FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Watford, by way of a remote telephone hearing: A:BTMMREMOTE

Tribunal reference	**:**	**CAM/26UG/LIS/2019/0030**
Court claim number	**:**	**E42YM917**
Property	**:**	**165A High Street, London Colney, St. Albans, Herts AL2 1RP**
Applicant/Claimant	**:**	**Assethold Limited**
Representative	**:**	**Scott Cohen Solicitors**
Respondent/Defendant	**:**	**Janet Holt**
Representative	**:**	**Robert Ostler (Ms Holt's partner)**
Tribunal members	**:**	**Judge Ruth Wayte & Judge David Wyatt**
In the county court	**:**	**Judge Ruth Wayte**
Date of decision	**:**	**30 June 2020**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be:

(a) If an application is made for permission to appeal within the 28-day time limit set out below 2 days after the decision on that application is sent to the parties, or;

(b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties.

Covid-19 pandemic: description of hearing

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in an electronic bundle of 234 pages and the skeleton argument, cost schedule and interest calculation filed by the applicant, the contents of which we have noted.

Summary of the decisions made by the Tribunal

1. The following sums are payable by Ms Holt to Assethold Limited by [a date to be confirmed following hand down]:

   (i) Service charges: £336 (£176 due);

   (ii) Administration charges before issue of proceedings: £300 (plus £540 once a valid demand has been made);

Summary of the decisions made by the Court

2. The following sums are payable by Ms Holt to Assethold Limited by [a date to be confirmed following hand down]:

   (iii) Legal costs in the County Court: £2,354;

   (iv) Interest at 4% from the date of issue to the date of judgment: £32.60 as at 30 June 2020.

The proceedings

3. Proceedings were originally issued against the respondent on 18 September 2018 in the County Court Money Claims Centre with claim number E42YM917. The respondent filed a Defence dated 11 October 2018. By an order dated 17 December 2018 the case was allocated to the small claims track and listed for hearing on 7 February 2019. The applicant filed and served a witness statement dated 23 January 2019. The hearing went ahead at Watford County Court before District Judge Chesterfield who decided to transfer the case to this tribunal.

4. There was some delay in receiving the County Court file, which eventually arrived at the tribunal's office on 25 October 2019. Directions were issued on 14 November 2019, with the hearing originally listed for 30 April 2019. That hearing was cancelled due to the coronavirus pandemic and the matter relisted for a remote telephone hearing on 9 June 2020.

The hearing

5. The applicant freeholder, Assethold Limited was represented by Richard Granby of counsel, instructed by Scott Cohen solicitors. Their witness, Ronni Gurvits is employed by Eagerstates Limited, the managing agents. The respondent leaseholder, Janet Edna Holt, was represented by her partner Robert Ostler. At the start of the hearing, it transpired that the respondent had been unable to open the electronic hearing bundle sent by Scott Cohen. Mr Ostler had paper copies of the key documentation in the case; had received the costs schedule and interest calculation sent by the applicant before the hearing and was able to open an email of the updated skeleton argument prepared by Mr Granby. He confirmed that he was happy to proceed on that basis.

The background

6. The subject property is one of five flats in a Victorian conversion of two properties: 165 and 167 High Street, St Albans.

7. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.

8. The respondent holds a long lease of the subject property, which requires the landlord to provide services and the lessee to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. The sums claimed by the Applicant were as follows:
   (i) A service charge for insurance of £539.41 (less £160 paid by the respondent);
   (ii) Administration fees claimed under the lease of £720;
   (iii) Legal costs of £1,320 to the date of issue;
   (iv) Costs from the filing of the defence of £10,010;
   (v) Interest from the date of issue to the date of the hearing of £321.30.

10. The tribunal's jurisdiction to determine the respondent's liability to pay the insurance costs falls under section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**") i.e. whether they are payable under the lease and reasonable in amount. The administration fees and costs prior to issue were claimed from the respondent as an administration charge and therefore the tribunal's jurisdiction falls under Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

County court issues

11. After the proceedings were sent to the tribunal offices to determine the above issues, the case management directions given on 14 November 2019 directed that, to seek to save time, costs and resources, the Judge at the substantive hearing would deal with all of the issues in the claim, performing separately the role of Tribunal Judge and then the role of Judge of the County Court (District Judge). No party objected to this. This part of the claim involves the the post-issue legal costs and interest. Accordingly, Judge Wayte presided over both parts of the hearing, sitting with Judge Wyatt for the matters before the Tribunal and for simplicity sitting alone, as a Judge of the County Court (at District Judge level) for the matters before the County Court.

