



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

Case Reference : **LON/00AS/LSC/2021/0396 and
LON/00AS/LVL/2021/0009**

Property : **268A Kingshill Avenue, Hayes, Middx UB4
8BY**

Applicant : **Mr Melkom Ozcan**

Representative : **Mr Craig Barlow - Counsel**

Respondent : **Mohammed Amin Morad**

Representative : **Mr Nick McLeod - Counsel**

Type of Application : **Application for determination of the
reasonableness and pay ability of service
charges**

Tribunal Members : **Tribunal Judge Dutton
Mr R Waterhouse BSc (Hons) LLM Property
Law MA FRICS
Ms J Dalal**

**Date and venue of
Hearing, Alfred Place, : 9 June 2022
London**

Date of Decision : **13 June 2022**

DECISION

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DECISIONS OF THE TRIBUNAL

1. The Tribunal determines that the Respondent should repay to the Applicant the following sums:
 - (a) in respect service charges the sum of £100 for the alleged repairs in the year 2016
 - (b) in respect of service charges representing the insurance premiums the sum of £150 for each year in respect of the overpaid insurance premiums for the period 2015 to 2019. This amount would be a reasonable sum for later years until such time as the Respondent resolves the insurance. (See below)
 - (c) The sum of £2,200 for service charges paid by Mr Ozcan, for which no demand was made, all such sums to be repaid within 28 days.
2. The sum of £488.71 was properly due and owing and does not require repayment by Mr Morad.
3. The Tribunal dismisses the application to vary the lease of the flat made on 27 January 1984 between M W Dellbridge (1) and G Whitehead (2) as extended in 2015 in a lease between the Respondent (1) and SJ and SG Pease (2), (although the front page of this lease erroneously refers to Mr Dellbridge).
4. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of proceedings may be passed through to the Applicant as a service charge, it being noted that the Respondent confirmed he would not do so in any event, which obviates the need for an application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
5. The Tribunal makes no order in respect of the refund of fees paid by the Applicant to the Tribunal

BACKGROUND

1. On 22nd September 2021 the Applicant Mr Ozcan applied to the Tribunal both for a determination under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) and under s35 Landlord and Tenant Act 1987 (the 1987 Act). The Applicant also sought an order under section 20C of the 1985 Act and under paragraph 5A of schedule 11 to the 2002 Act in respect of the Respondent's costs.
2. The Applicant is the tenant of 286A Kingshill Avenue, Hayes Middlesex UB4 8BY (the Flat) under the terms of a lease granted on 27 January 1984, as extended in 2015, the contents of which we will refer to as necessary in the course of this decision. The Respondent is the freeholder of the building, 286 Kingshill Avenue, Hayes Middlesex (the Building) in which the Flat is situated, on the first and second floor. The ground floor is taken up with a shop, owned and run by the Respondent, Mr Morad.
3. Mr Ozcan seeks the recovery of sums he has paid in respect of service charges since he took occupation in 2015. In addition, he is dissatisfied with the

insurance arrangement for the Building and his Flat and seeks to vary the lease and to recover the insurance premiums he has paid since he took occupation. Mr Morad says that he did not 'demand' service charges over and above the sum of £100 said to be for roof repairs in 2016 and contribution to the insurance premium of £300 for each year, which he said was the appropriate apportionment. He said, and reaffirmed at the hearing, that he would repay the sum of £2,200 to Mr Ozcan in 28 days.

4. Prior to the hearing we were provided with a bundle of papers which covered both applications. We were able to consider them in advance and have taken them into account in reaching our decision in this case. In addition, on the morning of the hearing we were provided with skeleton arguments by both Mr Barlow and Mr McCloud, for which we are grateful.
5. Within the bundle there were a number of documents to which we were referred. As well as the applications for both cases we were provided with a copy of the directions. The wording for the proposed lease variation was included as was a Scott Schedule together with statements made by the parties.
6. In his opening Mr Barlow took us to the Scott Schedule. The first entry related to a charge of £488.71 which related to a period before Mr Ozcan bought the flat. Mr Barlow said that there was no evidence to support this sum and it was Mr Ozcan's case that this was a sum paid to the seller of the flat by him and that he was entitled to seek a refund of same, in the absence of evidence that the sum was properly payable.
7. On the question of the insurance, as a service charge, the challenge was to the right that Mr Morad had to demand same when no specific demand had been made, indeed whether there was even insurance cover for the Flat, and in respect of the insurance provisions he put in place that were not in accordance with the lease and as a stop gap if there was an amount payable it was not £300.
8. It was said that for each year the cover provided to Mr Morad was excessive, including, as it did, his business and that Mr Morad had failed to ensure that the interest of Mr Ozcan and his mortgagee was noted on the policy. The sum insured was challenged.
9. The premium for each year from 2015 had risen from £680.91 to £828.65 for the year ending September 2022 and the apportionment was unexplained.
10. The final challenge on a service charge basis was to the sum of £100, which appears on a handwritten invoice from Mr Morad showing a cost of £100, which we were told related to roof repair works. There was no evidence produced to show this sum had been paid. Mr Barlow argued that in the absence of evidence that the cost had been incurred it was not payable by Mr Ozcan.
11. With regard to the lease variation, it was said that the provision was not satisfactory, and he referred us to the Upper Tribunal case of London Borough of Camden v Morath [2019] UKUT 193 (LC). It was said that the clause was not "workable" and that we should vary it as was set out in the suggested wording at page 133 of the bundle.

