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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/43UK/LSC/2015/0046**
Property	:	**9 Stack House, West Hill, Oxted, Surrey, RH8 9JA**
Applicants	:	**T M O'Carroll and M J Curran**
Representative	:	**-**
Respondent	:	**Stack House Residents (Oxted) Ltd**
Representative	:	**Rayners**
Type of Application	:	**Service Charges : Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act")**
Tribunal Member	:	**Judge P R Boardman**
Date and venue of Hearing	:	**Decided on the papers**
Date of Decision	:	**24 August 2015**

DECISION

Introduction

1. This application is for the Tribunal to decide whether the Respondent, as freeholder, is entitled to include the premium for a home emergency insurance policy in the service charge payable by the Applicants, as leaseholders of the property, and whether the apportionment of insurance premium costs is reasonable

2. The application form stated that the policy in question was a Sutton & East Surrey Water Services Limited ("S&ES") "Premier 365 Home Emergency" policy. It benefited areas for which individual leaseholders had responsibility, with negligible application to the areas for which the Respondent had responsibility. The policy booklet made it clear that the purpose of the policy was to provide cover for emergencies arising within individual flats. Any benefit which might accrue to the Respondent for common services was marginal. This meant that the Respondent was taking on responsibilities of leaseholders. The common services, which fell within the Respondent's remit, were already included in a buildings insurance policy, namely Towergate Riskline policy 019906. The S&ES policy was a "block" policy, and differed from an individual policy only in that a discount of 11% applied to multiple policies taken out under a single invoice. The premium of £2835 was disproportionate

3. In the case of the property, which was gutted and unoccupied, the S&ES policy was invalid, both by virtue of the policy wording relating to "unoccupancy", and because there were no relevant risks in the flat, because of its gutted state

4. The Applicants indicated at section 9 of the application form that they did not wish to make an application for limitation of the Respondent's costs under section 20C of the 1985 Act

5. The Tribunal has decided the application on the papers before it, without an oral hearing, pursuant to rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), and the Tribunal's directions dated 18 June 2015, neither party having requested a hearing in the meantime

6. The Tribunal has decided that it is not necessary for the Tribunal to inspect the property in view of the nature of this application

Letter from the Applicants 11 July 2015

7. The Applicants stated that the Respondents currently maintained five

insurance policies :

a. buildings : Towergate Insurance : £4855.08
b. general liability : Towergate Insurance : £615
c. directors and officers liability : Towergate Insurance : £228.20
d. lift liability : Towergate Insurance : £710.31
e. home emergency cover : S&ES : £2835.00

8. The Applicants agreed that it was fair and reasonable to apportion the buildings policy premium on a floor area basis, as the potential benefit would be apportioned that way

9. The premiums for general liability, directors and officers liability, and lift liability should be shared equally, as the potential benefit was the same for all leaseholders

10. The premier 365 home emergency policies fell outside the Respondent's remit, and the Applicants considered that the very marginal benefits, over and above the cover already provided by the buildings policy, did not justify the substantial premium being paid out of the service charge. Additionally, Flat 9 was uninhabitable and unoccupied, and, on that basis, the home emergency cover specifically excluded any claims relating to Flat 9. The benefits were therefore zero. Where such policies were considered to be desirable, a payment mechanism outside the service charge should be adopted. This would avoid anomalous and disproportionate charges occurring

11. If, contrary to the Applicant's view, the policy did not fall outside the Respondent's remit, Flat 9 should be excluded on the basis of being empty, and the set of policies should cover 17, not 18 flats. The Applicants had confirmed with S&ES that such a change was possible, and would have no impact on the level of discount

Respondent's case 27 July 2015

12. Rayners, as managing agents, stated on behalf of the Respondent that the building was a block of 18 quality, purpose-built flats

13. The Respondent had the power to take out the S&ES policy by virtue of clause 1 of the lease, which empowered the Respondent to take out an insurance policy for such risks as "the lessors think fit", and paragraph 1 of the fourth schedule, which gave the Respondent a wide discretion to take out any policy it felt, in its own absolute discretion, benefited the building and its leaseholders

