12356

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2017/0137**
Property	:	**27B Brockley Gardens, London SE4 1QZ**
Applicant	:	**Mr Victor Abrahams**
Representative	:	**Mr Geoffrey Abrahams (Son)**
Respondent	:	**Mr Felix Henry**
Representative	:	**Mr F Henry In Person**
Type of Application	:	**Court referral – section 27A Landlord and Tenant Act 1985 and Schedule 11 Commonhold and Leasehold Reform Act 2002 – determination of service charges and administration charges payable**
Tribunal Members	:	**Judge John Hewitt** **Mr Kevin Ridgeway MRICS**
Date and venue of hearing	:	**6 September 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**15 September 2017**

DECISION

The issues before the tribunal and its decisions

1. The tribunal is to report to the court on the sums (if any) payable by the respondent tenant to the applicant (Claimant in the court proceedings) – Claim Number: C8QZ1Q26

2. The sums claimed in the court proceedings were:

Insurance 2014/15	£416.98
Insurance 2015/16	£456.60
Management fee	£ 60.00
Late payment fee	£ 24.00
Court fee	£ 60.00

3. The basis of the claim was that the Claimant was the landlord of the Defendant and that the sums were payable pursuant to the terms of a lease of the subject premises, which lease was dated 14 March 1985

4. We report to the court as follows:

   4.1 The Claimant – Mr Victor Abrahams – is not the landlord of the Defendant. The Defendant's landlord is Beitov Properties Limited, a company of which Mr Victor Abrahams is the secretary and one of several directors. Mr Geoffrey Lewis Abrahams is also a director of that company.

   4.2 The lease provides for the payment of an insurance rent. That rent is a service charge for the purposes of section 18 Landlord and Tenant Act 1985.

   4.3 Demands for the payment of the insurance contributions were issued by the landlord to the Defendant but they were not accompanied by a document known as 'Service Charges - Summary of tenant's rights and obligations' which is provided for in the Service Charges (Summary of Rights and Obligations and Transitional Provisions)(England) Regulations (SI 2007/1257) (the regulations).

   4.4 Section 21B (1) Landlord and Tenant Act 1985 provides that a demand for a service charge must be accompanied by the summary of the rights and obligations provided for in the regulations. Section 21B (3) provides that a tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

   4.5 By a further demand dated 24 May 2017 the Defendant's landlord re-issued a demand to the Defendant which was compliant with the regulations with the consequence that the two insurance contributions in issue became payable by the Defendant to his landlord as from that date, subject only to the amount payable being a reasonable amount.

4.6 We find that reasonable amounts for those insurance contributions are:

2014/15	£312.73
2015/16	£342.45

4.7 Similar arguments arise in connection with the two administration charges of £60 and £24 claimed but, for other reasons we need not go into, during the course of the hearing before us Mr Geoffrey Abrahams withdrew and abandoned those two claims.

4.8 To summarise, the applicant/Claimant Mr V Abrahams is not the Defendants landlord and he has no right to claim the insurance contributions. If Beitov Properties Limited was to be substituted as Claimant, in place of Mr Abrahams, it would be entitled to the claim the insurance contributions, but only as from 24 May 2017 when compliant demands were made on the respondent. Even then the insurance contributions payable are limited to:

2014/15	£312.73
2015/16	£342.45

4.9 This tribunal has no jurisdiction in respect of the £60 court fee claim and this claim is remitted back to the court for determination by the court.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the section and page number of the hearing file provided to us for use at the hearing.

The background

5. The property was originally constructed as a house and subsequently it has been converted to comprise two self-contained flats. Those flats have been sold off on long leases. The respondent, Mr Henry, acquired one of the flats as an investment to add to his 'Buy to Let' portfolio.

6. The lease provides for the payment of an insurance rent being: *"... a sum equal to fifty per cent of the amount which the Lessor may expend in effecting or maintaining the insurance of the Building in accordance with Clause 5(2)..."*

Clause 5(2) is a covenant on the part of the landlord to insure and keep insured the Building against certain specified risks in the full reinstatement value in some insurance office of repute.

