



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

Case Reference	:	CHI/18UK/LSC/2020/0131
Property	:	3 & 6 Lenwood Country Club Lenwood Road Northam Bideford EX39 3PN
Applicant	:	Christine Ann Harris and Robert David Harris (6) Anthony Ready-Wearne (3)
Representative	:	Christine Harris
Respondent	:	Ground Rent Trading Limited
Representative	:	Paul Simon
Type of Application	:	Section 27 A Landlord and Tenant Act 1985 (The Act) (Service Charges)
Tribunal Members	:	Judge C A Rai Mr M Woodrow MRICS (Chartered Surveyor)
Date type and venue of Hearing	:	6 April 2021 Paper Determination without an oral hearing
Date of Decision	:	8 April 2021

DECISION

Summary of Decision

1. The Tribunal determined that the insurance contributions payable for the disputed years are as follows:
 - a. For the year 2016 – 2017 (for the period from 25 July 2016 until 24 January 2018 – Nil.
 - b. For the year 2019 – 2020 (for the period between 31 July 2019 until 24 January 2020) - Nil but with no credit due in respect of any part of an insurance contribution already paid for the period between 25 January 2019 until 24 January 2020.
2. The Tribunal determined that the insurance contribution payable on account for 2020/2021 is £150.
3. The reasons for the Decision are set out below.

Background

4. Lenwood Country Club is a woodland site consisting of at the year. The original clubhouse and tennis courts are which served the bungalows are now derelict. Additional chalets have been developed and it appears that these are let by the freeholder.
5. The leases of the original chalets are not all identical and t
6. Three previous decisions regarding service charges have been made by the First Tier Tribunal, one of which was in respect of an application by the Respondent which had been transferred to the Tribunal from the County Court. The other two decisions were made in respect of applications by leaseholders.
7. Mr and Mrs Harris are the owners of 6 Lenwood Country was dated 14 December 2020.
8. The Applicants collectively have applied for a determination in respect of their insurance contributions for 2019/2020 and in respect of their insurance contributions demanded on account for 2020/2021. Mr and Mrs Harris have separately asked for determination with regard to their insurance contribution for 2016/2017.

9. The Application also referred to other matters but the Tribunal directed the parties that it could only consider that part of the application which related to insurance contributions due from the leaseholders (See paragraph 11 below).
10. Regional Surveyor Mr D Banfield issued directions dated 10 February 2021 following a telephone Case Management Hearing (CMH) held on the same day.
11. In paragraph 7 of those directions Mr Banfield stated that the leases of 3 and 6 Lenwood Park do not permit recovery of any sums other than the fixed ground rent, “such sum as the Landlord may from time to time pay for the insurance of the demised premises” and the greater of £100 and that sum uplifted annually by the Retail Prices Index from 30 September 1986. The parties who attended the CMH did not dispute his interpretation of the Lease. Copies of the leases of both 3 and 6 Lenwood are in the hearing bundle and state that the annual service charges payable are fixed and subject to an annual review by the application of a formula linked to the retail price index.
12. Mr Banfield directed the Parties that the Tribunal has no jurisdiction to make a determination in relation to any part of the application which related to service charges, but that it could consider the application in relation to the insurance costs. He reminded the parties that some of those costs had previously been determined by the Tribunal and although not bound by those decisions, it would be slow to depart from them if the circumstances were the same or similar.
13. The parties agreed to a determination on the papers without an oral hearing. They also agreed the content of the Directions regarding further disclosure of their respective statements of case and further documents upon which each wished to rely.
14. The Applicant submitted a statement of truth to the Respondent dated 16 February 2021. Nothing further was submitted by the Respondent.
15. Judge Dobson declined an application from the Applicant for an extension of time because of the Respondents failure to supply a statement of its case by 4 March 2021. He said it was unnecessary because the Respondent could choose not to comply, as it had done. He said that the Tribunal would consider the case as presented and could, if necessary, choose to preclude late submissions from the Respondent.
16. Subsequently the Applicant provided the Tribunal with the hearing bundle comprising 68 pages. That bundle contains the only documents seen by the Tribunal. The page numbers referred to in this decision are to the numbered pages in that bundle.
17. The Applicant’s statement of case is a letter dated 16 February 2021 addressed to Mr Simon, the Respondent’s Representative, [Pages 52 and 53] signed by Mrs Harris.

