10318

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOBD/LSC/2013/0813 (Court referral)** **LON/OOBD/LSC/2014/0182 (Applications by Mr Hughes)**
Property	**:**	**114A High Street, Whitton, Twickenham TW2 7LN**
Applicants	**:**	**Mr Rakeih Patel** **Mr Durman Patel**
Representative	**:**	**Mr Andrew Dymond – Counsel** **Mr Philip Sherreard of Sterlings Estate Management, managing agents for the Applicants** **Mr A Marti of Accord Surveyors Limited**
Respondent	**:**	**Mr Brett Hughes**
Representative	**:**	**Mr Brett Hughes in person accompanied by Mr Frank Wilson** **Mr D A Williams of John Henshall Limited, insurance broker** **Mr J C le May MRICS**
Type of Application	**:**	**Court referral and sections 20C and 27A Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mrs J E Davies FRICS**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 6th and 7th August 2014**
Date of Decision	**:**	**18th September 2014**

DECISION

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DECISION

(1) The Tribunal determines that the amounts claimed by the Applicants in respect of the roofing works are reasonable and are payable and that the balance due in respect of the County Court claim, which is therefore due and owing by Mr Hughes, is £357.

(2) The Tribunal dismisses Mr Hughes' counter claims for the reasons set out below.

(3) The Tribunal finds that the sums claimed in respect of the insurance premiums for the years in dispute are payable in the amounts claimed.

(4) No order is made under Section 20C of the Landlord and Tenant Act 1985 for the reasons set out below.

(5) The only outstanding issue relates to any costs of the County Court claim which should be referred back. To assist the Court we confirm that the claim number is 3YL61654 and the date of transfer is 27th November 2013.

BACKGROUND

1. This matter came before us for hearing on 6th and 7th August 2014 starting life as a County Court application made by the landlord Applicant in the County Court at Staines. That Court, by an order dated 27th November 2013, transferred the matter to this Tribunal. The question that we were required to determine is set out in the Consent Order and states as follows:- *"In relation to the years 2012 and 2013, are the service charges demanded under the terms of the lease commencing [sic] relating to roof works carried out during these years payable and reasonable under Sections 37A and 19 of the Landlord and Tenant Act 1985 respectively, including whether the Defendant is entitled to seek to set off damages for alleged disrepair to his flat against the service charge liability herein above by way of counter claim and in particular whether there was any delay on the part of the Claimant which contributed to that alleged disrepair."*

2. The remaining proceedings were adjourned generally pending our determination.

3. On 7th January 2014 the matter came before this Tribunal when directions were issued. Those directions recite the Court Order as we have above and identified the issues to be determined:- (a) were the service charges for major works (replacing the roof to the property in June/July 2013) reasonably incurred and/or are they reasonable under Section 19 of the Act (b) did the landlord fail (in breach of covenant of the lease) timorously to repair the roof (c) if so, were the repairs more extensive than would otherwise have been the case so that the Respondent could be entitled to damages (d) what is the quantum of any damages (e) can those damages be set off against any service charges payable.

4. Certain matters were agreed not to be in dispute and they are as follows:- (a) that the roof works are within the landlord's obligations under the lease and that the

cost of such works are payable by the leaseholder under the lease (b) the appropriate percentage for the Respondent's flat is 25% of the total for the building (c) it appeared the Respondent is not questioning the validity of the Section 20 consultation process. If this became a matter in dispute, the Respondent was to inform the Applicant by 5th February 2014.

5. The directions also go on to record certain background matters that we do not need to repeat, save to record in this decision, that it appears that the amount of £357 was the total sum that appeared to be owing in relation to service charges up to the date of the proceedings.

6. In the Court proceedings Mr Hughes raised three issues as part of a counter claim. The first was that there had been unreasonable delay on the part of the claimant in completing the necessary roof repairs, which had caused a loss of rental revenue to the defendant assessed at £9,000. The second was that there had been an unreasonable delay on the part of the claimant in completing the necessary roof repairs and, as a direct consequence of the claimant's alleged negligence, inadequate precautionary weather protection had permitted an ingress of water and other water damage resulting in damage to the roof structure and the internal walls of the Respondent's flat for which he assessed a loss of £10,000. The third element of the counter claim was that there had been a sudden and unreasonable change to the agreed course of professionally managed essential roof repairs in mid-2012. This he said had resulted in a huge delay and excessive cost escalation. He estimated the excessive costs to be in excess of £15,000. The counter claim also suggested that there should be an element of aggravated damages, which at the directions hearing in January 2014 we declined to take jurisdiction.