Insurance costs

12. The applicant purchased the freehold of the property in March 2018. On 17 April 2018 an insurance renewal notice was sent by Eagerstates to the respondent requesting a contribution of £539.41, a fifth share of £2,697.03; being the premium of £2,295.24, a broker's fee of £50 and agent's fees of £351.79. Having considered a copy of the insurance policy, the respondent replied on 14 May 2018. She pointed out that in the last 4 years her contribution for insurance had on average been less than £150 and bearing in mind there had been no significant change in relation to the risk or value of the property, she felt that the cost was unreasonable. She sent a cheque for £160 which she considered should be more than adequate and concluded: "*If you still feel you can justify your demand for £539.41 then I welcome the legal action you refer to in your correspondence dated 4 May 2019*".

13. This was an unfortunate decision on her part to say the least, as the costs generated by the dispute subsequently spiralled out of all proportion to the initial charge. The respondent now understands that the better course of action would have been to pay the full amount under protest and apply to this tribunal for a determination under section 27A of the 1985 Act as to whether the service charge was payable under the lease and reasonable in amount. This would have avoided all of the subsequent administration and legal costs now claimed under the lease and dealt with below.

14. Eagerstates replied on 17 May 2018 to say that they "*have had a quick look at the previous policy and can find some obvious differences between the policies*". In particular, they said that the previous landlord's insurance policy was for a homeowner renting out their own property and would have been much cheaper, as well as being unsuitable in terms of the failure to properly spell out the risks of freeholder insurance. The respondent's cheque was accepted in part

payment of the account, meaning that the respondent had not paid £379.41 of the sums demanded as at that date.

15. In his witness statement prepared for the County Court proceedings, Mr Gurvits relied on the terms of the lease to support the claim. The leaseholder's obligation to reimburse insurance costs is set out in clause 4(16) as follows:

> "*To pay to the Lessor a proportionate part of the basic premium (before any loading resulting from the use of the remainder of the Building) the Lessor may expend in effecting or maintaining the insurance of the Building against loss of damage by the insured risks…*"

The insured risks had been amended by a Deed of Variation dated 18 February 1988 to provide for a comprehensive list including terrorism "*and such other risks as the Lessor may from time to time and in its absolute discretion think fit*". The Lessor's covenant to keep the Building insured in clause 5(a) was expressed as being "*subject to contribution and payment by the Lessee as hereinbefore provided*".

16. Mr Gurvits explained in his statement that the Building had been insured as part of the applicant's block policy with AXA for £1,200,000 (with a declared building value of £800,000). It was subsequently explained in a statement of case filed in the tribunal that the policy covers approximately 450 of the applicant's properties and that the premium is not affected by claims from other properties. The premium is calculated at a base rate of 0.25% of the sum insured plus IPT. If the property has a poor claims history there may be an excess on top of this sum. This property had a good claims history, and therefore following this evidence the premium should have been £2,000 (0.25% x £800,000) plus 12% IPT of £240, but was actually slightly higher at £2,295.24.

17. As to market testing of the block policy, Mr Gurvits relied on an email from the applicant's insurance broker Sam Kruskal, which stated that the policy was reviewed in January every year. His email was dated 9 January 2019 and confirmed that he was "*just in the process of reviewing the book and have approached 15 insurers for terms*". No further details of that exercise were provided but the email concluded that "*When renewing we look for the best Policy both in terms of terms of cover and premiums*".

18. In addition to the premium, the applicant claimed £50 for the broker's market testing fee and £351.79 for Eagerstates. The work covered by the agent's fee was described in Mr Gurvits' statement as liaising with the broker, reviewing the policy and handling the billing. The statement of case described these fees as necessary to effect and maintain the

insurance and therefore claimed they were due under the lease and reasonable in amount.

