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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AJ/LSC/2017/0034**
Property	:	**1364A Greenford Road, London UB6 0HL**
Applicant	:	**Ms Maria McCudden**
Respondent	:	**Mr Roop K Babbar**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Ruth Wayte (Tribunal Judge)** **Sue Coughlin** **Leslie Packer**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**12 May 2017**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the sum of £190.47 is payable by the Applicant in respect of the insurance for the years 2006 to 2016 as only 2016 has been demanded in accordance with the lease as at the date of the hearing.

(2) In the event that a service charge for the insurance is payable for other years, following a demand in accordance with the lease, the tribunal determines that a reasonable contribution from the Applicant for 2006 to 2009 would be £200 per year, for 2010 to 2014 £175 per year and £190.47 for 2015.

(3) The tribunal determines that £630 is payable by the Applicant in respect of the various repair works carried out between 2006 and 2016.

(4) 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.

(5) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 2005 to 2016.

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

The hearing

3. Both parties appeared in person. They had also attended a Case Management Conference on 23 February 2017 when directions were given for the hearing.

The background

4. The property which is the subject of this application is a first floor flat above commercial premises. There are two flats above the property,

one let on a long lease and one which has been retained by the Respondent and is let to tenants.

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 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 issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for 2006 through to 2016 for insurance and other works of repair;

   (ii) Whether an order should be made under section 20C of the Landlord and Tenant Act 1985, preventing the landlord from passing any of his costs through the service charge; and

   (iii) Whether an order for reimbursement of the application and hearing fees should be made.

8. 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 Lease

9. The lease dates back to 2002 and contains very limited provisions for the payment of the relevant costs. In particular the obligation on the lessor to pay a contribution in respect of insurance is expressed as follows at the end of clause 1:

   "*AND ALSO PAYING by way of additional rent from time to time a sum or sums of money equal to the amount which the Lessor may expend in effecting or maintaining the insurance of the Demised Premises in accordance with the covenant in that behalf hereinafter contained such last mentioned rent to be paid without any deduction within seven days of production of a renewal notice/demand from the insurers*"

   The Lessor's covenant to insure is at clause 3.4 of the lease as follows:

"At all times during the said term (unless such insurance shall be vitiated by an act or omission on the part of the Lessee) to insure and keep insured the Demised Premises against loss or damage by fire and such other risks as the Lessor may from time to time think fit in full current value of the cost of rebuilding thereof (such current costs to be determined if required by either party by the Lessor's surveyor) and also Architects and Surveyors fees in connection with such rebuilding and two years loss of rent in some insurance office of repute and will whenever required produce to the Lessee the Policy or Policies of such insurance and the receipt for the last premium of the same..."

10. The only other service charge provisions are contained in the Lessee's and Lessor's covenants respectively as follows:

"2.6 *At all times during the said term to pay and contribute one quarter towards the expenses of making repairing maintaining supporting rebuilding and cleansing all halls landings stairways passageways pathways sewers drains pipes watercourses water pipes cisterns gutters party walls easements and appurtenances belonging to or used or capable of being used by the Lessee in common with the occupiers of the Other Flats and the roof main walls main structure and chimney stacks from the level of the joists supporting the first floor upwards....*

3.3 *Except insofar it is the tenants liability to do so to keep the Building in good repair and condition to include but not limited to making repairing supporting rebuilding and cleansing all halls landings stairways passageways pathways sewers drains pipes cisterns gutters party walls easements and appurtenances belonging to or used or capable of being used by the Lessee and the roof main walls main structure and chimney stacks and foundations subject to the contributions set out in clause 2.6."*

11. There are no provisions for accounts. Provision for payment for any works carried out under clause 3.3 is contained in 2.20 of the Lessee's covenants as follows:

"To pay to the Lessor on demand a sum equivalent to the cost incurred by the Lessor in performing and observing the obligation on the part of the Lessor contained in clause 3.3 hereof."

Insurance

12. There was no dispute that the Respondent had insured the demised premises, the issue was originally whether it had been correctly apportioned. This was expanded in the Applicant's schedule of items in dispute such that the Applicant challenged payment altogether, due to the lack of any evidence of the premiums paid, other than in 2015/16.

13. Rather confusingly, the shop premises beneath the flats has the address of 1328 Greenford Road; the residential part above is 1364. This is due to the entrance to the flats being at the back of the building. The Respondent gave evidence that until 2010 he had insured the building as a whole, charging the shop 30-35% of the premium and splitting the balance between each flat equally.

14. In 2009 the Respondent bought the neighbouring building at 1326 Greenford Road (commercial premises at the front). There was one flat above, over all three floors, known as 1362 Greenford Road. Following discussions with his accountant the Respondent decided to insure his properties on a block policy. In evidence he stated that he owned 26 properties and it was unclear whether all of those properties were on a single block policy or whether his reference to a block policy related simply to the neighbouring buildings in Greenford Road.

