



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

<b>Case reference</b>	:	<b>LON/00AE/LSC/2018/0306</b>
<b>Property</b>	:	<b>187 Dudden Hill Lane, London NW10 1AR ("the flat")</b>
<b>Applicant</b>	:	<b>Philomina Louisa Reynard Tann ("Mrs Tann")</b>
<b>Respondent</b>	:	<b>Harish Ravji Bhundia and Sunil Ravji Bhundia ("The landlords")</b>
<b>Type of application</b>	:	<b>Liability to pay service and administration charges</b>
<b>Tribunal member</b>	:	<b>Angus Andrew Michael Taylor FRICS</b>
<b>Date and Venue of hearing</b>	:	<b>14 November 2018 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>29 November 2018</b>

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**DECISIONS**

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**Decisions**

1. Mrs Tann is not liable to pay any of the buildings' insurance premiums claimed by the landlords since her purchase of the flat on 12 May 2011.
2. Mrs Tann is not liable to pay the administration charges claimed by the landlords since her purchase of the flat in May 2011.
3. Mrs Tann is not liable to pay the premium for legal expenses cover claimed by the landlords in 2016 and 2017.

4. Mrs Tann is not liable to pay the cost of £225 (subsequently reduced to £135) claimed by the landlords in respect of the preparation of a health and safety report in 2017.
5. The landlords may not recover the cost of these proceedings either as a service charge or as an administration charge.
6. The landlords must reimburse Mrs Tann with the Tribunal fees of £300 within 28 days of the date of this decision.

### **The application, directions and procedural issues**

7. On 14 August 2018 the Tribunal received Mrs Tann's application for a determination of her liability to pay service and administration charges under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and under schedule 11 of the Commonhold and Leasehold Reform Act 2002. The application form also included applications under section 20C of the 1985 Act and under paragraph 5A of schedule 11 to the 2002 Act. By these additional applications Mrs Tann sought to limit the landlords' ability to recover the cost of these proceedings either through the service charge or as an administration charge under the terms of the lease.
8. Directions were issued by Judge Oxlade on 15 August 2018. The directions authorised us to consider whether the landlord should reimburse Mrs Tann with Tribunal fees paid by her. We heard the applications on 14 November 2018. Mrs Tann appeared in person. The landlords did not appear and were not represented. They had however submitted a statement in response that we read and took into account in reaching our decisions.
9. In her applications Mrs Tann named the respondent as a Sunil Bhundia although the directions list the respondent as R. D. Bhundia Properties. From the official copy entries included in Mrs Tann's document bundle we note that the landlords are in fact Harish Ravji Bhundia and Sunil Ravji Bhundia and the statement in response was submitted by Sunil Bhundia on behalf of both landlords. For the sake of good order we therefore add Harish Ravji Bhundia as a respondent to the proceedings.

### **Background**

10. The flat is on the ground floor on what would originally have been a semi-detached house that was subsequently converted into two flats. Both flats were sold on long lease. A copy of the lease of the flat was included at pages 25-33 in Mrs Tann's bundle and the terms are pivotal to our decision.
11. The lease is dated 19 September 1980 and is for a term of 99 years from 6 June 1980. The lease is rudimentary. It is a product of its time and by

today's standards any competent conveyancing practitioner would regard it as defective. The lessee is responsible for maintaining the flat including the foundations of the building. By clause 2(2) of the lease the lessee covenants to insure the flat *"under a comprehensive policy in an insurance office of repute to be approved by the lessor"*.

12. The lessor's obligations are contained in clause 3 of the lease and are minimal. The lessor covenants to repair and maintain various party structures and to require every person entering into a lease of the upper flat to enter into similar covenants to those contained in the lease of the flat.
13. Mrs Tann purchased the flat at auction with completion on 12 May 2011. At the hearing Mrs Tann told us that only limited information was made available to her and it is apparent that she did not commission a survey. The vendor's solicitors disclosed a letter dated 20 January 2010 from Sunil Bhundia that concludes with the following sentence: *"I understand the property is going to be placed in Auction for sale and would appreciate if the buyers are advised the buildings insurance will have to be insured through our insurance office"*.
14. Having purchased the flat Mrs Tann discovered that both that the building was insured by the landlords and that it suffered from severe subsidence. Although she seems to have appreciated that she was responsible for insuring the flat she considered that she had no alternative but to persevere with the landlords' insurance because of the subsidence.
15. Since her purchase Mrs Tann has endeavoured to have the necessary remedial works completed with only limited success. The insurers refused to deal with Mrs Tann directly on the ground that she had no right of enforcement because she was not their insured.
16. On the basis of Mrs Tann's evidence, which we accept, her efforts to persuade the landlords to pursue a claim against the insurers were only partially successful. From the correspondence in Mrs Tann's bundle it is apparent that the landlords did not pursue the claim with any vigour and during the course of the claim they made the surprising decision to change insurer without consulting Mrs Tann.
17. Although cosmetic repairs were completed Mrs Tann told us that the building was not underpinned and the subsidence has not been eradicated. Mrs Tann is 66. She purchased the flat as an investment for her retirement. She now finds that the flat is unsaleable and consequently she has had to continue working beyond her planned retirement age of 65.

