FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2020/0017**
Property	**:**	**37 Venetian Road, London SE5 9RR**
Applicant	**:**	**Mr. P. Winter**
Representative	**:**	**In person**
Respondent	**:**	**Mr. R. Gurvitz**
Representative	**:**	**In person**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge, and for an order under S.20C of the Landlord & Tenant Act 1985 to limit the landlord's costs of proceedings**
Tribunal members	**:**	**Ms. A. Hamilton-Farey** **Mr. S. Mason**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**9 March 2020**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £176.61 is payable by the Applicant in respect of the additional insurance premium for the year 2019/20.

(2) The tribunal makes the determinations the agents fees of 10% are payable under the terms of the lease and are reduced in relation to the survey fee to £40.00 plus VAT.

(3) The tribunal determines the reasonable surveyors fee for conducting the insurance revaluation is £400.00 plus VAT.

(4) The tribunal makes an Order under S.20C of the Landlord and Tenant Act 1985 that the landlord may not recover any of the costs of these proceedings under the service charge.

(5) The tribunal determines that the Respondent shall pay the Applicant £100.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 management fees and insurance for the service charge year 2019. The applicant also seeks an order under S.20C of the Landlord & Tenant Act 1985 to limit the landlord's costs of proceedings, and has made an application under Paragraph 5A to Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

2. The relevant legal provisions are set out in the Appendix to this decision.

3. Directions were issued by the tribunal on 17 January 2020, which suggested that the matter be dealt with on the basis of paper submissions. Neither party objected to that approach and therefore this matter has been dealt with on the basis of the bundle prepared, and sent to the tribunal.

The background

4. The property which is the subject of this application is described as the lower ground floor maisonette within the lease, which also confirms that the property is divided into two self-contained dwellings consisting of the Upper and Lower Maisonettes. The lease refers to the property being situated at 37 Venetian Road, London SE5. It is assumed from the documentation that the Upper Maisonette is number 38, due to the fact

that the insurance policy refers to both addresses. It is also determined from the lease the each of the leaseholders of the maisonettes is liable for one half share of any costs for which they are liable to contribute to under the lease.

5. The lease under which the applicant occupies is dated 18 December 2000, for a term of 99 years at an initial ground rent of £200.00 per annum.

6. It is not disputed between the parties that the landlord is obliged to insure the building and pass on to the applicant '*one half of the amount from time to time paid by the Landlord as premium for insurance of the building, such further rent to be paid to the Landlord on demand*'.

7. The lease at 4.7.3 requires the applicant to pay the fees charged by any Managing Agent employed by the landlord.

8. In addition, the lease enables the landlord to recover a further 5% of expenditure incurred, when a managing agent is used, see Clause 4.7.5. This has confused the applicant/tenant who believes that any management fee is limited to 5% and has suggested that he has been overcharged in the past. The tribunal has interpreted the lease differently, and it is clear to us that, where the landlord employs a managing agent, then the tenants are liable for their proportion of those fees. In addition, where an agent is employed, the landlord is itself entitled to claim 5% of the cost of any expenditure. However, as with all service charges, there must be a demand for payment for those fees, whether from the managing agents or the landlord.

The issues

9. The applicant says that following a demand from the landlord, on 18 September 2019, he paid the insurance renewal charges inclusive of management and brokers fees totalling £549.00. The identified brokers' fee amounted to £50.00 of that sum. A copy of the Certificate of Insurance has been provided in evidence and supports the sum claimed. It also shows the Building Sum Insured to be £484.704, and the Building Declared value to be £323,136. Insurance premium tax has been included and the Certificate identifies the period of cover to be 1 October 2019 until 30 September 2020, and finally that the certificate was issued on 13 September 2019.

10. However, the landlord then wrote to the applicant on 11 November 2019 to say that they had been reviewing the insurance for the property and say the sum insured to be inaccurate. They say that there had not been a full insurance valuation carried out for a number of years, and that they wish to have one carried out by an RICS chartered surveyor.

