



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

Case reference : **LON/00BH/LSC/2017/0438**

Property : **38A and 38B Haroldstone Road
Walthamstow London E17 7AW**

Applicant : **Mr S Nuaimi (Flat A)
Ms S Awan (Flat B)**

Representative : **Mr S Nuaimi in person**

Respondent : **Mr M S Choudhary**

Representative : **Mr R Alford**

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

Tribunal member : **Mrs E Flint FRICS**

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

Date of decision : **21 March 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that no sums are payable in respect of the insurance premiums for the years 2014 -15 and 2015 -16.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable in respect of the S20 Notice served in 2012 and the insurance premiums for 2014-15 and 2015-16.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a two storey terraced house converted into two flats.
4. 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.
5. The Applicants hold long leases of the flats which require 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 are referred to below.
6. Having considered the oral evidence and the documents provided, the tribunal has made determinations as follows.

The Issues

7. The only item in dispute is the insurance premium payable for 2014-15 and 2015-16 because the landlord had given an undertaking prior to the hearing that he would not seek to recover any sums in respect of the 2012 section 20 notice for works costing £20,250.

The Lease

8. The lease for the ground floor flat which is dated 10th May 1991 is for a term of one hundred and twenty five years from 25th December 1990 at a rising ground rent. The leases for both flats are understood to be on identical terms.
9. The lessee covenants at Clause 1 *“to pay “by way of additional rent during the said term fifty per cent of the premiums paid by the Lessor for insuring the whole of the building of which the demised premises form part in accordance with its covenant hereinafter contained.”*
10. At 5 (3) the Lessor covenants to *“insure and keep the building of which the demised premises forms part against loss or damage by fire and other usual risks normally covered by a comprehensive policy of domestic insurancein the joint names of the Lessor and the Lessee and in the Lessor agency and upon request of the Lessee or his agent will within 14 days produce a copy of the policy of insurance and the receipt for the last premium “....*

The Hearing

11. Mr Nuaimi presented the case on behalf of himself and Ms Awan. He said that he had made lots of requests for information but had not received replies to his queries. He had requested insurance documentation in accordance with the terms of the lease but this had not been provided.
12. The insurance premium paid for 2013-14 of £278 was reasonable. However, he was concerned that the property may not have been insured in the years following. He had not received a receipt issued by the insurer since the building had been included in a block policy in the name of the Lessor's son who manages the property on behalf of his father. The premium had increased significantly to £445 for 2014-15 and £483.70 for 2015-16 for each flat; no explanation had been given to explain the large increase since 2013-14 nor had any schedule been produced showing the premiums charged and the individual properties on the schedule for 2014-15, 2015-16 or 2016-17. He said that the premium for the block policy for 2015-16 was 23% lower than in 2014-15 however the premium demanded for this property had not been reduced. He considered that the use of a block policy was inappropriate for the subject property. There was no reason for the managing agent to step into the shoes of the Lessor for the purposes of insuring the property. He considered that the premium for 2013-14 should be the starting point in estimating the insurance premium for subsequent years.

13. The Lessor had said that there had not been a claim in 2012 but that was inconsistent with a letter from the insurers which quoted a claim reference number. He said if any monies had been paid out they had not been expended on the property.
14. Mr Nuaimi thought that the previous lessee of the first floor flat had paid £10,125 in 2012 in respect of s20 works and asked how the money had been expended.
15. Mr Richard Alford of counsel appeared for the Respondent. He said that it was first necessary to determine whether the insurance premiums were recoverable in principle under the terms of the lease and if so were the charges reasonable.
16. He explained that Mr Chaudhury had managed the property since his father bought it. He referred to a Power of Attorney appointing Asad Shamin Chaudhary as attorney for Mohammed Shamin Chaudhary. He accepted that it did not appear to have been registered with the Court of Protection and was unable to obtain further information during a short adjournment.
17. Mr Alford referred to clause one of the lease which imposes an obligation on the Lessor to insure the building and each Lessee to pay 50% of the cost of insurance. He contended that non-compliance with paragraph 5 (3) did not prevent the lessee from recovering the cost of insurance from the lessees. He gave as an example providing a copy of the insurance within 15 rather than 14 days of the request.
18. Mr Alford referred to the Upper Tribunal's decision in *Denise Green v 180 Archway Road Management Co. Ltd* 2012 UKUT 245 (LC) UTLC where it was held that the correct question was: had the respondent (in that case) complied with the terms of the lease? It was held that the lease terms had not been complied with and the lessee was not liable to pay any part of the premium for the relevant years.