14. The annual cost for each leaseholder was £210

15. One of the most contentious issues in management was where a leak occurred between flats, and there was often considerable delay whilst leaseholders argued about who was going to investigate a leak where the

source was uncertain. The S&ES policy meant that a plumber could be engaged immediately to investigate and repair a leak

16. That trace, access and repair facility was not covered by the general buildings policy

17. There was no excess on the S&ES policy

18. The premium had appeared in the company accounts for a number of years, as the Applicants would have seen, and it was inequitable that the Applicants should seek to exclude themselves for the current year

19. The Applicants' claim for exclusion was based on their flat being currently unoccupied and in the process of renovation. However, that situation must be temporary because of their liability under clause 4(1) of the lease to repair and maintain the flat. The temporary circumstances of the flat were irrelevant to the principle. The flat had already been in a state of repair since 2012. Whilst the Respondents had agreed to carry out some of the work to the flat, matters had been delayed because of difficulties in arranging access with the Applicants

20. There had been claims against the policy by leaseholders, and the majority of leaseholders believed that the policy benefited the estate, and wished to continue with it

21. Rayners had spoken to a lady called Glynis [sic] at S&ES about the extent of the cover. She agreed that that the policy document seemed to envisage an individual policy rather than a group policy for a block of flats. However, contrary to the Applicants' assertions, her view was that all joint pipes were covered to the point where they became the responsibility of the statutory water authority. She was not sure whether a block policy to exclude one flat would be possible with a pro-rata reduction in premium, or what the position would be part way through a year. Further, she felt that the definition of "home" on a block of flats policy covered the whole block. That view was supported by the fact that over the last 5 years there had been at least 3 successful claims involving communal areas which were :
    a. a split in the supply pipe from the mains where it entered the building
    b. a faulty ballcock in one of the rooftop communal header tanks (the labour element of the repair was covered)
    c. a leak in the sewer after it left the building

22. Several leaseholders had also claimed against the policy, and the policy covered all services serving the building at what the directors believed was a very competitive premium

23. In relation to the apportionment of the insurance premiums, the Applicants argued that the premiums should be varied in respect of some of the premiums because they considered that the level of cover benefited

the flats equally

24. The Respondent rejected that challenge, because :
    a. the method of division had been long established and accepted by the leaseholders
    b. to accept the variation would allow other factors to be argued, such as the number of occupants, and period of occupation
    c. it was for the landlord to determine the division of service charge costs

25. The leaseholders had the right to have the matter determined by an independent surveyor : clause 3(l) of the lease. As the Applicants had not made such an application, the landlord's determination should prevail until an alternative determination were made as part of that procedure

The Applicants' reply 29 July 2015

26. The Applicants stated that the actual annual cost of the S&ES 365 home emergency policy for the 18 flats was the discounted price of £157.50 a policy, totalling £2835, which was then apportioned among the flats as follows :

    2 penthouses @ 7.5% = £210 each
    12 mid-floor flats @ 5.5% = £156 an apartment
    4 ground floor flats @ 4.75% = £135 an apartment

27. It was not necessary for a home emergency policy to be in place to obtain the immediate services of a plumber to investigate and repair a leak. Furthermore, it was not the landlord's function to become involved with plumbing issues within each apartment

28. Trace and access costs were included in the buildings policy (peril number 7 on page 16)

29. The premium was only shown in the income and expenditure account, and was described as "water services/insurance", which lacked clarity. The documentation which they had received had never made clear the nature of this item. It was only in 2014 that they had become fully aware of the nature of the S&ES policy and its implications. Whilst the same state of affairs had occurred in the two preceding years, it was not until August 2014 that they were in a position to raise this matter with the landlord, some 7 months before the policy renewal date. They had felt that it would be unreasonable to include those earlier 2 years in their application

30. The fact that the flat was unoccupied was irrelevant to the application. The state of disrepair since 2012 was for reasons beyond their control, and they had no grounds for believing that there would be any resumption of works within the foreseeable future

31. Claims made by leaseholders were not the responsibility of the landlord. However, the Applicants recognised the right of individual leaseholders to be free to choose whether or not to take out such a policy on a personal basis, and for this to be paid for outside the service charge

