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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BD/LSC/2018/0225**
Property	:	**3a Royal Parade, Richmond, Surrey, TW9 3QD**
Applicants	:	**Deidre and Michael MacCarthy Morrogh**
Representative	:	**None**
Respondent	:	**Oliverock Limited**
Representative	:	**Marc Nerden (Director)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mr T Sennett MA FCIEH** **Mr A D Ring**
Date and venue of Hearing	:	**13/8/18 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**20/9/18**

DECISION

Decisions of the tribunal

(1) With respect to the building insurance, the tribunal determines that the applicants are liable to pay £968.50 for 2014-2015, £1,002.39 for 2015-2016, £1,071.73 for 2016-2017, and £1,139.36 for 2017-2018.

(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.

(3) The tribunal determines that the respondent shall, within 28 days of this decision, reimburse the applicants any application and hearing fees paid by them.

The application

1. The applicants seek 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 applicants in respect of the service charge years 2014-2015, 2015-2016, 2016-2017, and 2017-2018.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Mrs MacCarthy Morrogh appeared in person. The respondent was not represented, as indicated in its correspondence with the tribunal.

4. The tribunal had before it the following documentary evidence; the respondent's bundle with its cover letter dated 3/7/18, the applicants bundle received by the tribunal on 20/7/18, and the respondent's further bundle sent with its cover letter dated 8/8/18.

The background

5. The property which is the subject of this application is a self-contained flat above a café in a Victorian era parade of similar buildings. The property has a separate ground floor entrance and hallway adjacent to the café. The applicants do not share any communal parts with the café.

6. 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.

7. The applicants hold a long lease of the property which requires the landlord to provide services and the tenant's to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. As identified in the tribunals directions dated 22/6/18 and confirmed by Mrs MacCarthy Morrogh at the hearing, the sole issue was in respect of the insurance premiums for each of the relevant service charge years.

The applicants' case

9. The material parts of the applicants' case can be summarised as follows.

10. The applicants purchased the flat in 2000. The flat was initially let out and the applicants have been living at the flat since August 2014.

11. The insurance premium had become excessive and unreasonable since 2008 after the respondent purchased the freehold.

12. The applicants paid £1113.21 for 2014-2015, £1152.17 for 2015-2016, £1231.87 for 2016-2017, and £1311.92 for 2017-2018.

13. The applicants did not receive any written demands until 8/9/16 and the demand did not include a summary of tenants' rights and obligations. The first full demand, which included a summary of tenants' rights and obligations but did not include a copy of the relevant receipt for premiums paid, was received on 25/10/17.

14. Mrs MacCarthy Morrogh clarified the following at the hearing. She had always received "written invoices" for each of the relevant service charge years by post and subsequently by email but she did not read the relevant emails until January 2016 as she had received them as "spam emails". When she received the letter dated 19/10/17 from the respondent's insurance brokers in relation to the premiums for the service charge years 2015, 2016, and 2017, she received a summary of the tenants' rights and obligations. When she received the invoice for the building insurance for 2018, she was sent a summary of the tenants' rights and obligations.

15. Although the respondent had provided invoices to the applicants requesting payment towards the insurance premium, the respondent has never provided any receipts confirming that it had paid its brokers or insurance company for the building insurance.

16. The applicants have been unable to obtain information from the respondent regarding the calculation of the insurance premium. The applicants believe the insurance is part of a block policy, which they have never agreed to, and also covers the respondent's commercial interests. The applicants were unaware whether the insurance premiums had been inflated by payment of any commission or whether they had been affected by any claims history.

17. Despite the tribunals Directions, the respondent had not provided and has never provided any claims history, any accounts that show whether commission has been paid or received by the respondent or its brokers, how the premium had been apportioned, any alternative quotes, a copy of the last valuation, or a price schedule with the brokers report testing the market.

18. The respondent was seeking to sell the whole block at auction. Mrs MacCarthy Morrogh had searched online the night before the hearing and the information provided by the auctioneers with respect to the ground floor property stated that its contribution towards the building insurance for 2015-2016 was £1,809.47, 2016-2017 was £1,934.64, and for 2017-2018 it was £2,060.35. This did not suggest a 50/50 split as per the terms of the lease as it appeared that the ground floor was paying more than the applicants. However, despite previous requests, the respondent had never provided the total cost of insuring the whole block. The applicants have always simply been invoiced a specified amount without any explanation as to what percentage of the total insurance premium it represented. The applicants were nevertheless clear that they were not charged for any sums paid by the respondent to arrange cover for "loss of rent".

