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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AE/LSC/2017/0352**
Property	:	**5 Kenmere Gardens, Wembley, Middlesex HA0 1TD**
Applicant	:	**Ms Efuru Obua**
Representative	:	**In person**
Respondent	:	**Woodville Properties Limited**
Representative	:	**Unrepresented**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mr J P Donegan – Tribunal Judge** **Mrs S Redmond MRICS – Valuer Member**
Date and venue of Hearing	:	**06 December 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19 December 2017**

DECISION

Decisions of the tribunal

(a) The Tribunal disallows the insurance premiums for 5 Kenmere Gardens, Wembley, Middlesex HA0 1TD ('the Flat') for 2015, 2016 and 2017, in full. No premiums are payable by the applicant for these three years.

(b) The Tribunal makes orders under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act') and paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'), as set out at paragraph 33 of this decision.

(c) The Tribunal determines that the respondent shall reimburse the application and hearing fees totalling £300. Such sum is to be paid to the applicant within 28 days of the date of this decision.

The application

1. The applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') as to the amount of service charges payable by her for 2015, 2016 and 2017.

2. The application was dated 07 September 2017 and directions were issued on 19 September 2017. The only service charges in dispute are the insurance premiums demanded from the applicant. The applicant also seeks orders for the limitation of the respondent's costs under section 20C of the 1985 Act and/or paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').

3. The applicant served a schedule of disputed items, alternative quotes and a statement of case in accordance with the directions. She also filed a bundle of documents and skeleton argument for use at the hearing. The respondent failed to file or serve any documents and has not engaged in these proceedings in any way.

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

The background

5. The applicant is the long leaseholder of the Flat, which she described as a one-bedroom ground floor flat/maisonette. The Flat forms part of 5/5A Kenmere Gardens ('the Building'). There is a second flat on the

first floor, numbered 5A. The respondent is the freeholder of the Building.

6. Unfortunately, these are not the first set of proceedings between the parties. The applicant pursued an earlier application to the Leasehold Valuation Tribunal ('the LVT'), as it then was, in 2006/07. That application concerned the insurance premium for 2006. At paragraph 8 of its decision dated 30 January 2007, the LVT stated *"Accordingly the Tribunal determines that the insurance is not unsatisfactory in any respect and that the premiums are not excessive."*

7. The relevant lease provisions are referred to below.

The lease

8. The Flat lease was granted by Eagle Star Insurance Company Limited (*"the Lessor"*) to Nixon (Barnehurst) Limited (*"the Lessee"*) on 11 October 1955, for a term of 999 years from 25 December 1951. The Lessee's covenants are at clause (i)-(xvii) and include:

(xi) Forthwith to insure and at all times during the said term to keep insured the demised premises and all buildings erections and fixtures of an insurable nature which are now or may at any time during the said term be erected or placed upon or affixed to the demised premises in the Eagle Star Insurance Company Limited in a sum equal to the full value thereof in the joint names of the Lessor and Lessee whether in conjunction or not in conjunction with the name or names of any other person or persons legally or beneficially entitled in the demised premises and to pay all premiums necessary for that purpose within seven days after the same shall have become due and whenever required to produce to the Lessor or its agent the policy for every such insurance and the receipt for the last premium thereof And in case default shall be made in effecting or keeping on foot such insurance or producing such receipts it shall be lawful for the Lessor but without prejudice to the power of re-entry under the clause hereinafter contained to insure the said building against loss or damage by fire and the Lessee shall will forthwith repay all sums expended in effecting of keeping on foot such insurance and in case the demised premises or any part thereof shall at any time during the said term be destroyed or damaged by fire then and as often as the same shall happen with all convenient speed to lay out all moneys received in respect of such insurance in rebuilding repairing or otherwise reinstating the demised premises in a good and substantial manner to the satisfaction of the Surveyor for the time being of the Lessor and in case the moneys received in respect of the said insurances shall be insufficient for the purpose to make good the deficiency out of the Lessee's own moneys.

9. The lease was varied by a deed of variation dated 30 September 2005. This made various changes, including:

> 2. *The wording of clause (xi) of the Lease shall be deleted in its place shall be substituted the following: - "Forthwith to insure and at all times during the said term to keep insured the demised premises and all buildings erections and fixtures of an insurable nature which are now or may at any time during the said term be erected or placed upon or affixed to the demised premises in the joint names of the Lessor and the Lessee against all risks normally insured under a Householders Comprehensive Policy with some insurance office from time to time nominated by the Lessor and through the agency of the Lessor and or some person firm or company nominated in writing by the Lessor in a sum equal to the full reinstatement value thereof for the time being throughout the said term together with Architects and Surveyors professional fees and to make all payments necessary for the above purposes within seven days after the same shall become due and to produce to the Lessor on demand the policy of such insurance and the receipt for each such payment and to cause all monies received by virtue of such insurance to be forthwith expended in rebuilding and reinstating the said buildings to the satisfaction of the Lessor to make any deficiency out of the Lessees own monies. Provided that if the Lessee shall at any time fail to effect or maintain such insurance the Lessor may effect and maintain the same"*

The effect of this clause is that the applicant must insure the Flat and pay the premium but the insurance is arranged by the respondent or their nominee and the insurer is nominated by the respondent. The Flat must be insured in the joint names of the applicant and the respondent.