## **Issues in dispute**

### Insurance premium

18. Having purchased the flat on 12 May 2011 Mrs Tann started to receive annual demands for the building insurance premiums from the landlord. The premium claimed were £236.44 (2011), £295.48 (2012), £357.77 (2013), £362.42 (2014), £383.08 (2015), £385.11 (2016), £311.01 (2017), £180 (2018).

### Administration charges

19. The landlords also demanded annual administration charges of £20 (2011), £15 (2012), £42 (2013), £43.49 (2014), £45.96 (2015), £47.41 (2016), £37.32 (2017), and £26 (2018).

20. As far as we can ascertain from the documents included in Mrs Tann's bundle and from landlords' own statement these charges related to the placement by the landlords of the annual building insurance policy.

### Legal expenses insurance premium

21. The landlords claimed legal expenses insurance premium of £55.88 (2016) and £62.50 (2017).

22. Mrs Tann's evidence was that she had asked the landlords to consider the possibility of legal expenses cover but she had not pursued the matter when informed of the potential premium. It seems however that the landlords nevertheless effected legal expenses insurance and for the years 2016 and 2017 had sought to recover the premiums from Mrs Tann.

### Health and Safety

23. The landlords had commissioned a "*Combined Risk Assessment & Self-Assessment Framework*" report from 4Site Consulting Limited and in 2017 sought to recover the cost of £225 from Mrs Tann who informed us that the sum claimed was subsequently reduced to £135.

## **Reasons for our decisions**

### Insurance premiums

24. In their statement in response the landlords state correctly, that they "*have no responsibility to insure these premises*" and that "*the responsibility for*

*insurance of the subject premises falls upon the leaseholder applicant under clause 2(2)".*

25. Our jurisdiction is limited by section 27A of the 1985 Act. We can determine only whether "a service charge, is payable". As the landlords themselves accept they cannot recover the insurance premiums as a service charge under the terms of the lease because it is Mrs Tann who is responsible for insuring the flat.

#### Administration charges

26. Again, in their statement in response the landlords accept that there is "*no specific wording*" requiring Mrs Tann to pay these administration charges. In any event having determined that the insurance premium cannot be recovered as a service charge it must follow that the landlords cannot recover an administration charge under the terms of the lease for placing that insurance.

#### Legal expenses insurance

27. As with the building insurance premiums there are simply no provisions in the lease that either require the landlords to effect legal insurance cover or enable them to recover the premiums for such cover. Again, under the terms of the lease these premiums are not recoverable as a service charge.

#### The cost of the health and safety report

28. The assessment deals with risk such as fire, asbestos and legionella. In their response the landlords rely on clause 2(5) of the lease. That clause requires the lessee at its own expense "*to do and execute all such works under by virtue of any Act of Parliament for the time being in force or under any order of a Municipal or Local Authority shall be directed to be done or executed in respect of the demise premises whether by the Lessor or the Lessee thereof*".

29. In so far as there may be a statutory obligation to procure a health and safety report the lease places the obligation on Mrs Tann and not the landlords. As with the insurance premiums there is simply no provision in the lease that either requires the landlords to obtain a health and safety report or enables them to cover the cost of such report as a service charge under the terms of the lease.

#### Costs and fees

30. Mrs Tann has been wholly successful in these proceedings and it would be both unjust and inequitable if the landlords were to recover their costs either through the service charge or as an administration charge.

Consequently, we make the orders sought by Mrs Tann. For the same reason we also order the landlord to reimburse Mrs Tann with the tribunal fees of £300 incurred by her.

**Name: Angus Andrew**

**Date: 29 November 2018**

### **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).