15. Despite the order in the directions requiring the Respondent to send the Applicant copies of all relevant invoices relating to the matters in dispute, the only documentation in relation to insurance was the policy and broker's letter for 2015/16. The Respondent stated that he only had documents going back the last three years as he kept records for tax purposes for that period only. The tribunal proposed that he be given an opportunity to provide some evidence of the premiums paid or any other available documentation after the hearing but he declined to accept that offer on the basis that he would rather the matter was dealt with by the tribunal on the evidence before it.

16. The Applicant maintained that she had never seen any insurance documentation, other than the documents produced in respect of 2015/16. This evidence was corroborated by the correspondence in the hearing bundle. In particular, a copy of a letter sent by the Applicant to the Respondent on 2 January 2006 which requested a copy of the insurance. That request was repeated on 1 October 2007 in respect of the following year. On the 14 July 2015 the Applicant wrote to the Respondent stating "*...not once have you ever provided copies of invoices for works undertaken nor a copy of the building insurance policy even upon my written request*". That letter was responded to on 25 July 2016 with a copy of the insurance for 2015/16 and a letter from the broker confirming her contribution. This remains the only insurance documentation received by the Applicant from the Respondent when requesting payment for insurance under the terms of her lease.

17. The insurance documents provided in the bundle indicated that a premium of £1,523.76 was paid by the Respondent on 4 September 2015. He accepted in evidence that it was clear from the insurance documents that the cover was in respect of both buildings in Greenford Road, although he thought there may have been another charge in relation to the shop at 1326. Again, he declined the tribunal's offer to

be allowed a further opportunity to produce any evidence in support of that assertion. In addition to the policy schedule there was a letter from the broker dated 7 December 2015 stating that the premium for 1364a Greenford Road was £385. This was the sum claimed in 2015 and 2016 and represented a quarter of the total premium paid.

18. In answer to the query by the tribunal that on the face of it only an eighth should be due from the Applicant, assuming that liability should be evenly split on the basis of eight floors across both buildings, the Respondent suggested that a sixth might be more appropriate, given that there was a single flat above the shop next door. The Applicant agreed that an eighth was appropriate.

19. In relation to the other years where no evidence has been produced by the Respondent of the total premium paid, the Applicant offered 50% of the amount claimed as her best estimate of what she should have paid, effectively relying on the "double charging" for 2015/16.

The tribunal's decision

20. As stated in paragraph 9 above, the obligation on the Applicant to pay her share of the insurance premium depends on the production of a renewal notice or demand from the insurers. On the evidence before the tribunal this information was only given to the Applicant in respect of the demand for 2016. In the circumstances no payment is due from the Applicant in relation to the other years unless the renewal notice or demand (or similar) is produced for the other years.

21. For the avoidance of doubt, the tribunal does not consider that the actual renewal notice or demand is the only relevant document, the purpose of the clause is clearly to evidence the sum due, as the Applicant acknowledged in her letter dated 31 July 2016 when she paid the charges for 2015/16.

22. Assuming that the Respondent is able to produce relevant evidence of insurance for the years in dispute, the tribunal has considered reasonableness based on the figures given in the service charge demands.

22. From 2006 to 2009 the demands for the Applicant's insurance contribution varied from £282 in 2006, to £292 in 2007, £385 in 2008 to £318 in 2009. No explanation was forthcoming from the Respondent for the variation in those amounts and of course no evidence was produced of the total premium paid. Doing the best it can with the evidence before it, the tribunal determines that a reasonable cost for the insurance from 2006 to 2009 would be £800 per annum and the Applicant's 25% share of that cost, £200 per annum. For the avoidance of doubt, the tribunal finds no basis for

reducing the Applicant's share by a further 50% as set out in paragraph 19 above.

23. From 2010 the Respondent had purchased the next door building and put both buildings on a block policy. Again the charge made to the Applicant varied from £260 in 2010, to £318 in 2011, £328 in 2012, to £348 in 2013, £354 in 2014 to £385 in 2015 and 2016.

24. In respect of 2015 and 2016 the tribunal determines on the evidence before it that a reasonable charge for the insurance is one eighth of the premium or £190.47, based on the number of floors in the two buildings covered by that policy. Doing the best it can with the limited evidence before it, the tribunal further determines that a reasonable charge for 2010 through to 2014 would be £175 per annum. This reflects the discount achieved by the Respondent through his block policy. The tribunal has not varied the premium for simplicity and in the light of the fact that any variations would only be a matter of a few pounds.

25. The current position is that as the Respondent has failed to comply with the lease in demanding the insurance payments, apart from for one 12 month period, a rebate of £3,464.53 is due to the Applicant, comprising all of the monies paid in relation to insurance from 2006 to 2016, less £190.47 due for 2016. If the Respondent can produce sufficient evidence of the total premia paid he may be entitled to recovery of the service charge for insurance, subject to any arguments as to limitation. In any event, the payment due for 2006 to 2015 is subject to an upper cap of £1,865.47, reflecting the findings as to reasonableness in paragraphs 22 and 24 above. It may be that the parties are able to reach agreement on this amount, which would reduce the credit due to the Applicant in respect of insurance to £1,599.06.

