grounds of appeal; and
 - (c) state the result the party making the application is seeking.
4. If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required in paragraph 2 above or any extension of time granted by the Tribunal –
 - (a) The application must include a request for an extension of time and the reason why the application was not received in time; and
 - (b) unless the Tribunal extends time for the application the Tribunal must not admit the application.