7. Following these directions, Mr Hughes made three applications to the Tribunal at the end of March 2014. The first was an application under Section 20C of the Landlord and Tenant Act 1985 (the Act) of which we need to make no further comment at this time. The second was an application under Section 27A of the Act in which Mr Hughes sought to challenge insurance charges from 2010 to 2014 and the final application was under IV of the Landlord and Tenant Act 1987 seeking a variation of the lease, which was not in fact proceeded with.

8. As a result of these applications a further directions hearing was held on 29th April 2014 where the insurance application under Section 27A and the cost application under Section 20C were in effect amalgamated to be heard with the County Court referral.

9. There were skirmishes between parties but these have no bearing the matter that came before us and there seems no benefit in recounting those in this decision.

10. Prior to the Hearing we received bundles of documents running to some 1,674 pages. We read those documents which we considered to be relevant to the issues to be determined.

HEARING

11. At the start of the Hearing we were told that Mr Ahmed, who was the Director from Sterling Estates Management Limited (SEM) and who had had the conduct of

this matter was not able to attend because of personal difficulties. In his absence Mr Sherreard was to provide the evidence for the Applicants. Mr Hughes raised no objections to this and no application was made for an adjournment.

12. We dealt firstly with the insurance issues. The essence of Mr Hughes' claim was that the insurance premiums were too high and that he thought they should be reduced by an amount to reflect the overcharging, which he said rested with the 'brokerage' fee claimed by SEM. Initially we heard from Mr Sherreard on this point. Mr Ahmed had provided a detailed witness statement but it is not necessary for us to recount this in detail. This witness statement did, however, highlight the level of "broker's fee" that SEM received. At page 1464 of the bundle this showed that the broker's fees were never less than £800 per annum and in the year to March 2015 were £1,041.54. We were told this was not commission but was a fee paid for which SEM handled insurance claims.

13. Insofar as the placement of insurance was concerned, we were told that SEM work with a number of brokers, the main one being Reich Insurance. Indeed they had written to SEM on 4th July 2014 which after some puff about their status in the insurance world confirmed that the policy the Applicants had was bespoke, having been agreed between Reich and AXA the insurers. We were told that they had taken the standard AXA wording and using the "strength of our relationship" significantly improved the cover to provide the Applicants with the most comprehensive cover in the market. The letter also went on to comment on the reasonableness of the premiums and the ability to "shop around" utilising other brokers. It was Reich's view that they would not recommend moving business around each year for the cheapest premium but instead achieving some form of loyalty with an insurer so that a relationship can be developed.

14. Mr Sherreard was asked questions by Mr Hughes and Mr Wilson aimed mainly at the brokerage fees. Mr Sherreard confirmed that they did not themselves add any mark-up and did not inflate the insurance premium for a larger fee. Much was made of SEM's apparent reluctance to disclose the existence of the broker's fee to Mr Hughes but Mr Sherreard confirmed that it was disclosed to the landlord. We were told that neither Mr Sherreard nor Mr Ahmed had insurance qualifications but that SEM was registered with the financial authority. He was also asked about the number of additions to the policy set out at page 1466 of the bundle which included trace and access, metered water charges, theft of keys and other issues. It was denied that the additional terms, if they be such, had caused any inflation to the insurance premium. It should be noted that the property does have something of a claims history although not excessive, but both flats have suffered water damage since 2011, although the sums paid out by the insurers is not great.

15. The Respondent's evidence was put forward by Mr Williams, an insurance broker from Shropshire. He had provided a statement which we had read in advance. He is a director of John Henshall Limited, a company registered to transact general insurance business. Having been contacted by Mr Hughes, he obtained a number of quotes in respect of the property which were subject to review as more information became available. It appears that the final quote obtained towards the end of March 2014 from Alliance in the sum of £1,843.76 was the closest that Mr Williams had got to finding a comparable to the Applicant's insurance. It is to be noted, however, that at the Hearing we were not directed to this insurance

comparable but rather to one with NIG which had a premium of £1,711.20. Mr Williams was asked to comment on the brokerage fee. He told us that insurance companies did not pay brokerage but instead paid commission and that the commission being earned by SEM was on the high side. There was also some discussion as to the declared values of the property both in the actual policy with AXA and the comparables put forward by Mr Williams. Mr Williams did not agree with Reich's views in connection with the market. He was not able to provide a copy of the NIG policy but considered that it would be on a like for like basis but could make no particular comments on the additional level of cover provided in the AXA policy other than to say he thought they were excessive. He conceded that any quotes that he had given did not include terrorism cover which was included under the AXA policy. At the conclusion of the evidence on the insurance issues, Mr Hughes made it clear that he considered the premiums payable should be the amounts which were actually charged by the Applicant in the years in question but that the brokerage fees should be deducted there from. These figures were set out at page 1464 of the bundle and Mr Hughes calculated that this resulted in an overpayment by him of £1,565.18.

