



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

Case References : **BIR/00CT/LIS/2019/0018**

Properties : **Hamptons, Apartments 1-15
1 Hermitage Road, Solihull, B91 2FW**

Applicants : **Lessees of Hamptons**

**Applicants’
Representative** : **Abdrabalamir Alshammasi**

First Respondent : **Grey GR Limited Partnership**

**First Respondent’s
Representative** : **Residents Quarter Limited**

Second Respondent : **Hamptons (Hermitage Road)
Management Company Limited**

Applications : **(1) Application for a determination of
liability to pay and reasonableness of
service charges pursuant to ss 19 & 27A
Landlord and Tenant Act 1985 (the Act)**
**(2) Application for an order limiting the
Respondent’s costs in the proceedings
under s20C of the Act and**
**(3) An Application for an Order under
paragraph 5 Schedule 11 Commonhold and
Leasehold Reform Act 2002 (CLRA 2002)
reducing or extinguishing the tenant’s
liability to pay an administration charge in
respect of litigation costs**

**Date of Inspection
And Hearing** : **28 November 2019**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr.D. Satchwell FRICS**

Date of Decision : **13 December 2019**

DECISION

- 1. The Tribunal determines the sum of £3907.32 claimed for service charges namely insurance premium for the service charge year 2018-2019 together with the sum of £802.58 as an additional premium for the period 1 January 2018 to 30 June 2018 are reasonable and Applicant is liable to pay the total sum of £4709.90**
- 2. The Tribunal determines the sum of £3665.80 claimed for service charges namely insurance premium for the service charge year 2019-2020 is reasonable and Applicant is liable to pay the sum**
- 3. The Tribunal orders pursuant to the application under s20C of the Act that the costs of the Landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining any service charge payable by the Applicant.**
- 4. Pursuant to paragraph 5A Schedule 11 CLRA 2002 the Tribunal determines that legal costs are not payable as administration charges.**

Introduction

1. This is an application for a decision under s27A of the Landlord and Tenant Act 1985 (the Act) whether or not service charges relating to building insurance contributions for service charge years 2018-9 and 2019-20 are reasonable due and payable. The original application included service charge years 2016-7 and 2017-8 but the Applicant withdrew their application relating to those years.
2. There are further applications relating to costs under both s20C of the Act and Paragraph 5 Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the CLRA 2002).
3. The Applicants are lessees of the Hamptons. They were represented at the hearing by Mr Abdrabalamir Alshammasi who was supported and assisted by one other tenant.
4. The First Respondent was represented by Miss Kimberley Ziya of counsel instructed by JB Leitch LLP solicitors of Liverpool. Mrs Sarah Parkyn a director of Residents Quarter Limited was present with Miss Ziya.
5. The Second Respondent took no part in the proceedings.

The Property

6. The Tribunal inspected the Hamptons on 28 November 2019 in the presence of Miss Ziya, Mrs Parkyn, Mr Alshammasi and other residents.
7. The Hamptons is a two storey building with a third storey constructed in the central part of the building as a design feature. It was constructed in 2015 and 2016 with traditional brick and tile construction. There is parking to the rear. The development does not have any garden area.
8. As the subject of the dispute related to the reasonableness and payability of the building insurance premiums it was not necessary to inspect any of the apartments.

The Parties Submissions

9. The Applicants' complaint regarding the insurance premiums was that they are excessive having regard to the amount paid in previous years since construction of the property until the Respondent acquired ownership of the property on 18 January 2018.
10. The application was issued on 5 May 2019 by Mr Alshammasi and joined by the other lessees of the Hamptons. By the application Mr Alshammasi complained that upon acquisition of the freehold by the First Respondent from the developer Lode Development Limited the insurance premiums increased without good cause. The premium costs became a disproportionate amount of the total budget for service charges.
11. The history of premiums is:

a. 2016/7	£1619.50
b. 2017/8	£2173.00
c. Additional Premium	£802.58
d. 2018/9	£3,907.32
e. 2019/20	£3,665.80
12. The increase was not explained to the satisfaction of the lessees. Mr Alsammashi contended that there are cheaper but satisfactory alternatives available in the market. He produced a quote from a broker namely Middletons which suggested a suitable like for like alternative policy was available with a premium of £2,371.00. He produced other correspondence

with indicative quotes but as they were not fully formulated quotes they were not regarded as helpful comparable evidence.

