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

Case Reference : **LON/00AZ/LSC/2016/0403**

Property : **45 Como Road, Forest Hill, London
SE23 2JL**

Applicant : **Mr Gerald Charles Dudley**

Representative : **Mr G Dudley In Person**

Respondent : **Mr Taoheed Laguda**

Representative : **Mr T Laguda In Person**

Type of Application : **Section 27A Landlord and Tenant Act
1985 – determination of service charges
payable**

Tribunal Members : **Judge John Hewitt
Mr Hugh Geddes Professional Member**

**Date and venue of
hearing** : **25 January 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **8 February 2017**

DECISION

Decisions of the tribunal

1. The amount payable by the respondent to the applicant in respect of:

1.1	Insurance for the year 29.12.2015 to 29.12.2016	£ 798.43
1.2	Cost of gutter repairs	£ 100.00
	Sub-total	£ 898.43
1.3	15% Management fee	£ 134.77
	Total	£1,033.20

2. The respondent shall reimburse the applicant to sum of £115 being one half of the fees paid by the applicant to the tribunal in respect of these proceedings.

3. The file shall be returned to the court for the court to determine the remaining issues, on which this tribunal does not have jurisdiction, namely the claims to:

Ground rent	£50.00
Management fee on ground rent	£ 7.50
Statutory interest	£24.25 + £0.25 per day
Court fee	£70.00

Procedural background

4. 45 and 47 Como Road are a pair of purpose-built maisonettes, one above the other, built circa 1900. The applicant (Mr Dudley) is the registered proprietor of the freehold interest.

5. Mr Dudley lets 47 Como Road on a short term letting basis. In 1991 Mr Dudley granted a long lease of 45 Como Road. That lease is now vested in the respondent (Mr Laguda) who acquired the lease in about 2004.

6. So far as is material to the proceedings before this tribunal the lease provides:

By clause 4(ii) a covenant on the part of the lessee to pay to the lessor on demand one equal half share of the costs expenses outgoings and matters mentioned in the Fourth Schedule.

By clause 5(e) a covenant on the part of the lessor to keep insured the building against loss or damage by fire explosion storm flood tempest earthquake aircraft subsidence land slip heave and such other risks (if any) as the lessor thinks fit in some office of repute in the full value thereof including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating of the building.

The Fourth Schedule includes:

Paragraph 1 The expense of maintaining repairing redecorating and renewing:

- (a) ... gutters and rainwater pipes
- (b) ... gas and water pipes drains ... in under or upon the Mansion ...

Paragraph 5 The cost of insurance taken out by the lessor and maintaining in force the policies mentioned in clause 5(e)

Paragraph 7 The lessor shall be entitled to add to the above items the administration expenses

These provisions of the lease were not in dispute.

- 7. On 5 April 2016 Mr Dudley commenced court proceedings against Mr Laguda (Claim Number C3QZ171Y). He claimed:

50% cost of gutter repair 18 July 2015	£100.00
15% management fee thereon	£ 15.00
Buildings insurance 29.12.15 – 29.12.16	£798.45
Ground rent 31.12.15 – 31.12.16	<u>£ 50.00</u>
	£848.45
15% management fee thereon	<u>£127.27</u>
 Sub-total	 £1,090.27
 Statutory interest to date of issue	 £ 24.25
Further statutory interest	£ 0.25 per day
 Court fee	 £ 70.00

- 8. Mr Laguda filed a defence.
- 9. By order made 19 October and drawn 27 October 2016 District Judge Coffey sitting at the County Court at Bromley made an order:

“This matter be stayed and the Defendant’s dispute be transferred to the First Tier Tribunal for determination of the reasonableness of the charges and insurance costs.”

- 10. Directions were given on 7 November 2016.
- 11. The proceedings came on for hearing before us on 25 January 2017. Mr Dudley and Mr Laguda both attended the hearing and presented their respective cases.
- 12. There were three issues to determine:
 - 11.1 The claim to the insurance costs;
 - 11.2 The claim to the gutter costs; and
 - 11.3 Mr Dudley’s application for reimbursement of fees.

