FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/11UB//2019/0001**
Property	**:**	**32A Belgrave Road Aylesbury Bucks HP19 9HN**
Applicant	**:**	**Mrs Chris Gaskin (Tenant)**
Representative	**:**	**None**
Respondent	**:**	**Fairfield Rents Ltd. (Landlord)**
Representative	**:**	**Urbanpoint Property Management Ltd. (Managing Agent)**
Type of application	**:**	**Liability to pay and/ or the reasonableness of service charges, S.27A(1) Landlord & Tenant Act 1985 and administration charges para 5(a) Schedule 11 Commonhold and Leasehold Reform Act 2002.**
Tribunal	**:**	**Mr N. Martindale BSc MSc FRICS**
Date and venue of determination	**:**	**7 October 2019** **HMCTS Cambridge County Court 197 East Road Cambridge CB1 1BA**
Date of decision	**:**	**7 October 2019** **This decision replaces that of 23 August 2019, following Review**

DECISION

Decision

(1) The Tribunal determines that the 'proper sum' due from the tenant to the landlord for 'Public Liability Insurance' has already been determined by the County Court at Milton Keynes by a judgment dated 10 October 2018. The matter therefore falls out with the jurisdiction of this Tribunal.

(2) The Tribunal determines that the sum of £86 for the 'Insurance' is not reasonable and payable by the applicant.

(3) The Tribunal determines that the respondents costs incurred in defending this claim should not be recovered from the applicant, by an order under S.20C, L&TAct 1985.

(4) The Tribunal determines that the application fee of £100 is repaid to the applicant by the respondent.

Application and Directions

1. The Tribunals' Directions were issued by Deputy Regional Valuer Hardman, on 23 May 2019. They were necessarily an interpretation of the tenant's original 28 March 2019 *"Application for a determination as to liability to pay an administration charge or for the variation of a fixed administration charge."* There was however no administration charge. Instead it was directed that the dispute to be determined centred on two items of service charge by the tenant to the landlord. They also incorporated application for an order under S.20C of the Landlord and Tenant Act 1985 (1985 Act), and/or an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (2002 Act), to limit the landlords ability to recover costs through the lease. The relevant statutory provisions are set out in the Appendix to this decision.

2. The two service charge items initially disputed were: The amount and payability of £239 as an end of period balancing charge and the amount and: The amount and payability of the £381.36 for the service charge year 2017/2018 and a question of what this relates to. They arose under the applicant's lease of the Property, dated 26 July 1990 for 99 years.

3. The Tribunal note that lease appears to be between two parties only with no provision for a separate management company. The tenant, originally Martin and Deborah Massey, and since by assignment Mrs Gaskin; and originally the landlord Pledgelone Ltd., and later by transfer to the current landlord, Fairfield Rents Ltd. are the only two current parties. Although the respondent is named as Urbanpoint Property Management Ltd. this company is in fact the agent for the

landlord. The Tribunal's decision front sheet above clarifies these identities and roles, with Fairfield Rents Ltd. being the correct respondent.

4. The parties partially followed the Directions issued however it appeared that they could not agree a single bundle. Consequently the Tribunal received two overlapping bundles. The applicant failed to provide a full copy of the lease, but the Tribunal was able to use the copy from the respondent. The Directions were for a paper determination as originally requested by the applicant. Neither side subsequently asked for a hearing.

Background

5. 32A Belgrave Road appears to be a maisonette on one level forming one end of part of a small post war block of six maisonettes. Like many small blocks like this one there appears to be very few if any common parts between the Property and other maisonettes but rather six self contained units. 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.

6. The lease provisions setting out the liability to pay a service charge and the proportions of the whole cost due from this leaseholder were not in dispute: Neither were the lease provisions determining the extent of each demise or the ability of the landlord to provide services and seek cost recovery.

Applicants Case

7. The applicant set out their statement of case as at 19 July 2019. In it they give some background to their application, and significant developments since its issue and that of the Tribunal's Directions. On page 2 and at paragraph 9 the applicant helpfully confirms that: *"As a result of my First Tier Tribunal application is now only to dispute the two insurance policies I have been charged for."* And on page 3 at paragraph 2 *"Therefore I firmly dispute the two insurance charges of £168.86 and £86. There is absolutely no evidence that either of them exist or that the freeholder has paid an insurance company these amounts."* Both items are now identified by the applicant as ones falling within service charge ending 2019.

8. Scott Schedule: Applicant's item 1: *"Public Liability Insurance £168.86."* And comments *"No policy, no schedule, no receipt or proof lessor paid, I already have £5million pounds PLI with my buildings insurance in joint names with lessor."*

9. Scott Schedule: Applicant's item 2: *"No policy, no schedule, no proof freeholder paid. Landlords insurance is an indirect expense. I have insurance as per my lease I do not have a contract with a landlord I have never been charged landlord insurance before its not in my lease. I do not pay indirect expenses."*

10. The applicant also states in her original application by way of background that: *"I have been with them for 12 years and their accounts department have been nothing but trouble, constantly charging e for things I do not have to pay and refusing to give me breakdowns of large charges."*

Respondents Case

11. The Tribunal was provided with a copy of the respondent's responses on 12 June 2019 to Direction 1 and parts of Direction 3. The respondent declined to directly address the tenant's commentary on the two remaining items in the Scott Schedule, nor did they provide a written statement of their case, to the Tribunal.