19. The defence filed in the County Court drew attention to the possible over-insurance of the property; the renewal notice had stated the sum insured was £519,400 whereas the policy documents were for £1,200,000. At that stage the respondent had also obtained two quotes from AXA for landlord's buildings insurance, one based on £519,400 and the other for the higher amount. Those quotes were for £697.17 and £1,210.98 respectively. In response to the applicant's statement of case which challenged whether the quotes were "like for like", the respondent produced a further 7 quotes all based on a sum insured of £600,000. These produced a range from £624.93 to £1,994.29, including another quote from AXA for £1,087.05. The respondent stated that she would be happy to pay an amount between the lowest quote and the AXA quote, divided by 5.

20. After Mr Gurvits had confirmed his statement at the hearing, Mr Ostler asked him about the insured value in the renewal notice of £519,400. Mr Gurvits responded that must have been "*a typo*", although he subsequently advised the tribunal that following a revaluation exercise the insured value had in fact been reduced to £600,000, resulting in a lower premium for 2020/21 of £1,680 with Arch Insurance. In any event he pointed out that the AXA premium for 2018/19 was calculated on the declared building value of £800,000 rather than the full insured value of £1,200,000. He also confirmed that Eagerstates' fees of £351.79 were based on 15% of the premium, although in order to reach that amount the broker's fee needs to be added to the premium.

21. All of the alternative quotes produced by the respondent were rejected by the applicant on the basis that they were for different types of policy and covered fewer risks, for example terrorism cover was not included, despite it being one of the insured risks described in the Deed of Variation. Mr Ostler replied that the respondent had tried her best given the limitation of the online system available. The latest quotes also appeared to be for landlord's insurance of rented property, which Mr Ostler considered may well be more expensive given the obvious incentive to long leaseholders in ensuring their property was properly maintained.

The tribunal's decision

22. When considering any service charge, the first port of call is of course the lease. In this case, the lease describes the leaseholder's contribution as "*a proportionate part of the basic premium*". There was no dispute that one fifth was the correct proportion but did the wording of the lease include any liability on the part of the leaseholder to pay the broker's and agent's fee in addition? Mr Granby accepted that there was no provision in the lease which enabled a management

charge to be levied, or any other provision in the lease expressly covering those costs. He sought to argue by reference to the lack of such provisions in the landlord's repairing and decorating covenants in the lease that because a corporate landlord needs someone to arrange performance of their obligations clause 5(16) should be read as if "*obtaining*" was inserted in that clause, or as if "*basic*" meant the same thing as the words "*(before any loading resulting from the use of the remainder of the Building)".* The applicant's solicitors appeared in their statement of case to rely on the phrase "*effecting or maintaining*" which appears later in the clause (see paragraph 15 above).

23. The tribunal does not consider that either the words "*effecting or maintaining*" which are in the clause or the addition of "*obtaining*", which would be new, can materially detract from the plain and obvious meaning of the words "*a proportionate part of the basic premium*". Nor do we accept that the word "*basic*" is to be ignored and treated as if it means only the premium before any loading relating to the use of remainder of the Building - but even if it were ignored, the wording still refers only to a proportionate part of the premium. In those circumstances the tribunal determines that neither the broker's fee nor the agent's fee is payable under this lease. As Mr Granby admitted, what is missing from this clause is the usual reference to a liability to pay all the costs of effecting the insurance, which would have covered the additional amounts claimed, subject to any finding as to reasonableness.

24. Turning to the insurance contribution itself, the tribunal understands why the respondent was shocked at the increase but the law is clear that a freeholder has a degree of latitude as to the choice of policy (assuming the lease does not dictate to the contrary) and that a block policy may well lead to an increased premium which is not in itself unreasonable. The comparison is to be made with the insurance required by the terms of the lease as varied by the deed of variation to specify a wide range of insured risks; the comparables produced by the respondent are not "like-for-like", although the tribunal accepts that the respondent has done her best. That said, the evidence from Mr Gurvits has confirmed that the insured value was overstated and that the current cost of insurance is calculated on a declared value for the building of £600,000. Mr Gurvits had previously confirmed that £800,000 was used as the value insured by the previous landlord (although it is not clear whether this was comparing like with like, given that the previous policy refers to a building sum insured, not a declared value) and Mr Granby maintained that it was reasonable to use this figure for the renewal given that Assethold had only very recently purchased the freehold. The tribunal disagrees, it is the landlord's responsibility to properly assess the insured value and bearing in mind that they dismissed the previous policy as wholly inappropriate, it is strange they chose to rely on the insured value.