32. The information given to the Respondent by Glynis [sic] of S&ES differed from that given by Glynis to the Applicants during telephone conversations in the week beginning 11 May 2015. The Applicants were attaching a copy of notes made at that time, and the Applicants drew attention to the last paragraph

33. Premiums had amounted to well over £10000 in the last 5 years, and the benefit to the landlord was completely disproportionate. The landlord's building policy already covered plumbing claims (item 7.2, page 10, section 1, numbers 7 and 15)

34. The apportionment of insurance premiums according to flat size only became apparent when, following the appointment of outside managing agents last October, the Applicants received a copy of the final remittance account on 14 January 2015

35. The fact that the method of division had been long established did not make it right. The apportionment was established at a time when the buildings insurance policy was the landlord's only policy. The Applicants readily accepted that for the buildings policy an apportionment based on area was fair and reasonable. For other insurances where leaseholders benefited equally, the premium cost should be the same for each leaseholder

36. The lease did not set out the method of division, and, as such, the Applicants did not accept that this application would in any way impinge upon the items cited

37. Any division of service charge costs by the landlord should be fair, reasonable and justifiable

38. The drafting of the lease, including clause 3(l), predated the establishment of the First-tier Tribunal system. There was no middle ground in this dispute which would lend itself to being resolved through arbitration, and seeking a First-tier Tribunal decision was an appropriate course of action

The lease

39. The lease provided to the Tribunal includes the following provisions :

Clause 1

.....and also paying by way of further or additional rent from time to time a sum or sums of money equal to the amount which the Lessors may expend in effecting or maintaining the insurance of the demised premises against loss or damage by fire and such other risks as the Lessors think fit such last mentioned rent to be paid without any deduction on the half yearly date for payment of rent next ensuing after the expenditure

Clause 3(i) [tenant's covenants]

(b) To pay all rates taxes assessments charges impositions and outgoings which may at any time be assessed charged or imposed upon the demised premises or any part thereof or the owner or occupier in respect thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the premises of which the demised premises form part not demised to the Tenant and not forming any flat comprised in the Building or the Estate to pay the proper proportion of such rates taxes assessments charges impositions and outgoings attributed to the demised premises
(c) Maintain uphold and keep the demised premises other than the parts thereof comprised and referred to in the Lessors' covenants for repair hereinafter contained and subject as hereinafter provided all walls sewers drains pipes cables wires and appurtenances thereto belonging in good and tenantable repair and condition damage by fire or other risk or risks covered by the Lessors' insurance policy or policies referred to in clause 5(2) hereof excepted
(l) If the Lessors and Tenant shall fail to agree what constitutes the proper proportion of the rates taxes assessments charges imposition [sic] and outgoings under paragraph (b) of sub-clause (i) hereof or any question arising out of the payment of the expenses incurred by the Lessors arising out of the Fourth Schedule hereto then the matter shall be determined by the Lessors but if the Tenant or the lessee of any of the other flats comprised in the Estate shall be unwilling to accept the determination of the Lessors he or they shall be entitled (having first paid the amount determined by the Lessor) to have the matter determined by an independent surveyor.....whose determination shall be final and binding on the parties

Clause 4 [tenant's covenants]

(ii) Contribute and pay the sum of £125 on the signing hereof such sum to be applied by the Lessors towards the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto and upon demand not to be made more frequently than twice a year to pay one eighteenth part of the said costs incurred since the last such demand or payment

(iii) Pay so long as either the Flat or the garage shall not be separately assessed for water rates a due proportion of the water rate assessed on the Estate (excluding any flat or garage on the Estate for the time being separately assessed) such proportion to be determined by the Lessors on the basis that every flat and every garage on the Estate is of equal value to every other flat and every other garage respectively

Clause 5 [landlord's covenants]