Other service charge items

26. In addition to the insurance, the Applicant has been charged for various repair works from 2007 to 2013. It was agreed at the hearing that in accordance with the provisions of the lease set out in paragraph 10 above, the correct contribution is one quarter, whether the works affected simply the residential part of the premises or the whole of the building as set out in clause 3.3 of the lease.

27. The first charge was in 2007 for unblocking a drain. The Applicant had originally paid the full amount claimed of £40 but subsequently reduced this by £10 to reflect the fact that she should pay a quarter rather than a third. The Respondent accepted that the total cost had been £120 and therefore the Applicant's share was £30.

28. Again, no invoices had been produced by the Respondent. On his evidence these works were in connection with the residential part of the property and therefore one quarter was payable in respect of the Respondent's "expenses". There is no requirement in the lease for a copy of the invoice to be sent to the Applicant prior to payment, the issue for the tribunal was whether that cost was incurred and whether it was reasonable for the works undertaken.

29. At the hearing the Applicant maintained that she should either pay nothing or at most £20, effectively based on the fact that as she had been charged twice what she should have been for the insurance (since both buildings were insured on one policy), the same logic applied to the drainage (and other) works. With all due respect to the Applicant, the tribunal cannot accept this argument. Provided the works are to the building in which her flat is situated, the lease is clear that her contribution is one quarter. The actual cost of the works needs to be determined by the tribunal as well as whether there should be any reduction to reflect reasonableness, but there is no rationale to support a 50% reduction on the price paid by the Applicant simply based on the Respondent's computation of the insurance costs.

30. Although the Respondent was unable to produce documentary evidence of the cost of the works, the tribunal accepted his evidence that they had been carried out and of the cost, which he admitted he split three ways at the time. In the experience of the tribunal, which includes a professional member, £120 is a reasonable amount for unblocking drains and in the circumstances the tribunal determines that the contribution payable by the Applicant was £30.

31. There was a second unblocking charge in 2009, this time the total charge was £180 and it was again split into three as it affected the drainage for the residential part. The Respondent accepted that it should have been split into four and the Applicant had in fact reduced her payment to £45. The tribunal again accepted the evidence of the Respondent in relation to the fact and cost of the works and that the charges were reasonable, having heard his account of the additional work required. In the circumstances the tribunal determines that £45 was payable. Again, the Applicant had already paid this amount.

32. In 2009 a claim was also made for £80 for front roof repairs. The original hand written demand indicated that the total cost of the works was £220, which would have made a quarter share £55. The Respondent gave evidence of the works undertaken, which was not challenged by the Applicant. Again, the tribunal considers that the charge of £220 was reasonable for the works but that the share payable by the Applicant was £55 rather than £80. The Applicant had already reduced her contribution to £60 for these works, meaning that an additional rebate of £5 is due.

33. In 2010 the Applicant paid £390 in respect of repairs to the first floor roof, effectively her external access to her flat. That figure was subsequently reduced to £292.50. She accepted the works were done but challenged the cost firstly as no invoice had been provided and secondly on the basis that as major works they should have been subject to consultation pursuant to section 20 of the Landlord and Tenant Act 1985.

34. The Respondent stated that the price had been agreed in advance of the works, although that was disputed by the Applicant who stated that she came home to find they had been carried out. She did agree that they were done at the same time as works to extend the ground floor shop premises.

35. The tribunal determines that there was no agreement, accepting the Applicant's evidence. In the circumstances and with no answer from the Respondent in relation to the challenge on consultation grounds, the tribunal determines that the cost of these works should be limited to £250 in accordance with section 20, meaning a rebate of £42.50 is due to the Applicant.

36. The final repair charges claimed by the Respondent were for the repair of the second floor flat roof in 2013. The Applicant had paid £397.50 for these works. Her challenge was as before and the Respondent admitted there had been no consultation. In the circumstances and for the same reasons the tribunal limits the cost of the works to £250, meaning a rebate of £147.50.

37. The Respondent had originally also claimed £952 in respect of flooding to the ground floor shop. This had not been paid by the Applicant and the claim was withdrawn by the Respondent at the hearing. In the circumstances the tribunal determines that nothing is payable by the Applicant in relation to that item.

38. This means that a total rebate of £195 is due to the Applicant in respect of the other works charged by the Respondent in relation to the period in dispute.

Application under s.20C and refund of fees

39. At the end of the hearing, the Applicant made an application for a refund of the £300 that she had paid in respect of the application and hearing[1] fees. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

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

40. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless 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.

Name: Ruth Wayte **Date:** 12 May 2017

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 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 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.