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

Case Reference : **LON/00AN/LSC/2015/0355**

Property : **52A Winchendon Road London
SW6 5DR**

Applicant : **Dr Fouad El-Hibri**

Respondent : **Ms Noreen Coomber**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay service charges and
administration charges**

Tribunal Members : **Mrs E Flint DMS FRICS**

**Date and venue of
decision** : **27 October 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **28 October 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 2011-2012, 2012 - 2013, 2013 - 2014 and 2014 - 2015.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a maisonette on the first and second floors of a converted house comprising three separate units of accommodation.
4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The Applicant holds a long lease of the property which requires the landlord to insure the Building and the tenant to contribute towards the cost.

The lease

6. The Applicant holds a lease for 125 years from 30 September 1994. The lessee covenants at clause 2 of the Fourth schedule "*to pay by way of an additional rent and further rent one half of the total expense reasonably incurred by the landlord of performing the obligations and covenants on his part specified in clause 1 and 2 of the Fifth Schedule.*" The landlord covenants at clause 2 of the Fifth schedule "*To insure the said buildings*"
7. Paragraph 4 of the lease provides that "*in the event that any rent hereby reserved shall remain unpaid for a period of twenty one days*

after the same shall have become due..... to pay interest at the yearly rate of four per cent per annum above the national Westminster Bank Base Rate”.....

The issues

- (i) The reasonableness of service charges for 2011 – 2015 relating to insurance premiums.
 - (ii) 2013 – 2014: interest on late payments and administration charges.
8. Having considered the evidence and submissions from the parties the tribunal has made determinations on the various issues as follows.

2011 – 2012 Insurance premium: £1234.50

9. The Applicant stated that after receiving the quote from Aviva on 30 September 2011, three weeks after the renewal date, he obtained a comparable quote from an insurance broker in the sum of £670. In view of the difference in the quotes he asked the Respondent for details of the claims history of the building since that can affect the level of future premiums. He was told that there had been a claim for £2000 some 7 years earlier. The Applicant did not consider that such a claim would affect the premium in 2011 since insurers only require for details of claims in the previous 5 years. The applicant asked the landlord to consider using another insurer but stated that she had advised him that she “*would not be happy going with another insurer*”.
10. The Respondent stated that the building was insured with Aviva when the Applicant purchased the lease in 2009. Aviva is one of the top ten insurers and covers both parties. The company had been recommended by the Respondent’s insurance broker. The other two tenants in the building have not complained about the insurance premium. Further the Respondent has owned leasehold properties in the past where the buildings have been insured with Aviva and she had paid the premiums.

The tribunal’s decision

11. The tribunal determines that the amount payable in respect of insurance for the Building is £1234.50.

Reasons for the tribunal’s decision

12. The Applicant has not provided full details of the comparable quotation. The Tribunal is satisfied that the landlord acted reasonably

in placing the insurance of the Building with a reputable insurance company. No evidence has been provided to show that the premium was unreasonable.

2012 – 2013 Insurance premium: £1316.57

13. The Applicant stated that he obtained two quotes which were significantly cheaper than that provided by the Respondent: £872.79 (AXA) and £888.61 (NIG). The applicant provided the basis of the quote from NIG. The quotation from AXA noted that the property is converted flats, the number of leaseholders is 2 with one occupant of each flat and that there is one flat privately rented again with one occupant. The Applicant offered to pay what he considered to be a fair amount based on the quotes he had obtained. The full amount of the amount due was paid in October 2013.
14. The Respondent's case was as above.

The tribunal's decision

15. The tribunal determines that the amount payable in respect of insurance for the Building is £1316.57.

Reasons for the tribunal's decision

16. The Tribunal is satisfied that the landlord did not act unreasonably in placing the insurance with a reputable insurance company of her choice based on her experience here and elsewhere.

2013 – 2014 Insurance premium: £1243.02

17. The Applicant stated that his insurance broker advised him that the premium was high.
18. The Respondent's case was as above.

The tribunal's decision

19. The tribunal determines that the insurance premium for the Building of £1243.02 is reasonable and payable

Reasons for the tribunal's decision

20. No evidence was produced to show that the premium was unreasonable.

Interest: £31.71

21. The applicant stated that the lease did not provide for the payment of interest. The interest related to those parts of the insurance premium which remained unpaid until 7 October 2013.
22. The Respondent did not comment on these items.

The tribunal's decision

23. The tribunal determines that the amount payable in respect of interest and the reminder fee are £31.71.

Reasons for the tribunal's decision

24. The Tribunal determines that the landlord is entitled to charge interest in accordance with clause 4 of the lease.

Reminder fee: £50

25. The Applicant considered the charge to be unwarranted; there was no reference to a reminder fee in the lease.
26. The Respondent made no representations in respect of the reminder fee.

The tribunal's decision

27. The tribunal determines that the sum of £50 is not payable.

Reasons for the tribunal's decision

28. The Respondent has not provided any explanation as to why the sum has been demanded or any other evidence in relation to this sum.

2014 – 2015 Insurance premium: £1185.71

29. The Applicant requested details of the quotation commencing 18 August 2014 and at various intervals thereafter, only receiving a substantive response on 16 February 2015. The applicant provided a quote from NIG in the sum of £826.41
30. The Respondent's case is as in previous years.

The tribunal's decision

31. The tribunal determines that the sum of £1185.71 in respect of insurance for the Building is payable.

Reasons for the tribunal's decision

32. The Tribunal is satisfied that the landlord did not act unreasonably in placing the insurance with a reputable insurance company of her choice based on her experience here and elsewhere.

Application under s.20C

33. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. The case was dealt with on the papers and the Respondent's statement of case which was less than one page long did not address all the issues raised by the applicant.

Name: Evelyn Flint

Date: 28 October 2015

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.

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).