12. We heard from Mr Ozcan who had made two witness statements, the contents of which we had read. He told us that he had contacted three alternative insurers but conceded he did not have the claims history for the Flat and could not recall what value he had put forward. He produced three quotes but the Nat West one did not seem have a premium recorded. The other two showed premiums of between £201.15 and £155.07, the lower one being with AXA.
13. He was asked questions by Mr McLeod and confirmed that he had not been sent any demands by Mr Morad for service charges. Indeed, he was referred to an email Mr Morad had sent him on 11 September 2017 asking him not to pay money into his account “because I have not asked for it”. In September 2020 Mr Morad sends a further message saying there was no need to pay anything because he had overpaid in the last two years.
14. Mr Ozcan was taken to page 233 (p240 on pdf) of the bundle which included a copy of what purported to be a completion statement at the time of Mr Ozcan’s purchase. He did not know what had been discussed between his solicitor and the sellers solicitors. This did show the sum of £488.71 being the “service charge apportionment till 31.12.15” which was included in the amount required to complete. It is noted that the Flat was then valued at £190,000.
15. As to the sum of £100 Mr Ozcan confirmed he had paid this and that it seemed it did not become an issue until problems arose, it seems in 2019, concerning the use of the patio area.
16. With regard to the lease variation, it was Mr Ozcan’s contention that the Flat had not been insured properly. He wanted to control the insurance to ensure it was on a proper footing. Further the apportionment was challenged. Whilst accepting that the Flat was probably larger than the ground floor shop, he did say that not only was there the building below the patio, of which he owned the surface, but also what appeared to metal extensions.
17. We then heard from Mr Morad. He produced after a short adjournment a letter from Poonam Estates a firm of Estate and Letting Agents which suggested that the correct insurance value for the Building was now £325,00 “just to be on the safe side” The letter is written by Mr Sharma BA(Hons) MNAEA MARLA. Mr Morad had made a witness statement at page 157 (p164 pdf). We have noted the contents. In the statement he confirms a willingness to refund the monies, confirming that he had received £3,100, which appeared to represent £1,100 x two years and £900 insurance premiums.
18. In cross examination he was asked about an alleged dispute between himself and Mr and Mrs Pease, who may have been the executors for the previous owner. Initially the correspondence was portrayed as evidencing a service charge dispute, but we think following suggestions that in fact it may have related to the lease extension that was being pursued at the time. Certainly, Mr Morad denied any knowledge of a service charge dispute between himself and Mr and Mrs Pease.

19. Asked about the £100 for service charges in 2016 he confirmed that he had spent £200 on the roof works but conceded he had no documentary evidence to support the costs, he think it was dealt with by cash payments.
20. On the question of the insurance, he accepted that he had not arranged for the interest of Mr Ozcan or his mortgagees to be noted in the policy. However, he was sure that the policy did include the flat, although that was not clear from the earlier policy documents. He told us that he had taken out the insurance under the mortgage arrangements he had, where they required to see the policy each year. They did not complain about the sum insured or the policy details and he assumed all was in order. He told us he had bought in 2007 at a price of £312,000 and that he had not obtained a valuation since nor queried the sum insured. He did not use a broker although he had on a couple occasions made his own enquiries, which he said had resulted in the insurer reducing the premium.
21. In closing Mr Barlow submitted that we should reject the claim for £100 as there was no evidence. The insurance sums claimed of £300 should either be disallowed in full, or reduced to reflect the failings of the landlord, and for the fact that the price of the insurance policy included the Respondent's shop and related costs, for which Mr Ozcan should not have to contribute. As to the £488.71 it was said that Mr Morad had to prove this sum, which he had not done. He said little on the question of the variation, sensing that we were against him.
22. Mr McLeod said that his client was learning as a result of these proceedings He averred that the Flat was insured, and whilst the Applicant's name and mortgage interest was not noted, however the flat was mentioned specifically in the policy and therefore the premium was due and payable. The arguments around the sum of £488.71 were speculative and that solicitors were involved, and therefore the sum was properly paid. As to £100 there was an invoice and the amount had been paid.
23. Mr Ozcan had made an application under s20C of the 1985 Act. Mr McLeod told us his client would not be seeking the costs of the proceedings as a service charge, indeed he was unsure that the lease even allowed it. Mr Barlow asked for a refund of the Tribunal fees.