16. We then turned to the question of the building works to the roof of the property which also gave rise to the counter claims made by Mr Hughes. Mr Hughes considered that we could determine the counter claim, although he would prefer that if we found favour in those claims the matters should be referred back to the County Court for the Court to determine the quantum. He thought, however, he had given us all that we needed to consider the counter claim.

17. As with the insurance issues the Applicant's evidence was heard first. We had an amended statement in response, prepared by Mr Ahmed, which accompanied a witness statement he had made in respect of the County Court proceedings. This witness statement at page 139 onwards set out the chronology relating to the works in question which are not in issue. The important steps are as follows. On 3rd May 2012, following an initial notice in March of 2012, the leaseholders, Mr Hughes of Flat 114A and Mrs Coles of Flat 112A, were told that an estimate had been obtained from General Repairs with a cost of £4,830 plus VAT for, in effect patchwork repairs. This was the cheapest quote although there was initially some confusion as it appears a third company called Arklow Builders had provided a quote and it was subsequently discovered that they were not subject to VAT. However, on 8th May 2012 Mr Hughes wrote to SEM asking that instructions to General Repairs were revoked until the leaseholders had seen any quotations or revisions and agreed a specification and were happy with the works to be undertaken by an agreed contractor. It was confirmed that no works would take place though Mr Hughes was warned by Antonio Ahmed that the longer the matter delayed the worst it would become. Towards the end of May, Mr Ahmed wrote again asking for further information from Mr Hughes and Miss Coles and warning that unless he heard by close of business, he would pass the work to the most competitive contractor. Things, however, gathered some momentum because on 18th May 2012 Mr le May of le May and Co wrote to Mr Hughes following a meeting on 17th May setting out his views on the works required to the roof. He said in the second page of his letter at page 1268 to the bundle as follows: *"I understand that the managing agents are proposing to overlay the asphalt with a torch on bituminous felt system. Whilst this may be a reasonable solution in the short or even medium term, I consider that it is not the most satisfactory for a number of*

reasons and there are some risks attached to this approach." The letter went on, on the third page, to recommend as follows: "*My recommendation is that the existing roof coverings are stripped, the decking repaired or replaced as necessary. The opportunity can be taken to adjust the firrings in order to correct the ponding currently occurring. The decking should then be overlaid with a suitable bituminous felt vapour barrier, this could then be overlaid with insulation which is likely to do something in the order of 100mm thickness of polyisicyanurate foam board. This can then be covered with either a built up high performance felt system or a propriety single ply membrane. Either should have a life of in excess of 25 years.*" The recommendations appear to have been accepted by SEM on behalf of the Applicants because on 21st May 2012 Mr Ahmed said that he would seek costs from contractors based on the comments made by Mr le May.

18. In June of 2012 a new stage 2 notice was issued which included an estimate from Arklow Builders of £13,750 without VAT, the Greater London Building Company of £17,650 including VAT, General Repairs Services of £26,000 plus VAT, Finishing In Touch Property Services of £17,795 plus VAT and AML Roofing of £16,320 including VAT which appeared not include any supervision. These sums were obtained on the recommendation made by Mr le May. Observations were requested and it was the Greater London Building Company's estimate that was suggested as being appropriate by the landlord. However, this resulted in further correspondence in July with Mr Hughes expressing surprise that Greater London Building Company should have been put forward and also that Mr le May appeared not to have been appointed to deal with the supervision of the works. This caused a response from SEM in August of 2012 at page 1295 of the bundle, the contents of which we have noted and which explains why Arklow have not been used as they were a company not known and appeared not to be VAT registered. The letter also confirmed that SEM had not been provided with a formal specification by le May and Co and that the landlord, through SEM, was in the process of engaging other surveyors known to them to supervise the works potentially it seemed at a lower charge than le May and Co. This did not satisfy Mr Hughes and it appears that the representative of Barclays also became involved at this time. However, by 13th September 2012 an inspection had been undertaken by Mr Marti of Accord Chartered Surveyors which highlighted certain deficiencies in the recommendations by le May surveyors, in particular that they did not take into account current building regulation requirements. Nor it seemed had they provided detailed drawings or any contingency. To be fair to Mr le May, his letter in May of this year merely contained recommendations and there was no suggestion by either party that a full specification had been prepared by le May & Co for these works. There was then further correspondence as to fees that were to be charged, an email was apparently sent to Mr le May which SEM said was not replied to and eventually in November of 2012 a further Section 20 stage 2 notice was sent out containing four estimates one of which was incomplete. This resulted in further correspondence from Mr Hughes in December 2012 in which he still expresses concerns that Mr le May is not being employed as the supervising surveyor, that the preliminaries seem excessive and that his roof was still leaking. Nonetheless, he said that given the time of year and weather it did not seem appropriate for work to be carried out for some time. It should be noted that no funds had been lodged by the leaseholders with SEM for any works to undertaken.

