



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

**Case Reference** : **LON/00AK/LAC/2020/0011P**

**Property** : **14A and 10 Ferndale Road, Enfield,  
Middlesex EN3 6DH**

**Applicants** : **Harriet Ray (leaseholder of 14A)  
and Paul Marks (leaseholder of 10)**

**Representative** : **In person**

**Respondent** : **Chancery Lane Investments  
Limited**

**Representative** : **Moreland Estate Property  
Management Ltd**

**Type of Application** : **Liability to pay and/or  
reasonableness of service charges  
and administration charges**

**Tribunal Member** : **Judge P Korn**

**Date of Decision** : **22<sup>nd</sup> December 2020**

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**DECISION**

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**Description of hearing**

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicants confirmed that they would be content with a paper determination, the Respondent did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which I have been referred are in a series of electronic bundles, the contents of which I have noted. The decisions made are described immediately below under the heading “Decisions of the tribunal”.

## **Decisions of the tribunal**

- (A) None of the items challenged by the Applicants are payable. This means that the building insurance premium, the insurance valuation survey charge and the late payment fee are not payable at all.
- (B) The tribunal hereby makes an order pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent is not entitled to recover from the Applicants under their leases any costs that it has incurred in connection with these proceedings.
- (C) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal orders the Respondent to reimburse to the Applicants the application fee of £100.

## **Introduction**

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) as to the payability of certain service charges and a determination pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“**the 2002 Act**”) as to the payability of certain administration charges.
2. The Applicants are both leaseholders of flats in a purpose-built block comprising 8 units. The Respondent is their landlord and Moreland Estate Property Management Ltd is the Respondent’s managing agent. Copies of the Applicants’ respective leases (together “**the Leases**”) have been provided.
3. The items challenged by the Applicants are as follows:-
  - Building insurance premium for 2020 of £323.25 per flat
  - Insurance valuation survey charge of £120.00 per flat
  - Late payment fee of £45.00 per flat.

## **Applicants’ case**

4. The Applicants state that they have been invoiced for a share of the cost of the building insurance for the 2020 year. The Applicants submit that the Respondent is not entitled to charge building insurance premiums, as responsibility for building insurance under each of the Leases rests with the individual leaseholder.

5. The Applicants also state that they have each been charged for the cost of an insurance valuation survey but that there is no provision for the cost to be recovered under the terms of the Leases. In the alternative they also argue that the charge is excessive as the cost to the Respondent was only £150 and yet it levied a charge of £120 per flat on all 8 flats.
6. In relation to the late payment fees totalling £45.00, the Applicants state or at least imply that according to their understanding these fees all relate to the late payment of charges which they deny are payable at all.

### **Respondent's case**

7. The Respondent has not made any submissions, nor seemingly has it engaged with this process at all.

### **Tribunal's analysis**

#### **Building insurance premiums**

8. Under section 27A of the 1985 Act an application may be made to this tribunal for a determination as to whether a service charge is payable, and under section 18 of the 1985 Act "service charge" is defined to include "*an amount payable by a tenant of a dwelling as part of or in addition to the rent ... which is payable, directly or indirectly, for services ... or insurance*". Under section 19(1) of the 1985 Act, service charge costs are payable "*only to the extent that they are reasonably incurred*".
9. Under clause 2(8) of each of the Leases the lessee (i.e. the relevant Applicant) covenants "*to keep the demised premises insured at all times ... in the joint names of the Lessor and the Lessee ... PROVIDED ALWAYS that if the Lessee shall at any time fail to keep the premises insured as aforesaid the Lessor may do all things necessary to effect or maintain such insurance and any moneys expended by it for that purpose shall be repayable by the Lessee on demand ...*".
10. The Applicants are therefore under an obligation to insure their flats, and it is only if they fail to do so that the Respondent can step in and take out insurance and charge the cost to the Applicants. There is no evidence before us that the Respondent has been forced to step in to insure the flats as a result of any failure on the part of one or both of the Applicants to insure them. If that had been the case it would have been a simple matter for the Respondent to raise this objection to the application and to provide some basic evidence such as copy correspondence in support of that objection. In the absence of any submissions on the part of the Respondent my factual finding is that

the Respondent did not levy this charge as a result of being forced to step in to insure these flats as a result of the Applicants having failed to do so.