25. In the circumstances a reasonable cost of insurance must be based on the correct value of £600,000. Applying the formula under the AXA policy of 0.25% plus IPT at 12%, would produce a premium of £1,680 (£1,500 + 180), which is the current premium charged. The tribunal appreciates that this is still a huge increase but without truly like-for-like comparators or some evidence that the formula is unreasonably high for a block policy the tribunal determines that this is a reasonable amount. This would make the respondent's contribution for 2018/19 £336, leaving an amount of £176 outstanding once the £160 paid back in May 2018 is deducted.

Administration charges under the lease: agent's fees and pre-issue legal costs

26. This claim is based on clause 4(7) of the lease by which the lessee covenants to:

> "*Pay all costs charges and expenses (including Solicitors' Counsels' and Surveyors' and other professional costs and fees) incurred by the Lessor in or in contemplation of any proceedings relating to the Flat under Sections 146 and 147 of the Law of Property Act 1925 or the preparation and service of Notices thereunder (whether or not any right of re-entry to forfeiture has been waived by the Lessor or a Notice served under the said Section 146 is complied with by the Lessee or the Lessee has been relieved under the provisions of the said Act and notwithstanding forfeiture is avoided otherwise than by relief granted by the court) and to keep the Lessor fully and effectually indemnified against all costs expenses claims and demands whatsoever in respect of the said proceedings*."

27. This is a comprehensive clause and includes an indemnity provision, which Mr Granby said the tribunal ought to observe. That clause only operates where the lessee is in breach of the lease, that is in the event that monies were outstanding in respect of the insurance. As stated in paragraph 25, this tribunal has determined that £176 was outstanding and therefore the clause does operate, although as stated in paragraph 10 above, administration charges are still limited to what is validly demanded and reasonable pursuant to Schedule 11 of the 2002 Act. There must also be an intention to forfeit the lease. Mr Granby pointed to the correspondence which makes this clear and Mr Ostler did not seek to argue to the contrary.

28. Eagerstates maintained that it charges the applicant £120 for the first arrears letter, £360 for instructions to the solicitors and an additional £240 for assistance with any proceedings, all these figures including VAT.

29. The legal costs are two fixed fees of £500 plus VAT: one for the pre-action protocol letter and the other for issuing any proceedings. Both Eagerstates and Scott Cohen's costs were claimed from the respondent as an administration charge by letter dated 12 June 2018, together with the court and Land Registry fees of £120. That letter was accompanied by a letter before claim from Scott Cohen dated 13 June 2018 which stated that £715 could be disregarded if payment was made within the next 30 days i.e. the second set of legal costs and the court fee but curiously not the administration charges associated with proceedings or the Land Registry fee. Scott Cohen subsequently wrote on 23 July 2018 to confirm that in the absence of a response to the letter before claim, the client had instructed them to commence proceedings without further notice after 14 days. As stated above, proceedings were actually issued on 18 September 2018.

30. Mr Ostler suggested that the charges were "*a little bit over the top*", bearing in mind that both Eagerstates and Scott Cohen were probably working from template letters and documents. He also felt that Assethold were a little quick to go to their solicitors, given the respondent's query as to the cover, which has some justification bearing in mind the finding as to over-insurance.

The tribunal's decision

31. In terms of the Eagerstates charges, the notice of proceedings charge is dated 16 May 2020 and a letter of that date is in the bundle at page 126. It is extremely short and does not merit any additional charge, which in any event is referred to in that letter as the "*initial costs for arranging the file for the solicitors*" rather than the cost of the letter. The next letter in date order appears to be a demand dated 12 June 2018 which lists all of the charges sought, including the additional admin charges of £360 and £240 referred to above. That last fee of £240, for assistance with any proceedings, is considered in paragraph 34 below. Confusingly, a chaser letter was sent on 3 July 2018 which referred to an additional charge of £100 plus VAT in the event that the file was "*escalated*". Taking all of the above into account, the tribunal determines that a reasonable charge for Eagerstates for copying their file and referral of the claim to Scott Cohen is £120, including VAT.