7. Unfortunately the relationship between Mr Geoffrey Abrahams and Mr Henry has broken down and both are frustrated with one another and at times hostile to one another.

8. The claimant has a substantial ground rent investment portfolio and his son Mr Geoffrey Abrahams helps him to manage it through V. A. (Property Management) Ltd. Mr Geoffrey Abrahams explained that a large part of the portfolio is managed by managing agents, Basicland Registrars Ltd (BLR), which charges for its services and which charges are passed through a service charge account and ultimately borne by the long lessees.

9. The subject property is a small development of only two flats and very little by way of management is required. Mr Geoffrey Abrahams believed that some while ago he came to an understanding with the two long lessees that they would themselves manage the building on a day to day basis as that would save them money and all the landlord would do is effect buildings insurance. Thus professional managing agents have not been appointed.

10. Mr Geoffrey Abrahams has effected the insurance and sought to recover the 50% contribution from Mr Henry and he considers Mr Henry has taken undue advantage of his good nature by being difficult and taking sneaky legal points when the paperwork is not quite right.

11. Mr Henry, on the other hand, considers that the amounts charged for insurance are outrageously high when compared with the cost of insurance on his other flats and when he challenges issues or seeks further information he finds Mr Abrahams is obstructive, unhelpful and inconsistent.

12. Neither party fully complied with directions. Mr Abrahams did not provide a statement of case, he simply filed a series of correspondence and other documents. When detailed questions were put to Mr Abrahams and he was asked to identify what particular document he relied upon he rather unhelpfully indicated all the answers were in the documents and we could find them for ourselves. We allow that Mr Abrahams was in a little difficulty because he had not brought his spectacles to the hearing. Nevertheless it was plain to us that Mr Abrahams was distinctly peeved at being at the hearing, which he considered was a waste of his time, and he was keen that everyone should know that. It was also clear to us that Mr Abrahams tends to shoot from the hip and make broad statements. When pressed on some detail he tends to backtrack and hence his evidence was on occasions contradictory and inconsistent.

13. Mr Henry claimed that he was unable to obtain comparable quotations for insurance and to put in evidence to challenge the applicant's costs because the applicant had not provided him with the necessary historic information. This was disputed by Mr Abrahams who accused Mr Henry of failing to read and understand the correspondence.

The insurance dispute

Claims history

14. What it came down to was the claims history of the building and whether there had been subsidence in the past. At the hearing Mr Abrahams said, and we accept, that the building has a good claims history in that there have been no claims in the past 10 years or so, since 2007 when the current brokers were engaged.

15. As to subsidence, Mr Abrahams said that as far as he is aware there has not been subsidence, certainly not since his family acquired the building. Mr Henry was of the opinion that some repair work hinted that there might have been subsidence some years ago and that he needed firm and clear information about it because it was crucial to the cost of insurance, or at least a new or incoming insurer would ned full details before quoting a premium. Mr Henry said that he bought his lease in 2003 and there has been no subsidence since then. He also said, and we accept, that he knows the previous owner who had bought the flat in 1993 and she had no knowledge of any subsidence during her ownership.

16. Thus it seems clear to us that the evidence is there has been no subsidence since at least 1993 and that is the only information that can be given to insurers. We find there is no point in Mr Henry trying to press the applicant to provide historic information which the applicant simply does not have, particularly bearing in mind that Mr Henry does not have any reliable evidence that there has been subsidence in the past, but pre 1993.

Market testing

17. One of the issues Mr Abrahams tended to gloss over was the extent to which market testing had been undertaken. Mr Abrahams said that BLR was responsible for organising the portfolio insurance and placed the business with brokers, Christopher Trigg (Triggs). There is an email at [3/11] from Triggs which is dated 1 June 2017. It states that marketing of the applicant's and BLR portfolio is undertaken every two years when a number of named insurers are approached. The last review was undertaken in November 2016 at which Covea offered the most competitive terms. Mr Abrahams also sought to rely upon a rather bland letter dated 29 October 2015 [4/11] which was not on headed paper but which was said to have been written by Triggs summarising what they did at the 2014 market testing

18. We assume that the brokers would have issued reports on the 2014 and 2016 market testing exercises with recommendations. Those reports ought to have summarised the offers from the insurers approached and made a recommendation. Those reports ought to have been disclosed by the applicant. They are clearly material to the issue before the tribunal.