11. The applicant says that he was contacted by the firm of surveyors, J M Cope regarding access to the property, but he responded that he was unable to give access. The landlord has produced a copy of that inspection report prepared by JM Cope following their inspection on 20 November 2019. Although the report states that an inspection was undertaken, there are no photographs of the common parts, interiors of the flats, or the rear elevation/garden area. Given the applicant's statement that he did not give access to the ground floor, and from the report, it appears the inspection was conducted to the external parts of the building that were visible from the road.

12. The report recommends the property be insured for £600,000 for VAT registered companies and £700.000 if not VAT registered. In this case the landlord is VAT registered and therefore the sum assured would be £600,000, according to the surveyor.

13. Following receipt of the report, the landlord wrote to the tenant to say that an additional premium of £505.35 was required, together with a contribution towards the survey and fees of £460.20. The tenant disputes these fees as being not payable, due to the lack of an inspection, and also being unreasonable in amount. The tribunal has not been provided with a copy of the revised insurance certificate and therefore is unable to actually see the revised premium.

Survey Fees:

14. The tribunal is satisfied in principal that the landlord is entitled to have an insurance revaluation carried out at the tenant's cost. However, it appears to be somewhat remiss of the landlord to renew the policy in September, and then ask for a revaluation in November, when this matter should have been considered by the managing agents at the time.

15. The company used by the landlord to carry out the insurance revaluation is based in Manchester, whilst the subject property is based in South East London.

16. Given the lack of evidence to suggest that the surveyor carried out more than an external survey of the front elevation, we find the amount claimed of £700.00 to be excessive.

17. The surveyor had been informed in advance that it would not be possible for them to gain entry, but presumably travelled from Manchester to carry out the inspection.

18. In the circumstances we consider that a reasonable approach to the revaluation could have been to appoint a local firm who would not have charged travelling fees, or for the surveyors to carry out a desk-top valuation.

19. On balance, we find the amount claimed for the survey to be too high, and restrict the amount payable by the applicant to their proportion of £400.00 + VAT if applicable, which we find to be a reasonable sum. Under the terms of the lease,

20. In addition to the survey costs, the landlord's agent has claimed £117.00 as an administration fee for dealing with the surveyor. The tribunal has not been provided with a copy of the statutory Summary of Rights and obligations in relation to administration charges and therefore finds the tenant not to be liable for this charge. However, if we are wrong in that, we find that the maximum amount to be claimed by the agents, using the landlord's own correspondence is 10% of the charge. The landlord is entitled to claim a further 5% on top of that charge, but we have not been provided with an invoice from the landlord to support the additional charge. We find therefore the maximum payable by the tenants to be £40.00 plus VAT divided equally between the two flats.

Insurance Premiums:

21. The tribunal has identified above that we have not received a copy of the revised insurance schedule or invoice from the insurers or brokers regarding the renewal.

22. We have some misgivings about the valuation and find the sum assured recommended by the surveyor to be too high, and to include as additional items such as the 'external and unmeasured areas' and the demolition and site clearance that we find would be covered in the rate per square metre of £1,697.

23. Notwithstanding that we have some reservations about the valuation relied on by the landlord, the tenant has provided some comparable evidence of insurance premiums, and we find that evidence to be preferable to the lack of evidence by the landlord, but again these are only indications of likely premiums for household policies, which do not take into consideration the fact that the properties are maisonettes, and not a single-family house.

24. We find therefore the actual declared value to be £450,000, which with the 50% inflation-proofing AXA uplift results in a sum insured of £675,000. Using the landlord's evidence of the current premium we calculate the premium for the additional sum insured to be £,1260.00, or ££629.00 to the applicant, less the amount already paid by the tenant (£452.39), a total due of £176.61. To which the 10% management fee should be applied.

S.20C Application and Paragraph 5 to Schedule 11 applications.

25. Having read the evidence, the tribunal considers that it should make an Order preventing the landlord from charging any costs of these proceedings within the service charges.

26. We also order the landlord to repay the applicants fees of £100.00 in relation to the application fee, on the basis that the tenant attempted to meet with the landlord to resolve the issues during the application process, and the landlord did not engage.

Name: Ms. A. Hamilton-Farey **Date:** 9 March 2020

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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).