



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

Case reference : LON/00BH/LSC/2015/0257

Property : 84a Markhouse Avenue
Walthamstow London E17 8AZ

Applicant : Terry Newson

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Respondent : Sheryl Hawkins

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

Tribunal members : Mrs E Flint DMS FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 3 September 2015

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £155.35 is payable by the Applicant in respect of the service charges for 2014-2015.
- (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") as to the amount of service charges payable by the Applicant in respect of the service charge years 2008 to 2015. The Applicant seeks a determination under section 20C of the Landlord and Tenant Act 1985 in respect of the landlord's costs in relation to the tribunal proceedings.
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 ground floor flat with garden in a converted two storey terrace house.
4. Neither party requested a hearing and the case was decided on the papers submitted by the parties in accordance with the Directions issued on 14 July 2015.
5. 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.
6. The Applicant holds a long lease of the property which requires the landlord to insure the building in which the premises are situated and the tenant to contribute towards the costs. The specific provisions of the lease will be referred to below, where appropriate.
7. The Applicant does not dispute the reasonableness of the insurance premiums. He contends that his contributions are not payable because the premiums were incurred more than 18 months before the contributions were demanded and also that the demands did not include a summary of his rights and obligations.

The Lease

8. The lease which is dated 14th July 1975 is for a term of 99 years from 1st January 1975 at an initial ground rent of £25pa “AND SECONDLY..... by way of further and additional rent a fair proportion to be determined by the Lessor’s Surveyor or Agent of all such sums as the Lessor shall pay by way of premium for insuring and keeping insured the building of which the maisonette forms part in respect of the insured risks...such further rent to be payable on demand”.
9. By clause 2(2) the lessee covenants to “repay to the Lessor the amount or amounts from time to time expended by the Lessor in effecting or maintaining insurance on the demised premises”
10. By clause 3 (b) the Lessor covenants “To insure ..and keep insured ... the demised premises

The issues

11. The relevant issues for determination are as follows:
12. The payability of the insurance premiums from March 2009 to March 2015.
13. The application of sections 20B and 21B of the Landlord and Tenant Act 1985.
14. Having read the submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Insurance premiums claimed

8 June 2008 to 8 June 2009	£342.71(3 months £85.67)
8 June 2009 to 8 June 2010	£395
8 June 2010 to 8 June 2011	£353.72
8 June 2011 to 8 June 2012	£370.30
8 June 2012 to 8 June 2013	£383.29
8 June 2013 to 8 June 2014	£256.64

8 June 2014 to 8 March 2015	£310.70
Total	£2077.64
	50% =£1038.82

The Applicant's case

15. In 2014 the Applicant was in the process of selling his interest in the subject premises. His solicitor contacted the Respondent and was advised that there were outstanding insurance premiums due. Mr Newsom stated that he had insured the flat himself throughout the period of his ownership. He had never received any documentation or demand from the Respondent relating to the buildings insurance; he had understood when he purchased the lease that it was his responsibility to take out the necessary buildings insurance.

16. On 11 March the Respondent emailed details of the insurance premiums paid since 2008-2009 to 2015, stating that 50% of the total, amounting to £1038.82 was due. The Applicant wrote to the respondent quoting section 20B of the Act and offered to pay £217.27 in settlement based on 18 months premiums to March 2015. The offer to pay was made to assist with the completion of the sale of the lease which only went ahead subject to the purchaser's solicitors retaining £1500 of the purchase price against a future claim for unpaid insurance premiums. The applicant considered that as no formal demand had been issued which included a summary of his rights and obligations in accordance with section 21B of the Act nothing is payable; moreover he has insured the flat himself since 2007. By the date of submission of his statement of case no formal invoice had been served.

17. The landlord had acted unreasonably in not dealing with this matter expeditiously and had caused the applicant to incur unnecessary costs in coming to the Tribunal for a decision in this matter. If he had received a demand for the insurance in the first year of his ownership he would have been alerted to the fact that there was double insurance.

The Respondent's case

18. During a discussion with the Applicant's solicitor the matter of the insurance premiums which she had paid was discussed. The Respondent stated that she understood that she was able to claim back six years costs and that a statement of the amounts due, in a letter form would suffice. The letter and copy insurance documents were forwarded on 11 March 2015. The Respondent stated that she had requested that the Applicant obtain confirmation from his solicitor what is legally due.

The tribunal's decision

19. The tribunal determines that the amount payable in respect of the insurance premium is £155.35 once an enforceable demand is issued. This sum equates to 50% of the insurance premium for the year commencing 8 June 2014.

Reasons for the tribunal's decision

20. The lease provides that the landlord should insure the demised premises and recover the cost from the lessee.
21. There is no dispute that formal statutory compliant demands have not been served. The parties accept that notification of the costs incurred was provided on 11 March 2015. However Section 20B provides that any costs incurred more than 18 months before a demand for payment of the service charge is served on the tenant are not payable unless within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant had been notified in writing that those costs had been incurred and that he would be required under the terms of his lease to pay the charges.
22. The insurance premiums each relate to a year commencing on 8 June. The premium paid in respect of 8 June 2014 to 8 June 2015 was notified to the applicant in March 2015 and therefore falls within the 18 month period. However the premium in respect of 2013 -2014 was due in June 2013, there is no evidence that this cost was not incurred within the normal timescale for paying such premiums and it therefore falls outside of the 18 month period ending on 11 March 2015.

Application under s.20C

23. 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.

Name: E Flint

Date: 3 September 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.

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 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.