FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BB/LSC/2019/0255**
Property	:	**First Floor Flat , 153B Grange Road, London E13 0HA**
Applicant	:	**Hafiz Al Sadat Choudhuri**
Representative	:	**Nowshad Choudhuri (Brother of Applicant)**
Respondents	:	**Chamber Estates Limited**
Representative	:	**Martin Paine (Circle Residential Management Ltd)**
Type of application	:	**Reasonableness of service charges**
Tribunal member(s)	:	**Judge Jim Shepherd** **Hugh Geddes**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**14 November 2019**

DECISION

Determination

The application is dismissed. The service charges for 2019 are reasonable. The applications under Landlord and Tenant Act 1985, s.20C and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 are dismissed.

The Application

1. The Applicant is the leaseholder at First Floor Flat , 153B Grange Road, London E130HA ("The premises") pursuant to a lease dated 10th September 2004. The Respondents are the freeholder. Circle Residential Management Ltd are the managing agents. Under the lease the Applicant is responsible for paying 50% of the *Mutual Charges* (Clause 5(b) of the lease). These are the landlord's costs including insurance.

2. The Applicant challenges the insurance costs for the current year. He seeks details of how the insurance was procured, whether there has been a competitive process, and explanations as to why terrorism insurance is being purchased and why property liability insurance is set at £15m when £2m is the standard amount for such a building. In short he is challenging the reasonableness of the insurance costs. He obtained what he considered to be comparable insurance quotes from a website called UKinsurance.net. He also obtained quotes from other brokers. He detailed correspondence between him and Circle Management Ltd. His view was that the premiums being charged to and passed on by the freeholder are higher than his "comparables".

3. In correspondence with the Tribunal dated 28th September 2019, Martin Paine of Circle Residential Management Ltd ("Circle") queried the amount of premium challenged by the Applicant (£2438.46). He said that the Applicant had in fact been charged and paid an insurance premium of £950.43 and a further amount following a revaluation of £266.80. This appeared to be correct. The Tribunal were no clearer after the hearing as to where the Applicant obtained the figure of £2488.46.

4. Mr Paine submitted a detailed witness statement / statement of case on behalf of the Respondent. In this document he provided a clear and comprehensive explanation of the procurement and background to the building insurance. He was equally clear if at the hearing before the Tribunal.

The hearing

5. The Applicant did not attend the hearing; he sent his brother to represent him. The Tribunal heard the matter nonetheless.

6. Nowshad Choudhuri said that his brother had tried to obtain a breakdown of the insurance. He said his brother wasn't seeking to claim money back but was of the view that the insurance could be procured for less. He said that his brother had obtained a quote from AXA a reputable company. The quote from AXA appeared to have reduced upon them having obtained further information. This was of some concern to the Tribunal. It could not be explained by Mr Choudhuri.

7. Mr Paine said that the insurance procured was not actually much more expensive than AXA. The total premium for the building was £1810.08. He said that the freeholder took no commission; Circle share a commission with the broker. He said that market testing had been carried out. He said Circle provided a claim handling facility which was not recharged to the leaseholder. He said terrorism insurance was standard nowadays. Further, he said the public liability cover did not affect premiums. He said that we did not know what information had been provided to the broker by the Applicant.

The law

8. Section 19 of the Landlord and Tenant Act 1985 states the following:

> 19.— Limitation of service charges: reasonableness.
>
> (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
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> (a) only to the extent that they are reasonably incurred, and
>
> (b) where they are incurred on the provision 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.

The test under s.19 (1) is one of reasonableness and not one of rationality : *Waaler v Hounslow LBC* [2017] EWCA Civ 45;[2017] 1 W.L.R. 2817.

9. The landlord is not obliged to buy the cheapest insurance; as long as it is obtained in the market at arms length, then the premiums are reasonably incurred: *Sinclair Gardens Investments (Kensington) Ltd v Avon Estates (London) Ltd* [2016] UKUT 317 (LC) where it was stated:

The appellant's complaint is that it might be possible to obtain a cheaper rate, but it is not for the landlord to establish (as has been expressly found in Berrycroft) that the insurance premium was the cheapest that could be found in order for the costs to have been reasonably incurred. The words "properly testing the market" used by Mr Francis in Forceclux in 2001 does not in any way detract from the decisions of the Court of Appeal in Berrycroft and Havenridge that the landlord must prove either that the rate is representative of the market rate, or that the contract was negotiated at arm's length and in the market place [at [30]]

Reasons for the decision

11. The Tribunal considered that this was a speculative application without any real substance. Mr Paine gave a clear explanation in his witness statement and in person as to how the insurance was procured. There was no cogent challenge by the Applicant to any of the information provided by Mr Paine. Indeed it was at times unclear what the Applicant's complaint really was. It would clearly have helped if he had attended rather than sending his brother.

12. The insurance premiums charged by the Respondents seemed reasonable to the Tribunal.

13. The Tribunal considers that the case was not reasonably brought by the Applicant and therefore it dismisses the applications under Landlord and Tenant Act 1985, s.20C and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

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).

Judge Shepherd

14 November 2019