FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MD/LSC/2019/0032**
Property	**:**	**139 Canterbury Avenue, Slough SL2 1BH**
Applicant	**:**	**Navneet Kaur Chahal**
Respondent	**:**	**Castle New Tower Holdings Limited**
Representative	**:**	**Stanley Cohen, in-house solicitor**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge Wayte**
Venue	**:**	**Cambridge County Court**
Date of decision	**:**	**19 August 2019**

DECISION

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(1) £493.16 is payable by the Applicant to the Respondent as the agent of RSA in respect of the insurance premium for the property for 2018/19 and 2019/20.

(2) The costs of £75 charged by the Respondent for the late payment of the premium for 2018/19 are not payable.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount payable for insurance by the Applicant from her purchase of the property, to date. For 2018/19 the premium was £909.59 and the current premium is £493.16. The Applicant claims that this compares unfavourably to the insurance costs for the previous leaseholder of £234.08 and other quotes she has obtained in the marketplace, including from the same insurance company.

2. The Respondent, through their solicitor Stanley Cohen, denies that the tribunal has jurisdiction to consider the claim on the basis that the insurance costs are not a service charge. Under the terms of the lease the tenant is obliged to place their own insurance, albeit in the joint names of the lessor and the lessee and with an insurer nominated by the lessor. Alternatively, the Respondent states that the current cost is reasonable. The previous higher premium was based on an unnecessarily high rebuilding cost.

3. After some debate the parties agreed to this matter being considered on the papers and bundles were filed by each party. Unfortunately, the policy documents were not in either bundle and the tribunal therefore requested a copy from the Applicant, leading to a short delay.

4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The property which is the subject of this application is a two bedroom first floor maisonette, described by the Respondent as being one of four maisonettes in a semi-detached block. The block is part of a larger estate of similar properties in Slough, the Respondent's property portfolio consisting of over 350 properties in Slough and elsewhere.

6. The Applicant's bundle contained a copy of the estate agent's particulars for the maisonette, with a photograph of the front of the building. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The Applicant purchased the property on 15 June 2018. She holds a leasehold interest pursuant to a lease dated 19 October 1951. The relevant clause in respect of insurance is at paragraph 13 of the lessee's covenants, which states:

"*Forthwith to insure and at all times during the said term to keep insured the demised premises and all buildings erections and fixtures of an insurable nature which are now or may at any time during the said term be erected or placed upon or affixed to the demised premises to the full value thereof in some insurance office of repute to be named by the Lessor in the joint names of the Lessor and the Lessee whether in conjunction or not in conjunction with the name or names of any other person or persons legally or beneficially interested in the demised premises. And whenever required to produce to the Lessor or its agent the policy for every such insurance and the receipt for the last premium thereof And in case the demised premises or any part thereof shall at any time during the said term be destroyed or damaged by fire then and as often as the same shall happen with all convenient speed to lay out all monies received in respect of such insurance in rebuilding repairing or otherwise reinstating the demised premises in a good and substantial manner to the satisfaction of the surveyor for the time being of the Lessor and in case the moneys received in respect of the said insurance shall be insufficient for the purpose to make good the deficiency out of its own moneys*."

8. In practice, or at least in this case, the Respondent placed the insurance with the Royal Sun Alliance, its nominated insurer. In particular, the Respondent sent an application form to the Applicant, which is marked with the Respondent's name and PO address in Jersey, for a product called "Choices Extra VD7757F". The Applicant returned the form to the Respondent and it was sent by "Lynn for Castle Tower Holdings Ltd" to the Royal Sun Alliance on 15 June 2018 with a request for the policy documents. On 20 September 2018 Lynn sent another email to RSA, thanking them for the policy documents but querying why the premium of £909.59 was so high. That same day the Insurance Department of the Respondent wrote to the Applicant requesting that amount and confirming that the policy documents would be sent out on receipt of the premium.

