



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

Case Reference : **LON/00AG/LSC/2013/0821**

Property : **Flat 2, 47 Hollycroft Avenue,
London, NW3 7QJ**

Applicant : **Miss Ella Draper**

Representative : **In person**

Respondent : **Forty-seven Hollycroft
Management Co Ltd**

Representative : **Mr G Ullah (Senior Property
Manager at Salter Rex, managing
agents)**

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

Tribunal Members : **Mr L Rahman (Barrister)
Mr M Cairns MCIEH
Mr L G Packer**

**Date and venue of
Hearing** : **28 April 2014, 10am
10 Alfred Place, London WC1E 7LR**

Date of Decision : **9.6.14**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines the insurance for 2011 (£3,916), 2012 (£4,179), and the estimated charge for 2013 (£3,600-£3,700) is reasonable and payable.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. 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 charges payable by the Applicant in respect of the service charge years 2011, 2012, and 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person and the Respondent was represented by Mr Ullah.
4. The Applicant arrived late at 10:30am, stating she had been stuck in traffic.
5. The Respondent did not attend the hearing at 10am. After a telephone call by the Case Officer at 10:35, Mr Ullah stated the Respondent did not receive the notice of hearing and was unaware of the hearing date. Mr Ullah stated he would immediately attend the hearing.
6. The hearing commenced at 11:10am after Mr Ullah's arrival.
7. The Tribunal notes by way of background the Applicants claim for reimbursement of £6,048 for the years 1999 to 2010 and £520.80, £487.20, and £433.20 for the years 2011 to 2013, being her calculation of the cost of gas and electricity she claims to have paid for the common parts and which she claims should have been contributed to by the other lessees in the building, was correctly struck out at the oral case management hearing on 6 February 2014, attended by the Applicant. With regards to the other heads of claim, the Tribunal noted at the case management hearing it was unclear whether the Applicant challenged any of the heads of service charge for the years 2011 to 2013 or whether her challenge was purely to the retention of any overpaid service charges by the Respondent.

8. The Tribunal had directed the Applicant to send a completed schedule, setting out by reference to each service charge year (2011, 2012, and 2013), the item and amount in dispute, the reason(s) why the amount was in dispute, and the amount, if any, the Applicant would pay for that item. The Applicant was also directed to send a signed witness statement of the facts upon which she intended to rely upon and any other documents she intended to rely upon. The Applicant was directed to serve these on the Respondent, by post or email, by 28 February 2014. The Applicant emailed the Tribunal on 3 March 2014 requesting an extension of time to comply with the Directions. The Tribunal extended the time to 6 March 2014. However, the Applicant failed to comply with those revised Directions.
9. The Applicant was also Directed to prepare a bundle of documents in preparation for the hearing, to be served on the Respondent and the Tribunal by 11 April 2014. The Applicant failed to submit bundles by the deadline. The Case Officer contacted the Applicant on 23 April 2014. The Applicant stated she would only be able to submit the bundles by Friday 26 April 2014 or on the day of the hearing (Monday 28 April 2014). The Applicant submitted a bundle (45 pages) to the Tribunal, by hand, on Friday afternoon.
10. The Applicant stated at the hearing she emailed a statement to the Tribunal and the Respondent on 28 March 2014, in which she challenged the fairness of the service charges, particularly the building insurance, and provided an alternative building insurance quote (page 26 of the Applicants bundle). With respect to the bundle, the Applicant stated initially that she had overlooked submitting the bundle. The Applicant then stated she had mistakenly assumed the bundle could be served on the day of the hearing, for which she was sorry. The Applicant also stated that she personally put a copy of the bundle through the managing agents letter box on Friday 26 April 2014.
11. The Applicant confirmed the only issue she wanted the Tribunal to resolve was whether the insurance for the service charge years 2011, 2012, and 2013 were reasonable.
12. Mr Ullah stated that he did not recollect seeing a copy of the Applicants email dated 28 March 2014. He further stated that it may be that a bundle was delivered on Friday afternoon, but the post would normally be sorted internally by 11:00am on Monday. He left the office to attend the hearing, therefore, he had not seen a copy of the Applicants bundle until after arriving at the hearing. Given the single issue raised by the Applicant, Mr Ullah stated he would be able to deal with the matter by 2pm, once he had the opportunity to clarify certain issues with his office and if he were able to provide additional documents.
13. Given the Applicants failure to comply with the Tribunals Directions and the clear consequences specified in those Directions, the Tribunal

