


9136

		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/00AX/LSC/2013/0325
Property	:	Flat 22, York Court, Albany Park Road, Kingston upon Thames, KT2 5ST
Applicant	:	Mr I. Donnell (leaseholder)
Representative	:	In person
Respondent	:	Albany Riverside Company Limited (landlords)
Representative	:	W H Matthews (solicitors)
Type of Application	:	Sections 27A and 19 Landlord and Tenant Act 1985
Tribunal Members	:	Professor James Driscoll, solicitor, (Tribunal Judge) and Mr Luis Jarero BSc FRICS
Date and venue of Hearing	:	10 Alfred Place, London WC1E 7LR
Date of Decision	:	8 July 2013

DECISION

Decisions summarised.

1. The sums claimed from the leaseholder for arranging director's insurance and associated costs were reasonably incurred and are recoverable in full from the leaseholder.
2. No orders are made for costs.

Background to the application

3. In this case the applicant is the leaseholder of the subject premises and the respondent company the owner of the freehold and the landlord under the lease. The landlord company is owned by the leaseholders.
4. The leaseholder seeks a determination of the payability of charges for arranging directors insurance and other costs associated with company and shareholder meetings.

The Tribunal application

5. The application was received on 7 May 2013 and directions were given on 13 May 2013. It was directed that the application should be heard on the basis of the papers filed and not by an oral hearing unless either party asked for an oral hearing.

Our consideration of the application

6. Neither party having asked for an oral hearing the tribunal considered the application on 8 July 2013 on the basis of the bundle of documents which was produced by the leaseholder. This included a copy of his lease, statements by each of the parties and items of correspondence. A copy of the insurance policy was also produced.
7. The leaseholders complains about the way in which the directors deal with applications to sublet or assign and other matters in his statement of case. He claims that this 'vitiates' the insurance but does not explain how or why it does.
8. In response the landlord's solicitors state that the insurance payments made for directors represent only a part of the service charge costs of meetings, organising meeting rooms and the like. They deny that the insurance arranged for the directors has been vitiated. They also seek an order that the leaseholder pay up to £500 towards their costs.

9. As the leaseholder fails to explain how the director's insurance is vitiated we have little hesitation in dismissing his complaints and we find that this aspect of the service charge expenditure was reasonably incurred and that his contribution is recoverable in full.

10. We do not consider it appropriate to make an order for costs as requested.

James Driscoll

8 July 2013

Appendix of the 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

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.

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.

But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation 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 a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).