19. On 9th January 2013 SEM wrote again to Mr Hughes setting out the final stage 3 notice confirming that the works were to be placed with Salnor Roofing Services Limited who had provided an estimate in the sum of £27,949.85 plus VAT. The surveyors Accord recommended that Salnor be asked to undertake the work. The works were undertaken and it seems finished sometime in July 2013.

20. Mr Sherreard was tendered for cross examination in respect of the roofing works following this run through of the chronology by Mr Dymond. Mr Sherreard accepted that Mr Hughes had communicated extensively with SEM on the question of works and that he considered the first communication he had had from Mr Hughes on water ingress affecting his property was on 20th April 2012. The matter then strayed into the area of the insurance claim made by Mr Hughes for the repair to his flat following water ingress. This strictly speaking is not part of the Section 27A application but does form part of the counter claim. A letter from Crawford Commercial, the loss adjusters, had found its way into the bundle. It was dated 17 February 2014 and addressed to Mr Ahmed. It appeared to be response to an email Mr Ahmed had sent on 3rd February 2014. It is to be noted that this exchange of correspondence was some time after the insurance claim was made and the payment had been made to Mr Hughes, which was in 2013. At a site visit in August 2013, the author of the letter in February 2014, a Mr Hancock, sets out the damage that he had seen. This he records is restricted to the second floor bedroom where water has damaged the lathe and plaster ceilings. He thought that there was also evidence of localised plaster repairs and joinery replacements required. In any event, a settlement cheque was tendered to Mr Hughes and accepted. We will return to the issue of the insurance claim in our Findings section when we deal with the counter claim. The evidence of Mr le May which we heard later is also relevant in this regard.

21. After an exchange relating to the insurance claim, matters returned to the roofing issue. Mr Sherreard was asked why they had not proceeded with Mr le May and he said it was because he had not responded to an email requesting a specification and a review of his charging rates. He relied on the letter which we refer to above dated 8th August 2012 at page 1295 as setting out SEM's reasons for not proceeding with Mr le May.

22. The matter adjourned until the following day on 6th August and questioning re-started again concerning the basis upon which SEM decided not to make use of the services of Mr le May. Mr Sherreard was asked whether, if Mr Hughes had not intervened in July of 2012, the landlord would have proceeded to carry out just patchwork repairs and the answer was that it would have done. However, they were not able to do so at that stage because the leaseholders had not made payments on account to fund the costs. He repeated that they had asked Mr le May to provide a specification and to review his costings in June of 2012, but he had not responded. In those circumstances the Applicant thought it appropriate to appoint their own surveyor to proceed.

23. In re-examination by Mr Dymond, Mr Sherrear confirmed that SEM had only communicated with the loss adjusters as a result of these proceedings. The claim had been settled in 2013 without any input by SEM. Further there was no evidence that Mr Ahmed had contacted the loss adjusters before his email in February of 2014.

24. We then heard from Mr Marti of Accord who were the supervising surveyors for the roofing works and who had provided a statement at page 1457 of the bundle. We considered the statement. It set out the works that were undertaken and in particular dealt with the scaffolding requirements. The statement confirmed that a contract was entered into with Salnor Roofing on 8th April 2013 at a price of £27,949.84 plus VAT and the practical completion was effected on 5th July 2013 with a final account of £28,830.26 excluding VAT. The additional costs were as a result of further issues being discovered during the course of the roofing works. There was it seems no dispute between Mr Marti and Mr le May that the more extensive works suggested by Mr le May in his letter in May 2012 were appropriate. In evidence to us Mr Marti explained the need for more complicated scaffolding works, in particular the tower and the shoot to enable the removal of materials from the roof. He told us also that as a result of the re-roofing the levels had changed and that the fascias and gutters needed to be lifted. He was asked why the estimate of costs in June of 2012 was different from the final costings by Salnor. He confirmed that these figures preceded his appointment and were only estimates.

25. When questioned by Mr Hughes and Mr Wilson he was told that Mr Hughes had no issue with the PVC fascia boards being installed but was unhappy that the scaffolding appeared to be excessive. However, Mr Marti told us that the tower scaffold was necessary to support the rubbish shoot which conveyed the rubbish to a skip for which they had a licence. The tower was also used for the delivery of materials which avoided having to use the flat roof to the rear which provided cover for the lower premises. The specification had been agreed with the contractor, although he accepted that further problems were found once they started work. He confirmed that the scaffolding costs were around £6,000 plus VAT which included the shoot, handrail and fans as well as the tower scaffold.

