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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OODA/LSC/2016/0043**
Property	:	**19 & 22 Kelso Heights, Belle Vue Road, Leeds LS3 1HN**
Applicants	:	**Mr J Morris**
Accompanied by	:	**Mr Collinson**
Respondent	:	**Ground Rents (Regis) Limited**
Represented by	:	**Mr McDonald (Counsel)**
Type of Application	:	**Landlord and Tenant Act 1985 Sections 27(A) and 20C**
Tribunal Members	:	**Mr J. Platt FRICS, FIRPM (Chairman)** **Mr P A Barber**
Date	:	**24 March 2017**

DECISION

DETERMINATION

1. Insurance costs have been reasonably incurred for each of the years 2010/11, 2015/16 and 2016/17. The service charges payable by Mr Morris for each of the two properties are:

2010/11	£187.83
2015/16	£405.73
2016/17	£434.64

2. The tribunal make no award of costs under Rule 13 and make no determination under Section 20C.

APPLICATION

3. The tribunal received an application from Mr Morris on 28th June 2016 for the determination of the payability and reasonableness of service charges and administration charges for the years 2010/11, 2015/16 and 2016/17. The application also requested the tribunal consider the payability of ground rent but the applicant was made aware that the tribunal has no jurisdiction to consider that issue.

4. The application also requested the tribunal consider making a determination under Section 20C Landlord and Tenant Act 1985.

5. Directions were issued on 20 July 2016 and both parties have substantially complied with those directions.

6. A hearing was held on 23rd February 2017. The applicant attended in person and was accompanied by Mr Collinson who described himself as a 'litigation friend'. The respondent was represented by Mr McDonald of counsel who was accompanied by Ms E Utting from Inspired Property Management; the managing agents.

7. Prior to the hearing, the tribunal carried out an inspection of the common parts of Kelso Heights.

THE ISSUES

8. The application sought a determination of the reasonableness of insurance premiums recovered as service charges for each of the years 2010/11, 2015/16 and 2016/17. All other service charges were agreed.

9. There had been some dispute between the parties over what payments had been received by the respondent in respect of both ground rent and insurance contributions. Prior to the hearing, it became clear to both parties that this dispute related to a number of cheques which had been sent by the applicant to the respondent but which the respondent had not cashed.

10. The respondent had sought to levy a number of administration charges which were predominantly related to the alleged non-payment of ground rent and insurance contributions. The applicant requested the tribunal determine the payability and reasonableness of these sums; especially as there was dispute as to what sums have been paid (or at least proffered) and which sums were outstanding.

11. Three days prior to the hearing, the tribunal received a final bundle from the respondent which contained revised statements of account. It was clear from these revised statements that the respondent no longer sought the recovery of any administration charges for the years April 2009 – April 2017. The only substantive issue remaining for the tribunal to determine, therefore, was the reasonableness of insurance contributions for the years in question.

THE LAW

12. The full text of s18, s19, s20C and s27A of Landlord and Tenant Act 1985 is appended at appendix 1.

THE LEASE

13. The draft undated lease defines the parties as: Kirov Advisers Limited "the Landlord", Morris Properties Limited "Morris" and "the Tenant".

14. The Freehold Proprietor i.e. "the Landlord" is now Ground Rents (Regis) Limited and Mr Morris is "the Tenant" of both Nos 19 & 22. Mr Morris confirmed that he is unrelated to Morris Properties Ltd whose initial interest in the lease is no longer of any relevance.

15. The service charge is defined as *"the monies payable by the Tenant for the upkeep of the 'common parts and the provision of services in accordance with the Fourth Schedule."*

16. The Fourth Schedule includes *"all reasonable and proper expenses incurred by the Landlord in complying with the Landlord's obligations under Clause 5 of this Lease in and about the maintenance and proper and convenient management and running of the Development ...."*

17. Clause 5.4 includes an obligation on behalf of the landlord to insure and keep insured the Development for the full cost of reinstatement (the full wording of 5.4 has been obscured in the copy lease provided to the tribunal).

18. It was not in dispute, therefore, that the lease provides for the landlord to insure the Development and to recover a proportion of the costs from the applicant as a service charge.

19. The Fourth Schedule makes provision for the landlord to demand service charges on account which are payable by equal quarterly payments on dates specified by the Landlord. At the end of the financial year, the Landlord shall provide a statement showing a summary of the Expenditure and the Tenant's Proportion.

20. In practice, the respondent has followed (via their managing agents) the service charge provisions within the lease for all service charge sums except for insurance contributions. The respondent has chosen to demand insurance contributions along with ground rent on an annual basis at the commencement of each financial year.

21. The applicant, having asserted that cheques had been sent to the respondent in full payment of every demand, had not taken any issue with the respondent's chosen method of demanding insurance contributions. The tribunal, therefore, determined that the sums were payable but drew the respondent's attention (for future years) to the lease provisions with regard to both quarterly payments and the requirement to include insurance costs within the annual summary of expenditure.

EVIDENCE ON BEHALF OF THE APPLICANT

22. Mr Morris asserts that all service charges, insurance contributions and ground rent demands have been paid. Since making the application, however, it has now become clear that (whether received or not) not all cheques have been cashed by the respondent.

23. Mr Morris did not dispute the payability of insurance contributions but requested the tribunal determine the reasonableness of the premium. The level of premium has doubled in six years which is much higher than the increase in the general insurance market.