The claim to 15% administration expenses was not challenged.

13. This tribunal does not have jurisdiction to determine the other claims made in the court proceedings and we shall return the file to the court along with our report on the claims to the insurance costs and gutter repair costs, so that the court may take such further steps as may be appropriate.

We might also mention that Mr Laguda says he has paid to Mr Dudley £480 on account of the cost of the insurance and if that is right the court will wish to take that into consideration.

The claim to insurance costs

14. It was not in dispute that at all material times Mr Dudley has effected buildings insurance with AXA Insurance UK Plc, such insurance being placed through brokers, Arthur J Gallagher. It was also not in dispute that AXA had paid out on subsidence claims in 1996 and 2012 and that this history limited the ready availability of insurance in the market.
15. At the hearing Mr Dudley produced a copy of the insurance schedule for the year in question. Whether it had been produced to Mr Laguda previously we do not know because Mr Dudley was not able to explain that to us. The schedule records the following information:

Insured: Gerald Dudley T/as GD Properties

Premium: £1426.36

IPT: £ 135.50
£1,561.86

Property Insured: Premises - 45 & 47 Como Road, London SE23 2JL (Described as 2 self-contained maisonettes) which appears to be referred to as 'Location 2'.

Buildings* Sum Insured: £675,000 (500000)
Rental Income Sum Insured: £20400 36 months

Subsidence excess for Location 2 is stated to be £5,000.

16. Mr Dudley told us that he had increased the Building Sum Insured to reflect the market value of the two maisonettes which he assessed at £750,000. He said he recognised the difference between site clearance and rebuilding costs and current market value of the two maisonettes. He said he went on line to do his research and completed an online form with relevant data for the property and thus arrived at his figure. Evidently Mr Dudley did not retain a copy of the completed form or any calculations; certainly none were provided to us.
17. Having arrived at his new Building Sum Insured Mr Dudley said that he instructed his broker to obtain quotes for renewal. At page 5 of a small bundle of documents prepared by Mr Dudley is an email from his broker dated 14 December 2015 which states, amongst other matters:

"In order to ensure we remain competitive I have undergone a market exercise and can confirm Axa have remained the competitive and other insurer's can only provide a quote excluding subsidence. If this is of any interest to you please let me know, we would however recommend that you renew with Axa."

Mr Dudley told us that he instructed the broker to renew with AXA for four main reasons. He has been with AXA for over 20 years and considered them to be reliable and trustworthy and he was more than satisfied about the manner in which they had dealt with the 1996 and 2012 subsidence claims. He was obliged by the terms of the lease to include subsidence cover in the buildings insurance and the broker had not been able to secure a quote from another insurer which included subsidence. Finally, the recommendation of his broker was to renew with AXA.

18. Mr Laguda's case on insurance was threefold. First that Mr Dudley had insured four properties on the policy and had recharged him 25% of the cost, as opposed to 50% of the cost of insurance on 45 and 47 Como Road. Secondly, that the Building Sum Insured was too high. Thirdly, that the cost incurred was unreasonable in amount and much less expensive insurance could have been obtained elsewhere.
19. As to the first point, it appears that, at one time, Mr Dudley owned two flats at 41 Felday Road, Catford as well as the two flats at Como Road and all four flats were insured under a block policy. We were shown some insurance Schedules issued by AXA for prior years and this certainly appeared to be the case. The schedule in respect of the insurance taken out effective from 29 December 2014 clearly refers to all four flats and the total premium + IPT was £2,064.50. Mr Laguda told us that in recent times the contribution to insurance demanded of him was:

2013	£466.01
2014	£494.35
2015	£522.37
2016	£798.45

This would appear to support Mr Laguda's evidence that in prior years he was asked to pay 25% of the cost of the insurance on all four flats.

