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

Case Reference : **LON/00AJ/LSC/2015/0391**

Property : **The Flat, 21ABroadway Buildings,
Boston Road, London W73TT**

Applicant : **Tym Woods Associates Limited**

Respondent : **Mr G W Hammond**

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

Tribunal Members : **Ms M W Daley LLB (hons)
Mr A Manson FRICS**

**Date and venue of
Paper Determination** : **02 November 2015 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **02/11/15**

DECISION

Decisions of the tribunal

- (1) The tribunal's determination is set out in paragraphs 19-25 of the Determination.
- (2) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.
- (3) This matter is remitted to the County Court, to give effect to the Tribunal's determination.

The application

1. The Applicant issued proceedings in the Northampton County Court for service charges in the sum of £434.60. The tribunal notes that insofar as the Applicant claims ground rents, the sum claimed is outside of the jurisdiction of this tribunal.
2. On 18 March 2015 the Respondent made a partial admission that the sum of £200.00 was owed.
3. On 29 April 2015 the matter (claim no B9BW6483) was transferred to the tribunal.
4. Directions were given on 8 September 2015 requiring the respondent, tenant to prepare a statement in reply by 16 October 2015. The landlord was required to prepare a bundle by 23 October 2015 and the matter was set down for a paper determination in the week beginning 2.11.2015.

The Background

5. The premises consist of a building which is part residential and part commercial. The commercial parts of the premises were situated on the ground floor with storage at basement level. The residential premises comprise the respondent's premises which are on the first and second floors.
6. The Respondent holds a lease of the residential parts of the premises. Pursuant to a lease dated 13 August 1981 requiring the Applicant to insure the premises clause 4(2), and the respondent to contribute to the cost of the insurance by way of a variable service charge (clause 2 of the lease.)

7. The relevant legal provisions are set out in the Appendix to this decision.
8. The Tribunal noted that the sole issue for determination was the reasonableness of the service charges, for the period 30 July 2014 to 29 July 2015, for the costs incurred by the landlord in insuring the premises.

The paper determination

9. The Tribunal were provided with a bundle of documents which included the defendant (the respondent to these proceedings partial admission and Defence filed in the county court) the landlord's statement of case the insurance quotation together with a copy of the schedule of insurance.
10. In the statement of case the landlord stated that the building insurance premium for the whole of the building had been based upon "*a gross external area of approximately 255sqm and as the flat occupies approximately 50% of these areas it seems reasonable that 50% of the premium should be payable by the lessee of the flat...*"
11. The Tribunal were also referred to clause (a) of the first part of the lease which stated:- (a) *that part of the amount which the Lessors shall expend in effecting and maintaining the insurance of the building pursuant to its obligations contained in clause 4(2) hereof as attributing to the flat but not excluding 50% of the total amount...*
12. In the statement of case, the Applicant noted that the word "*excluding 50%*" appeared to be an error, and that the correct wording would appear to be not exceeding 50%. This was accepted by the Tribunal.
13. The Applicant provided copies of the summary of quotation from AXA Insurance UK PLC, together with the schedule of insurance in the total sum of £869.20 (including £106.00 optional terrorism cover). These documents were considered by the Tribunal.
14. The Tribunal noted that the Respondent had not complied with the Directions in that the Respondent had not prepared a statement as required by the 16.10 2015 in compliance with the directions.
15. The Tribunal however noted that the Respondent's defence to the county court proceedings had been included in the bundle.
16. In his statement Mr Hammond stated that he had not received a service charge demand for some time and that *...I am working from the last insurance bill I received 8 years again & online estimates of current*

prices which generally agree the amount asked is too much but are also as general as what is the average... [Sic]"

17. The Tribunal were not provided with copies of any of the estimates referred to or any of the alternative charges.
18. Clause 2 of the lease provides:- *"That the Lessors will at all times during the term...insure and keep insured the Building against loss or damage by fire and other perils as are normally covered under a comprehensive or "all risks" policy and such other risks (if any) as the Lessors think fit in some insurance office of repute in full reinstatement value..."*

The tribunal's decision and Reason for the decision

19. The tribunal having considered the documentary evidence makes the following finding. That the sum of £434.00 for service charges for the costs of the insurance is reasonable and payable.
20. The Tribunal were not informed as to the nature of the commercial premises and whether this affected the overall cost of the insurance, neither from the insurance was there anything in the schedule which appeared to be applicable only to the commercial premises.
21. The Tribunal noted that loss of the rented accommodation for the residential part of the property was included nevertheless the tribunal noted that the terms of the lease provide the Applicant with a wide discretion as to what to include within the policy.
22. The Tribunal noted that it was not for the landlord to prove that they had used the cheapest quotation, only that the cost of the insurance as provided for under the terms of the lease was reasonable.
23. The Tribunal noted that there was no information from the respondent to suggest that there were sums included within the insurance premium for items which ought not to be allowed or ought to be payable by the tenant.
24. In the absence of an appropriate comparable policy the tribunal considered the sum claimed to be within a reasonable range (with reference to the tribunal's knowledge and experience).
25. Accordingly the sum of £434.00 is reasonable and payable on account of the service charges for 30/7/14 to 29/7/15.
26. This matter shall be remitted back to the county court to give effect to the Tribunal decision

Application under s.20C and refund of fees

27. The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.

Judge Daley (Chair)

02 November 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).