32. Turning to Scott Cohen's fees for taking instructions and the letter before claim, the tribunal accepts that a landlord may choose to involve solicitors in chasing arrears but considers that a Grade A solicitor at an hourly rate of £250 plus VAT in 2018 is simply not a reasonable choice for such a modest case. The tribunal also agrees with the respondent that the work clearly involved the use of templates and in the circumstances, considers one hour is reasonable for the letter before claim at a rate of £150 plus VAT, equivalent to the rate (with an uplift for inflation) for a trainee solicitor or paralegal out of London. This

amounts to £180 in respect of taking instructions and the letter before claim dated 13 June 2018.

33. It seems to the tribunal that the applicant cannot rely on the demand dated 12 June 2018 for the costs yet to be incurred in relation to the proceedings. Part 1 of Schedule 11 to the 2002 Act contains no equivalent provision to section 27A of the 1985 Act as to costs to be incurred and it is clear from the correspondence and the timeline that as at 12 June 2018 none of the costs in connection with the proceedings had been incurred. In the circumstances none of those charges are payable under paragraph 4(3) of Part 1 to Schedule 11 of the 2002 Act. This finding relates to the agent's fees of £240, the second set of solicitors' costs of £600, the court fee and the Land Registry fee, making a total of £960.

34. If we are wrong about that and in any event should a further demand be served by the applicant, the tribunal agrees with the respondent that the charges are excessive, given the simple nature of the dispute. The particulars of claim are set out in simple terms on the claim form itself and are unlikely to have taken more than an hour, given that the firm was already fully aware of the dispute. For the same reasons as stated above, this is also work that was suitable for a trainee solicitor rather than a Grade A solicitor. In the circumstances the tribunal considers that a reasonable fee for issuing the claim would be £180, plus the issue and Land Registry fee, a total of £300. The tribunal would also be inclined to allow the agents charge of £240 in respect of the statement and other work in support of the claim, given its decision as to the costs of representation in the tribunal, as set out below.

35. In the circumstances, the tribunal determines that the total amount payable in respect of the administration charge for the agent's fees and legal costs claimed from the respondent on 12 June 2018 is £300 (£120 agent's fee plus £180 legal costs), with a further £540 in the event that a valid demand is subsequently served on the respondent in respect of the costs of issue.

Legal costs from issue

36. The applicant's solicitors submitted a schedule of costs, which was considered by Judge Wayte sitting in her capacity as a judge of the county court. Mr Granby again relied upon the contractual right to recover costs from the lessee in clause 4(7) of the lease and set out in full at paragraph 26 of this decision.

37. In my capacity as a judge of the county court, I am satisfied that the landlord is entitled to an order for the recovery of its costs against the lessee, as a matter of contractual entitlement, as the landlord has shown an intention to pursue forfeiture proceedings as set out in paragraph 27 above. I turn now to the amount of the landlord's costs,

noting that the assessment is on an indemnity basis under Rule 44 of the Civil Procedure Rules because of the contractual entitlement. In practical terms this means that costs are not limited to those which are proportionate in amount and it will give the benefit of the doubt to the applicant in terms of whether costs are reasonably incurred or reasonable in amount. That said, *Avon Ground Rents v Child* [2018] UKUT 0204 (LC) confirms that even under a contractual entitlement the Court will not allow costs which it determines have been unreasonably incurred or which are unreasonable in amount. The court will have regard to all the circumstances, including the matters set out in rule 44.4(3) of the Civil Procedure Rules.