19. The applicants had obtained a number of alternative insurance quotes for the building. The best quote obtained in November 2017 for the whole block was in the sum of £1378.72 from Stride Insurance Group (page 32 of the applicants' bundle).

20. Mrs MacCarthy Morrogh confirmed at the hearing that although they had the respondent's certificate of insurance for the period covering 1/7/17 to 30/6/18, they did not compare whether the terms and conditions were "like for like". Mrs MacCarthy Morrogh further stated that they did not know how their quote compared to the respondent's certificate of insurance as they had not gone through it clause by clause.

21. The tribunal noted that the respondent's figure for the "building sum" was approximately £1.4 million whereas the applicants' figure for the same item was approximately £1.2 million. The respondent's "loss of rent" cover was for £162,000 for a period of 36 months whereas the applicants' quote for the same item was for £100,000 for a period of 12 months. The respondent's "property owners liability" was for a sum of £10 million whereas the applicants' quote for the same item was £5

million. When asked why the applicants had not obtained a like for like quote, Mrs MacCarthy Morrogh stated that the broker she had spoken with put a value of £1.2 million and she could not say why she had not obtained a quote with a similar loss of rent and property owners liability cover as compared to the respondent's certificate of insurance. Mrs MacCarthy Morrogh stated at the conclusion of the hearing that she should have obtained a "like for like" quote.

The respondent's case

22. The applicants had made numerous and spurious claims over the years. The complaints made against its managing agent were rejected in full by the Ombudsman.

23. The most recent letter from its insurance broker confirms that the invoices for the relevant premiums have been paid in full by the respondent. The respondent does not receive any commission in respect of the insurance premiums. The respondent's broker tests the market each year to secure the most comprehensive and cost-effective insurance cover.

24. The "Amlin policy" used by the respondent offers far greater cover and claims service than the lower level cover proposed by the applicants in the past.

25. The alternative quotes obtained by the applicants were not comparable to the respondent's policy cover. The policy wording used by the respondent is far wider than any standard cover and contains many extensions. It has been drafted to ensure maximum cover and protection for the insured. In terms of the level and quality of cover, the respondent is entitled and indeed has taken better quality and wider cover to ensure maximum cover and protection in the event of a claim.

26. The tribunal notes the letter dated 3/7/18 from the respondent's insurance broker's states: "*We refer to the enclosed invoice and letter and confirm this firm received payment in full for the insurance premiums for the above flat... We confirm that for each year in question, we approached numerous providers to ensure Oliverock Limited secured the most comprehensive and cost-effective insurance cover available*".

27. The tribunal notes the respondent's letter to the applicants dated 7/11/17, which states "*...We confirm that you have been sent a summary of tenant's rights and obligations with insurance payment requests on numerous previous occasions. We provided you with receipts for the four years ending 30 June 2015, 2016, 2017, 2018 in our letter dated 25 October 2017. We have provided other supporting documentation in previous correspondence...*"

The tribunal's findings and reasons

28. Given the applicants' own evidence, that "written invoices" were sent to them within 18 months of each relevant service charge year and they had received a summary of their rights and obligations by the second half of 2017, the tribunal is satisfied that the respondent had now correctly demanded the service charges for each of the disputed service charge years.

29. The main issue concerns whether the amount charged for the building insurance is reasonable in amount.

30. The tribunal found the findings made by the Ombudsman Services dated 31/8/17 unhelpful as they dealt with complaints made by the applicants against Carlton Management which was responsible for maintenance matters only. It is made clear in its decision that the Ombudsman Services did not deal with any issues concerning the insurance and collection of service charges, all of which was the responsibility of the respondent.

31. The tribunal notes that despite the simple and clear Directions dated 22/6/18, and the Directions clearly stating that a failure to provide evidence may result in the tribunal drawing an adverse inference, the respondent has failed to provide a number of documents/information. In particular, whether any claims history had been taken into account by the respondent's brokers or insurers, whether any other 'additional risks' were covered, how the premium is apportioned to the property and whether it takes into account the claims history of other properties, copies of any alternative quotes that had been obtained by the respondent for the relevant block, a copy of the last valuation for the building, or any documentary evidence to show the steps that the respondent or its brokers had taken to test the market, e.g. any relevant report or successful tender bid with a priced schedule.

