



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

Case references	:	LON/00AP/LSC/2019/0308
Property	:	70b Grand Parade, Green Lanes N4 1DU
Applicant	:	James McGowan
Respondent	:	Millennium Accommodation Limited
Present at hearing	:	Mr McGowan, Mr Davies (Counsel for the Respondent)
Type of application	:	Service Charges
Tribunal Judge	:	Martyński
Date of Hearing	:	20 March 2020
Date of decision	:	26 March 2020

DECISION

Decision summary

1. Insurance premiums for insurance of the building beyond the common parts are not payable.
2. Charges levied under the guise of 'costs and expenses' in connection with the insurance are not payable.
3. The Tribunal does not have jurisdiction to deal with the claim for £680 paid by the Applicant in respect of building repairs.

4. The Respondent is to pay to the Applicant the fees that the Applicant has paid to the Tribunal in connection with this application within 28 days of the date this decision was sent to the parties.

The property and the lease

5. The Applicant is the long leaseholder of a (second floor) flat in a four-storey terraced property consisting of a ground floor commercial office with three upper residential flats on the first, second and third floors.
6. The Applicant's original lease is dated 13 June 1986 and was initially for a period of 99 years from 25 March 1984. A new lease on the same terms was granted on 3 December 2018 for 189 years from 25 March 1986.
7. Clause 4 of the lease sets out the covenants made by the Leaseholder and sub-clause (ii) is in the following terms:-

Contribute and pay on demand one quarter of the costs and expenses incurred by the Lessors in carrying out the work mentioned in Clause 5(c) hereof and in lighting the hall stairs and landings and in insuring the part of the building not demised by the Lease of the flat and of the first floor flat and third floor flat

8. The Leaseholder then has the obligation of insuring the flat under clause 4.(x). By clause 5.(F) of the lease, the Landlord is obliged to; "keep insured the parts of the building not demised by the Leases of the flat and of the first floor flat and third floor flat..."

The application

9. In his application, Mr McGowan sought to challenge the following items;
 - a. The costs of the insurance that the Respondent had taken out on the entirety of the building
 - b. The Administration Charge made by the Respondent of 25% of the insurance premiums for the building
 - c. Payments of £1788.84 made to the Respondent over recent years
 - d. The sum of £680 being the Respondent's share of the costs of building works paid by Mr McGowan

Hearing

10. At the final hearing on 26 March 2020, Mr McGowan represented himself and the Respondent was represented by Counsel, Mr Davies.
11. On behalf of the Respondent, Counsel admitted that Mr McGowan had paid the sum of £1788.84 to the Respondent and that this should be accounted for.

The parties' submissions and my decisions

Insuring the building

12. There was no dispute that, under the terms of the lease, the Landlord is responsible for the insurance of the common parts only and that the individual Leaseholders are responsible for insuring their own flats.
13. The Respondent alleged that there was an agreement between the parties to the arrangement and payment of insurance premiums for the whole building to be undertaken by the Respondent. Mr McGowan denied any such arrangement.
14. It appears to me on the statements made by the parties and on the documents available that Mr McGowan has simply paid the insurance premiums demanded by the Respondent over the years. It was not until in or about 2018, when Mr McGowan started the process to extend his lease, that it became clear to him that the Landlord was only obliged to insure the common parts. I do not consider therefore that he can be taken to have 'agreed' the insurance premiums that relate to parts of the building not comprising the common parts.
15. It is inevitable therefore that I make the decision that the insurance premiums charged by the Respondent for insurance over and above the obligation in the lease to insure the common parts are not payable. As discussed in the hearing, if the Applicant wishes to enforce re-payment of the sums that he has paid, he will have to take proceedings in the County Court and may well face difficulties in convincing the court to make an order in his favour given that he has enjoyed the benefits of this insurance over the years.
16. My finding will be of more use to the parties going forwards. Should the Respondent seek to recover payments of insurance premiums over and above those for the common parts, they will not be payable by Mr McGowan.

Administration Charges

17. As to the 25% Administration Charge levied by the Respondent on the insurance premiums, Counsel sought to justify this by reliance upon the terms of clause 4.(ii) of the lease (which I have set out above).
18. It is clear that, if the landlord has no obligation to insure the flats, he cannot charge an Administration Charge in respect of that insurance.
19. As to any Administration Charges that may relate to insurance of common parts, the first problem for the Respondent is that it produced no evidence at all of having incurred any expenses ancillary to the insuring of the building.

20. Further, I do not consider that the Respondent would be entitled to charge for its time in arranging the insurance. The covenant at clause 4.(ii) is for the payment of ‘*costs and expenses incurred*’ - so the Respondent has to show the incurrence of money before it can recover those sums.
21. As with the issue of the insurance premiums, the Respondent alleged that there was agreement between the parties on the charging of the Administration Fee. The evidence on this issue is clear. Mr McGowan has since at least 2011 disputed the Administration Fee. There is no evidence of agreement.

The claim for £680

22. The Tribunal does not have any jurisdiction to deal with this matter. This is not a Service or Administration Charge levied by the Respondent. It is a claim for money paid directly by Mr McGowan in carrying out repairs on the building. Accordingly, if he wants to pursue this matter, he will have to go to the County Court.

Costs and fees

Tribunal fees

23. Mr McGowan has been mostly successful in this application, and it is clear that, had he not made this application, the Respondent would not have agreed the matters in dispute. Therefore, I consider that the Respondent should pay to Mr McGowan the fees that he has had to pay to the Tribunal to pursue this application. That sum should be paid within 28 days of this decision being sent to the parties.

Costs

24. Mr McGowan asked for an order to be made that the Respondent pay his costs (other than the Tribunal fees discussed above) on the grounds that the Respondent had behaved unreasonably in these proceedings.
25. Whilst I have been critical of the Respondent’s initial response to this application (in seeking to take technical points on the correct identity of the Respondent), I do not consider that the Respondent’s behaviour overall would warrant the making of a costs order. I bear in mind that some of the Applicant’s application has not been successful.

Deputy Regional Tribunal Judge Martyński
26 March 2020

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).