Mr Laguda's concern was that the cost of insurance at 25% of four flats was greater than 50% of the two flats at Como Road. Whether that was right is a matter of speculation. It appears from the documents we have seen that that the Catford flats were referred to as Location 1 and the Como Road flats as Location 2. The subsidence excess for Location 1 is £1000 (suggesting there might not have been a claims history there) whereas the excess for Location 2 in the subject renewal is £5000 and that property has been the subject of two claims. That is all by the way,

because it is quite clear to us that the AXA Schedule for the renewal on 29 December 2015 refers only to the two Como Road properties.

If Mr Dudley had provided a copy of the Schedule to Mr Laguda at an earlier date, Mr Laguda would have been able to satisfy himself as regards the subject renewal: that he was not being asked to bear 25% of the cost of insurance on four flats.

It was curious that the Schedules for prior years we saw made reference to the Catford flats because Mr Dudley was adamant that those flats had been sold some years ago.

20. As to the Building Sum Insured Mr Laguda relied upon a survey carried out when he purchased the lease of 45 Como Road in 2004. His surveyor recommended a building Sum Insured of £76,000 and even allowing for inflation the increase effected by Mr Dudley was way too much. Secondly, he had given details of the properties to brokers who had recommended to him a Building Sums Insured of £375,000 in one case and of £337,000 in another. Mr Laguda was not able to explain to us how these sums had been arrived but he was of the view that both of them were way too high.
21. As to reasonableness of cost of insurance, Mr Laguda relied upon three quotes he had obtained.

Broker: UKinsuranceNet
Insurer: NIG
Premium: £453.19
Sum Insured: £375,000
Dated: 29 November 2016, valid until 13 January 2017
Note: Subsidence is plainly an excluded contingency

Broker: Fairweather Financial Services
Insurer: Lloyds
Premium: £621.36
Sum Insured: £337,000
Dated: 17 January 2017
Note: Subsidence appears to be included with an excess of £2,500

Broker: Highworth Insurance
Insurer: Modus Underwriting
Premium: £173.71 premium + IPT Additional fees payable £224.50
Sum Insured: Not specified
Dated: 16 January 2017
Note: This quote relates to 45 Como Road only

Discussion

22. We were satisfied on the evidence presented to us that for the year in question the Schedule showing the property insured mentioned 45 and 47 Como Road only.
23. We were also satisfied that it was reasonable for Mr Dudley to require subsidence cover to be included because he had a contractual obligation to insure against that peril.
24. We find that it was not unreasonable that Mr Dudley should follow the advice of his broker and remain with an insurer he had been with for a long time and in whom he had confidence if it became necessary to make a claim on the policy.
25. We have sympathy with Mr Laguda. It is invariably difficult for lessees to obtain quotes for comparable purposes. Brokers and insurers will only ever quote going forward and not retrospectively. Further, there are ever present risks whether the quote is on a full like for like basis and whether it contains a discount to attract new business. One of Mr Laguda's quotes excludes the peril of subsidence. Another refers to his flat alone and no building sum insured is given. The remaining quote is not of itself particularly persuasive.
26. For all of these reasons we find that it was reasonable for Mr Dudley to renew the insurance with AXA. Mr Dudley is not obliged to shop around to obtain the most competitive quote but he is required to act reasonably. We find it was well within the range of reasonable conduct for a landlord, such as Mr Dudley, to renew the policy with AXA even though that might not have been the cheapest option open to him. We bear in mind also that Mr Dudley's brokers were unable to obtain a quote from an alternative insurer who would include the subsidence risk.
27. Finally, we turn to the question of the Building Sum Insured. It appears that one of the reasons for a substantial increase in the cost of insurance in December 2015 may be the result in the increase of the Building Sum Insured effected by Mr Dudley.
28. Both parties put forward rival figures but neither party adduced any, let alone reliable, evidence to support their respective positions. In the absence of such evidence we can but draw upon the experience of the members of the tribunal on this point, which, we wish to point out is limited. It appears to us the figure set by Mr Dudley may be closer to the reality than the figures relied upon by Mr Laguda. We suspect that the figure of £76,000 contained in Mr Laguda's house purchase survey of 2004 may have been wrong because it seems far too low even for that date.
29. We cannot say that the figure set by Mr Dudley was so obviously wrong that it must be unreasonable. There was no evidence of over insurance and we cannot properly conclude that this occurred.

