FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/11UF/LIS/2018/0013**
Property	**:**	**Flat 1, 22 West Wycombe Road, High Wycombe, Bucks HP11 2LW**
Applicant	**:**	**Mr Kedrain Henry**
Representative	**:**	**Acting in person**
Respondent	**:**	**Mr Nigel Leheup**
Representative	**:**	**Acting in person**
Type of Application	**:**	**Determination of the pay ability and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mr D Brown FRICS** **Mr N Miller BSc**
Date and venue of Hearing	**:**	**Magistrates' Court, High Wycombe on 17th October 2018**
Date of Decision	**:**	**25th October 2018**

DECISION

DECISION

1. **The Tribunal makes the decisions as set out below.**
2. **The Tribunal orders the Respondent to repay to the Applicant the application fee of £100 and the hearing fee of £200. The costs of the postal order are a matter to be borne by the Applicant.**
3. **The Tribunal makes no further order as to costs under the provisions of Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.**

BACKGROUND

1. By an application dated 11th June 2018 the Applicant sought to challenge, in the main, the cost of the building insurance for the period 2007 through to 2018 and a claim for interest that had been added as a result of the alleged late payment of service charges. It was also stated that the demands did not comply with section 21B of the Landlord and Tenant Act 1985 (the Act).

2. We inspected the exterior of 18 and 22 West Wycombe Road, High Wycombe before the hearing on 17th October 2018, in the company of the parties. The subject property at 22 is a three storey terrace which has been converted to house three flats. The Respondent appears to own 18 West Wycombe Road as well. The terrace fronts a busy road. There is a yard area to the rear reached by a passage way running up the middle of the terrace. Access to the upper flats above the Applicant's property is via a brick built staircase to the rear. Mr Henry's property has a front door on to the street.

3. In the papers that we were provided prior to the hearing, we had evidence of some alternative quotes that Mr Henry had obtained, the directions order issued by the Tribunal on 17th July 2018, a copy of Mr Henry's lease and further documents considered to be relevant to the matters we were required to determine.

4. Somewhat late in the day by an email dated 7th October, Mr Leheup, the Respondent Landlord submitted what purported to be his statement of case with copies of insurance information for the period April 2016 through to April 2019. In respect of the latter year, we were also provided with the insurance schedule.

5. Mr Henry had also provided a submission, which he handed in at the hearing, headed 'Tribunal Points' which sought to address the 18th month rule under section 20B of the Act, the summaries and rights and obligations under section 21B of the Act and other issues which were not in truth service charge matters, including an outstanding insurance claim and an allegation that some damage had been caused to his Sky dish.

6. As a result of the production of the insurance documents by the Respondent, Mr Henry confirmed that he no longer sought to challenge the quantum of the premiums. The payability of same still remained an issue.

7. Mr Leheup admitted that none of his demands complied with section 21B of the Act in that they did not contain the statutory wording setting out the rights and

obligations of the tenants. On his admittance that no proper demands were made during the period in dispute, it is quite clear that there was no obligation on Mr Henry to make the payments until they were properly demanded and accordingly the claim for interest is misplaced.

8. Mr Leheup told us that he had paid the insurance premium each year and that neither the tenant in the flat at the top of the Property nor Mr Henry had paid all that had been requested. He did accept that there had been contributions made by Mr Henry as set out on a schedule produced just before the hearing showing that some £650 had been paid in respect of the insurance contributions.

9. The lease also provided for £100 to be paid as a contribution towards service charges on an annual basis but again no demand had been made in respect of that sum of money. Indeed, it is not clear whether a letter was ever sent to any of the tenants informing them of their obligation to make this payment.