FINDINGS

24. Let us take the Lease variation first. The provisions of s35 of the 1987 Act in so far as they relate to insurance are set out at the foot of this decision. The ground is that the lease fails to make satisfactory provision with respect to one or more of the matters set out at 35 (2)(a) onwards. We think it is agreed that the terms of the lease must be unsatisfactory and unworkable.
25. The term is to be found at clause 3(2)(c) of the lease. The wording requires that the Building, defined at recital (e) as including the Flat, should be insured to the full reinstatement value, including architects fees, for risks normally included in a "householders comprehensive policy" and the premium will be apportioned between the Flat and the ground floor shop. The clause requires

that the interest of the lessee and his mortgagee are noted and that on reasonable notice copies are produced, both of the policy and proof of payment of the premium. We find that this clause is perfectly satisfactory and workable. Indeed, it is fairly standard. The problem is Mr Morad's implementation of same. This is not a ground for varying the lease. In any event the proposed variation would not in our finding work. The repairing obligations in the lease negate the effectiveness of the proposed wording. Accordingly, we dismiss this application as it does not fall within the provisions of s35 of the 1987 Act.

26. However, we do strongly advise Mr Morad to arrange two policies of insurance. One a straightforward Buildings insurance cover suitable for the property in question and in accordance with the lease terms. It should not include extraneous matters linked to his business needs. That should be covered by a separate policy. The company who covers the building should be able to apportion the premium between the shop and the Flat. Failure to follow this course is likely to result in him coming before us again.
27. Turning to the service charge issues. We agree with Mr Barlow that the claim of £100 is not sustainable. There is no evidence as to how this payment arose, save from a verbal recounting by Mr Morad, which is not good enough. The demand, if you can grant the invoice such a title, fails to comply with s21B of the 1985 Act. We disallow this amount.
28. In so far as the claim for £488.17 is concerned we find that this was an amount which appeared in the completion statement when Mr Ozcan bought the flat. It was prepared by his solicitors at the time, and we consider we are entitled to assume that they investigated the amount and satisfied themselves that this was a sum that should be reimbursed to the seller. In those circumstances we find that it would be inappropriate for Mr Ozcan to seek to recover this amount from Mr Morad.
29. The final question in respect of the service charge dispute relates to the insurance premiums. It seems that Mr Morad included a sum of £300 for each year. He was not able to tell us how he had calculated this amount. It certainly did not appear to be assessed as a reasonable apportionment, which we consider would be the requirement under the lease term, although not specifically stated. Mr Morad has ignored the lease provision and ploughed his own furrow in respect of the insurance. We accept, on the balance of probability that the Flat was covered by the policies that have been produced to us. The existence of the Flat is known to the insurers, but the interest of Mr Ozcan and his mortgagees has never been included. Further the sum insured seems potentially low. Mr Morad told us that he paid £312,000 in 2007. Mr Ozcan paid £190,000 in, it would seem, 2015. The sum insured for each year does not seem to cover even this basic position. We heard Mr McLeod's arguments that the reinstatement value would be less than the market value. We are not convinced and have no evidence to make that conclusion in any event. The inference we draw is that the Building may be under insured. The letter from Poonam Estates, with all respect to them does not assuage that concern. Mr Morad needs to get a reinstatement value undertaken by a suitably qualified surveyor.

30. Taking these matters into account it is we find reasonable to reduce the apportionment that Mr Ozcan should pay in line with the quote he received from AXA of circa £150 for 2022. Rather than become bogged down in percentage apportionments for each year we propose to adopt a broad-brush approach and reduce the premium from £300 for each year to £150, and for it to be at that level until such time as Mr Morad put insurance in place which accords to the terms of the lease.
31. Given that Mr Morad is not intending to seek to recover the fees of these proceedings as a service charge and given the partial success of Mr Ozcan we consider it to be just and equitable to make an order under s20C of the 1985 Act to the effect that the costs incurred by Mr Morad cannot be recovered as a service charge. In effect each side will pay their own costs. We do not order reimbursement of the fees paid to the tribunal as the application to vary the lease has been rejected by us and we consider the pursuit of this matter may well have impaired the possible settlement of the service charge dispute.

Andrew Dutton

Judge: _____
A A Dutton

Date: 13 June 2022

Relevant law

S35 Application by party to lease for variation of lease.

(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

...

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph

(a)(iii);

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 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 to 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 (ie 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.