18. No submissions were received from the Respondent.

Applicants' submissions and reasons for the Tribunal's Decision

Insurance 2016/2017 (Mr and Mrs Harris only)

19. Mr and Mrs Harris stated that they paid insurance for 2016 in September 2016 and again in January 2017. They have disclosed a demand from the Respondent's managing agent, Moreland Estate dated 17 August 2017 [Page 59]. That demand refers to three insurance payments referred to under a subheading "Arrears", so outstanding on that date being:
- a. £127.36 for the period between 25.07.2015 and 24.07.2016 (insurance).
 - b. £154.86 for the period between 30.09.2016 and 29.09.2017 (Buildings insurance & Public Liability Cover).
 - c. £152.52 for the period between 25.01.2017 and 24.01.2018 (Property & Public Liability Insurance 2017 – 2018).
20. With another sum (not disputed), the total sum demanded was £522.87 which amount was paid by Mr and Mrs Harris on or about 31 August 2017 as evidenced on a Nationwide statement [Page 60].
21. The Tribunal Decision dated 12 May 2020 (the May 20 Decision) referred to the sums demanded by the Respondent from other leaseholders at Lenwood Country Club for insurance for the years ending 29 September 2017 and the "on account" demand for insurance for the year ending 29 September 2020.
22. In the May 20 Decision, the Tribunal concluded that a payment of £154.86 demanded (in August 2017) for the period 30.09.2016–29.09.2017 had been demanded prematurely as the existing insurance policy remained in force until it expired in January 2017 and **for that reason** determined the entire contribution was not recoverable [Page 55, (paragraph 138 of the May 20 Decision)].
23. In their statement of claim Mrs Harris stated that "it appears that we have paid twice for the year 2016/2017" and asked for the sum of £154.86 to be recredited to their service charge account. They received no response from the Respondent or its managing agent. The overpayment was in respect of the period between 25 January 2017 and 29 September 2017. The Tribunal decision did not apportion this payment in the May 20 Decision. Whilst it stated that "there is some information and documentation in the Bundle relating to the insurance policy for each of the disputed years" (Paragraph 123 of the May 20 Decision), it stated that "the extracted details for every year save for that commencing in July 2019 include cover for loss of rent, employers' liability, property owners' liability and commercial legal expenses". It had to make a decision using the incomplete information disclosed.
24. The Tribunal has not been provided with a copy of the insurance schedule for this period. However, based on its earlier decision and the information provided by the Applicant, it is satisfied that the

Respondent demanded insurance payments twice for the period between 25 January 2017 and 29 September 2017 and that the Applicant is entitled to a refund from the Respondent for the overpayment for this period. As Mr Banfield explained during the CMH, the recovery of any excess sums paid must be through the County Court [Page 44 paragraph 14 of the directions].

Insurance 2019/2020

25. The Applicants have provided the Tribunal with copies of two demands dated 23 February 2021 the first addressed to Mr and Mrs Harris [Page 57] and the second addressed to Mr Ready-Wearne [Page 58].
26. Those demands refer to the insurance payments due and to an insurance credit being:-
 - a. £210.82 for period 25.01.2019 until 24.01.2020 (Property Insurance).
 - b. £104.19 for period 31.07.2019 until 24.01.2020 (Property & Public Liability Insurance 2018 - 2019 CREDIT).
 - c. £294.76 for period 31.07.2019 until 30.07.2020 (Property & Public Liability Insurance 2018 – 2019 EXTEN).
 - d. £241.63 for period 31.07.2020 until 30.07.2021 (Property Insurance).
27. The demand addressed to Mr and Mrs Harris does not refer to the £210.82, presumably because they had already paid this sum.
28. The Applicants dispute their liability to pay £294.76 for the period between 31.07.2019 and 30.07.2020. Their reason is that they had already paid for insurance until January 2020 (which presumably was the £210.82), although Mrs Harris refers to £210 in her statement.
29. The Applicants have stated that the insurance was cancelled “apparently due to the state of the roads on the site” [Page 52]. They also stated that “the insurance is to cover the demised premises being destroyed by fire and other insured risk” and “can only be demanded once in any period of twelve months as specifically mentioned in our leases”. Furthermore, they considered that the sum of £294.76 for period (commencing) on 31.07.2019 is unreasonable.
30. The Applicants have not provided the Tribunal with any information about the content of the insurance policy for this period or the risks covered. When the Tribunal made the May 20 Decision, it did so after examining evidence disclosed by the respondent that it had cancelled its existing insurance policy in July 2019 and replaced it with another more expensive policy which is what prompted the credit of £104.19 and the additional demand for £294.76.
31. Whilst it was not satisfied by the explanation provided by the Respondent, it determined that the Respondent was entitled to demand (and retain) £210.82 for the period commencing 25.01.2019. In the May 20 Decision, the Tribunal determined that the sum of £294.76 was not recoverable.

