

9265



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

Case Reference : LON/00BA/LSC/2013/0418

Property : Flat 3, 158-160 Chestnut Grove,
Mitcham, Surrey CR4 1RB

Applicant : Abba Ibrahim Mohammed

Respondent : Mohammed Sadiq

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

Tribunal Members : NK Nicol
C Gowman BSc MCIEH

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 3rd September 2013

DECISION

Decisions of the tribunal

The Tribunal determines that the sums of £166.85 and £182 are payable by the Applicant in respect of the buildings insurance for the years 2012/13 and 2013/14 respectively.

Reasons

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount payable in respect of the buildings insurance for the years 2012/13 and 2013/14.
2. The Tribunal issued directions on 21st June 2013. Unfortunately, the Respondent has not complied with any of them. Despite this, the Tribunal had sufficient information on which to reach a decision because the Applicant did comply and provided a comprehensive bundle of relevant documents. However, the Tribunal has the power to debar a party from defending an application and may consider exercising that power in any future application if the Respondent continues to ignore such legal proceedings.
3. The relevant legal provisions are set out in the Appendix to this decision.
4. The Applicant is the lessee of a 2-bedroom maisonette in a purpose-built block of 4 flats with commercial premises on the ground floor. For each of the years 2012/13 and 2013/14 building insurance was arranged by Your Business Insurance Brokers with Groupama on behalf of the Respondent. The total cost was £2,224.60 and £2,431.54 respectively. Clause 1.3 of the Applicant's lease specifies that his contribution is 15%. In fact, the Respondent charged him £166.85 and £182 respectively, presumably after removing the commercial property's share although the method of calculation is nowhere shown.
5. The Respondent became the freeholder of the subject property in 2011. When the Applicant received the demand for payment of his contribution to the insurance, he requested details. The Respondent did not provide them. The Tribunal cannot understand why he did not. It is good practice and simple enough to do. Having said that, the information needed to determine the payability of the Applicant's contribution was in his bundle, including the Property Owners Schedule. Therefore, sufficient detail had been provided by the time the Applicant compiled the bundle.
6. The Applicant has pointed out that the Respondent has wrongly informed the insurers that all the flats are owner-occupied when in fact two of them are tenanted. The Tribunal agrees with the Applicant that

this could cause problems in future and the Respondent would be well-advised to make full disclosure to the insurers. Having said that, this may well be a mistake and is not evidence of fraud as the Applicant has alleged. It also does not void the policy or otherwise affect its general utility.

7. The Applicant has raised no other objection. Given the Respondent's poor initial response, it is understandable that he has concerns. In a similar vein, the Respondent has denied liability for the repair of a downpipe when it is fairly clear that the lease places the repairing obligations on the freeholder, not the lessee. However, the Tribunal could find no evidence that the insurance premiums are anything other than reasonable in amount, reasonably incurred and payable.

Name: NK Nicol

Date: 3rd September 2013

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.