had the option of either striking out the Applicants application under the Procedure Rules (Rules 8(2)(c) and 9(3)(a)) or deal with the matter immediately or adjourn to a later time. Bearing in mind the only issue raised by the Applicant, which the Respondent was able to deal with by 2pm, and there being no application from the Respondent to strike out the Applicants application, the Tribunal found it was able to deal with the matter fairly and justly by adjourning the hearing to 2pm.

14. The Respondent adduced further documents, namely, the insurance certificates for October 2011 to October 2012, October 2012 to October 2013, and the Profit and Loss account for the year ending 2010, 2011, and 2012.

The background

15. Along with her former husband, the Applicant was the owner of the subject property from about November 1999 to 2 December 2013 (when it was sold). The flat is one of six in a converted mansion house, with five flats in the main building and one outside. The freehold is owned by the Respondent, a lessee owned company limited by guarantee, of which all the lessees (including the Applicant at the time) are shareholders. Salter Rex has been the managing agent since before the Applicant bought her flat and it continues to act in that capacity.
16. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
17. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issue

18. At the start of the hearing the Applicant confirmed that the only issue she wanted the Tribunal to resolve was whether the insurance costs for the service charge years 2011, 2012, and 2013 were reasonable.
19. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal finds as follows.

Buildings Insurance for 2011, 2012, and 2013

20. The Applicant stated that she was not sure what the insurance cost was for each of the relevant years. The Applicant initially stated that the managing agents were responsible for obtaining the insurance, but later

stated she did not know who purchased the insurance and stated that it may be that the Respondent directly purchased the insurance.

21. The Applicant stated that she told the insurance company her own claims history and a claim made by the flat below in 2006. Her insurance quote excess was £500. The Applicant had provided the value of the building based upon the information contained in the 2006 insurance certificate. The Applicant obtained an insurance quote on 6 March 2014 for £2,742.00 (page 27 of the Applicants bundle).
22. Mr Ullah stated that the insurance for 2011 was £3,916, for 2012 it was £4,179, and for 2013 the estimated charge was £3,600-£3,700.
23. Mr Ullah stated the Respondent communicates with its members. The Respondent goes to an insurance broker to arrange the insurance. The insurance is not arranged by the managing agent and the managing agent does not receive any commission. Since 2009-2010, the Respondent decided to directly arrange its own insurance.
24. He said that the Applicant did not have all the necessary information to obtain an accurate quote. The value of the building was now much higher than it was in 2006. Other flats, in addition to the Applicants flat and the flat below, had also made minor claims.
25. The service charge accounts are audited by an independent firm, appointed by the Respondent, and it had seen all the invoices. The insurance for each of the relevant years was within reason.
26. The Tribunal finds the insurance for each of the relevant years is reasonable and payable.
27. The Tribunal accepts that the Respondent, a lessee owned company of which all the lessees (including the Applicant at the time) are shareholders, directly arranged the insurance, which it is entitled to do. It is reasonable to assume the Respondent company would seek to get the best price for itself.
28. The accounts are audited therefore the Tribunal accepts the figures provided are correct.
29. The quote obtained by the Applicant is not a fully "like for like" comparison. For example, the Applicants quote is based upon the 2006 value of £1,569,393. The Respondents quote is based upon a more up to date declared value of £1,828,555. The Respondents "excess" is £200, which is significantly lower than the £500 "excess" in the Applicants quote. The Respondent believes the claims history is much bigger than the one put forward by the Applicant when obtaining her own quote, and the Tribunal has no reason to believe otherwise.

Application under s.20C and refund of fees and costs

30. No applications were made by either party, and the Tribunal makes no Order.

Name: Mr L Rahman

Date: 9.6.14

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.