



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

Case reference : **LON/00BG/LSC/2019/0128**

Property : **55 Locksons Close, London E14
6BH.**

Applicant : **Mr. S. Walsh.**

Representative : **In person.**

Respondent : **Locksons Wharf (Poplar)
Management Company Limited.**

Representative : **In person.**

Type of application : **S.27A, Landlord & Tenant Act 1985.**

Tribunal member(s) : **Ms. A. Hamilton-Farey
Mr. T. Sennett**

Date of decision : **26 June 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the excess on the insurance policy for the property is not excessive and in line with expectations in the market, for properties with a similar claims history.
- (2) The tribunal determines that there is nothing within the lease that enables the Respondent to charge the full excess to the Applicant and that the excess is part of the service charge for the property. The Applicant is liable for his proportion of that excess in accordance with the apportionment within his lease.
- (3) The tribunal cannot order the respondent refunds any monies to the applicant and the resolution of this is a matter between the parties.
- (4) The tribunal makes an order that the respondent may not recover any of the costs and/or administration charges, so far not quantified, of these proceedings from the applicant.

The application

1. By an application dated 21 March 2019, the applicant sought a determination of his liability to pay the excess on the freeholders' insurance policy following water penetration through the structure of the building.
2. In his application, the applicant states that he has paid the £1,000.00 excess to the contractor which carried out remedial works following the water penetration and now seeks reimbursement from the respondents, because they are responsible for the maintenance of the structure of the building.
3. Directions were issued by the tribunal on 4 April 2019 requiring the parties to supply documents/bundles on which they wished to rely in support of their relevant case. It was suggested that the matter be dealt with by way of paper determination.
4. Both parties submitted a bundle to the tribunal.

The determination:

5. It is not disputed by the parties that there was water penetration into the applicant's flat that necessitated the relocation of the applicant's tenants for a period of approximately three months. It appears from the correspondence that the freeholder's insurance policy has

compensated the applicant for the costs of remedial works as well as the cost of alternative accommodation for his tenants.

6. The applicant states that he has 'lost rental income' in that he paid/reimbursed his tenants the sum of £1,300.00 as compensation for the difficulties of having the works carried out. He does not seek to be reimbursed for that amount from the respondent, and in any event this tribunal considers that any loss of rent would be covered by the applicant's own insurance (as landlord).
7. The applicant relies on a report prepared by himself in relation to the defects in the building and the remedial works required in his opinion. We are less persuaded by this evidence because it cannot be said to be impartial and does not contain any of the usual caveats one would expect in an expert report before the tribunal.
8. The applicant says that it he should not have to pay the landlord's excess because the reinstatement works were badly managed and caused the cost to the insurers to increase. There is no evidence that the cost to the applicant increased, and it appears that the extra cost of alternative accommodation was covered by the landlord's insurance.
9. The respondents say that they are not responsible for arranging the insurance on the block but under the terms of the lease, this is the responsibility of the freeholder, who then invoices the respondent, and the sum is included within the service charge for the building. The tribunal is satisfied from the leases provided that this is the case, and the freeholder is obliged to insure for the usual risks and invoices the respondent accordingly for the premiums.
10. The respondents have produced evidence of the claims on the building over the two years from 2017 – 2019. These show that, including the settlement for the subject property, approximately £88,700.00 was paid out by insurers in relation to 'escape of water' claims, which might include, for example, washing machine leaks etc. As a result of those claims the insurance premium has increased from 2017 (£23,644.20) to 2018 (£34,054.06), and the excess on the policy has increased from £1,000.00 to £2,000.00 in respect of escape of water claims.
11. The respondents say that it is always the responsibility of the claimant under the policy to pay the excess, and this is usually deducted from the claims settlement monies, as has happened in this instance. The applicant disagrees with this approach and says that, because the water leaks were caused by a structural fault, then the building service charge should meet the cost. It appears he accepts that, if the claim arose from a fault in his own property, for which he was liable, then he would be liable for the excess. But that is not the case here and the parties agreed there were problems with the fabric of the building leading to the water leaks.

12. The respondents provided evidence to support their statement, one of the documents was the budget for 2018-2019, which included an item for 'Water Ingress' £2,000.00 and which was confirmed in the respondents' statement of 10 May 2019, to be the insurance excess for that year in relation to escape of water.
13. It appears to us that this is an element of double counting with the respondents charging the excess within the budget, but also requiring insurance claimants to meet the cost themselves. We find that this cannot be correct.
14. In addition, we can find nothing in the lease that suggests a tenant is liable for the policy excess where a fault lies with an element of the building insured by the landlord.
15. In the circumstances, we are unable to conclude that the applicant should be liable for the insurance excess in this instance, and although we cannot order a refund of the excess already deducted from his claim, it is clear in our minds, that an adjustment should be made.
16. The applicant has also said that the excess of £2,000.00 is too high. Having considered the very significant level of claims for water ingress in 2017 – 2019, we do not consider the excess to be too high and we therefore find the excess to be reasonable.
17. The applicant finally applied for an order that the respondent not be entitled to claim either their administration charge or other fees from defending this application against the service. We make such an order under S.20C of the Landlord & Tenant Act 1985, that the landlord/respondent may not recover any costs as part of the service charge.

Tribunal: Ms. A. Hamilton-Farey

Date: 26 June 2019.

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).