38. Mr Granby admitted that the total claim for costs of £10,010 was large for a debt in the sum originally claimed by the applicant, this was a result of the application effectively being prepared for hearing on three occasions: the hearing in the Watford County Court, the hearing originally arranged in the tribunal and the actual hearing on 9 June 2020. Neither the applicant nor the respondent had requested a transfer, it appeared that the District Judge transferred the case of his own volition. At that stage the costs were in the region of £4,000. Mr Ostler said that he and the respondent were shocked at the size of the costs and they were surprised to see a barrister attend both hearings, bearing in mind a solicitor had already been instructed. Mr Ostler described the instruction of solicitor and counsel as "*a sledgehammer to crack a walnut*".

The Court's decision

39. The *Avon Ground Rents* case referred to above is also authority that at least before the tribunal legal representation is not essential or even necessary (see paragraph 65). Mr Granby relied on the contractual entitlement under the lease and the indemnity provision within it as support for his proposition that it was not open to the court to deny payment for legal representation, relying on *Chaplair Ltd v Kumari* [2015] EWCA Civ 798. He also argued that although this was essentially a straightforward matter, it was straightforward for specialists. However, given the small amount outstanding, following *Avon Ground Rents* (which at paragraph 43 took into consideration, and is consistent with, the decision of the Court of Appeal in *Chaplair*), Mr Ostler's observations and the concession by Mr Granby (subject to his argument above) that this case was straightforward from the applicant's perspective, I consider that once the matter had been transferred to the tribunal from the County Court it was wholly unnecessary for the applicant to continue to instruct solicitors (and counsel) and therefore it is unreasonable for the respondent to pay those costs. This was a service/administration charge dispute which is commonly dealt with by managing agents on behalf of their client and Mr Gurvits was clearly able to do so. In any event, as Mr Granby stated when making the points summarised in paragraph 38 above, the case had been fully prepared for hearing on 7 February 2019 and therefore

the applicant had the benefit of that work which could simply have been reused before the tribunal with only modest updating and specific further information, as contemplated by the directions dated 14 November 2019. Again, *Avon Ground Rents* provides the authority in paragraph 65 that a conclusion that the costs of representation were unreasonable "*would be compatible with a clause in a lease providing for the recovery of costs on an indemnity basis*". Costs before the tribunal are therefore assessed at zero for legal representation. Mr Gurvits has already been allowed his fee for assisting with the litigation, subject to submitting a valid demand for those administration costs, as set out in the determinations made by the tribunal.

40. In the circumstances, I will assess and award the costs in the County Court only, using the Schedule of Costs prepared for the hearing on 7 February 2019. The claim is for £4,209 in total. As before, the solicitors' work was carried out by a grade A fee-earner, but at a slightly higher rate of £275 per hour plus VAT. For the same reasons as expressed in paragraph 32 above, I consider that the use of a Grade A fee earner in such a straight forward and modest matter allocated to the small claims track is unreasonable. I bear in mind Mr Granby's point that porperty litigation can be a specialist area, but this matter would be straightforward for a very junior specialist. In the circumstances I allow an hourly rate of £150 plus VAT. I consider that the time taken for preparation and attendance is reasonable in the context of a more junior fee earner and therefore make no reduction from the schedule of costs which in terms of time amounts to 8.8 hours. As to Mr Granby's attendance at court, given that the hearing was listed for 2 hours before a District Judge I consider his fee of £800 excessive and reduce it to £500. As with the solicitor, this case would have been suitable for a pupil or junior barrister at a lower rate than that agreed for Mr Granby. The court fees are payable but not twice, the issue fee was included in the claim for administration fees above and therefore it is only the trial fee of £170 which should be included in the post defence County Court costs.

41. Even if greater costs would otherwise have been reasonably incurred or reasonable in amount, I would have made the same reductions in view of the conduct of the parties and the other circumstances. Even taking into account the position taken by the respondent before issue of proceedings, the applicant issued the County Court proceedings for the principal sum of £2,311.27 (plus interest and costs of the proceedings) and the respondent has succeeded in reducing that sum by more than 60%, to £476 plus a further £540 if a valid demand is now served.