(2)(a) That the Lessors will at all times during the said term (unless such insurance shall be vitiated by any act or default of the Tenant or the owner lessee or occupier of any other flat comprised on [sic] the Estate) insure and keep insured the demised premises and the buildings on the Estate against loss or damage by fire and such other risks (if any) as the Lessors think fit in some insurance office of repute in the replacement value thereof and whenever required produce to the Tenant the policy or policies of such insurance and the receipt for the last premium for the same and will in the event of the demised premises and/or the said buildings being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the said buildings
(b) That the Lessors will at all times during the said term effect and maintain insurance against their liability to third parties
(3) That (subject to contribution and payment as hereinbefore provided) the Lessors will maintain and keep in good and substantial repair and condition
(ii) all such gas and water pipes drains and electric cables and wires in under and upon the Estate as are enjoyed or used by the Tenant in common with the owners or lessees of the other flats or premises in the Building

Fourth schedule
Costs expenses outgoings and matters in respect of which the Tenant is to contribute

1 All reasonable costs and expenses incurred by the Lessors for the purpose of complying or in connection with the fulfilment of their obligations under sub-clauses (3) (4) (5) (7) and (10) of clause 5 of this lease in respect of all of the Estate or incurred by the Lessors whether or not pursuant to an obligation to the Lessee but in fact provided for the benefit of the Estate or any part thereof as to which the Lessors shall be the sole arbitrator

Document entitled "telecom with S&SE [sic] Water – week commencing 11/05/2015 – Glenis [sic] (02087 227003) – Admin for "block" policies"

40. The document started with the heading "TOC Notes and Observations"

41. The document stated that the essence of these 365 (premier) assured home emergency cover policies appeared to be to provide peace of mind and cover for plumbing emergencies

42. At Stack House there was a "block" policy which covered 18 flats. "I asked Glenis if there was any difference between individual and block policies with regard to their scope and cover, and if different policy documents applied to each. Also, does the fact that these policies are held in the landlord's name confer any additional rights." The answer was no, the only difference was that a block policy gave a discount from the full price of £177 a flat, to £157.50 a flat (9%). There was no sliding scale, so that if there were only 17 policies in force, the discount would remain at the same level

43. "As our property is in a "gutted" state, we have no water or indeed bathroom or kitchen, or any appliances. As our apartment falls within the "unoccupied for 30 consecutive days or more" exclusion criteria, we are unable to make any claim whatsoever, per the general conditions of the policy (page 18). Note : apportioned charge for number 9 amounts to £210, which is £52 more than we should be charged, notwithstanding that we are unable to claim under the policy anyway. What benefit do we receive – no water supply, kitchen, bathroom, WC, central heating, gas boiler. Nothing there for an annual check up"

44. On page 5 of the policy document, under "drainage", cover was defined as "the mains drainage systems and associated pipework within the boundary of the home as far as the first connection to the shared mains drainage services"

45. When this point was queried, Glenis had to seek further guidance from her manager, who responded that as there were no water meters servicing the individual flats at Stack House then the cover would extend to the common pipework/sewers and out to the main road. This was the only part of the policy which was applicable to the landlord's responsibilities, ie the common or shared pipes and services

46. The claim limits were :

£250 (including VAT, ie £208 net) to cover call out, labour, parts and materials : any claim
£600 (including VAT, ie £500 net) to cover call out, labour, parts and materials : mains drainage system repairs
unlimited : underground external water supply pipes

47. These "block" policies were very old, and were not being sold any more. It seemed that the policy might automatically be renewed each year on 1 April "for water bill associated premiums", "whatever that means"

48. The directors of the Respondent were in breach of their responsibilities

under point 1 of the general conditions on page 17 of the policy, which stated "(as is the case in all insurance policies)" : "You are expected to provide complete and accurate information when **you** take out **your** insurance policy, throughout the lifetime of the policy and when **you** renew **your** insurance

49. Under the cancellation and renewal provisions, a pro-rata return of premium would be made provided that no claims and call-outs had been made. In the case of number 9, that was obviously true

Other documents before the Tribunal

50. Other documents included :

a. a Stack House Residents Association income and expenditure account for the year ended 29 September 2014, including, under the heading "expenditure", an item "water services/Insurance £2644"

b. an invoice dated 23 September 2014 from the Respondent to the Applicants entitled "maintenance fees and services for the half year from 30 September 2014 to 24 March 2015" for the following sums:

service fees	£2360
insurances	£350
total	£2710

c. a document dated 5 December 2014 entitled "Stack House Residents (Oxted) Limited final remittance account for the transfer of residents' funds to Rayners/Stack House Clients account", with footnotes including the following :