32. The tribunal also notes that the applicants have failed to provide a like for like quote despite having the respondent's certificate of insurance for the period covering 1/7/17 to 30/6/18. In particular, the tribunal notes the following differences between the respondents insurance cover and the applicants' best alternative quote: the respondents "building sum" is £1,407,405 and the applicants' are £1,266.300, the respondents "property owners liability" is £10,000,000 and the applicants' are £5,000,000, both have terrorism cover but the respondents cover has no excess and the applicants' cover has an excess of £100 (page 30 of the applicant's bundle), and the respondents "basis of settlement" has a 50% uplift and the applicants' cover has a 35% uplift, all of which makes the respondents cover better. However, the applicants' quote is slightly better in relation to the excesses for "general policy", "escape of water", and "subsidence" (applicants' excesses are £300, £300, and £1,000 respectively as compared to the

respondents excesses of £500, £500, and £1,000 respectively). The tribunal notes the respondents cover includes a higher amount for "loss of rent" and the cover is for a much longer period. However, given that the respondent does not charge the applicants for the additional sums paid for such cover (as confirmed by the breakdown provided in the respondents bundle (not paginated)), the tribunal did not find that this adversely affects the respondent's position. It does of course adversely affect the applicants' position as it is likely that the quote they have obtained would have been lower if their quote did not include cover for loss of rent. However, given the information provided to the tribunal by the applicants, it is impossible to determine what the deduction would have been.

33. The tribunal notes, according to the information from the broker providing the applicants' quote (page 30 of the applicants' bundle), that if the applicants were to have a 50% uplift (basis of settlement) and £10 million indemnity for property owner's liability, the quote would increase by "up to £500 or even £900". Unfortunately, no further breakdown is provided. In the circumstances, to make the quote more comparable to the respondents cover, it is reasonable to add a further £900 to the quote obtained by the applicants. Therefore, the quote for the whole block totals £2,278.72 (£1378.72 + £900.00).

34. The tribunal notes that the respondent had seen the applicants' quote and stated in its letter dated 8/8/18 that the applicants' quotes were not comparable, the policy wording used by the respondent is "far wider", and "contains many extensions". However, the respondent failed to explain in its letter (or in its earlier letters) in what way its cover was "far wider" or what other extensions it contained. Furthermore, the respondent chose not to attend the hearing to explain or clarify its case any further or to assist the tribunal.

35. The respondent claims that its insurance premium is competitive and that its brokers have sought to obtain a competitive price. However, the respondent has failed to provide any supporting evidence as specified in the tribunals Directions, such as copies of any alternative quotes obtained for the relevant block or any documentary evidence to show the steps that the respondent or its brokers had taken to test the market.

36. The applicants have obtained alternative quotes from a broker, albeit not exactly on a like for like basis, and have provided all the information to the tribunal and have attended the hearing to assist the tribunal. The tribunal further notes that the applicants have not simply chosen the cheapest alternative quote (the quote from NIG was slightly lower at £1,330.30).

37. Given the evidence before the tribunal, on balance, the tribunal finds that the reasonable insurance premium for the whole block for 2017-

2018 is £2,278.72 (£1378.72 + £900.00). Under the terms of the lease the applicants are liable to pay 50% of the buildings insurance. Therefore, the applicants are liable to pay £1,139.36 for 2017-2018 (which represents a deduction of approximately 13% from the respondents service charge demand).

38. Given the lack of evidence before the tribunal, the tribunal found the fairest, reasonable, and most proportionate way of dealing with the earlier disputed service charge years was to make a deduction of 13% for each of the earlier service charge years. The tribunal accordingly found the applicants are liable to pay £968.50 for 2014-2015, £1,002.39 for 2015-2016, and £1,071.73 for 2016-2017.

Application under s.20C and refund of fees and costs

39. Taking into account the determination above, the applicants have reduced their service charge demand by approximately £600. The applicants have acted reasonably in connection with the proceedings and were successful on the main disputed issue. In the circumstances, the tribunal orders the respondent to refund any fees paid by the applicants [within 28 days of the date of this decision] and the tribunal found that it is just and equitable 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: Mr L Rahman **Date:** 20/9/18

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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.