11. The Leases contain no other obligation on the part of the landlord (i.e. the Respondent) to insure the whole or any part of the building, nor any other right to recover the cost of doing so. It should be noted, though, that the Applicants' own obligations are limited to insuring the "demised premises", i.e. their own respective flats. This gives rise to the question as to whether there is adequate provision for the building to be insured as a whole. There may be common parts which are not covered by any individual flat's policy and/or there may be parts of the structure (such as the roof or the foundations) which are not covered by any individual flat's policy. It is in all parties' interests to make sure that the building as a whole is adequately insured and – if it is not – to consider and (if necessary) take legal advice as to what to do about it.
12. However, on the question of whether the building insurance premiums of £323.25 per flat are payable, the answer is that they are not payable at all as – on the facts of this case – the Respondent has no right under the Leases to charge these sums.

#### Insurance valuation survey charges

13. As with the building insurance premiums, these charges would constitute service charges rather than administration charges as, on the basis of the information before me, they fit the definition of service charge referred to above.
14. Clause 2(4) of each of the Leases contains what might be termed an informal service charge provision. It obliges the lessee "*to pay and contribute towards a fair proportion of the expenses of maintaining and repairing all paths ways sewers drains watercourses pipes cisterns gutters party walls and other matters used in common by the Lessee and the tenants of the said other maisonettes ...*".
15. The above clause is clearly not wide enough to cover the imposition of an insurance valuation survey charge and there are no other provisions in the Leases which could cover such a charge. The Respondent has made no submissions by way of explanation of the rationale behind this charge, and this may well simply be because the Respondent is unable to explain it.
16. Accordingly, these charges are not payable at all.

### Late payment fees

17. Under paragraph 1(1) of Schedule 11 to the 2002 Act, an “administration charge” includes “*an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable ... in respect of a failure by the tenant to make a payment by the due date ...*”. Under paragraph 5(1) of Schedule 11 to the 2002 Act, an application can be made to this tribunal for a determination as to whether an administration charge is payable.
18. The Applicants state that they have each been charged £45.00 by way of late payment fees and their understanding seems to be that all of the late payment fees relate to the late payment of building insurance premiums and/or insurance valuation survey charges. It was open to the Respondent to make a counter-submission by arguing that some or all of the late payment fees do not relate to these items, but the Respondent has chosen not to engage with this process. We therefore accept, in the absence of any challenge, that all of the late payment fees relate to these items.
19. The Leases do not contain any provision permitting the Respondent to levy late payment fees, but in any event it is not possible to charge a late payment fee in respect of a payment which itself is not lawfully due.
20. Accordingly, the late payment fees are not payable at all.

### Costs

21. The Applicants have applied for an order under paragraph 5A of Schedule 11 to the 2002 Act “*extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs*”. In other words, they have applied for an order that the Respondent is not entitled to recover from them direct under the Leases any costs that it has incurred in connection with these proceedings.
22. In this case, the Leases do not contain any provisions which would enable the Respondent to recover such costs, and in any event it is hard to see how the Respondent could have incurred any such costs having not engaged with the process. However, for the avoidance of doubt, as the Applicants have been successful on all matters and the Respondent has not engaged, I hereby make such order.
23. In addition, in the tribunal’s directions it is stated that one of the issues for determination is “*whether an order for reimbursement of application/ hearing fees should be made*”. The relevant legislative provision is paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which reads: “*The Tribunal*

*may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party ...”.*

24. There has been no hearing, and therefore no hearing fee incurred, but the Applicants have paid an application fee of £100.00. The Applicants have been successful on all matters and the Respondent has not engaged with this process at all, and therefore it is entirely appropriate in the circumstances to order the Respondent to reimburse to the Applicants the £100.00 application fee, which I hereby do.

**Name:** Judge P Korn

**Date:** 22<sup>nd</sup> December 2020

#### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.