12. At page 15 of the respondent's bundle is a copy of a letter from Clear Insurance Management. It appears to confirm that there was between 24 June 2018 and 23 June 2019 buildings cover (amount not specified). The *'Property Perils Covered'*, are for a wide range of risks including fire. Its in the sole name of Fairfield Rents Ltd from NIG insurance company. It is for the whole of No.32 Belgrave Road, *Buildings £135.71 IPT £16.29, Policy Charge £20*. A total premium of £172. The cover also appears to include *'Property Owners Liability'* to £10M. From the accompanying letter confirming payment had been received by the insurance agent, this information appears to have been provided to the managing agent as early as 6 November 2018.

13. At page 21 of the respondent's bundle is a copy of a letter from the managing agent to the applicant. It states two-thirds of the way down *"Landlord's Public Liability Insurance £172"*.

14. At page 25 of the respondent's bundle is a copy 'Service Charge Statement'. It identifies *"Insurance"* as £172.

15. At page 44 of the respondent's bundle is a full copy of *Premier Property Owners Policy Booklet Top Level Cover."* It does not explain which sections of cover have been taken out for this particular Property leaving the Tribunal to rely on the other statements above.

16. Subsequent to the original decision, the respondent brought to the attention of the Tribunal the existence and content of the judgment issued by Deputy District Judge Child in the County Court at Milton Keynes on 10 October 2018. It states at paragraph 3 *"That the*

Claimant is liable to pay the paper (proper ?) *share of the Landlord's public liability allowance but, from evidence of that policy having been provided top* (to ?) *date, shall not have to do so until 14 days the Production of copies of the policy, policy schedule and a receipted invoice showing that these charges had been incurred at the date charged by the tenant."*

Decision

17. The tenant makes clear in the statement of case their view of the lease and the insurance practice both parties have adopted here for years, without dispute, until this year by the landlord. At page 2: *"There are now only 2 amounts outstanding for payment, the £168.85… public liability insurance which Urbanpoint were unable to supply the correct documents for and the £86 for half of the buildings insurance that I do not have to pay for because my lease states I can provide my own building insurance which I have done and always do and I always send a copy of the renewal to Urbanpoint every February."*

18. The lease makes two provisions for insurance at the Property, one on the tenant, the other on the landlord.

19. Lease clause 4(iii) requires the tenant to *"Insure and keep insured the maisonette against loss or damage by fire in the full value thereof in the names of the Lessee and the Lessor with such insurance office as the Lessor shall reasonably approve and whenever required produce to the Lessor the Policy or Policies of such Insurance and the receipt for the last premium for the same and in event of the maisonette being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or re-instatement of the maisonette."*

20. There is thus no obligation on the applicant to take out insurance for any other maisonette, just for the Property, nor for risks other than fire, nor for public liability. There is then a gap in the lease for insurance arrangements. However in the Tribunal's experience most buildings insurance policies will include wider risks and public liability as standard clauses in the cover and the premium quoted. From the evidence available to it, this would appear to be the case here. The tenant has perhaps unknowingly closed this gap in the lease provisions, by taking out standard wider risk buildings and public liability insurance cover for the Property. Both the tenant and landlord have been able to inspect and check the cover arranged by the tenant and found it adequate for their needs until recently.

21. However for reasons not explained by the respondent in general correspondence this has now become insufficient. Despite invitations to do so the absence of respondent's commentary in the Scott Schedule

and/or provision of its own statement of case were both particularly unhelpful to the Tribunal.

22. In contrast to the obligation on the tenant to insure, there is no requirement on the respondent to take out insurance for any risks. There does remain provision in the lease for the applicant to *"Contribute and pay one half part of the costs expenses outgoings and matters mentioned in the Fourth Schedule."* Lease clause 4(ii) refers. At Sch 4, para 4; this provision appears to the Tribunal to include; *"The cost of insurance against third party risks in respect of the Lessor's property if such insurance shall be taken out by the Lessor."* (Both the landlords and tenants copies of this particular section of the lease are very poor photocopies making it hard to read).

23. Subsequent to the original decision of the Tribunal the respondent has brought to the attention of the Tribunal the content of the judgment which had been issued by the County Court in October 2018 regarding the costs of public liability insurance. That matter having been already decided by the Court, it falls out with the jurisdiction of the Tribunal to determine. Whether the prior conditions in that Court judgment for the defendant Urbanpoint Management, have been met before collection of the proper sum remains a matter between the parties.

24. For these reasons the Tribunal determines only, that the sum of £86 for the 'Insurance' is not reasonable and payable by the applicant.

Application fee and S.20 costs Orders

25. The Tribunal orders repayment to the applicant by the respondent of the Tribunal application fee of £100. Such matters should have been resolved well before this had to proceed to Tribunal, by clear and timely information and explanations of the insurance arrangements in the lease and in practice: They were not.

26. Although this lease does not appear to make provision, the Tribunal orders that the landlord is not to seek recover any of their costs arising from the proceedings in respect of this application to the Tribunal, for the same reasons as the preceding paragraph.

Name: N. Martindale Date: 7 October 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.

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.]

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 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
  (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
  (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate Tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).