13. He complained that the Respondent had not properly complied with the Tribunal's directions for disclosure of insurance policies to enable him to give proper instructions to other possible insurers. He asserted he received nothing more than marketing pamphlets.
14. Mr Alsammashi also asserted that one cause of the increase in premiums was that the reinstatement value of the property had doubled thereby resulting in a consequential doubling of the premium.
15. Specific terms of the policy incepted by the Respondent were also criticised. The Applicant complained that the figure of £15m for public liability was excessive. It should have been £5m. Terrorism cover is not required.
16. He further asserted the policy should have been specific to Hamptons and not within a block policy. By insuring in a block policy added to the costs.
17. In response Miss Ziya on behalf of the Respondent asserted that upon acquisition of the Property the Respondent arranged for a revaluation both at the request of the insurers and as part of its normal business operation. The company instructed to carry out the valuation was a reputable independent professional valuer unconnected with the Respondent. The valuation was substantially higher than that used by Lode Developments because it was for full reinstatement whereas the original valuation was the developers build cost.
18. The quote from Middleton was not a final quote as it expressly reserves the position by inviting the Applicant to provide further information whereupon a 'firm quotation' would be given.
19. Also it was not like for like because there is no information as to the name of the insurer. There is no cover for employee dishonesty. There is an excess of £250.00 on claims. The Respondent's policy includes £50,000 of content cover. The Tribunal was urged to disregard the Middleton quote as a satisfactory alternative. However, Miss Ziya submitted that in any event the quote was within a reasonable range and not one which would displace the

Respondent's discretion in deciding under the terms of the lease on the suitability of an insurer.

20. The Respondent adduced a quotation from another broker proposing insurance with Allianz at the premium of £5765.76 which was higher than premium in dispute but confirmed the existence of a range of possible premium pricing.
21. As far as the lack of knowledge of the Respondent's policies was concerned Miss Ziya pointed out that the Applicant had received all documents required by the Tribunal. The Applicant had used the Respondent's information when seeking an alternative quote with Middleton. She suggested that the Applicants' representatives may not have recognised the documents as policies and certificates.
22. As far as the reinstatement valuation was concerned the Respondent pointed out the Applicant had adduced no evidence in support of the contention the valuation was too high.
23. By using a block policy Miss Ziya asserted the premiums were more competitive. The previous owners used portfolio insurance. Also terrorism cover is now required within the meaning of explosions as an insurable risk.
24. In the written submissions of the Applicant it contended the placing commission paid to the Respondent should be repaid to it. Miss Ziya rebutted this claim. Mrs Parkyn's evidence described the work done by the Respondent in arranging insurance and managing the policy. The Respondent contended that the sum paid for commission was disclosed and in line with normal practice.

The Leases

25. It was common ground that the lessees occupy their apartments on substantially the same terms as the lease produced to the Tribunal.
26. The lease produced was that between Mr Ashamasi made between him and Lode Developments for a term of 125 years from 1 January 2015.

27. Clause 2 is the grant of the lease. It provides at 2.3:

“The grant is made in consideration of the Tenant paying to the Landlord the Premium.....and covenanting to pay the following sums as rent

(a) The Rent

(b) The Insurance Rent

(c) The Service Charge

(d) ...”

And by clause 1 (Agreed Terms) Insurance rent is

(a) A fair and reasonable proportion determined by the Landlord of the cost of any premiums(including any by PT) that the Landlord or the management company (as appropriate) expends (after any discount or commission is allowed for paid to the Landlord) and any fees and other expenses that the Landlord or management company reasonably incurs in effecting and maintaining insurance of the Building in accordance with the obligations contained in this lease including any professional fees for carrying out any insurance valuation of the Reinstatement Cost

(b).....

