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

Case Reference : LON/00AN/LSC/2016/0409

Property : Ground floor flat, 30 Elbe Street,
Fulham, London SW6 2QP

Applicant : Mr Michael Pocock

Representative : In person

Respondent : Ms Rosemary Hadfield

Representative : In person

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

Tribunal Members : Judge N Hawkes
Ms S Coughlin MCIEH

**Date and venue of
Hearing** : 1st February 2017 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 6th February 2017

DECISION

Decisions of the Tribunal

- (1) The Tribunal records that the parties have agreed that the sum of £1,840.92 is payable by the respondent in respect of the service charges relating to insurance from February 2007 to date.
- (2) The Tribunal determines that the Tribunal fees which have been incurred by the applicant are not payable by the respondent.
- (3) The Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, by consent, so that none of the landlord's costs of the Tribunal proceedings may be passed to the respondent 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 which are payable by the respondent in respect of buildings insurance.

The hearing

2. The applicant appeared in person at the hearing, accompanied by a BPP Law School Student who assisted her by taking a note, and the respondent also appeared in person. Each of the parties was accompanied by a friend who took no part in the proceedings.

The background

3. The property which is the subject of this application is the ground floor flat within a Victorian terraced property which has been converted into two flats.
4. Neither party requested an inspection of the property and the Tribunal did not consider that one was necessary in light of the subject matter of this application.
5. The respondent holds a long lease of the property by which the lessee covenants with the lessor to pay one half of the lessors' costs of insuring the building which comprises both flats.

The issues

6. At the commencement of the hearing, the respondent drew the Tribunal's attention to the fact that the copy of the application in the

applicant's hearing bundle was dated 28th October 2016 whereas the application which the applicant had sent to the Tribunal to be issued was dated 31st October 2016.

7. The respondent explained that this was because he had not dated the copy of the application which he had retained at home and he had incorrectly remembered the date of the application.
8. However, the respondent then pointed out that the version of the application in the applicant's hearing bundle included a claim in respect of the year 2008/9 whereas the application which had been issued did not.
9. The Tribunal noted that the applicant had not asked for permission to amend the application which had been issued and that he had included a different application in his hearing bundle without making any attempt to draw the Tribunal's attention to the discrepancies between the two applications.
10. The applicant then stated that he was no longer seeking to claim any service charge for the year 2008/09. He also confirmed that there is no claim in respect of the year 2012/13.
11. It was then agreed that, whilst the respondent has not received the full extent of the information regarding the insurance cover which on her case she should have received, for the purposes of these proceedings it is likely on the balance of probabilities that insurance cover was in place for the relevant years. This is without prejudice to any rights and/or remedies which the applicant may have in respect of insurance and, in particular, any right to be supplied with further and/or more detailed documents.
12. Following discussions between the parties, it was agreed that a 30% discount should be applied to the total premium up until the year 2012 in order to reflect an uplift on account of the fact that the upper flat was, during this period, being let to DSS tenants ("the DSS uplift").
13. The parties then agreed that the total sum which is payable by the respondent is £1,840.92. Accordingly, the Tribunal is not required to and has no jurisdiction to make a determination as to the sum payable and simply records the agreed figure.
14. At the conclusion of the hearing, the applicant consented to the making of an order under section 20C of the Landlord and Tenant Act 1985 so that the applicant may not pass any costs incurred in connection with the proceedings before the Tribunal through the service charge. However, the applicant made an application for a refund of the

Tribunal fees that he has paid in respect of the application and hearing in the sum of £300.

15. Accordingly, the only issue remaining for the Tribunal to determine is whether or not it should make an order requiring the respondent to pay the Tribunal fees in the sum of £300.

Application for the refund of the Tribunal fees

16. The Tribunal does not exercise its discretion to order the respondent to pay the applicant's Tribunal fees for the following reasons:

- (i) The insurance premiums claimed in the applicant's application included the "DSS uplift" which it is now accepted should not be paid by the tenant.
- (ii) The application was issued not long after the demands for payment were sent to the respondent, leaving a relatively short period time for the applicant to both seek legal advice and enter into any discussions. The demands are dated 6th October 2016 and the application which was issued is dated 31st October 2016. Whilst the applicant states that nothing has been paid for 10 years, nothing was payable until demands accompanied by the summary of the rights and obligations of tenants of dwellings in relation to service charges were served on the tenant. It is common ground that this did not occur until October 2016.
- (iii) The applicant sought to rely upon an application in his hearing bundle which differed from the application which he had issued (in particular, it included a claim relating to an additional service charge year) without seeking the Tribunal's permission to amend his application or drawing the Tribunal's attention to the discrepancy.

17. Accordingly, the Tribunal makes no order requiring the refund of the Tribunal fees which have been paid by the applicant.

Name: Judge N Hawkes

Date: 6th February 2016

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.