"1 Insurance premiums are allocated in provisional amount in the first half year pending agreed terms in October and for S&ES Water Services in the following April. Firm allocations are served in the second half year based on floor area ie ground floor flats 4 @ 4.7% 1/3rd floors 12@ 5.5% Flats 9 and 18 7.5%"

d. an invoice from S&ES dated 3 March 2015 for £2835 addressed to the Respondent, showing the property insured as Stack House (18 flats), the level of cover as "365 Premier 18 properties", and the policy period as 1 April 2015 to 31 March 2016

e. invoices from Towergate Insurance, all dated 20 October 2014, as follows :

- property owners : £4855.08
- excess public liability : £615
- directors and officers liability : £228.20
- combined engineering : £710.31

f. an S&ES document entitled "Plumbing Policy Document 365 Assured" :

- on page 3 of the document, "The aims of this insurance" were set out as follows :

> This product meets the demands and needs of those who wish to ensure that their home is covered in the event of an emergency affecting the essential services serving their

home and for routine maintenance for the items shown in this document. This insurance is a home emergency policy and not a household buildings or contents policy. It should complement your household insurance policies, and provide benefits and services which are not normally available under these policies. What we undertake to do is to provide rapid, expert help if you suffer an emergency in your home arising from an incident covered under the policy. We will arrange for one of our approved contractors on our list of approved tradesmen to attend and take action to stabilise the situation and resolve the emergency"

- on pages 6 and 7, section 1 of the document set out the "primary" levels of cover, including :
    - uncontainable leakage of hot or cold water pipes within your home
    - total blockage of soil or waste water system pipes from sinks, basins, bidets, baths or showers
    - complete failure of, or damage to, underground mains drainage system or sewers within the boundaries of your home, as far as the first connection to the shared mains drainage system
    - total blockage or mechanical failure of a WC or cistern in your home which results in complete loss of function
- on pages 8 to 12, section 2 of the document set out the "standard and premier" levels of cover, including extensions, including:
    - uncontainable leakage of hot or cold water pipes within your home
    - total blockage of waste water system pipes from sinks, basins, bidets, baths or showers
    - complete failure of, or damage to, underground mains drains or sewers within the boundaries of your home, as far as the first connection to the shared mains drainage system
    - total failure of your mains water or sewerage services for which you are legally responsible
    - repairs as a result of leakage on the underground water supply pipe for which you are legally responsible from the Water Company principal stop tap to the first domestic stop tap. In the case of common or shared supply pipes, cover under this policy commences from the branch point on the common supply pipe serving the home up to the first domestic stop tap only.....
    - total blockage or mechanical failure of the only accessible WC or cistern in your home which results in complete loss of function
    - broken external window glass compromising the security of your home
    - electrical supply failure to lighting and power distribution systems.....

- missing broken or repositioned roof tiles or damaged flat or tarpaulin roofs allowing water penetration.....
- lost keys.....
- DIY accidents (eg nails through pipes)
- supply pipe inspection.....
- trace and access costs.....
- the cost of supplying and fitting washers, ball valves, gate valves and internal stop taps.....
- failure of, or damage to, underground mains drainage system or sewers within the boundaries of your home, as far as the first connection to the shared mains drainage services
- the cost of labour to repair defective WC siphons.....
- the cost of repairing any defective blocked or leaking sink, bath or basin waste water systems
- the cost of repairing small containable leaks

- on pages 13 and 14, section 3 of the document set out the "premier" levels of cover, including :
  - annual service inspection.....
  - the cost of labour to fit or replace taps.....
  - the cost of labour to replace shower cartridges.....