26. The Respondents commenced their evidence on the roofing works by calling Mr le May who put himself forward as an independent expert. He had prepared a report on the roof repairs in February of 2014, such report being in the bundle. We do not need to go into great details concerning that. It does, however, record his recommendation which as set out in the 2012 letter and also records that he had seen a number of documents including quotations, schedule of works prepared by Accord, a budget estimate for roof repairs from Maguire Brothers who were a company known to him and a quotation from Arklow Builders. He had also had sight of quotations and invoices for repairs to the water damage to Mr Hughes' flat. In respect of the building works his report indicated that a budget figure had been obtained by him from the Maguire Brothers of £23,194.00 plus VAT. In considering the works set out in the specification from Accord he thought generally they were satisfactory but preliminary issues were "a little excessive". He thought that only a scaffold tower would be required at the rear and other exposed sides to require only handrails and fans. His report went on to say that whilst the Accord specification was especially satisfactory, there did not seem to be any logical reason why it was necessary to start the process over again and he thought that it seemed unreasonable that the cost of the works should exceed the £13,750 estimated by Arklow Builders.

27. His report then went on to deal with the internal damage to the property which he would have seen on his visit in August of 2013. This is set out in his report and includes apparently that a wall plate had suffered dampness and rot which resulted in more extensive works being required. It included, for example, the replacement of a lintel over the right hand windows. The invoices that had been provided indicated that Mr Hughes had spent some £15,000 in reparation works. He thought this was a reasonable figure.

28. In his conclusions he said of the roofing works that "*The specification was very much along the lines as I had proposed but there was a considerable increase in costs. Much of this seems to be contributable to the additional preliminary items.*" The report also goes on to record that Mr Hughes had offered to undertake the works at a price much lower than anyone else had offered.

29. In evidence to the Tribunal he was asked whether he had received the email from SEM asking him to prepare a specification and to consider whether a fee of 10% would be appropriate. He said he did not receive it and there was no follow up. It did not appear that he himself had chased SEM. He did not, however, think that he had ever been engaged by SEM to deal with the project. Asked whether he thought the works could have been carried out more quickly if he had been involved, he thought that there was a possibility of a head start which could have resulted in the works undertaken more speedily. As to scaffolding costs, he thought that a figure of around £7,000 was included in the estimate although his budgeted figure was around £6,000. He told us that he had obtained a quote from the Maguire Brothers, who had undertaken works for him in the past, at £23,000 or thereabouts excluding VAT but this contained no provisional sums. He did not think that the costs associated with dealing with the fascia and the guttering had greatly affected the cost but that really it was the scaffolding that was "overdone". He was asked whether he stood by his comments in his report that the works could have been carried out by Arklow at a figure of under £14,000. He said that he would stand by that but would need to look in more detail at their proposals. He did not think that the repair costs were betterment. He confirmed that it was his professional view was that the damage to Mr Hughes flat had occurred between 2012 and 2013.

30. He was then the subject of cross examination by Mr Dymond. On the question of scaffolding, he was asked whether the costs fell within a range which would be a reasonable difference between Surveyors. He thought that the specification was a little high but would not argue in principle that the scaffolding was reasonable. On the question of the fascia he thought that this could have been dealt with by overlapping with the original fascia in place, although did not pursue this to any extent because of course Mr Hughes indicated that he accepted the works. He accepted that he had not provided a specification setting out the preliminaries and that he was never engaged by SEM to undertake the works. He was asked whether Mr Hughes could have undertaken the work. He thought that he would need to use contractors and was not sure if Mr Hughes would have been able to have obtained a guarantee for his work but hopefully the sub-contractors would have provided one. Asked about the Maguire brothers he told us that he had used them and that they were of good quality. Asked why he thought that the price for the work should have been £13,750 when his own comparable quote from Maguire was over £23,000 he was not able to give a compelling answer.

31. Following Mr le May's evidence we heard briefly from Mrs Coles who read out her statement which was at page 480 of the bundle. She confirmed that she had now been provided with a guarantee for the roofing works and that she had carried out the repairs to her own flat at a total cost of around £3,500 less the monies that she had obtained from the insurers. She said that she had reported the leaking to SEM before Mr Hughes but was of the view that the bickering between parties had resulted in unnecessary delays. She did accept, however, that it was important for the landlord to use professional and appropriate contractors.