9. Following a reminder for the renewal premium on 4 October 2018, the Applicant replied stating that the quote was too late. After sending the proposal form to them on 14 June 2018 she was unable to contact the Respondent and therefore arranged her own insurance on 24 July 2018 through Simply Business for £265.63. The Applicant had contacted RSA herself but been given a quote of £1,591.78. When she queried the amount, she was advised to contact the Respondent.

10. On 16 October 2018 the Respondent wrote to the Applicant's mortgagees stating that £990.09 was outstanding in respect of arrears of rent, insurance premium and costs. On 5 November 2018 the Applicant paid the amount under protest. On 13 November 2018 the Applicant was sent the policy documents and advised that the difference in the premium compared to the previous leaseholder was due to three factors: (i) she had insured the property for more than double the rebuilding costs compared to the previous lessee; (ii) the

previous lessee lived in the property whereas she rents the property out and (iii) she was a new customer to the RSA.

11. On 20 May 2019 the Applicant asked the Respondent to get a new quote with a rebuilding cost of £110,000 as opposed to the £200,000 she had originally stated in the proposal form. On 28 May 2019 Lynn passed that request on to the RSA and asked for a revised renewal notice. On 31 May 2019 the Insurance Accounts Department of the Respondent wrote to the Applicant stating that the cover had been reduced in accordance with her request and the revised premium would be £493.16. On 7 June 2019 the Respondent sent the amended renewal notice to the Applicant. It is unclear whether the Applicant has paid this sum and whether she paid the Respondent or RSA directly.

12. The tribunal was eventually sent the original policy schedule by the Applicant and a newly endorsed master schedule for the current year by the Respondent, together with the policy booklet. Despite the intervention of the Respondent it seems that the insurance was not in fact in joint names until 4 July 2019, when Castle New Tower Holdings Ltd was added to the policy. It is not clear how this happened but the tribunal assumes that the Respondent requested the amendment. Looking at the proposal form it is stated that if the policy is to be in joint names, both applicants must sign the declaration at the end of the form. It may well be that the Respondents have never done this, as Mr Cohen states that "the Respondent acts as a post box to forward the proposal to the insurer". Castle New Tower are otherwise described as the "Agency" by the RSA, although Mr Cohen denies that the Respondent acts as an agent of the insurer, despite the admitted commission of 22.5%. The Choices Extra policy appears to be a standard home insurance policy, with no particularly distinguishing features.

13. The Applicant has provided several examples of cheaper insurance products, including quotes involving RSA and at a much higher rebuilding cost than currently insured. No policy documents have been provided to compare terms and none of these quotes put the insurance in joint names, as required by the lease.

14. Having considered all the documents provided, the tribunal has made determinations on the various issues as follows.

Is the insurance a service charge?

15. The definition of service charge is contained in section 18 of the Landlord and Tenant Act 1985, set out in full as an appendix to this decision. There are effectively three elements:

(i) An amount payable by a tenant of a dwelling as part of or in addition to the rent;

(ii) Payable directly or indirectly for…insurance, and

(iii) A variable amount, according to the relevant costs.

"Relevant costs" are defined in section 18(2) as costs incurred by or on behalf of the landlord, in connection with the matters for which the service charge is payable.

16. The statement of Stanley Cohen, solicitor for the Respondent, simply states that this section does not apply to a payment by a lessee to an insurer when the landlord is under no obligation by the terms of the lease to insure. Mr Cohen points out that there is no power for the lessor to insure or make any charge for insurance and denies that the costs incurred are on behalf of the landlord.

17. As stated in the leading text of Tanfield Chambers "Service Charges and Management": "*It is apparent from a close reading of [section 18] that the definition of "service charge" is a wide one. The statutory definition is the determining factor and not the lease. Were that not so, a landlord could avoid the protection afforded by the statute by defining service charge items as non-service charge items in order to circumvent the statutory control*".