24. Mr Morris had been unable to obtain any comparable quotations because insurance companies would only quote to the freeholder. He asserted, however, that discussions with tenants in other developments led him to believe that the level of premium should be £80 - £90 less than the level currently being recovered.

25. Mr Morris also disputed the respondent's supposed assertions that the building was in a high crime area and had a poor claims history.

26. Mr Morris asserted a belief that the respondent was benefiting from hidden profit within the cost of the insurance. In written evidence, the respondent advised that no commissions were received directly as a result of placing the insurance for Kelso Heights. The development was included within the respondent's portfolio block policy. Mr Morris asserted that was likely to increase the cost as Kelso Heights would be subsidising other developments within the portfolio with poorer claims history; some of which might not be insurable as a single risk.

EVIDENCE ON BEHALF OF THE RESPONDENT

27. The respondent provided details of the insurance for each of the years in question. Mr McDonald pointed out that the insurance had been procured via brokers in the normal market place and had, in fact, been placed with different insurance companies in different years. He asserted that the level of insurance premium had shown a gradual; rather than dramatic, rise year on year and had actually reduced in 2015/16 before jumping back up in 2016/17.

28. Mr McDonald referred to the claims history from 2009 to date which shows that there have been recurring problems of water leaks resulting in 15 claims during the period with a total value in the order of £30,000. It could not therefore, be disputed that the building had a poor claims history in the eyes of insurance companies who are increasingly concerned about the number of claims rather than the historic value; afraid that the next claim may be a very big one.

29. Mr McDonald pointed out that Mr Morris had provided no evidential basis upon which to base his claim that the level of premium should be lower. He had provided no alternative quotes nor any comparables for similar buildings in similar locations.

30. Mr McDonald also pointed out that the money had actually been spent and had been spent on a service of value i.e. one that has been claimed upon several times.

31. Mr McDonald asserted that the premium of £405 was not outside the parameters of reasonableness for a building with this claims history in this area of the city of Leeds.

32. Mr McDonald confirmed that Kelso Heights is insured via the respondent's portfolio block policy but asserted that was likely to lead to better value for money across the portfolio as a whole.

COSTS

33. Mr Morris made a verbal request for the tribunal to make a costs award against the respondent. He asserted that the respondent had acted unreasonably throughout the period in dispute and had submitted the final bundle very late. Had the respondent advised why they considered sums to be outstanding at an earlier date and not sought to levy administration charges (no longer sought) his application and / or the hearing may not have been necessary.

34. In response Mr McDonald asserted that it was in fact the applicant who had acted unreasonably through his protracted and lengthy correspondence from which it was very difficult to understand the nature of his queries. He asserted that the correspondence was unduly personal and intimidating towards an individual who is simply "doing his job" as an employee of the respondent's agents.

35. Mr McDonald also asserted that the respondent had been entirely justified in defending the application and had demonstrated reasonableness by ceasing to seek administration charges.

THE DELIBERATIONS AND DETERMINATIONS

Insurance Premium

36. The tribunal do not consider the cost of insurance for any of the relevant years to have been unreasonably incurred. The applicant failed to provide any evidential basis to support his assertion that the costs should be £80 - £90 pa lower. The respondent provided evidence that the insurance is placed through brokers in the usual insurance market and is market tested on an annual basis. The tribunal noted the changes in the identity of the insurance company year on year.

37. The tribunal had regard to the test outlined in *Plough Investments Limited v Manchester City Council (1989) I EGLR 244*; namely would a landlord incur costs in such a manner if paying them himself. A landlord paying the insurance premiums for a large portfolio of varied properties across the country was highly likely to place the insurance via a portfolio block policy rather than many individual single policies.

Costs

38. The tribunal ensured that the applicant was fully aware of the limited grounds upon which it has jurisdiction to make a costs determination under Rule 13; namely that a "person has acted unreasonably in bringing, defending or conducting proceedings".

39. It is unfortunate that greater clarity was not available to Mr Morris at a much early stage on what costs were being sought from him and why. That clarity has finally been provided as a result of this application and the respondent's review of what charges are being sought.

40. That does not make the respondent's actions in defending the application unreasonable. The tribunal, therefore, decline to make any award of costs under Rule 13.

Section 20C

41. Some leases allow a landlord to recover costs incurred in connection with proceedings before the First-tier Tribunal (Property Chamber) as part of the service charge. The applicant has made an application under s20C of the Act requesting the tribunal disallow the costs incurred by the respondent in calculating service charges payable for the properties, subject, of course, to such costs being properly recoverable under the provisions of the Lease.

42. The Tribunal determines that, as it has found that the service charges for the period in question have been reasonably incurred, it would be unreasonable to make such an order, and it therefore declines to do so.

Appendix 1 – The Law

Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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 –
which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
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 provides that

relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
only to the extent that they are reasonably incurred, and where they are incurred on the provision 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.

Section 27A provides that

(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 -
the person by whom it is payable
the person to whom it is payable
the date at or by which it is payable, and
the manner in which it is payable.

Subsection (1) applies whether or not any payment has been made.
....
No application under subsection (1)...may be made in respect of a matter which –
has been agreed by the tenant.....

(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 provides that

(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 or the First-tier Tribunal (Property Chamber) 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 the county court

(b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)

(c) ....

(d)....

(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.