32. In the afternoon of 6th August Mr Hughes offered himself for cross examination. He told us that the initial patchwork repairs were inappropriate and would not have dealt with the roofing problems and indeed would have compromised the roof structure. He said he had offered his services to do the work, which would have saved money. He apparently used to be a building contractor but no longer had a company but had suitable qualifications. He would have been happy to have undertaken the work under the supervision of Mr le May. He told us he had submitted an offer to do the work not exceeding £10,000 on a non-profit making basis. He thought he could have obtained a guarantee either by using a sub-contractor or via an insurance broker, although accepted that the insurance would not cover faulty works. He had no knowledge of the Maguire brothers or the quote that Mr le May had included in his report. When he had been asked to provide tenders in response he had not done so because he had found the dialogue with Mr Ahmed impossible. In addition he was not able to use the Icopal system which was exclusive and he did not know anybody who could have undertaken the work on that basis. He confirmed that he would not have been happy to have compromised on health and safety issues and accepted that a full health and safety requirement might have cost more money.

33. On the question of the counter claim he told us that the totality of his repairing costs was just under £15,000 and he accepted that some 25% of that should be removed given the history of the claim. There would also need to be a deduction for the insurance monies that he received. On the question of the rent loss he had reached an agreement with his tenants who have now vacated, that if he recovered any damages he would give some money to them. They had not moved out and had continued to pay the rent in full until they vacated it seems in around May of 2013. New tenants moved in and he had agreed to make an £1,500 allowance because the works to the interior of the flat had not been completed. We were told this had nothing to do with the roofing works. Accordingly he accepted that the only real loss that he suffered in respect of rental income was £1,500 but this related to the works to the flat. Insofar as the extra costs for the roofing works were concerned, he considered that he could have carried out the works for £15,000 or thereabouts plus VAT and supervision. The total when compared to the final costs in his view gave a difference of around £10,000 which was the level of damages he claimed in respect of this head of damage.

34. We then had submissions from firstly Mr Dymond who covered the insurance point first. He said no evidence had been produced by Mr Hughes for the early years although he had been directed to do so. The NIG quote was not comparable and just because it was cheaper it did not mean the original costs were unreasonable. It was clear that the market was tested and that indeed the landlord

had moved to AXA from other insurers. It was he said within the range. SEM had carried out the claim handling and it was a service, and therefore their payment for commission or brokerage was reasonable. The landlord did not receive the commission. SEM received it and declared it to their client and therefore it was unreasonable for that to be taken into account. Indeed Mr Williams in his evidence had indicated a possible commission of 30% and therefore there was little difference particularly as SEM carried out the claims handling. The question as to whether or not the NIG policy was comparable was raised. It was clear there was no mention of terrorism cover which was surprising given that there was a bank in the building. The bespoke terms were useful for landlords and helpful for leaseholders, for example the trace and access for leaks. There was nothing in the NIG policy to suggest that these terms were included and it was noted that the sum insured by AXA was higher than the amount shown in the NIG quote.

35. He then turned to the roofing costs. With the surveyor's fees this totalled £37,549. He asked whether they had been reasonably incurred and, if they had, could the counter claim stand. There was he said no issue about the standard of work. Alternative quotes had been obtained. It was he said 'cloud cuckoo land' to expect the landlord to allow Mr Hughes to carry out works. The landlord had quite properly moved from short term repairs to a longer term solution and of course these works were undertaken prior to the Supreme Court finding in the Daejan case hence the need for the landlord to be careful about Section 20 requirements. He could have proceeded with Mr Hughes or without the formal guarantee for it to have been carried out more cheaply but this could have caused more problems, for example on assignments by leaseholders. Further, the landlord could not have been criticised, for example, in refusing to use somebody such as Arklow which has no VAT and concerns about its status. It was also interesting to note that Mr le May suggested the figure of around £13,000 but then contrasted this with the Maguire quote of over £23,000. He asked how this could be put forward. In any event, the final invoice had been negotiated down and in his submission the sum was reasonable.

36. Mr Hughes' counter claim was then addressed. He drew our attention to the provisions of the lease. He said that the landlord had to follow the Section 20 procedures and that SEM had acted properly throughout. Mrs Cole had complained of water ingress in February of 2012 and SEM had acted swiftly thereafter. In May 2012 Mr le May suggested more detailed repairs and it cannot be criticism of the landlord that this more permanent solution was undertaken. Recommendations made to use Greater London Builders were not accepted by the leaseholders and the landlord decided it appropriate to start the process afresh using Accord and a specification which lead to the works being undertaken. There was, he said, no delay. The works had been done at a reasonable time and therefore there was no merit to the counter claim.

37. If we did not agree, then he asked what the value of the counter claim would be. The £15,000 repair cost is subject to reduction. Mr le May he said was vague about deterioration and the loss adjusters had inspected in 2013 and set out what they had seen at that time. The rent loss was only contingent on Mr Hughes succeeding. The £1,500 paid to the tenants was because the interior of the property had not been completed. It was also pointed out that the loss adjuster's

decision was taken in August of 2013 long before the communications between Mr Ahmed and Crawford's in February 2014.

