

12306



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

Case reference : LON/00AE/LSC/2017/0164

Property : 17B Park Parade, Harlesden,
London NW10 4JH

Applicant : Mr George Michael Dimitriadis and
Mrs Angela Dimitriadis

Representative : In person

Respondent : Mr Cuma Korkmaz

Representative : In person

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

Tribunal members : Judge Robert Latham
Mr Duncan Jagger MRICS

**Date and Venue of
Hearing** : 5 July 2017 at
10 Alfred Place, London WC1E 7LR

Date of decision : 7 July 2017

DECISION

Decision of the Tribunal

- (1) The Tribunal determines that the sum of £268.54 is payable in respect of insurance for the service charge year 2015/6 and £280.14 for 2016/7.

- (2) The Tribunal determines that the Respondent shall pay the Applicant £150 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application issued on 2 May 2017, the Applicant landlord seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the Act”) in respect of the service charge payable in respect of insurance for the service charge year 2015/6 and 2016/7. The sums in dispute are insurance premiums, namely £268.54 for the period 13 February 2015 to 12 February 2016 and 280.14 for the period 13 February 2016 to 12 February 2017. The Applicant indicated that he would be content for a paper determination.
2. The application relates to 17B Park Parade Harlesden, London NW10 4JH31 Union Road, London, SW4 6JQ (“the building”). This is a two bedroom self-contained flat. The building consists of two self-contained flats above a lock-up shop.
3. On 8 May 2017, the Tribunal gave Directions, pursuant to which:
 - (i) The Applicant has filed his bundle including his statement of case and the documents upon which he seeks to rely. This includes the range of documents which the tribunal had required the landlord to include. We commend the Applicant for the care with which he has prepared the Bundle. References to the Applicant’s Bundle are prefixed by the letter “A”.
 - (ii) The Respondent has filed his bundle including his statement of case and the documents upon which he seeks to rely. It is apparent that the Respondent’s main concern is historic disputes, rather than the insurance premiums for these two years. References to the Respondent’s Bundle are prefixed by the letter “R”.
4. The Directions contemplated that the application would be determined on the papers. On 15 May, the Respondent exercised his right to request an oral hearing. He stated that two days should be allocated as the case is complicated.
5. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

6. All the parties appeared in person. Mr George Dimitriadis spoke on behalf of the Applicants. Both parties expanded upon their written cases.

The Lease

7. The lease in respect of Flat B is dated 28 January 1987 and is at Tab 2 of the Applicant's bundle. It is for a term of 99 years. By Clause 2(iv) the tenant covenants to pay by way of further rent (at A11):

“a yearly sum equal to the sum or sums which the Lessor shall from time to time pay by way of premium (including any increased premium payable by reason of any act or omission of the Lessee) for keeping the demised premises insured against loss or damage by fire explosion or aircraft or other insured risks under the Lessor's covenant in that behalf hereinafter contained the said further sums to be paid once a year on the said 28th of September in each year.”

8. The landlord's covenant to insure is set out in Clause 3(2) of the lease (at A16):

(i) The landlord covenants to insure the demised premises “in a sum not less than the full reinstatement value as determined by the Lessor's Surveyor (including Architects and Surveyors fees and loss of two years ground rent)”.

(ii) The clause provides for the insurance to be arranged with “the Sun Alliance Insurance Group or with such other insurance office or underwriters of repute to be specified by the Lessor”.

(iii) The landlord covenants “whenever so required to produce the policy for such insurances and the receipt for the premium for the current year.

The Background

9. The landlord has provided full details of the insurance cover which he has arranged for 2015/6 and 2016/7. On 13 February 2015, the landlord invoiced the tenant £268.54 for the premium for the cover for the period of 12 months commencing on 13 February 2015 (at A2) and on 13 February 2016, £280.14 for the period of 12 months commencing on 13 February 2016 (at A3). The landlord paid these sums himself.

10. The landlord arranges insurance through Jannard Quadrant Insurance Brokers Limited ("the Broker"). The landlord confirmed that no claims have been made. Schedules for building insurance for 2015/6 and 2016/7 are provided (at A25-A41). A Summary of the policy and conditions are provided for 2015/6 (at A43-A50) and 2016/7 (at A51 to A58). Separate cover is also provided for terrorism (see A60-A79). Mr Dimitriadis explained that it was more cost effective to arrange separate cover.
11. The policy extends to loss of rental income which is included within the scope of the landlord's covenant to insure. However, the rental for the shop is £11,000 pa, whilst it is only £150 pa for Flat B and £50 pa for Flat A (see A80). The loss of rent premium for 2015/6 was £18.10 which the landlord charges to the tenant of the shop (see A137)
12. The Broker tests the market annually. The landlord provides particulars at A144-A170. The Broker provides further particulars in a letter dated 15 February 20127 (at A197). The landlord does not receive any commission. However, the Broker receives a commission of 22% (see A171-2).
13. The landlord insures the whole building which consists of two self-contained flats above a lock-up shop. The landlord divides the policy equally between the three tenants (A173). The landlord notes that the reinstatement value of the flats would be higher than for the shop. The shop would be reinstated to a shell, whereas the finishes to the flats would include kitchen, bathroom, and more extensive electrical and plumbing fixtures.
14. The landlord has not obtained a professional valuation of the rebuilding costs. The current valuation is based on the calculation that the landlord made when he acquired the property (A174). Index linking for the buildings cover is provided annually (A175).