10. Mr Henry told us that he had never seen a demand and although he had had letters from Mr Leheup seeking payment of the insurance. He thought that the earliest one was around 2014. This was a letter requesting payment of the insurance but without the information required under s21B

FINDINGS ON INSURANCE

11. On the question of the insurance payments, therefore, we find that the quantum of same is reasonable and is in fact not disputed by Mr Henry. However, before Mr Leheup can recover any of these payments he needs to serve demands that comply with section 21B of the Act. Whether or not the provisions of section 20B of the Act, limiting the recovery of service charges incurred to a period of 18 months before any demand was made, is another matter. As we indicated to Mr Henry, those demands do not need to be, in his terms, 'valid'. There merely needs to be something in writing indicating that within the period of 18 months of the costs being incurred written notification was sent informing Mr Henry that costs had been incurred and would be payable. For example, the letter sent in April 2014 would seem to safeguard Mr Leheup against the 18 months rule as clearly it put Mr Henry on notice that a cost had been incurred. It appeared to be accepted by Mr Henry that he had received demands from 2014, although it was said by Mr Leheup that he had hand delivered demands in 2012 and 2013. That will be a matter for Mr Leheup to consider. Mr Henry appears to have paid £650 towards service charges and it may well be in the interests of both parties to draw a line under the demands for money in respect of service charges and insurance and to start afresh from now.

FINDINGS ON ADMINISTRATION CHARGE OF 10%

12. The next items that Mr Leheup had sought to recover was a 10% administration charge from 2015 in respect of the insurance premium. There is no provision in the lease for this. There is provision for him to be able to instruct a managing agent to act on his behalf but no indication that he himself is entitled to make a management charge. In those circumstances we dismiss any 10% mark-up that may have been made in respect of the insurance provisions and that needs to be taken into account when the totality of any claim facing Mr Henry is quantified.

Another reason why we consider it may be appropriate for a line to be drawn. There is no doubt that the Property has been insured during Mr Henry's ownership.

13. We also suggested to Mr Leheup that it might be in his interests to instruct managing agents to deal with his leasehold properties so that the problems which have arisen in this case do not continue. He fully admitted to having no knowledge of the Landlord and Tenant Act 1985 which is potentially fatal for a landlord.

FINDINGS ON INTEREST

14. On the question of interest we find this claim by Mr Leheup must fail. As no demands have been made of Mr Henry that comply with the Act, there is no obligation upon him to make any payment. As there is no obligation to make a payment he cannot, therefore, be in arrears and accordingly any interest provisions that might be found in the lease do not apply as by virtue of section 21B(3) the tenant is entitled to withhold payment demanded of him if the words relating to the rights and obligations have not been provided to him, as is the case here.

SUMMARY ON SERVICE CHARGES

The insurance premiums for the years from 2014 inclusive will be payable when a valid demand has been made, in accordance with section 21B of the Act. The charges for insurance in earlier years may be similarly payable if Mr Leheup can prove compliance with section 21B. The 10% administration charge and the interest charge are not payable in any event. The parties are referred to the comments we made above at paragraph 11 and 12.

COSTS

15. The last matter that we were asked to consider was the question of costs. Mr Henry asked for a refund of the application and hearing fee totalling £300 and an additional £25 being the fee to him for using postal orders. Mr Leheup thought it was unrealistic that he should have to make a refund of these fees as the Applicant had not paid for insurance. He did, however, concede that he had not read the directions and was late in delivering his statement of case although suggested that Mr Henry was also remise in this regard. These comments followed Mr Henry's wish to be reimbursed the costs of attending the hearing of £75, he having to take a day's holiday.

16. In respect of the application and hearing fees we are of the view that these should be reimbursed to Mr Henry. The application had merit but could and perhaps should have been resolved before it came to us. The fact that did not rests largely with Mr Leheup and his failure to read the directions and his lack of knowledge of the law. Accordingly we order the Respondent Mr Leheup to make reimbursement in the sum of £300 to Mr Henry within 28 days. We do not consider that the costs of the postal order are payable by Mr Leheup. That was

the method by which Mr Henry sought to pay those fees and that is therefore an expense that he has to meet.

17. On the question of costs these can only be awarded against a party under Rule 13 of the Tribunal Rules if there has been unreasonable conduct in the course of the proceedings. There is no evidence that that is the case, although it is accepted there have been some non-compliance with the directions but by both parties. The Tribunal is generally a no costs jurisdiction and we do not consider that Mr Leheup's shortcomings are unreasonable within the meaning of the regulations and considering the Upper Tribunal case of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC). We therefore, find that he is not liable to reimburse Mr Henry the costs of attending the hearing of £75.

Judge: Andrew Dutton

A A Dutton

Date: 25th October 2018

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985

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.

21A Withholding of service charges

(1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5)Where a tenant withholds a service charge under this section, any provisions of the tenancy 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.