g. a Towergate "Property Owners' Quote Schedule" dated 1 October 2014, including :
   - the insured : the Respondent
   - excesses, including "escape of water" : £1000
   - indorsements, including : "Apartment number 9 – undergoing refurbishment : It is hereby noted and agreed that cover has been amended to include full perils at apartment 9, however, in the event of a claim originating from this apartment the excess will rise to £450 from £300. The owners of apartment 9 have agreed to pay the additional £150 should this arise"

h. a Towergate "Property Owners Policy Wording", including :
   - pages 8 and 9 : definitions, including "buildings", including "Piping ducting cables and associated control gear and accessories on the Premises and extending to the public mains but only to the extent of the Insured's responsibility"
   - pages 10 to 12 : cover, including "escape of water from water tanks apparatus or pipes including sprinkler instillations [sic]", and "accidental damage to underground pipes services and cables provided the Insured is responsible for the repairs"
   - pages 15 to 17 : extensions, including "7) Trace and Access : this section is extended to include the reasonable costs and expenses incurred with our consent in locating the source of damage to the Building caused by escape of water from any tank apparatus or pipe or leakage of fuel from any fixed hearing installation including repairs to walls floors or ceilings for an amount not exceeding £50000 in any one period of insurance except the Insurer will not indemnify the Insured for costs or expenses incurred where damage results solely from a change in the

water table level"

The Tribunal's findings

51. The S&ES policy

52. It is clear from the stated aims set out in the policy, and from the descriptions of the cover provided, that the policy is a home emergency insurance policy, to complement a buildings insurance policy, and is not itself a buildings insurance policy

53. It is also clear that the Respondent has arranged the policy, that the Respondent is the insured under the policy, that the policy covers the 18 flats, and that the premium of £2835 is a discounted figure

54. There is nothing to prevent the leaseholders from entering into an arrangement with the Respondent to arrange such a policy on the leaseholders' behalf, and to reimburse the Respondent for doing so, in order to obtain a discounted premium for "bulk buying" as it were

55. However, the question in this case is whether the Respondent is entitled under such an arrangement to include the premium in the service charge under the provisions of the lease, or whether the arrangement is outside the terms of the lease

56. The Tribunal finds that :

a. the Applicants' liability under clause 1 of the lease to pay "*a sum or sums of money equal to the amount which the Lessors may expend in effecting or maintaining the insurance of the demised premises against loss or damage by fire and such other risks as the Lessors think fit*" does not include a liability to pay a premium under the S&ES policy, because :

- damage by fire is covered by the Towergate "Property Owners" policy : the S&ES policy does not cover damage by fire
- the expression "and such other risks as the Lessors think fit" carries with it the implication that the Lessors will "think fit" only if it is reasonable for them to do so
- it is not reasonable for the purposes of clause 1 of the lease for the Respondent to effect or maintain insurance for the matters covered by the S&ES policy, because the matters covered by the S&ES policy, and not already covered by the Towergate "Property Owners" policy, are not matters for which the Respondent, as landlord, is liable under clause 5(3) of the lease, but are matters for which the Applicants, as tenants, are liable under clause 3(i)(c) of the lease

b. the Applicants' liability under clause 4(ii) to pay a service charge in respect of the matters mentioned in the fourth schedule to the lease does not include a liability to pay by way of service charge a proportion of the premium under the S&ES policy either, because :

- the matters in respect of which paragraph 1 of the fourth schedule requires the Applicants to contribute by way of service charge are the *"reasonable costs and expenses incurred by the Lessors for the purpose of complying or in connection with the fulfilment of their obligations under sub-clauses (3) (4) (5) (7) and (10) of clause 5 of"* the lease
- the Respondent's obligation to insure is in sub-clause 2 of clause 5 of the lease, which is not included in the list of sub-clauses contained in paragraph 1 of the fourth schedule

c. the premium under the S&ES policy is accordingly not payable by way of service charge under the lease

d. the question whether or not there is a binding arrangement between the Respondents and the Applicants to pay the S&ES premium outside the terms of the lease, is not a matter within the Tribunal's jurisdiction, and would have to be decided, in the absence of agreement, by a county court

57. The apportionment of the premiums for the other insurance policies

58. The Tribunal finds that the Applicants' liability to pay insurance premiums is under clause 1 of the lease, namely to pay *"a sum or sums of money equal to the amount which the Lessors may expend in effecting or maintaining the insurance of the demised premises"*

59. The expression "the demised premises" is defined earlier in clause 1 of the lease as the flat, the store, the garage, and the easements rights and privileges mentioned in the second schedule to the lease, subject to the matters mentioned in the second schedule and except and reserved as mentioned in the third schedule