10. In the Tribunal's experience, the insurance arrangements for the Flat are unusual. Most residential leases require the freeholder to insure the entire building and the leaseholders then contribute to the premium via their service charges. However, some require the leaseholders to insure as is the case here.

11. The Tribunal was not supplied with copies of the lease or any deed of variation for 5A Kenmere Gardens but it appears there are corresponding insurance obligations for that flat (see paragraph 27 below). This is sensible, as both flats need to be insured with the same insurer on linked policies. If there are separate insurers or unconnected policies then this could lead to coverage disputes when a claim is made.

The issues

12. The Flat is currently insured with Royal Sun Alliance ('RSA') on a 'Choices Extra' policy and the insurance is arranged by the respondent. The applicant pays the premiums direct to RSA. Her primary case was that premiums were unreasonable and excessive and the policy was "*unsatisfactory and overloaded*".

13. In her skeleton argument, the applicant also referred to paragraph 8(4) of the schedule to the 1985 Act and suggested that she and the respondent should find an alternative insurer.

The hearing

14. The application was heard on 06 December 2017. The applicant appeared in person but there was no appearance by the respondent.

15. At the start of the hearing, the Tribunal Judge queried whether the insurance premiums are service charges within the meaning of section 18 of the 1985 Act, as they are payable to the insurer rather than the respondent. If not, the Tribunal would be unable to determine their payability under section 27A. The Judge also pointed out there was no application for an order under paragraph 8(4) of the schedule to the 1985 Act, requiring the respondent to nominate or approve alternative insurers.

16. The applicant submitted that the premiums are service charges as she has no input in arranging the insurance and has no control over the choice of insurer or policy or the level of the premium. The insurance is arranged and controlled by the respondent.

17. The Tribunal considered its jurisdiction during a short adjournment. The respondent has not taken any point on whether the premiums are service charges and there is nothing in section 18 that says a service charge must be payable to a landlord, rather than a third party. Further section 27A(1)(b) specifically provides that the Tribunal can decide to whom a service charge is payable. This suggests that payments to third parties can be service charges.

18. In the light of these factors, the Tribunal concluded that the insurance premiums are service charges and it had jurisdiction to determine their payability under section 27A. On resuming the hearing the hearing it informed the applicant of its decision but explained it could not make any order under paragraph 8(4), as there was no application for such an order. Rather, this issue had only been raised in the applicant's skeleton argument, filed just before the hearing.

19. The Tribunal then went on to hear evidence and submissions on the payability of the insurance premiums.

Service charge item & amount claimed

Insurance premium 2015 - £640.23

Insurance premium 2016 - £563.21 (originally £663.21)

Insurance premium 2017 - £632.76

20. The premiums in question all included insurance premium tax ('IPT')

21. The hearing bundle contained copies of the insurance policy schedules for each of the three years together with some of the alternative quotes obtained by the applicant. The sums insured for the Building were £100,937 (2015), £104,369 (2016) and £108,450 (2017).

22. The applicant's evidence was contained in a witness statement dated 03 October 2017, which was also included in the bundle. The Flat has been insured with RSA since she purchased the Flat in 2005. Until 2014 years ago, the Flat was insured in the respondent's name and the applicant paid the premiums to the respondent. It is now insured in her sole name and she has paid the last three premiums to RSA direct.

23. The applicant has obtained much cheaper alternative quotes, which she has copied to the respondent. On questioning from the Tribunal, she said the insurers that quoted were aware of the tenure at the Building and the unusual insurance arrangements. As far as she is aware, there have been no insurance claims on the RSA policies, since she purchased the Flat. The alternative quotes for 2017 had all been obtained via insurance brokers, Paymentshield and she had supplied them with copies of the RSA insurance documents.

24. The alternative quotes were:

Year	Insurer	Sum Insured	Premium
2015	Legal & General ('L&G')	No quote in bundle	£133.46
2016	L&G	£120,000	£272.05
2016	Liverpool Victoria	No quote in bundle	£220.66
2016	Catlin Insurance	No quote in bundle	£241.74
2017	Allianz Insurance	£400,000	£270.32
2017	AXA Insurance	£400,000	£295.12
2017	RSA	£400,000	£303.46

25. The applicant has corresponded with RSA and the respondent at some length. Her solicitors have also corresponded with the respondent and disclosed the alternative quotes. RSA did reduce the 2015 premium by £100 but will not communicate with the applicant direct.

