FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BA/LSC/2020/0262**
Property	**:**	**10, Kimble Road, London SW19 2AS.**
Applicant	**:**	**Mr M Salts**
Representative	**:**	
Respondent	**:**	**Van Dare Properties Ltd**
Representative	**:**	**Commonhold and Leasehold Expert Ltd**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge S Brilliant** **Ms M Krisko FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**08 December 2020**

DECISION

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Decisions of the tribunal

(1) The Tribunal determines that the Applicant has failed to comply with his obligation under clause 2(21) of the 1985 lease to effect insurance in the joint names of himself and the Respondent.

(2) The Tribunal is unable to determine on the information before it whether the Respondent, having chosen to obtain its own insurance in lieu, has obtained such insurance in the joint names of himself and the Applicant as is required under clause 2(21) of the 1985 lease.

(3) The Tribunal directs the Respondent to produce the policy it has taken out within 28 days so the Tribunal can make a final determination.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to the amount of (a) service charges in respect of insurance, and (b) administration charges, payable by the Applicant in respect of the service charge year 2019.

2. This matter was decided on paper with written representations from both parties. Directions were given on 14 October 2020. The Applicant's notice of application stands as his statement of case.

3. The Respondent was directed to provide a statement of case setting out the relevant service charge provisions in the lease and any legal submissions in support of the service charges claimed. The Respondent duly provided a succinct statement of case.

The background

4. The property which is the subject of this application is a maisonette in a terraced block of four maisonettes ("the property").

5. The Applicant has been the registered proprietor of a long lease of the property since 30 April 2019.

6. He was granted an extended lease of property on 18 April 2019 by the Respondent ("the 2019 lease"). Accordingly, this would appear to be the first year that the question of insurance has arisen as far as the Applicant is concerned.

7. The 2019 lease was an extension of the original lease dated 15 July 1985 ("the 1985 lease") as varied by a deed dated 10 March 1988 ("the 1988 deed").

8. The 1988 deed made no material alteration to the 1985 lease as it affects this case, so can be ignored.

9. The 2019 lease is in all relevant respects identical to the 1985 lease, so it is that to which we must now turn.

10. In clause 2(21) of the 1985 lease, the Applicant covenanted as follows (emphasis supplied):

to insure and keep insured at all times throughout the term of the Lease ***in the joint names of the Lessor and the Lessee****… all buildings and works now or at any time hereafter built on the demised land from loss or damage… and to make all payments necessary for the above purposes within seven days after the same shall…become due… PROVIDED ALWAYS that if the Lessee shall at any time fail to keep the demised premises insured as aforesaid the Lessor may do all things necessary to effect or maintain* ***such insurance*** *and any monies expended by the Lessor* ***for that purpose*** *shall be payable by the Lessee on demand and recoverable forthwith as if the same were rent in arrear hereunder*

11. There is no covenant by the Respondent to insure. So the scheme is that the Applicant is under a duty to insure, and in default the Respondent can if it wishes step into his shoes and obtain the insurance. It is under no obligation to do so (but for obvious commercial reasons will always want to).

12. The Applicant has produced a policy schedule for insurance provided by Ageas Insurance Ltd in respect of the property. The total premium payable is £206.33. This policy runs from 29 September 2019 until 28 September 2020.

13. The Applicant is the sole policyholder. The Respondent is neither a joint policyholder nor named on the policy.

14. In his notice of application, the Applicant says that what is in dispute is an insurance premium of £291.53. Presumably, this is the premium which was paid by the Respondent in taking out its own insurance, it having taken the view that the policy obtained by the Applicant did not meet the requirements of the 1985 lease. We have not been provided with a copy of the Respondent's policy.

The issues

15. Directions were given on 14 October 2020. The relevant part of the directions is as follows:

This application raises a single issue. The Applicant challenges an insurance bill in the sum of £291.53 for the service charge year 2019. He contends that the liability to insure … the building falls on the tenant. He has provided a copy of his lease. He seems to rely on Clause 2(21). He has carried out his obligation

under the lease and has arranged insurance, particulars of which he has provided with his application. He therefore disputes the sum demanded by his landlord.