30. In these circumstances and for these reasons we find that the contribution to the cost of insurance payable by Mr Laguda in respect of the policy renewed in December 2015 is £798.43 made up as to:

Premium	£1,426.36	
IPT	£ 135.50	
Broker's fee	<u>£ 35.00</u>	
	£1,596.86	One half = £798.43

Gutter repairs

31. Mr Dudley relies upon an invoice dated 18 July 2015 issued by A B Roofing Repairs. It is in the sum of £200 in respect of:

“Cleaned out gutter and applied w/p compound to seal 4 x off set gutter bends also redirected soil pipe and also seal around leaking wastepipe with w/p compound”

32. Mr Dudley told us that he was present when the work was carried out by a tradesman and a boy. It took the best part of a morning. Access to the gutter was not easy and in the absence of access through the property it was necessary to gain ladder access over the roof and down to the rear of the property.
33. Mr Dudley thought the cost incurred eminently reasonable and he had no qualms about paying his one half share.
34. The gist of the case for Mr Laguda was that he noticed a leak from a first floor waste pipe and reported this to Mr Dudley. He says he has no knowledge of the gutter needing to be cleaned out. Mr Laguda says he obtained quotes for a waste pipe repair and gutter cleaning which are nothing like £200.
35. Mr Laguda accepted that he did not know what work was carried out to the gutter and he could not say that it was unreasonable for such work to be carried out.

Discussion

36. We prefer and accept the evidence on Mr Dudley on this point. It is not uncommon for gutters to need to be cleared from time to time and for sealant to be applied to joints. We find it was not unreasonable for Mr Dudley to have had this work carried out at the same time as the waste pipe leak reported to him by Mr Laguda. Given that Mr Dudley has to bear one half of the costs of such repairs we find that he would not have had work carried out that was not reasonably required.
37. Drawing on our expertise and experience in this area we find that a cost of £200 for such work on a suburban property in London is well within

the range of what can properly be considered reasonable or at a reasonable cost.

38. For these reasons, we find that Mr Laguda is obliged to contribute one half of the costs of these works, namely £100.

Management administration fees 15%

39. The lease provides for management administration fees. The 15% charged by Mr Dudley was not challenged by Mr Laguda.
40. In these circumstances, we find that the fees claimed are payable by Mr Laguda.

Reimbursement of fees

41. Mr Dudley made an application for reimbursement of the fees of £230 paid by him to the tribunal. Mr Dudley submitted that he was forced to issue the court proceedings because Mr Laguda had refused to pay his contributions and he was forced to come to the tribunal by reason of the defence filed by Mr Laguda in the court proceedings.
42. Mr Laguda opposed the application. Mr Laguda submitted that Mr Dudley had been unreasonable by not replying to his correspondence or providing documents and information requested of him.
43. It is clear that Mr Dudley and Mr Laguda do not get along. Whilst Mr Laguda's requests for information and documents might at times appear to be unreasonable, we find that Mr Dudley could have been more cooperative.

For example, if Mr Dudley had provided the December 2015 insurance Schedule to Mr Laguda, Mr Laguda would readily have appreciated that his concerns from prior years that he was being asked to pay 25% of the cost of insuring four flats was no longer the case.

44. In these circumstances, we find it is just and equitable for the parties to share the cost of the fees equally – just as they share the costs of repairs and insurance. Accordingly, we have made an order that Mr Laguda reimburse £115.00.

Judge John Hewitt
8 February 2017