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

Case Reference : **LON/00AG/LSC/2016/0358**

Property : **13 Crossfield Road, London NW3
4NS**

Applicants : **Ms J Ladwig – Flat A
Mr D Kohli – Flat B
Ms C Kaye – Flat C
Mr G Raffa – Flat D**

Representative : **Mr G Raffa**

Respondent : **Tapestart Limited T/A Compton
Group**

Representative : **James Mc Carry (In house Solicitor
employed by Tapestart Ltd)**

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

Tribunal Members : **Judge: N Haria
Professional member: S Mason BSc
FRICS FCI Arb**

Date of Decision : **03/02/2017**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out in this Decision

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 reasonableness of the amount payable by the Applicants in respect of the insurance premium as part of the service charges for the service charge years 2015/16 and 2016/17.
2. The relevant legal provisions are set out in the Appendix to this decision.

The Directions and hearing

3. The Directions dated 3/10/2016 provided for the matter to be dealt with on the papers. The parties were invited to request an oral hearing if they considered it necessary, no such request was received by the tribunal and accordingly the matter was listed to be determined on the papers.
4. The tribunal considered the matter in the week commencing the 30/01/2017.

The background

5. The property which is the subject of this application is a four storey terraced building of standard brick construction with a slate pitched roof constructed circa 1890-1910 which has been converted into four flats.
6. 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.
7. The Respondent is the Freehold owner and landlord of the building known as 13 Crossfield Road, London NW3 4NS.
8. The Applicants each hold long leases of their respective flats within 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. The leases of the individual flats are written in substantially similar terms.

The issue

9. The relevant issue for determination is the reasonableness of that part of the service charge for the years 2015/16 and 2016/17 relating to the insurance premium for providing landlord's insurance cover for the building.
10. It is the Applicant's case that the insurance premiums are excessive. The Applicants have sought to show the premiums are excessive by providing details of insurance cover as follows:
 - (i) 3 quotes for cover from Allianz, Liverpool Victoria and Zurich, and
 - (ii) 2 comparables, a property at 46 Belsize Avenue and a property at 7 Buckland Crescent
11. The Respondent submits that:
 - (i) it has used a London broker to research the open market,
 - (ii) It has placed the insurance with Liverpool Victoria an insurance company of repute to cover the risk required,
 - (iii) The insurance cover includes terrorism cover and is not unsatisfactory in any respect,
 - (iv) The insurance premium is not unsatisfactory and is reasonable as to cost.
12. Having considered the evidence and submissions from the parties and all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

13. The tribunal determines that the amount payable by way of a service charge in respect of the insurance premium for the years 2015/16 and 2016/17 to be reasonable.

Reasons for the tribunal's decision

14. Clause 7 of the Lease requires the Respondent as Landlord to insure the building "*...against loss or damage by fire and all or such other risks*

which may be included in a household comprehensive insurance policy as the Lessor may from time to time think fit....in the full reinstatement value thereof including loss of three years rent”.

15. The Respondent pursuant to the provisions of the Lease insurers the building. The current insurer of the property is Liverpool Victoria Insurance.
16. The Respondent does not receive any commission or payment in respect of the policy.
17. The requirement under Section 19 of the 1985 Act that costs be reasonably incurred does not mean that the relevant expenditure must be the cheapest available, although this does not give the landlord a licence to charge a amount which is out of line with the market norm **Forcelux v Sweetman [2001]ELGR 173**. It is therefore a matter for the landlord to show that the costs are within a range of reasonable prices.
18. Where the Applicant in a case before the tribunal is a leaseholder the legal burden of proof is on the Applicant to establish that the cost is unreasonable.
19. In this case the quotes and the comparable evidence produced by the Applicants are not a like for like comparisons of the insurance placed by the Respondent landlord. The Witness statement of James McCarry explains the basis on which the Respondent places the insurance cover with a particular insurer and the claims history of the building. The Respondent in the Supplemental witness statement of James McCarry has made a full and detailed comparison of the quotes and comparable evidence and the tribunal accepts that for the reasons given in the Witness statement and Supplemental witness statement of James McCarry that the evidence submitted by the Applicants does not show the insurance premium charged by Liverpool Victoria to be unreasonably high.
20. In relation to the loss of rent insurance cover, this compensates landlords should a property become uninhabitable following an insured event; such as a fire or flood. In the tribunals opinion it is normal practice for a landlord's building insurance policy to include cover for loss of rent. This is a risk which is usually included as a standard risk under a landlord's building insurance policy. The tribunal considers it to be prudent for a landlord to obtain loss of rent cover and as such the tribunal consider such insurance cover to be reasonable.
21. The Tribunal noted that the RICS Service Charge Residential Management Code 3rd Edition (" the Code") recommends in relation to Insurance at paragraph 12.5 that "... serious consideration should be

given to the taking out of terrorism insurance.....”. The Code has been prepared to “promote desirable practices in respect of the management of residential leasehold property..” and it has been approved by the Secretary of State under Section 87(7) of the Leasehold Reform, Housing and Urban Development Act 1993.

22. The tribunal considers it to be prudent to include insurance cover for terrorism for properties situated in the Greater London area. The tribunal took into account the recommendation of the RICS Code as it applies to residential leasehold properties in the whole of England not just in the City of London. If the RICS had intended that this recommendation should apply only to properties located in the City of London or properties with a significant commercial element, this would have been clear in the Code. The Tribunal also noted that the Respondent had acted on the advice of an Insurance Broker.

Name: Judge Haria

Date: 03/02/2017

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

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).