



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

**Case reference** : **LON/00AM/LSC/2017/0396**

**Property** : **First and second floor flat, 7 – 9  
Middleton Road, E8 4BL**

**Applicant** : **Oliver Edward Wrighton**

**Representative** : **In person**

**Respondent** : **Adebayo Bankole**

**Representative** : **In person**

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

**Tribunal members** : **Tribunal Judge Dutton  
Mr K M Cartwright FRICS**

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

**Date of decision** : **21st December 2017**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the Applicant is not required to make a contribution towards the insurance premium for the property at 7 – 9 Middleton Road, London E8 4BL in the sum of £483.95 for the reasons set out below.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (3) The tribunal determines that the Respondent shall pay the Applicant £150 being 50% of the tribunal fees paid within 28 days of 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 payable by the Applicant in respect of insurance premiums for the years 2013 - 2017.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

3. The Applicant appeared in person as did the Respondent.

## **The background**

4. The property which is the subject of this application is a first and second floor flat in a building with commercial usage at basement and ground floor level. In addition it appears that the Respondent occupies a residential unit at ground floor level annexed to the commercial element. The Respondent appears to have owned the property since 2005. The Applicant acquired his lease in 2013
5. 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**

6. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) That according to the lease the Respondent should, in accordance with clause 5 of the lease *“insure and keep insured the Building against loss or damage by fire and such other risks (if any) as the Lessor thinks fit in some insurance office of repute such sums as shall from time to time represent the full value of the building in the joint names of the Lessor and the Lessee...(our underlining). It is not so insured, as was agreed by the Respondent*
  - (ii) That the apparent change of use from office to a “multi media company” should have been disclosed and whether this would have impacted on the cover available.
  - (iii) That the Respondent has CCJ registered against him which had not been disclosed
  - (iv) That the fact that the Respondent appeared to live at the building had not been disclosed
  - (v) Whether the provisions of s20B Landlord and Tenant Act apply
7. 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.

#### **Lack of inclusion of Mr Wrighton on the policy**

8. The Respondent played to us two telephone conversations he said he had with Direct Line, the Insurers. Mr Wrighton asked us to listen to the recordings. They were indistinct and did not in truth support either parties case to any degree. The Respondent, in the latest conversation, apparently on the morning of the hearing sought to amend the policy to include the interest of Mr Wrighton. It would seem that Direct Line agreed to do this. However, when asking the Respondent whether the Applicant should be able to contact the insurers direct, he stated that he should not be able to do and appeared to merely ask that the Applicant’s interest be noted.

#### **Whether the change of use would impact on the insurance**

9. The Applicant said he had spoken to Direct Line on a hypothetical basis but had no compelling evidence to support his contention that the change of use to a “multi media company” would affect the insurance. The Respondent, relying on the first indistinct conversation with

someone at Direct Line sought to argue that he had informed them of the change and that the insurer did not appear to be concerned

### **Whether the existence of a CCJ would affect the cover**

10. In a small bundle submitted by the Respondent was a copy of the latest insurance schedule for September 2017 to September 2018. Under assumptions it states that the Respondent was required to disclose a County Court Judgment within the last 10 years. Apparently there was a CCJ which seems to be evidenced by a final charging order secured in the Charges Register of the title to the property in favour of the Financial Ombudsman Service Limited dated 19<sup>th</sup> November 2014. In the first telephone conversation there is an attempt to disclose this, referred to as a charge, which was dealt with by Direct Line as being a personal matter which would not affect the cover. Direct Line where not informed that there was a Final Charging Order registered against the title.

### **Disclosure of address and occupation as a residential unit by the Respondent**

11. Again we were asked to consider the telephone conversation in which this is at best alluded to. When asked, the Respondent confirmed that the occupancy was under a 6 month tenancy. Direct Line appeared to be confused about this and no unequivocal answer was given.

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

12. In respect of the failure to include the Applicant as a joint insurer we find that the Respondent has failed to do this. His excuse centred around disputes he was involved in concerning possible repossession of the property. He said that these had taken all his time and he had not been able to deal with the matter, other than by telephone on the morning of the hearing.
13. From listening to the replay of the conversation it is quite clear to us that the Respondent did not ask Direct Line to amend the policy so that it was in joint names of himself and the Applicant. At best he asked that the Applicant's interest be noted. In those circumstances we find that the Respondent is in breach of the terms of the lease and is not allowed to recover the insurance premiums in the sum of £483.95.
14. It should be noted that the first demand made for any contribution of the Applicant to the insurance premiums was dated 26<sup>th</sup> September 2017. Applying the provisions of s20B of the Landlord and Tenant Act 1985 (the Act) we find that the Respondent cannot recover any premiums for the period of 18 months before that date. In fact the demand of £483.95 reflects this and that sum was agreed as being the

potential liability of the Applicant, if we found that s20B applied, which we do.

15. In respect of the other matters we found the evidence of the Respondent unconvincing. The telephone conversations were unclear and the information given to Direct Line somewhat confusing. Against that the Applicant had no documentary evidence and had not contacted any brokers to support his assertions. We are not convinced that the three issues would affect the cover.
16. To resolve these matters we suggest that the Respondent communicates with Direct Line in writing (perhaps by email) setting out the concerns raised by the Applicant so that he can obtain a definitive answer from the insurers. If this is done, it would, we hope, prevent any ongoing issues. He must, in any event, make sure that the policy is in the joint names of the parties as soon as possible. This was the main concern of the Applicant. Once this is done, on the evidence that was adduced at the hearing, we conclude that ongoing insurance premiums would be payable

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

17. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/hearing<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund 50% of the fees paid by the Applicant within 28 days of the date of this decision.
18. In the application form at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and 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.
19. The Applicant indicated that he might consider a claim for costs under the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13, which is set out below. The Applicant's attention is drawn to the Upper Tribunal case of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC). Any such application must be made within 28 days after this decision is sent to him.

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

*Andrew Dutton*  
**Name:** Tribunal Judge Dutton      **Date:** 21st December 2017

### **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 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.

#### **Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013**

Orders for costs, reimbursement of fees and interest on costs 13.—

- (1) The Tribunal may make an order in respect of costs only—
  - (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
  - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
    - (i) an agricultural land and drainage case,
    - (ii) a residential property case, or
    - (iii) a leasehold case; or
  - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs— (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and (a) S.I. 1998/3132 10 (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal

sends— (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by— (a) summary assessment by the Tribunal; (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”); (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.