19. To confuse the evidence Mr Abrahams then claimed that no reports were in fact issued and that market testing is undertaken annually.

Each December Triggs visits the office, gives an oral summary of the market testing, makes a recommendation and is given an oral answer. Initially Mr Abrahams said that notes were kept of the meetings but when asked why they had not been disclosed he claimed that no notes were in fact made.

20. Despite the confused and confusing evidence we find, on the balance of probabilities, that market testing is undertaken on a bi-annual basis and that it is robust. We do make the point that it would be so easy for the applicant to produce copies of the reports so that all concerned could see for themselves that appropriate market testing has been undertaken. We do not understand why the landlord needs to be difficult over this issue.

The placing of the business

21. It was not in dispute that the applicant and his family have a substantial ground rent portfolio. We find that for reasons of good estate management it is not unreasonable that the buildings insurance is placed on a portfolio or block policy basis. It is a fact that in the insurance market such portfolio policies can sometimes work out more expensive that single policies taken out by individual householders. In our experience there are several reasons why the volatile insurance market tends to work in that way.

22. For these reasons, we find that it was reasonable for the business to be placed as it was in respect of the two years in question.

Commission

23. A further complaint of Mr Henry was that the applicant has not been explicit as to the receipt of any commission from the insurers. As regards the documents there may be some traction in that complaint but at the hearing Mr Abrahams was clear and adamant that neither his father nor any company owned or controlled by the family received any commission arising from the placing of the insurance. Mr Abrahams said that he was aware the insurers paid a commission to Triggs (which was normal in the market) and that Triggs shared some of that commission with BLR but he was not aware of the details, and he was certain none of it was shared with the family. We accept Mr Abrahams evidence on that point.

24. Mr Abrahams was keen that we should read a detailed email he sent to Mr Henry on 6 June 2017. A copy is at [3/1]. In it he mentions that he has spoken with both 'broker and agency' – we infer that was Triggs and BLR – about the commission they receive. Evidently for the two years in question this was about 66% because:

	2014/15	2015/16
Base cost of insurance	£250.19	£273.96
Total amount claimed	£416.98	£456.60

Mr Abrahams records that the broker and the agency have agreed to cap the commission at 25% for those two years and also to apply that cap for 2016/17 and on 'all future transactions to apply this rate.

On that basis the revised amounts payable are £312.73 for 2014/15 and £342.45 for 2015/16. The cost of insurance was thus decreased to those amounts and it would not be reasonable for the landlord to recover any more than those sums.

Building sum insured

24. Mr Henry had a concern about when the last insurance revaluation had taken place and whether the current building sum insured was adequate.

25. It appears from the documents provided to us that the building sums insured were as follows:

2014/15	£288,567 [4/17]
2015/16	£291,452 [4/15]
2016/17	£294,367 [3/6]

26. Mr Abrahams was unclear when the last formal insurance revaluation had taken place, but he had recently spoken informally to a surveyor knowledgeable in these matters who confirmed to him that the building sum insured was adequate.

27. If the building sum insured were to be increased then no doubt the cost of insurance would also increase. Mr Henry accepted that.

28. The building sums insured cannot be increased retrospectively and thus there is no impact on the reasonableness of the cost of insurance we have to determine.

29. If going forward there is a concern the parties will need to discuss it. Of course if a formal revaluation were to be undertaken there will be a cost to be borne by someone.

Administration charges

30. For the sake of good order we record that Mr Abrahams did not wish to identify what provision in the lease he relied upon to support the claims to the two administration charges or to justify the reasonableness of them and so he withdrew the claim to those two sums.

Judge John Hewitt
15 September 2017

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.