Clause 1 defines Insured Risks as

Fire explosions lightning earthquake storm flood bursting and overflowing of water tanks apparatus or pipes escape a water or oil impact by aircraft and articles dropped from them. Impact by vehicles riot civil commotion malicious damage theft or attempted theft falling trees and branches and aerials subsidence heave land slip collisions accidental damage to underground services public liability to anyone else and any other risks which the Landlord decides to insure against from time to time and Insured risks means any one of the Insured Risks

28. By Schedule 4 the Tenant Covenants at clause 3

3.1 to pay to the Landlord or the management company (as appropriate)

(a) the insurance rent demanded by the Landlord or the management company by the date specified in the notice given by the Landlord or the management company under the terms of this lease

29. By Schedule 6 the Landlord covenants at clause 2.1

To effect and had maintained insurance of the building against loss or damage caused by any of the insured risks with a reputable insurance on fair and reasonable terms that represent value for money for a mountain not less than the reinstatement cost subject to:

- (a) Any exclusions and limitations conditions or excess is that may be imposed by the insurer, and*
- (b) Insurance being available on reasonable terms in the London Insurance markets.*

The Statutory Framework

30. Sections 18 -30 of the Act provide a statutory framework for the regulation of the relationship between a Landlord and tenant of residential property in connection with service charges.

31. Section 19 provides

(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 provision 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.

32. S20(C) (1) provides

(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 leasehold valuation tribunal or the First-tier 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.

33. S27A provides

(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.*

34. Paragraph 5A Schedule 11 CLRA 2002 provides

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the Landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Decision

35. In her skeleton argument Miss Ziya reminded the Tribunal that the burden is on the Landlord to satisfy the Tribunal on the balance of probabilities that the costs in question have been reasonably incurred. The lease itself at Schedule 6 paragraph 2.1 imposes on the Landlord the obligation to ensure that insurance is obtained on fair and reasonable terms. Mr Alshammasi in his submission asserted that although he considered the sums claimed by the Landlord were too high there are other insurers offering the same insurance for lower premiums.

36. There is no dispute that the Landlord must obtain insurance, the issue is whether the Landlord has incurred the costs reasonably.

37. The tribunal is satisfied there is suitable insurance available within a range of prices. It is also satisfied that the insurance obtained by the Respondent is at a reasonable price. The Applicant while conceding premium pricing varies was unable to adduce evidence that the premium proposed by the Respondent was unreasonable. The quotation provided was not a good comparable because Middleton had not provided a firm quote.
38. The Tribunal rejects the Applicants' submission that it did not have enough information upon which to obtain a quotation. It is satisfied the Respondent complied with the Directions to disclose information relating to the policy. The information was not marketing material as the Applicant suggested but the relevant policy and certificate. It appeared to the Tribunal at the hearing that the lessees had not recognised the documents for what they were.
39. Accordingly the Tribunal is satisfied the sum claimed for insurance premiums is reasonable.

Costs

40. The Respondent indicated that it would not seek to include its costs as relevant costs in calculating the service charge. Accordingly, the Tribunal orders pursuant to the application under s20C of the Act that the costs of the Landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining any service charge payable by the Applicant.
41. However there was an application for legal costs as administration charges. The Applicants seek an order limiting litigation costs pursuant to paragraph 5A Schedule 11 of the CLRA2002. Although Miss Ziya provided assistance to the Tribunal by the way she presented the Respondent's case this was a straightforward matter which could have been conducted by the Respondent.
42. As stated in *Avon Ground Rents v Child [2018] UKUT 0204 (LC)*:
"The procedure before the FTT is intended to be relatively informal and cost effective. The legal principles for assessing the reasonableness of service charges are well-established and clear. In many cases there will be no issue about the relevant principles to be applied, and their application will not be so difficult as to make legal representation essential or even necessary. In

such cases a representative from the Landlord's managing agents should be able to deal with the issues involved. After all, those agents will have been directly involved in the decisions taken pursuant to the lease to provide services, to set annual budgets and estimated charges, to incur service charge costs and to serve demands for service charges. Where that is so, a court may reach the conclusion that it was unreasonable for the costs of legal representation to be incurred, whether in whole or in part"

43. The Tribunal is satisfied this is one of those cases in which it is appropriate to conclude it was not necessary to incur the costs of legal representation.

Appeal

44. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis
Chair