42. In total, therefore, the overall legal costs allowed are:

Solicitors' costs	£ 1,320
Counsel's fees	500

Disbursements	170
VAT on solicitors' and counsel's fees	364
Grand total	**£ 2,354**

Application under paragraph 5A of Schedule 11 to the 2002 Act

43. The respondent had not made an application under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for an order limiting her liability in respect of the litigation costs, despite an invitation to do so in the directions dated 14 November 2019. In accordance with the usual practice of the tribunal and the overriding objective in Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, Mr Ostler was allowed to make the application at the hearing. The tribunal gave the applicant an opportunity to make written representations in addition to Mr Granby's representations within 7 days of the hearing and if so advised. No further representations were received.

44. Mr Ostler said that he felt the ability to defend the case depended on the depth of their pocket. If the full costs claimed were allowed they would have to borrow money from the family as they only had about £3,000 in savings at best. He felt that the respondent had been overcharged and put at a huge disadvantage by the applicant employing both solicitors and counsel. Mr Granby admitted that the costs were far in excess of the contested sum in respect of the insurance but said that his clients should recover their costs under the terms of the lease if they had been successful in proving a breach i.e. that there was a debt following payment of the £160 by the respondent.

The tribunal's decision

45. This application covers the litigation costs in both the County Court and the tribunal. Sitting first as a tribunal, we determine that it is just and equitable that the respondent's liability in respect of any costs before the tribunal be extinguished. This is based on the decision that only £176 and pre-issue administration charges in respect of the recovery of that £176 were outstanding, the fact that the applicant had over-insured the building and claimed additional costs to which they were not entitled and the unrequested transfer to the tribunal by the County Court. The tribunal understands that Mr Granby argued against such a transfer but that does not mean that it is inevitable that the respondent should bear the cost. The tribunal also considers that it was wholly unnecessary for the applicant to retain legal representation before the tribunal. For this reason, the County Court Judge has already disallowed that part of the costs in any event but for the avoidance of doubt, if they had not done so, the tribunal would also have extinguished any liability for litigation costs in respect of the proceedings before it under paragraph 5A.

The Court's decision (Judge Wayte)

46. The County Court costs have already been assessed as detailed above. For the same reasons as those given for my assessment, if I had not reduced the sums claimed to those so assessed, I would have made an order under paragraph 5A reducing the relevant costs to achieve the same effect. I determine that given the other decisions made and the unfortunate decision described in paragraph 12 above, it is just and equitable not to limit the respondent's liability to pay those costs further.

Rate of interest

47. Finally, the landlord sought interest on the sum claimed in the proceedings at the statutory rate of 8%. Mr Granby accepted that he was usually granted 4% at best, which I consider to be a reasonable amount in an era of longstanding low interest rates. Given the decisions above, interest is due on £476 from 18 September 2018 to 30 June 2020 at a daily rate of £0.05 and amounts to £32.60.

48. No claim was made to interest on costs.

Conclusion

49. By way of conclusion, the following awards are made in favour of the landlord:

    (i) Service charges: £336 (balance due from the respondent £176);

    (ii) Administration charges (including pre-issue legal costs): £300 (plus an additional £540 if a valid demand is made);

    (iii) Legal costs in the County Court: £2,354;

    (iv) Legal costs in the First-tier Tribunal: £zero;

    (v) Interest: £32.60.

50. The respondent therefore bears a significant liability that will use up her savings. This claim was in relation to the insurance contribution for 2018/19 and no further rent or service charges have been demanded since then as the applicant wished to preserve its ability to rely on the forfeiture clause under the lease. The tribunal was advised that the insurance contribution for 2019/20 was also based on the higher valuation and the current premium is the same as the amount found reasonable based on the evidence at the hearing. It may be that the applicant will agree to reduce the amount for the insurance for 2019/20 (and other costs claimed) in the light of this decision but that it a matter for them.

51. As stated above, if the respondent wishes to challenge any future service charges she should pay them under protest and then make an application to the tribunal for a determination as to reasonableness. In those circumstances the applicant would be unable to rely on the forfeiture clause and costs are rarely payable in tribunal proceedings, absent unreasonable conduct.

52. In order to bring the matter to a conclusion I have drawn a form of judgment that will be submitted with these reasons to the County Court sitting at Watford, to be entered in the court's records. All payments are to be made by [date to be confirmed following hand down].

Name: Judge Ruth Wayte

Date: 30 June 2020

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.

6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.