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

Case reference : LON/00AE/LSC/2015/0506

Property : Ground Floor Flat, 13 Deacon Road,
London NW2 5NP

Applicant : Denise Kayder and Adam Kayder

Representative : In person

Respondent : Eric Frank Shapiro (1)
Roy Ezekiel Hayim (2)

Representative : In person

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

Tribunal members : Mrs S O'Sullivan
Mr D Jagger MRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 2 March 2016

DECISION

Decisions of the tribunal

- (1) [The tribunal determines that the sum of £ is payable by the Applicant/Respondent in respect of the service charges for the years]
- (2) [The tribunal makes the determinations as set out under the various headings in this Decision]
- (3) [The tribunal makes/ does not make an order under section 20C of the Landlord and Tenant Act 1985] [so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge]
- (4) [The tribunal determines that the Respondent shall pay the Applicant £ within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant]

The application

1. The Applicants 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 Applicants for the years 2009/10 to 2015/16. The service charges in issue relate to charges for buildings insurance premiums and range from £265 to £434.17.
2. An application is also made for an order under section 20C of the Act.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The property which is the subject of this application is a 3 bedroom ground floor maisonette on a purpose built house containing two flats.
5. 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.
6. The Applicants hold 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 and will be referred to below, where appropriate.

7. Directions were made dated 17 December 2015 which provided for this matter to be considered by way of a paper determination in the absence of a request for an oral hearing. As neither party requested a hearing the application was considered by way of a paper determination on 2 March 2015.
8. The Applicants had lodged a bundle in accordance with the directions.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The Applicants' case

10. The Applicants submitted that the buildings insurance premiums were unreasonable. The charges were as follows;

2009/10	£265 per flat
2010/11	£273.69
2011/12	£390.94
2012/13	£416.70
2013/14	£434.17
2014/15	£370.28
2015/16	£386.33 per flat (not yet invoiced)

11. The Applicants say that they had obtained quotations some 55% cheaper. They question why the property must be included in a portfolio for insurance purposes when cheaper insurance could be found if the property were insured separately.
12. By statement dated 21 January 2016 the Applicants relied on two independent quotations obtained in November 2015 from Ageas and Aviva in the sum of £249.99 and £252.56 per flat respectively. The Applicants say that both of these companies are well respected in the industry.
13. By a letter dated 29 January 2015 the Applicants submitted 2 further quotations from Ageas and Aviva in the sum of £318.95 and £302.15 per flat respectively. These quotations were inclusive of terrorism cover and confirmed the property was purpose built flats and occupied on an

assured shorthold tenancy agreement. They also submitted that they had obtained a separate terrorism quotation in the sum of £31.63 per flat from Beech Underwriting Agencies Ltd.

The Respondents' case

14. On behalf of the Respondents Mr Shapiro made an initial statement dated 21 December 2015. He relied on the Court of Appeal decision in *Berrycroft Management Co. Limited and others v Sinclair Gardens Investments (Kensington) Ltd [1997] 1/EGLR/47* in which it was held that “*the right of the landlord to nominate the company and the agency for insurance was unqualified – and the fact that the management companies could have secured lower rates was beside the point*”. The property was confirmed to be insured with 8 other properties with Aviva, a reputable insurance company, and a copy of the policy provided. It was also confirmed that the same premium is charged for both 13 Deacon Road and 13A Deacon Road and that no profit/commission is made out of the insurance premium.
15. A further response was made by letter dated 25 January 2016 to the Applicants' letter of 29 January 2015. This highlighted that the Ageas quotation contained 2 factual errors namely that the building type was not a converted block of flats and that the residents are described as owner occupiers when in fact the property is let on an assured shorthold tenancy. It is further said that Ageas is not a main line insurance company and there was no justification for departing with the decision of the Court of Appeal in relation to the right of the freeholder to place his insurances with a standard insurance company. It was confirmed that no commission was obtained from the insurance company or their agents.
16. The Respondents further criticised the quotations as there was no terrorism cover which was said to be unacceptable. In addition the Aviva cover was said to be their standard cover and not on a like for like basis.
17. By further letter dated 4 February 2016 it is further said that the Respondents had no allegiance or vested interest in any particular insurance broker and that the broker seeks the best quotation for the portfolio they can achieve.

The tribunal's decision

18. The tribunal allows the insurance premiums for the period in full.

Reasons for the tribunal's decision

19. We agreed that the quotations sent under cover of the Applicants' letter of 21 January 2016 were not good comparables as they wrongly identified the type of building, did not include terrorism cover and were given on the basis that the property was owner occupied. All of these matters would have an affect on the level of the premium quoted.
20. The Applicants then provided revised quotations by letter of 29 January 2016 which rectified these issues and we considered these were on a like for like basis. We noted that the Ageas quotation was in the sum of £318.95 per flat for 2016/17. The Aviva quotation was in the sum of £302.15 for the same period. We noted that the current insurance was placed with Aviva for the sum of £386.33, some £84.18 in excess of the Applicants' quotation.
21. We had regard to the Court of Appeal's decision in *Berrycroft* referred to above, the leading authority in relation to insurance, which makes it clear that the fact that a lower rate can be secured does not render a premium unreasonable. In addition the landlord does have the right to nominate the insurer of his choice. We considered the sum insured fell within a reasonable range given it was only £84.18 more expensive than the lowest quotation obtained by the Applicants and £67.38 more expensive than the Ageas quotation.
22. As far as the earlier service charge years are concerned we had no evidence before us to suggest that the premiums were unreasonable. We noted the Respondents' evidence that their broker seeks the best quotation for the portfolio they can achieve, this evidence was unchallenged. We also note that the Respondents are paying the same premium for the flat above and note that no commission and/or profit element is included.

Application under s.20C

23. In the application form the Applicants applied for an order under section 20C of the 1985 Act. The landlord has been wholly successful in defending the insurance premiums and the tribunal determines that no order should be made under section 20C.

Name: Sonya O'Sullivan

Date: 2 March 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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.