



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

Case Reference : CHI/00HN/LSC/2021/0005

Property : Ground Floor Flat, 1305 Christchurch
Road BH7 6BP

Applicant : Miss Caroline Rigler

Representative :

Respondent : Mr Robert Soden

Representative :

Type of Application : Section 27A Landlord and Tenant Act
1985- determination of service charges

Tribunal Member : D Banfield FRICS
Regional Surveyor

Date of Decision : 12 May 2021

DECISION

The Tribunal determines that at the date of this decision the Applicant is not liable to pay any of the invoice for £662.14 demanded.

However, once a demand has been made meeting the requirements of S.21B Landlord and Tenant Act 1985 and accompanied by receipts from the NFU for the premium paid the Applicant must pay one half of the premium on demand.

The charges for management and interest totalling £251.50 are not payable.

In the absence of insurance receipts, the Tribunal is unable to quantify the amount of service charge that will become due once the conditions referred to at paragraph 27 above have been met. If the parties are unable to agree the quantum they may seek the further determination of the Tribunal.

Background

1. The Applicants seek a determination in respect of service charges for 2019/2020 and 2020/ 2021. The amount of the dispute is said to be £562.14.
2. Judge Dobson made Directions on 28 January 2021 setting a timetable for both parties to follow for the production and exchange of documents leading to the preparation of an electronic hearing bundle by the Applicant.
3. On 6 May 2021 I gave permission for the bundle to be received in paper form.
4. The Tribunal considered that the application was suitable for determination on the papers alone without an oral hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal.
5. No objections have been received and the matter is therefore determined on the paper bundle provided.
6. Other than a letter dated 17 February 2021 to the Tribunal the Respondent does not appear to have participated in the proceedings. I am however satisfied that Mr Soden has received the Tribunal's communications and I have been provided with a posting certificate by the Applicant confirming that the hearing bundle has been sent to him.
7. The hearing bundle was examined on receipt and I am satisfied that the matter remains capable of determination on the papers without an oral hearing given the limited area of dispute which I have identified as;
 - Whether the property has been properly insured
 - Whether the Lessee's portion of the cost has been properly demanded
 - Whether the Lessor is entitled to recover "administration" charges

The Law

See the Appendix to this decision for the relevant law.

The Lease

8. The lease dated 12 September 1988 is for a term of 999 years at a peppercorn rent between D L & D M Spalton of First Floor Flat 1305A Christchurch Road and F W E & A D Pinnell both of Ground Floor Flat 1305 Christchurch Road. The terms relevant to this application are;
- In addition to the rent the lessee is to pay “one half of the amount that the Lessors shall expend (i) in effecting or maintaining the insurance of the Building as mentioned in Clause 3(c) hereof and (ii) in complying with the covenant by the Lessors contained in Clause 3 (b) hereof such last mentioned rent to be paid on demand following the expenditure by the Lessors”
 - Clause (1)(c) refers to the property as two purpose built flats known as 1305 and 1305A.
 - Clause 2(b) requires the lessee to pay one half of the costs referred to in Clause 3(b)
 - Clause 3(b) puts an obligation on the Lessor to maintain “*the main walls (including the front boundary wall) fences footings foundations and general structure roof chimney stacks gutters and rainwater pipes of the Building*” and to decorate the exterior (except the window frames)
 - Clause 3(c) states “*that the Lessors will at all times during the said term (unless such insurance shall be vitiated by any act or default of the Lessees) insure and keep insured the Building in the joint names of the Lessors and the Lessees in such Insurance Company of repute in the full value thereof against loss or damage by fire and all such other comprehensive risks as the Lessors shall think fit and make all payments necessary for the above purpose within seven days after they shall become due and whenever required produce to the Lessees the Policy or Policies of such insurance and the receipt for the last premium for the same or other evidence of the subsistence and terms of such insurance and of the payment of such premium and will in the event*”
9. In summary therefore, the Lessor insures and maintains the structure recovering half the cost from the Lessee on demand.

