

10548



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

**Case Reference** : **LON/00AH/LSC/2014/0581**

**Property** : **Ground Floor Flat, 47 Neville Road,  
Croydon, Surrey, CR0 2DS**

**Applicant** : **Dalkator Limited**

**Representative** : **Circle Residential Management  
Limited**

**Respondents** : **Mr J Caplan**

**Representative** : **N/A**

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

**Tribunal Members** : **Amran Vance. Tribunal Judge**

**Date of Decision** : **3 February 2015**

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**DECISION**

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## Decisions of the tribunal

1. The tribunal determines that the buildings insurance premium for the period 3 November 2014 to 2 November 2015 (the "2014/15 premium") in the sum of £954.22 is payable by the Respondent in a 50% share (in the sum of £477.11) and that the Premium Credit charge relating to the costs of insurance in the sum of £20.63 is also payable by him in full.

## The application

2. 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 charge payable by the Respondent in respect Ground Floor Flat, 47 Neville Road, Croydon, Surrey, CR0 2DS (the "Flat") for the 2014/15 service charge year. A determination is sought in respect of a buildings insurance premium and the charges of Premium Credit for facilitating the payment of that premium to be paid by way of instalments.
3. Numbers in brackets and in bold below refer to pages in the bundle supplied by the Applicant for the purposes of the tribunal's determination.
4. The relevant legal provisions are set out in the Appendix to this decision.
5. Directions were issued by the tribunal on 17 November 2014 which provided for the application to be determined without a hearing, on the papers, and for the Respondent to provide his response to the Application by 12 December 2014 together with any alternative quotations on which he wished to rely.
6. The Respondent has not complied with that direction. The tribunal has received no correspondence from him acknowledging receipt of the Application or responding to it. The bundle supplied by the Applicant for the tribunal to use when determining the Application contains no representations or communications at all from the Respondent.
7. In its Statement of Case, the Applicant states that it had been informed by the owner of 3 Margrave Gardens, Bishops Stortford, Herts, CN23 3WA (the address specified for the Respondent on the leasehold Office Copy Entries **[7-8]** for the Flat that the Respondent no longer lived at that address. All correspondence from the Applicant to the Respondent has therefore been sent to the Flat address. The tribunal has used that same address when writing to the Respondent.
8. It is unfortunate that this Application has had to be determined on the papers without any representations by the Respondent. However, in

the absence of any notification from the Respondent of an alternative correspondence address the Applicant cannot be criticised for sending correspondence to the Flat address. There is no evidence of any such notification on the papers before the tribunal and the tribunal is satisfied, on the material before it, that the Respondent has been properly notified of this Application.

### **The Applicant's Case**

9. The Applicant states that the Flat is located within a semi-detached two-storey building comprising two self-contained flats ("the Building"). The Applicant holds the freehold interest in the building [5-6] and the Respondent is the long lessee of the Flat 36 [7-8]. Circle Residential Management Limited ("Circle Residential Management") is the managing agent for the Building.
10. By letter dated 27 October 2014 [51-54] the Applicant demanded the total sum of £497.74 from the Respondent comprising £477.11 in respect of the 2014/15 premium together with the sum of £20.63 for the costs of the Pension Credit facility. The Respondent's contribution towards the 2014/15 premium was 50% of the total premium.
11. A copy of the Certificate of Insurance with Aviva Insurance Limited setting out the sum due for the 2014/15 premium for insurance of the Building is at [20]. The sum insured is said to be £488,241. When the Applicant acquired the freehold interest of the Building in 2010 it insured it for £375,000 [20].
12. The Applicant asserts that it used the services of a broker, Lockton Companies LLP, to source a competitive price for insuring the Building and a letter from them dated 16 April 2013 [55-59] sets out the steps taken when marketing the portfolio of properties managed by Circle Residential Management in 2010.
13. The Applicant also asserts that it wrote to the Respondent on 27 October 2014 [62-63] inviting him to agree that the amount of the 2014/15 premium was reasonable but that they received no response to that letter.

### **The Lease**

14. The Respondent holds his leasehold interest in the Flat pursuant to the terms of a lease dated 21 November 2007.
15. The Applicant is obliged by virtue of clause 5.2 of the lease to keep the Flat insured "*against all risks normally insured under a Householder's Comprehensive Policy in a sum equal to the full insurable value thereof...*".

16. Clause 3.5 contains a covenant by the Respondent to pay the amount of the insurance premium referred to in clause 5.2 within 14 days of demand.
17. Clause 3.2 sets out that the Respondent's contribution towards the costs of insurance (and other costs defined as 'Mutual charges') is one half of the total cost.

### **The tribunal's decision and reasons**

18. The tribunal determines that the cost of the 2014/15 premium and the Premium Credit Charge are payable by the Respondent and that these costs have been reasonably incurred.
19. The tribunal has not received any communications from the Respondent and does not know why the sum demanded by the Applicant on 27 October 2014 has not been paid. He has not complied with the tribunal's directions to respond to the Application and has not provided any alternative insurance quotes. He has not sought to argue that the costs in issue have been unreasonably incurred or that they are unreasonable in amount.
20. The provisions of the lease referred to above impose a clear obligation on the Applicant to insure the Flat and for the Respondent to contribute towards that cost in a 50% share. The tribunal notes that the obligation on the Applicant is to insure the Flat and not the Building. However, the tribunal considers that this clause should be interpreted to include insuring the Building itself as it is unlikely that it would be possible to insure the Flat without also insuring the Building (given that the Flat comprises part of the Building). If that is incorrect, the tribunal is of the view that in seeking to insure the Flat it was a reasonable response for the Landlord to seek to insure the whole Building and then apportion the costs equally between the two flats comprising the Building.
21. In the absence of any evidence from the Respondent to the contrary the tribunal concludes that the sum demanded from him in respect of the insurance premium is payable by him and that the cost has been reasonably incurred.
22. In its Statement of Case the Applicant refers to the decisions in *Forcelux v Sweetman* [2001] 2 EGLR 173; *Berrycroft Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* [1997] 1 EGLR 47; and *Avon Estates (London) Limited v Sinclair Gardens Investments (Kensington) Ltd*.
23. The tribunal agrees with the Applicant's submission that those authorities support its' contentions that whilst the costs of services

provided by a landlord must be reasonable the fact that they could have been obtained at a lesser cost does not necessarily mean that the actual cost is unreasonable and, further, that a landlord is not under an obligation to find and accept the cheapest possible premium. However, these issues do not fall to be determined in this Application as they are not issues raised by the Respondent.

24. As for the Premium Credit charge the Applicant has not explained why the taking out of this facility is necessary as opposed to the premium being paid in one payment. However, the tribunal notes the assertion in its Statement of Case that the Respondent has a history of non-payment of sums due under his lease resulting in five County court judgments against him. If that is correct then it may explain why a credit facility is needed. In the absence of any specific challenge from the Respondent the tribunal determines that the sum of £20.63 is payable by him in respect of the Premium Credit charge and that the costs have been reasonably incurred. This is on the basis that the charge is a cost associated with securing insurance for the Building and therefore recoverable from the Applicant under clause 5.2.

**Name:** Amran Vance

**Date:** 3 February 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.