38. On the question of costs, Mr Dymond was of the view that the lease entitled recovery and therefore asked that no order Section 20C was made.

39. After a short adjournment Mr Wilson and Mr Hughes made short responses. They believed on the insurance front that their arguments were compelling. The premium they said was two times what it should be. Their attempts to enter into dialogue had met with stoney silence particularly in regard to the denial on any commission or fees. They raised the lack of qualifications that the Directors of SEM had, although the company is FCA registered. They thought Mr Williams' evidence was appropriate and should be taken into account.

40. On the question of leaks Mr Hughes said he had had to carry out works to the property when he did because he would not have been able to re-let it. The loss of £1,500 was whilst he was conducting internal repairs but these he said had been delayed as a result of the completion of the roofing works. He believed that damaged had been caused to his flat between June 2012 and July of 2013. He did not believe that the Applicant should be entitled to their costs. He thought that the Applicants had been unreasonable in the manner in which they had undertaken the roofing works and had put the tenants through stress by having go to the LVT.

THE LAW

41. The law applicable to this matter is set out in the annex hereto.

FINDINGS

42. We will deal firstly with the insurance issues. Mr Hughes had made a valiant attempt to persuade us that the insurance premiums charged by the landlord were excessive. He called Mr Williams to provide evidence in respect of comparable insurance quotes and to give evidence as to the commission/brokerage fees paid. We found Mr Williams an honest and straightforward witness. This was in contrast to the evidence given by Mr Sherreard which we found somewhat unhelpful. He, however, was not helped by the fact that the person who had made the witness statements was not able to attend the Hearing. It was interesting to note that he had no insurance qualifications. However, we accepted his evidence that they did use brokers to obtain suitable insurance quotes and indeed a schedule was included in the documents showing that a number of insurance companies had been involved over a period of time. We also had the letter from Reich to which we have already referred. The big problem for Mr Hughes is that the various quotes put forward by Mr Williams are not comparable. There was no evidence to suggest that the various "add-ons" such as trace and access etc had inflated the insurance premium or were included in the comparables put forward. We accept that the add-ons have benefit to the Landlord and to the lessees of the property. Further, Mr Williams accepted that none of the comparables appeared to include any form of terrorism cover. Insofar as the brokerage/commission fee is concerned, this is not paid to the landlord but to SEM. SEM conducted the claims handling process on behalf of the landlord and the leaseholders. It is perhaps questionable why Mr Ahmed should have written to Crawford's as he did in

February 2014 but that was rather after the event. We have seen subsequent correspondence which appears to indicate that they are prepared to assist Mr Hughes in reviewing the insurance position and we hope that that is something that will be undertaken.

43. We do think that the premium is on the high side. However, we are aware of the long line of authorities that says that the landlord is not obliged to obtain the lowest quote available. The comparable evidence, as we have indicated, is not compelling and there is clear evidence that the landlord does use brokers to test the market. The simple expedient put forward by Mr Hughes of reducing by the amount of the commission to give the premium he considers reasonable, is not we find acceptable. In those circumstances, therefore, although with some reluctance, we dismiss Mr Hughes' application and find that the premiums charged are payable. The question of on-going insurance arrangements should be reviewed and Mr Hughes afforded the opportunity of putting forward alternative insurers, provided they are acceptable to the Landlord and meet the requirements of the property and the lease.

44. We turn then to the roofing works and have considered all the evidence, both written and oral. We say at the outset that we prefer the evidence of Mr Marti to that of Mr le May. Although Mr le May held himself out as an independent witness, it did not seem to us that he fulfilled that role. We find it surprising that he can in his report put forward a quote from the Maguire brothers in excess of £23,000 for the works and then argue that a quote/estimate by Arklow of £10,000 less is the appropriate figure for these roofing works. His challenge to the preliminaries, in particular the scaffolding, was unsuccessful. We preferred Mr Marti's evidence that the scaffolding that was erected was the correct one for the job to be handled. Traipsing over the flat roof to and from scaffolding to the rear would not it seems to us have been a sensible way of dealing with the matter. A tower scaffold with a shoot to remove the debris seems to us to be much the better way of handling the works. Certain photographs were handed in during the course of the hearing which indicated that the parapet wall was quite low and therefore protective scaffolding was required for the workers and also for people using the Bank at ground floor level. We, therefore, find that where there is a conflict of evidence on the specification Mr Marti's view is the preferred one. The response given by Mr le May with regard to the fascia highlighted this. The idea that new fascia could be attached to the existing seemed somewhat fanciful, the more so as Mr Hughes accepted that these works were reasonable.