26. The applicant believes that the Choices Extra policy includes unnecessary 'extras', which are not required under the terms of her lease (as varied). She is also concerned that the Flat has been insured with RSA for 12 years. This suggests that the respondent has not tested the market to check the premiums are reasonable. The applicant also queried whether the respondent's decision to continuously insure with RSA was motivated by commission payments.

27. The hearing bundle also included an email from the leaseholder of 5A Kenmere Gardens, Mr Raz Hoque, to the applicant dated 09 October 2017. This flat is also insured with RSA, via the respondent and Mr Hoque is unhappy with the policy, which he described as *"...vastly more expensive and inferior than what is easily available through other insurance companies, including RSA who offer both better products and premiums to the one we are both forced to buy."*

28. During the course of the hearing, the Tribunal referred the applicant to the Upper Tribunal's decision in ***Green v 180 Archway Road Management Company Limited [2012] UKUT 245 (LC)***. In that case an insurance premium was disallowed as the building had not been insured in the joint names of the freeholder and leaseholder, as required by the lease. In the light of this decision, the applicant submitted that the premiums in this case should be disallowed in full

The Tribunal's decision

29. The Tribunal disallows the insurance premiums for 2015, 2016 and 2017, in full.

Reasons for the tribunal's decision

30. There was no evidence from the respondent to demonstrate the insurance premiums had been reasonably incurred. The only evidence was from the applicant and the alternative quotes she had obtained were substantially lower than the premiums charged by RSA. One of these quotes was from RSA itself.

31. The Tribunal accepts the applicant's unchallenged evidence that the RSA premiums were unreasonable and excessive. However, it is not possible to say whether this was due to unnecessary 'extras' on the policy.

32. The Tribunal considered whether the premiums should be reduced or disallowed. The insurance is arranged by the respondent but does not comply with clause xi of the lease (as varied). The Flat is insured in the applicant's sole name rather than *"...the joint names of the Lessor and the Lessee..."*. This is a clear breach of the clause xi. The Flat is not insured in accordance with the lease and the respondent is liable for this failing. In the light of this fact and the Upper Tribunal's decision in ***Green***, the Tribunal concluded that the premiums should be disallowed in full.

Section 20C/Refund of fees

33. At the end of the hearing, the applicant requested orders under section 20C of the 1985 Act and paragraph 5A of schedule 11 to the 2002 Act, so that none of the respondent's costs of these proceedings (if any) are passed to her as a service or administration charge. She also applied for a refund of the Tribunal fees paid for the application and hearing[1]. Having regard to the determination set out above, the Tribunal makes section 20C and paragraph 5A orders. It also orders the respondent to refund the fees paid by the applicant, totalling £300, within 28 days of the date of this decision.

34. The application has been wholly successful, as the insurance premiums have been disallowed in full. The application was entirely justified and the respondent has not engaged in these proceedings. In the circumstances it would not be just or equitable for the applicant to incur any liability for the respondent's costs of these proceedings (if any have been incurred). Further, the respondent should refund the Tribunal fees as it incorrectly arranged the insurance and failed to properly address the applicant's concerns over the level of the premiums.

Next steps

35. The Tribunal has disallowed the insurance premiums in full. The applicant has already paid these to RSA direct and may wish to obtain independent legal advice on whether she can recover the premiums.

36. The failure to insure the Flat in joint names is a breach of the lease and the respondent should take immediate steps to rectify this breach. It may also wish to obtained independent legal advice.

37. This is the second set of tribunal proceedings between the parties; both arising from the insurance of the Flat. The risk of further proceedings can be reduced if the respondent consults with the applicant and

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[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

obtains a number of quotes to test the market, before arranging future insurance policies.

Name: Tribunal Judge Donegan **Date:** 19 December 2017

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

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 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.

Schedule, paragraph 8

Right to challenge landlord's choice of insurers

(1) This paragraph applies where a tenancy of a dwelling requires the tenant to insure the dwelling with an insurer nominated or approved by the landlord.

(2) The tenant or landlord may apply to the county court or the appropriate tribunal for a determination whether –
(a) the insurance which is available from the nominated or approved insurer for insuring the tenant's dwelling is unsatisfactory in any respect, or
(b) the premiums payable in respect of any such insurance are excessive.

(3) No such application may be made in respect of a matter which –
(a) has been agreed or admitted by the tenant,
(b) under an arbitration agreement to which the tenant is a party is to be referred to arbitration, or
(c) has been the subject of a determination by a court or arbitral tribunal.

(4) On an application under this paragraph the court or tribunal may make –
(a) an order requiring the landlord to nominate or approve such other insurers as is specified in the order, or
(b) an order requiring him to nominate or approve another insurer who satisfies such requirements in relation to the insurance of the dwellings as are specified in the order.

(5) ...

(6) An agreement by the tenant of a dwelling (other than an arbitration agreement) is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence; of any question which may be the subject of an application under this paragraph.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).