18. Looking at the wording of section 18, the tribunal determines that the amount payable for insurance satisfies the statutory definition. The lease requires the tenant to pay for insurance in the joint names of the landlord and tenant. There is no dispute that the costs will vary. Section 18 does not require the payment to be made to the landlord. The Tanfield Chambers text states that costs payable "indirectly" for services were included in the 1985 Act to cover payments made to a superior landlord, although it appears to the tribunal that it would also include costs payable to an insurance company. The tribunal considers that the premium is a "relevant cost" as set out in section 18(2), i.e. incurred on behalf of the landlord. Placing the insurance in joint names would enable the landlord to make a claim against the policy. The lease also requires the tenant to use any insurance monies to reinstate the property to the satisfaction of the landlord's surveyor and therefore the insurance must be incurred on behalf of the landlord, at least to that extent.

19. Although the lease is silent on the point, the way the Respondent has operated in this case is also consistent with treating the premium as a service charge. In particular, the Respondent admits that it requested payment from the Applicant, including £75 costs said to be due to

"failure to pay rent and premium". The Respondent's solicitor is silent on the legal basis for such a claim.

20. In the circumstances, the tribunal has jurisdiction under the 1985 Act and will go on to consider whether the costs were reasonably incurred under section 19 and payability under section 27A.

Was the insurance premium reasonably incurred?

21. The caselaw in relation to insurance premiums confirms that where the landlord chooses the insurance company or places insurance, they do not have to go for the cheapest quote and a range of reasonableness will be allowed. The main issue with the 2018/19 quote appears to be an alleged overstatement by the Applicant of the rebuilding costs (although there is no evidence what they actually are) – namely £200,000 as opposed to the current sum insured of £110,000. The Respondent queried the premium as soon as they were informed of the amount and appears to have received a response by their letter to the Applicant of 13 November 2018. It was only when the renewal notice was received that the Applicant requested the amount of cover be reduced and obtained the current premium of £493.16.

22. The Respondent has admitted a commission of 22.5% but no documents were produced to establish that amount. The Applicant accepts that 22.5% is standard for any "broker". Although the Respondent's evidence is unsatisfactory, the tribunal does not consider that there are grounds for reducing the premium to take account of the commission. The Respondent clearly plays a role in the insurance and the premium does not appear to be unduly affected by the payment of a commission. In particular, the tribunal accepts that a "buy to let" property would attract a higher premium for insurance than owner-occupied properties.

23. That said, the tribunal does consider that the premium was excessive for the year 2018/19. The Applicant may have contributed to that outcome by quoting higher rebuilding costs than were necessary, but the Respondent is meant to sign the proposal form and has a key role in liaising with the RSA. It would be usual for the "broker" to obtain the quote before placing the insurance so that the customer can decide whether to accept the offer or make enquiries as to the reason for the amount. In this case, the premium was only confirmed several months later and the Respondent should have been more active in establishing why the premium was so large so that the Applicant could have requested an amendment earlier. For the avoidance of doubt, the tribunal considers that the current premium is within a range of reasonable costs, notwithstanding that it is higher than the quotations provided by the Applicant.

Payability under section 27A

24. Section 27A is similarly widely drafted and enables the tribunal to determine not only whether a service charge is payable but the person to whom it is payable.

25. It is common ground that there are no provisions in the lease requiring the lessee to pay the lessor the costs of the insurance. There are also no provisions in respect of fees or costs incurred as a result of a late payment. Mr Cohen admits in his statement that the lease is defective and that many others have been brought up to date. It is not clear what the variations are or whether they would affect insurance or other payments in respect of the property.

26. However, the lease does provide for payment by the lessee of the insurance premium, directly to the insurance company. The Applicant's evidence was that the RSA were unwilling to deal directly with her and although the Respondent denied it, the tribunal determines that the respondent was acting as agent to the RSA in arranging the insurance. In particular, the Respondent accepts that where payment is by cheque, they collect the premium on the insurers' behalf. In the circumstances the tribunal determines that the insurance is payable to the Respondent acting as agent for the insurer, at the cost of the current premium. There is no evidence that the late payment fee of £75 was levied by the insurer rather than the Respondent and therefore that is not payable.

Limitation of costs

27. No application was made by the Applicant for the limitation of the landlord's costs either as a service or administration charge. In any event, the lease does not contain any provisions enabling the landlord to charge legal costs.

Name: Judge Wayte **Date:** 19 August 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).

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 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 -
   (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.