45. We then must consider the cost position. There is no doubt that Mr le May performed well in highlighting the need for more substantial works than that which was originally envisaged. These additional works are not in dispute. There was no real challenge to Section 20 procedures and the quotation/estimate provided by Salnor has been proceeded with and there is no argument that the works have been done properly. Certain extras were highlighted in the course of the works and in reality are not challenged and in those circumstances we find that the cost of the works for the replacement of the roof is reasonable and payment in full is due. We do not think it reasonable to expect a Landlord with a lessee such as Barclays at ground floor level contributing to the costs to utilise the services of a lessee to undertake works of this nature. Mr Hughes had not provided any detailed

breakdown of the costs he would charge, nor who would carry out the work to enable a guarantee to be obtained.

46. This means that insofar as the County Court proceedings are concerned, the £357, which we were told was outstanding at the time of the Court action commenced should be paid by Mr Hughes. We believe that there may be further sums due which are not the subject of these proceedings but we hope that there will not be need for further Court proceedings between the parties in that regard.

47. We turn then to the question of the counter claims. They are three matters. The first relates to the internal repairs to the property and the second is the increase in costs of the works of repair to the roof. It seems from the correspondence produced by Crawford that the disrepair that they saw in August 2013 was quite limited. It is not wholly clear when the problems with the lintel and wood trusses came to light. Mr le May suggests that these problems would have occurred between 2012 and 2013. We are not satisfied that is necessarily the case. It seems to us that severe rotting to the wall timbers must having taken place over a longer period of time. The insurers have made their payment based on what they saw on inspection and that has been accepted by Mr Hughes. It appears, on the face of it, that more extensive works have been undertaken. We would suggest that there should be a review of the insurance payment, if at all possible. However, we do not find that the Applicants have contributed to this loss. Their correspondence with the Loss Adjusters is dated after the event.

48. We do not accept on the evidence before us that any of the delays associated with the roof works have contributed towards the internal repair costs. The managing agents SEM have acted as quickly as possible in the circumstances. There has been a continual involvement of Mr Hughes during the process which has undoubtedly caused delays. Initially this was a good thing because it prevented patchwork tasks being undertaken. Clearly, a more detailed schedule of works was required and that was eventually created. Mr Hughes assertion that Mr le May should have been used as the surveyor is inappropriate. The landlord is entitled to make use of whoever he wishes and we have to say having heard from Mr Marti and Mr le May and the evidence that they have given, we consider that the landlord has made a fair and reasonable choice in proceeding with Mr Marti and Accord. That is borne out by the fact there is no complaint as to the standard of works, which have the benefit of a guarantee. Accordingly we do not consider that there has been any increase in the cost of works caused by the landlords. There has been a natural progression from the initial patchwork repairs that were first considered to the full replacement that has now been undertaken to an admitted satisfactory and reasonable level. There was a full involvement of Mr Hughes, which did not speed the process. In those circumstances we cannot accept that there is any claim that can be made by Mr Hughes that the costs have been unreasonably increased. We do not consider it appropriate for a landlord to be forced to accept works to be undertaken by a leaseholder. It is not clear what Mr Hughes' qualifications are and it is likely that he would have sub-contracted the work anyway. In those circumstances we dismiss that element of the counter claim that relates to the increased cost of works.

49. This leaves only the rent position. The sum that Mr Hughes says that he lost is £1,500. The other proposal to repay monies to one set of tenants if he were

successful does not of course result in him having suffered any loss. The £1,500 he paid to the tenants he truthfully told us related to the lack of repair to the interior of the flat. We do not consider that there has been a delay by the landlord in undertaking the works as we have indicated above and in those circumstances, therefore, the delay to the internal repairs cannot rest with the landlord. In any event, the roofing works were completed in July 2013 and we would have thought as it was the summer the internal reparation works could have been undertaken and there could have been avoidance of any delay or dissatisfaction caused to the new tenants.

50. In these circumstances, therefore, we find that there is no element of Mr Hughes' counter claim which we can support.

51. On the question of costs, it seems to us that the landlord has been successful. We propose, therefore, to make no order under Section 20 of the Act. This, of course, does not prevent Mr Hughes from challenging any costs the landlord might seek to recover as a service charge if the lease so allows.

52. That seems to conclude matters. Having dismissed the counter claim it seems to us that there is little that needs to be referred back to the County Court. The question of costs would need to be considered insofar as the County Court proceedings are concerned.

Judge: *Andrew Dutton*

A A Dutton

Date: 18th September 2014

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 a leasehold valuation 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 a leasehold valuation 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.