60. There is no apportionment provision in clause 1 of the lease in relation to the insurance premiums, in contrast to the apportionment provisions about payment of rates etc in clause 3(i)(b) and water rates in clause 4(iii), no doubt because the insurance premium payment provision in clause 1 relates to the insurance of the demised premises, rather than to the insurance of the whole building comprising all 18 flats

61. However, the Towergate "Property Owners" policy and schedule before the Tribunal make it clear that the premises insured are the whole building, Stack House, comprising all 18 flats, rather than Flat 9, or, indeed, any of the flats, individually

62. In relation to the Towergate "Property Owners" policy premium, the Applicants have accepted that an apportionment based on the relative areas of the flats is fair and reasonable. The actual apportionment applied by the Respondent is set out in the document dated 5 December 2014 entitled "Stack House Residents (Oxted) Limited final remittance account for the transfer of residents' funds to Rayners/Stack House Clients account", namely "based on floor area ie ground floor flats 4 @ 4.7% 1/3rd

floors 12@ 5.5% Flats 9 and 18 7.5%"

63. As the Applicants have accepted that basis of apportionment in relation to the Towergate "Property Owners" policy premium, the Tribunal finds that there is no issue before it in that respect

64. In relation to the other Towergate policies, namely "Excess Public Liability", "Directors and Officers Liability", and "Combined Engineering", the parties have provided the Tribunal with copies of the premium invoices, but have not provided copies of the policies themselves, or of the policy schedules, and there is no other evidence before the Tribunal to show whether the premiums have been calculated by the insurer by reference to the relative sizes of the flats, or whether they have been calculated by reference to the building as a whole, irrespective of the fact that the flats are of different sizes

65. Doing the best it can on the limited information provided to it, the Tribunal finds that :
    a. according to the Applicants' letter dated 11 July 2015 the "Excess Public Liability" policy is a general liability policy, the nature of the "Directors and Officers Liability" policy speaks for itself, and the "Combined Engineering" policy is a policy for lift liability
    b. the Tribunal accepts the Applicants' submission in their letter dated 11 July 2015, which the Respondent has not challenged as such in the Respondent's case, that each of these policies benefit the flats equally, irrespective of flat size
    c. it is more likely than not, in view of the nature of these policies, that the calculation of the premium by the insurer in each case has not taken into account, or been influenced by, the fact that the flats are of different sizes
    d. there is no independent evidence before the Tribunal to support the Respondent's submission that the method of apportionment of the premiums for these policies "has been long established and accepted by the lessees", nor, in particular, that it has been accepted by the Applicants
    e. clause 3(l) of the lease, which provides for the reference of disputes to a surveyor, does not relate to disputes about the apportionment of insurance premiums, but relates to disputes about the apportionment of rates etc under clause 3(i)(b) and disputes about expenses under the fourth schedule, and the latter does not include insurance premiums for reasons already given; in any event, clause 3(l) would not have prevented the Tribunal from deciding the payability of the premiums by way of service charge : section 27A(5) of the 1985 Act
    f. the Respondent has argued that to accept a variation of the current basis of apportionment "would allow other factors to be argued, such as the number of occupants, and period of occupation"; however, the Tribunal finds that the liability of a tenant to pay by way of service charge a proportion of an insurance premium arises under the terms of the lease, irrespective of the number of

occupants and the period of occupation, so that the number of occupants or the period of occupation would not be a relevant factor in assessing the basis of apportionment of the premium

g. in all the circumstances, the Tribunal accepts the Applicants' submission that the premiums for these three policies should be apportioned equally among the 18 flats, irrespective of flat size, and that any sum in excess of an equally apportioned figure in each case is not payable by the Applicants by way of service charge

The application fee paid by the Applicants

66. The Tribunal finds that the Applicants have effectively succeeded in their application to the Tribunal, and that it was reasonable to make the application, and, having considered all the circumstances of this case in the round, the Tribunal orders that the Respondent should reimburse the Appellants for the application fee in this case, which, according to section 14 of the application form, was £65

Appeals

67. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case

68. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision

69. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal

70. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 24 August 2015

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Judge P R Boardman
(Chairman)