He also referred to the Upper Tribunal's decision in *Cos Services Ltd v Nicholson* 2017 UKUT 382 (LC) which was concerned with the reasonableness of the amount of the insurance premium being charged. The conclusion of the Judge was that

"It remains a mystery, having heard the evidence adduced by both parties, why there is such a discrepancy between the premiums charged to tenants under the landlord's block policy and the premiums obtainable from other insurers on the open market. It is a mystery which the landlord has been wholly unable to explain.

It is clear to the Tribunal that the insurance premiums being charged by the landlord to the tenants were excessive, in the sense that considerably lower

premiums for similar protection could have been obtained elsewhere. Moreover, insofar as there may have been certain advantages with the NIG policy, they were so insubstantial that they could not justify the amount being charged.

It follows, applying the reasoning set out above, that the landlord has failed to satisfy the Tribunal that the amounts sought to be charged to the tenants were "reasonably incurred". The Tribunal therefore reaches the same decision as the FTT, and the landlord's appeal from that decision must be dismissed."

19. Mr Alford also referred to Court of Appeal decision in *Universities Superannuation Scheme Ltd v Marks and Spencer plc* 1998 where at paragraph 243 the purpose of the service charge was considered:

"The purpose of the service charge provisions is relevant to their meaning and effect. So far as the scheme, context and language of those provisions allow, the service charge provisions should be given an effect which fulfills rather than defeats their evident purpose. The service charge provisions have a clear purpose: the landlord who reasonably incurs liability for expenditure in maintaining the Telford Shopping Centre for the benefit of all its tenants there should be entitled to recover the full cost of doing so from those tenants and each tenant should reimburse the landlord a proper proportion of those service charges." The respondent in the case was liable for the full amount rather than the original sum demanded based on an incorrect calculation of the service charge due.

20. The Tribunal's decision

21. The Tribunal determines that the insurance policies for 2014-15 and 2015-16 did not comply with the lease provisions and the premiums are not recoverable from the Lessees.

22. Reasons for the decision

23. The lease requires the Lessor to insure the building in accordance with its covenants in the lease. By paragraph 5(3) the risks covered are to be those normally covered by a policy of domestic insurance, in the joint names of the Lessor and the Lessee and in the Lessor agency. The policies for these years were in the name not of the Lessor and Lessees but only his son as part of his business of property landlord and developer, in fact there was no reference at all to the names of the Lessees. Moreover, there was no evidence from the copy of the Power of Attorney in the bundle that it had been registered with the Court of Protection. The Tribunal accepts that the Respondent has authority to act as the managing agent for his father since the freeholder wrote to Mr Nuaimi on 24 June 2014 advising that Ascots property services would be managing the property on his behalf from that date. The insurance policies for those years therefore did not comply with the terms of the lease.

24. If the Tribunal is wrong on this point then the question of reasonableness of the premiums would need to be considered.

25. The 2013-14 Certificate of Insurance gave the name of the policy holder as Mohammad Shamin Choudhary, the premium inclusive of IPT was £556.18. The policy covered the subject property only.
26. The 2014 -15 Certificate of Insurance gave A Chaudhary as the block policy holder. The premium for the block policy covering 17 properties was £18,084.05, details of the properties and the individual premiums were on a schedule which has not been disclosed.
27. A 2015-16 invoice in the sum of £13,836.58 was addressed to Mr A Chaudhary by his insurance broker, it referred to cover for seventeen properties however no schedule has been disclosed itemising the individual properties. No certificate from the insurers been provided.
28. Mr Alford conceded that in the absence of any further information the 2013-14 premium would be an appropriate starting point with additions for inflation.
29. As to the 2012 letter there was nothing in it which directly referred to a claim in respect of the property. Mr Chaudhary stated in his witness statement that he could not recall any claim having been made.

The tribunal's decision

30. The tribunal determines that the amount payable in respect of the insurance premium for 2014-15 at £570 and for 2015-16 at £590 for the property. Each lessee is responsible for 50% in accordance with the terms of their leases.

Reasons for the tribunal's decision

31. The tribunal finds that the respondent was unable to provide a satisfactory reason why the premium had increased significantly once the insurance was included in a block policy of sixteen other properties. The actual schedules showing details of the properties included in the policy and their respective premiums was not disclosed to either the applicants or the Tribunal. The parties agreed at the hearing that an inflationary addition to the 2013-14 premium was a reasonable approach if the Tribunal found that the premium under the block policy was excessive.

Application under s.20C and refund of fees

32. In the statement of case, the Applicant requested an order under section 20C of the 1985 Act should be made and referred to a previous decision of the tribunal in 2011. Mr Alford agreed that there did not appear to be any clause in the lease which would allow the landlord to

pass on the costs to the lessees. Having considered 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. It is further ordered that the Applicants' fees should be reimbursed within 28 days of this decision since they had no alternative but to apply to the tribunal and come to a hearing in order to resolve this matter.

Name: Evelyn Flint

Date: 3 April 2018

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 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.