Our Determination

15. Mr Dimitriadis explained how he had computed the tenant's liability for rent:

(i) 2015/6 - £268.54: The total premium was £731.07 + £92.65 for cover against terrorism: £823.72 (see A203-4). From this, the landlord deducted the sum of £18.10 which is the premium for loss of rent which is charged solely to the tenant of the shop (see A137). The resultant sum of £805.62 was then divided equally between three tenants, namely the two residential flats and the ground floor business. The sum charged to the Respondent is £268.54. On 16 November 2015, a lawful demand

was made for this sum (R27). It was accompanied by the requisite Summary of Rights and Obligations.

(ii) 2016/7 - £280.14: The total premium was £762.26 + £96.89 for cover against terrorism: £859.15 (see A205-6). From this, the landlord deducted the sum of £18.73 which is the premium for loss of rent which is charged solely to the tenant of the shop. The resultant sum of £859.15 was then divided equally between three tenants: £280.14 On 18 November 2016, a lawful demand was made for this sum (A243).

16. A number of points were raised in respect of this insurance:

(i) The reinstatement value of the building is £435,000. Mr Dimitriadis has not obtained a professional valuation for the building as he was uncertain as to whether he could pass on this cost to the tenants. The Tribunal advises him to obtain a valuation. The lease requires the landlord to insure the demised premises at "full reinstatement value". The landlord can only satisfy himself that the building is insured to the full reinstatement value if he obtains a professional report. The reasonable costs of such a report could be passed on to the Respondent pursuant to the terms of the lease.

(ii) Mr Korkmaz questioned whether the insurance including insurance for contents. Although the insurance schedule refers to contents insurance, this is merely an item for which the landlord could insure (A176). In practice, he does not do so (see A185-6).

(iii) Mr Korkmaz questioned why he had not seen the certificate of insurance. The lease requires the landlord to produce "the policy for such insurances". It was common ground that the landlord had done so.

17. When these matters were explained, Mr Korkmaz conceded that the insurance premiums for 2015/6 and 2016/7 were payable and that they were reasonable. The Tribunal was impressed by the care with which Mr Dimitriadis has approached the issue of insurance and his desire to ensure that the apportionment is fair to all tenants, both residential and business. We have no hesitation in finding that the sums demanded are both payable and reasonable.

18. Mr Korkmaz rather sought to raise a number of subsidiary matters:

(i) The landlord had overlooked their responsibility to accompany any demand for payment with the requisite Summary of rights and Obligations. The landlord recognised this

omission in March 2015, and all demands since 5 March 2015 have been accompanied by the required information (see R8 and A257-9). Mr Korkmaz suggested that the sums that he had paid prior to 2015 were now recoverable. The Tribunal does not accept this. A tenant may withhold payment if the demand is not accompanied by the requisite information. There is no right to demand repayment of a sum which was lawfully due under the lease.

(ii) The landlord's insurance has run from 13 February to 12 February and the Broker demanded payment as soon as the landlord was required to pay the premium. However, under the terms of the lease, the tenant is required to pay the insurance premium once a year on 28 September. Again this was an innocent mistake by the landlord. Demands are now made no earlier than 28 September. However, there is no right for the tenant to demand repayment of sums which were demanded and paid prior to 28 September. The sums due for the past two years are still outstanding. A lawful demand was made for these at the appropriate time. All past sums that have been paid have lawfully become payable pursuant to the terms of the lease.

19. A further issue raised by Mr Korkmaz in his statement of case is the validity of the insurance premiums which he was required to pay for the years 2007 to 2014. Mr Kormaz has not issued any application to the tribunal in respect of these years and has not produced any material to substantiate any challenge. His concern seems to be the contribution that he was required to pay towards the insurance for loss of rent.
20. On 8 May 2015, the landlord agreed to refund a sum of £61.33 in respect of this aspect of the insurance premium for the years 2007/8 to 2015/6. This sum includes compound interest at 10%. It also includes £165 in respect of an administration fee of £150 (+ interest) which the landlord now concedes was not payable.
21. Mr Korkmaz was initially equivocal as to whether he was willing to accept the sum of £61.33 in full and final settlement of the insurance sums which have been payable for these years. He finally agreed that he was willing to do so.
22. This Tribunal considers that Mr Korkmaz was prudent to do so. We consider that the landlord's offer was more than reasonable. There are several ways as to how the insurance premium is to be apportioned between the three tenants. There is a tenable argument that he landlord could have divided the total premium equally. Whilst the resident tenants might be paying more than their fair share for loss of rent; the business tenant would be paying more than its fair share for the reinstatement costs. Further, had Mr Korkmaz declined to the

landlord's offer, it would now be too late for him to bring a separate application to this Tribunal. There has to be finality to litigation.

Application under s.20C and Refund of Fees

23. At the end of the hearing, the Applicant made an application for a refund of the fees of £300 that he had paid in respect of the application/hearing. Mr Dimitriadis then suggested to Mr Korkmaz that these costs should be shared equally between them. Mr Korkmaz accepted this offer. The Tribunal commends this approach and makes an order to this effect.
24. The landlord indicated that they would not be seeking to pass on any of their costs in respect of this application through the service charge. It is therefore not necessary for the Tribunal to consider an order under Section 20C of the Act.

Conclusions

25. The Tribunal has determined that the sum of £268.54 is payable in respect of insurance for the service charge year 2015/6 and £280.14 for 2016/7. The tenant has agreed to pay £150 in respect of the tribunal fees paid by the landlord. The parties are also agreed that the tenant is entitled to a refund of £226.33 in full and final settlement of the insurance premiums for the years 2007/8 to 2014/5 and the administration fee of £150. The net sum owed by Mr Korkmaz is £472.35.
26. The Tribunal commends the more positive approach that both landlord and tenant adopted towards the end of the hearing. Both recognised that the relationship of landlord and tenant will continue for many years and that they should look to the future, rather than the past.

Judge Robert Latham
7 July 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.

Appendix of Relevant Legislation

Landlord and Tenant Act 1985

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.