16. In fact, there are logically two issues:

(a) Has the Applicant discharged his obligation to obtain a policy in accordance with the lease? If yes, the Respondent's claim for the cost of insurance as a service charge fails. If no, we come to the second issue.

(b) Is the Respondent's claim for the cost of insurance as a service charge payable under the 1985 lease?

Insurance policies in leases: the law

17. Tanfield Service Charges and Management 4th edition paragraph 6.03 states (emphasis provided):

*The lease may dictate in whose name the insurance is placed. If the lease requires the insurance to be placed **in the joint names** of the landlord and tenant and the tenant's name is omitted, this will constitute a breach of the insurance obligation. Where the landlord is obliged to insure in joint names and/or note the tenant's interest on the policy, but fails so to do, there may be arguments as to whether or not insurance has been placed in accordance with the terms of lease and, in turn, whether sums are payable (as insurance rent or service charge) in respect thereof.*

*In Green v 180 Archway Road Management Co Ltd [2014] UKUT 245 (LC), the Upper Tribunal determined that because the landlord had failed to insure "in accordance with" its obligation (**in joint names**) the cost was not recoverable. The decision may be considered harsh insofar as the insurance in place may have provided the same level of protection as it would if it had been in joint names and further that the tenant's interest was deemed to be noted on the schedule.*

*However, in Atherton v MB Freeholds Ltd [2017] UKUT 497 (LC), a similar conclusion was reached in respect of tenants' covenant to insure their flats "**in the joint names** of the Lessor and the Lessee". The Upper Tribunal found this was not satisfied by simply noting the landlord's interest on the tenants' insurance policies. The Tribunal took into account evidence from insurers that noting a name on a policy was very different to insuring in joint names. Ultimately it is a matter of construction of the lease provisions as to whether the landlord (or the tenant) has adequately complied with its obligations to insure.*

Applying the law to the facts

18. It is clear beyond peradventure that the policy of insurance obtained by the Applicant did not satisfy the requirements of the 1985 lease. The policy was in the sole name of the Applicant. The Respondent is not mentioned at all in it.

19. Accordingly, the Respondent was entitled under the 1985 lease to obtain insurance itself and charge the premium to the Applicant.

20. The question then arises as to whether the Respondent has obtained a policy of insurance which satisfy the requirements of the 1985 lease.

21. It is clear from the *Atherton* decision that the policy obtained by the Respondent must satisfy the requirements of the lease.

22. In that case the proviso in the lease entitling the landlord to effect its own insurance was identical to the proviso in clause 2(21) in the 1985 lease.

23. Both provisos require the landlord, if electing to insure itself, to effect or maintain **such insurance**. In *Atherton* the policy taken out by the landlord was not a joint one, although the obligation of the tenant (as in this case) was to obtain a policy in joint names.

24. In a lengthy discussion of the issue, the Upper Tribunal held that the words **such insurance** meant that the policy taken out by the landlord had to be the same as a policy which the tenant should have taken out. In other words, the landlord had to insure the premises in joint names, just as the tenant should have done.

25. In *Atherton* the landlord had not taken out of policy in joint names, so that its claim to recover the cost through the service charge failed.

26. The Respondent's statement of case is notably terse. It makes no reference to the policy which it took out, and we have not been shown a copy of the policy.

27. The Respondent may have been led to be so coy because of the way in which the directions were formulated. In our view, it would be wrong for us to consider whether the Respondent had taken out a correct policy without giving the Respondent an opportunity to answer this point.

28. We therefore direct Respondent, if it so wishes, to provide a copy of its policy to the Tribunal and the Applicant within 28 days. We will then consider whether this policy complies with the Respondent's obligations under clause 2(21).

Name: Simon Brilliant **Date:** 08 December 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).