The Parties submissions

Applicant

10. In her statement of case explains her difficulties in obtaining information in respect of the insurance cover and says the evidence shows that Mr Soden insured his property 1305A first floor flat in 2006 but failed to insure 1305 being the ground floor flat. On 3 July 2018 Mr Soden added her name to the policy giving an incorrect address as 1305B on the first floor. Miss Ringler says this error was a deliberate act to deter her from having her legal rights.
11. The only invoices received have been “hand written, unprofessional, non valid, non-legible invoices from Mr Soden” The insurers, the NFU have not provided an invoice showing the cost of which she should pay half.
12. Mr Soden charges £30 when he writes to her and a management fee when such fees are not in the lease. There is no agreement for a management company in the lease.
13. Very little maintenance is carried out and when Mr Soden’s TV aerial was damaged he left it to his tenant to sort out. He leaves works to gutters etc. to her to sort out.
14. Mr Soden also charges a high rate of interest for monies owed from July 2019.
15. The Insurance reference booklet loaned to her seemed to be referring to industrial buildings rather than residential and as such was irrelevant.
16. Mr Soden ignored correspondence from a solicitor instructed by her.
17. Amongst the attachments to her statement were the following;
 - Letter dated 3 July 2018 from NFU addressed to Mr Soden and noting that it is insured as “private domestic dwellings (two flats)” and confirming that “Cover commenced on the 20th of June 2006 for 1305A&B Christchurch Road”
 - Pages 1 and 3 of an NFU Insurance Review dated 19 June 2018 referring to 1305A&B and confirming that “Miss Caroline Riggler (sic) has been noted as an interested party as the leaseholder of Flat B (First Floor)
 - A letter dated 23 August 2018 from NFU to Miss Rigler at 1305 Christchurch Road referring to her being added to the policy on 3 July 2018 as an interested party.
 - An email from NFU dated 19 March 2019 referring to 1305A&B
 - Letter dated 21 July 2020 confirming cover for “1305 Ground Floor Flat and First Floor Flat” noting that it is insured as “private domestic dwellings (two flats)” and that cover commenced on 20 June 2006
 - A letter from Mr Soden dated 13 May 2020 referring to seeking legal advice and that costs of £20 per account rendered and £30 per letter would be applied. Attached to the letter was a proforma typed document headed R V Soden with the blanks completed in manuscript indicating a total sum due of £381.14

said to be made up of; Insurance (20/6/20 to 20/6/21) £140.32, Repairs, Maintenance and Management £50, A/c rend. £230.32, Interest at 5% £11.50 and admin charges £50. (The Tribunal noted an error in addition which should have totalled £482.14)

- A similar letter dated 3 August 2020 enclosing a 250-page document from NFU and with a similar proforma demand increased to £502.14 by the addition of £20 for a letter.
- A letter dated 9 September 2020 referring to arrears now said to be £401.14.
- A letter dated 25 January 2021 with proforma demand increased to £522.14 by the addition of a further £20 for a letter
- A 127-page document entitled Commercial Select Insurance

Respondent

18. A letter to the Tribunal from Mr Soden dated 17 February 2021 referring to Miss Rigler's three previous proceedings against him, that he had provided a 250-page insurance booklet to her and that he would hold her responsible for his solicitor's fees of £2,000 +VAT. He referred to a previous dispute involving Miss Rigler's partner and that he was charging £100 for his time in dealing with "this frivolous case" He said that Miss Rigler was responsible for maintaining her own separate garden and fence and enclosed a further part hand written invoice now for £662.14.

Decision

19. The respective obligations of Lessor and Lessee are clearly set out in the lease which are in turn subject to the relevant legislation.
20. Although Miss Rigler refers to the landlord's failure to comply with his repairing obligations this application is in respect of service charges only and any such alleged failure will not therefore be determined. In observation however, I note that Clause 3(b) includes fences in the landlord's obligation to repair.
21. With regard to insurance Clause 3 (c) states that the Lessor will "*insure and keep insured the Building in the joint names of the Lessors and the Lessees*" and will "*whenever required produce to the Lessees the Policy or Policies of such insurance and the receipt for the last premium for the same or other evidence of the subsistence and terms of such insurance and of the payment of such premium*"
22. In addition to the requirements of the lease S.21B of the Landlord and Tenant Act 1985 requires demands for service charges to be accompanied by a Statement of the Rights and Obligations of Tenants.
23. The evidence in this case is that;

- Miss Rigler’s interest was not noted on the policy until 3 July 2018
 - That the receipt for the last premium had not been supplied and
 - No Statement of Rights and Obligations had been served thereby rendering the demands invalid.
24. Although Miss Rigler makes much of the use of an incorrect address (1305B) I consider it more likely that this is simple confusion on the part of NFU and I am satisfied that, as confirmed by NFU, the two flats have been insured since June 2006.
25. With regard to the demand for management costs and interest I note that the lease makes no provision for such payments.
26. **Given the above findings the Tribunal determines that at the date of this decision the Applicant is not liable to pay any of the invoice for £662.14 demanded.**
27. **However, once a demand has been made meeting the requirements of S.21B Landlord and Tenant Act 1985 and accompanied by receipts from the NFU for the premium paid the Applicant must pay one half of the premium on demand.**
28. **The charges for management and interest totalling £251.50 are not payable.**
29. **In the absence of insurance receipts, the Tribunal is unable to quantify the amount of service charge that will become due once the conditions referred to at paragraph 27 above have been met. If the parties are unable to agree the quantum they may seek the further determination of the Tribunal.**

D Banfield FRICS
12 May 2021

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

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 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 21B - Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

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

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- (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.]