11933

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LSC/2016/0102**
Property	:	**9C Crowland Road London N15 6UL**
Applicant	:	**Gerard Rafferty and Maureen Rafferty**
Representative	:	**In person**
Respondent	:	**Chaim Tescher**
In attendance	:	**Mr E Reich The Freehold Agent Ltd** **Mr Z Pollack Clockwork Estates**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charges and administration charges**
Tribunal Members	:	**Mrs E Flint DMS FRICS** **Mr A Ring**
Date and venue of decision	:	**15 June 2016** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**1 July 2016**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(2) The tribunal makes 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.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 2010 – 2015 inclusive.

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

The background

3. The property which is the subject of this application is a flat on the second floor of a converted house comprising three separate units of accommodation. Initially the house was converted into two units: a ground floor flat and a maisonette on the first and second floors both of which were subject to long leases. The leases apportioned the repairing and decorating covenants to the lessees, the landlord only being responsible for the maintenance of the shared entrance lobby and the insurance of the building. Subsequently the maisonette was divided into two flats, each subject to a long lease, with the repairing covenants of the lease for the maisonette divided between the two flats but not wholly in line with the extent of the demised premises.

4. The landlord has arranged regular repairs to the roof of the building over a period of several years. The flats are all let by the individual lessees, at least two are occupied under assured shorthold agreements.

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.

The lease

6. The Applicant holds a lease for 105 years from 23 December 2001.

7. The Lessor covenants in the Second Schedule to insure the building and provide a copy of the insurance policy and receipt for the premium paid to the Lessee.

8. By paragraph 3 (3) of the lease the Lessor covenants that *"for so long as the flat on the first floor of the Building is not demised for a term in excess of seven years in which there is imposed upon the lessee an obligation so to do the Lessor will pay one half of the sums expended by the Lessee in complying with the obligations to repair insofar as such relate to the structure of the Building and facilities used in common by the Lessees and the lessee of the first floor flat and will pay to the lessee of the ground floor of the Building a sum equivalent to that payable by the Lessee under paragraph 5 of the Second Schedule."*

9. Paragraph 4(7) of the lease provides that interest at 4% above the base rate for the National Westminster Bank PLC is payable on any sums unpaid for more than 21 days.

10. The lessee covenants at clause 6 of the Third Schedule *"To keep all external or structural parts of the building lying above the underside of the ceiling of the flat on the ground floor (including without prejudice to the generality of the foregoing the joists and beams structural walls roofs chimney stacks gutters and rainwater pipes) and the entrance landings and staircases leading to the Demised Premises from the ground and first floors cleaned lighted and in good and substantial repair and condition"*.....

The issues

(i) The reasonableness of service charges for 2010, 2011, 2013 and 2015 relating to insurance.

(ii) The reasonableness of the cost of roof repairs and associated management charges.

(iii) Legal and administration charges.

11. Having considered the evidence and submissions from the parties the tribunal has made determinations on the various issues as follows.

Roof repairs

12. During the course of the hearing the parties agreed the Applicant's contribution at £2337.50 inclusive of associated management charges. The Tribunal therefore had no jurisdiction to determine this item.

Insurance premium

13. Mrs Rafferty explained that until recently she had not had sight of any of the documents relating to the building insurance and was so concerned that the building might not be insured they had taken out cover themselves. In 2012 part of the ceiling in the ground floor lobby had collapsed following a leak from the first floor flat. No action was taken to make a claim under the insurance policy and the Lessees undertook the work themselves in 2013.

14. The landlord used a broker, Oster. In 2011 the premium was shown at £269.44, while the invoice from Oster was for £350.14. The name of the insured was incorrect in 2011 and 2012. The invoices from Oster are addressed to Europeak Ventures Ltd which is shown at Companies House as being a dormant company. Mrs Rafferty confirmed that she was not contesting the cost of the building insurance itself but the lack of transparency. The challenge was against the management fee of £20 which she considered unreasonable as the cost of the insurance already included a brokerage fee.

15. Mr Reich confirmed that the building was insured and that the addition of a Mr Hava as one of the insured had been a mistake. Europeak Ventures Ltd were associated with Clockwork Estates, the previous managing agents. His firm checked that the broker had obtained the most competitive premium. He confirmed that he would send the insurance information to the Lessees in future, in accordance with the terms of the lease. He would ensure that the documentation showed the insurance premium net of the brokerage fee.

The tribunal's decision

16. The tribunal determines that the management fee of £20 per year in relation to the insurance for the Building is not payable.

Reasons for the tribunal's decision

17. The cost of the insurance already includes a brokerage fee. It is the role of the broker to investigate the market not the managing agent. The fee amounts to double charging.

Legal and Administration Fees £300

18. The Applicant stated that the lease did not provide for the payment of the charges. They should not have to pay for raising queries relating to service charge demands.

19. Mr Reich explained that the sum of £300 was to cover the time spent checking the lease and responding to letters from the Applicant. The legal fees were for his time researching the relevant law. He pointed out that there is no fixed management fee. He was unable to show where in the lease such charges were authorised.

The tribunal's decision

20. The tribunal determines that the amount of £300 is not payable.

Reasons for the tribunal's decision

21. There is no provision in lease for the payment of such charges.

Application under s.20C

22. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. Particularly since the Applicant had not seen any insurance documentation until after Directions were issued by the tribunal.

Name: Evelyn Flint **Date:** 1 July 2016

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.

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).