32. In reliance on the May 20 Decision, the Tribunal determines that the Applicants are not liable to pay the £294.76 demanded by the Respondent for the period from 31.07.2019 until 30.07.2020 and that the Applicants are not entitled to receive the credit of £104.19.

Insurance payment on account 2020/2021

33. The Applicant has claimed that the sum of £241.63 demanded for insurance for this period is unreasonable. That sum is shown on the two demands which the Tribunal referred to in paragraph 0 above.
34. In the bundle the Applicant has disclosed a copy of a “renewal invitation” in respect of insurance from Incepta Risk Management dated 10 July 2020 [Page 14]. That appears to have been provided by the Respondent to Mr and Mrs Harris on 16 February 2021 [Page 61 email from Laurence Freilich of Moreland Estate]. Although the email from the Respondent refers to an insurance policy and a receipt for payment, neither have been disclosed to the Tribunal. The Tribunal does not know if the “renewal” invitation is what was described by Mr Freilich as “a copy of the current policy” in that email and provided by him with it.
35. Relying on the limited documentation supplied to it, all the Tribunal has concluded that if the invitation for a renewal was accepted, insurance cover was in respect of all risks of physical loss or damage and in respect of 66 holiday chalets and is for the sums of £7,555,665 for buildings/tenant improvements, £27,851 for landlords Machinery and Plant Fixtures and Fittings and all Other Contents and £292,500 for Loss of Rental Income – Period 36 months.
36. The Applicants have suggested that the amount of its insurance premium is unreasonable because it has purchased its own buildings insurance cover for £95.55. Mrs Harris has provided information about a buildings insurance policy with Admiral. She has provided a copy of a notice of cover which she says has been made in accordance with the Commonhold and Leasehold Reform Act 2002 (CLARA). She included the policy number and details of the risks covered [Page 63]. She has also provided a copy of an Insurance Product Information Document [Pages 64-65] and evidence of payment by debit card [Page 66] on 3 August 2020. The buildings are insured for £125,000.
37. In the application and in its statement of claim, the Applicant has asked for clarification if they “can purchase their own insurance under section 164 of CLARA stating that “the site is no longer a holiday complex. The club has been burnt down and many of the Landlords private Tenants (sic) reside all year 12 months occupancy” [Page 13].
38. Section 164 of CLARA applies where a long lease of a house requires the tenant to insure the house with an insurer nominated or approved by the landlord. That section is not relevant to the Applicants. In the Lease the lessor covenants with the Lessee “To insure and keep insured the Demised Premises against loss or damage by fire and such other

risks (if any) as the Lessor shall from time to time think fit in some Insurance Office of repute in the sum of Fourteen thousand Five hundred pounds (£14,500.00) or full reinstatement value whichever is the greater or such greater sum as the Lessor shall think fit and whenever required (but not more frequently than once every twelve months) produce to the Lessee the Policies of such insurance the receipt for the last payment..." [Page 28, clause 5(8)].

39. The Respondent may recover "on demand by way of further or additional rent such sum as the Landlord may from time to time pay for the insurance of the demised premises in accordance with his covenant hereinafter contained" [Page 23 clause 1].
40. In clause 18 of the Act, the definition of service charge includes an amount payable by a tenant as part of or in addition to rent which is payable for insurance. The Tribunal therefore has jurisdiction under sections 27 and 19 of the Act to consider if the amount which the Landlord is charging the Tenant for insurance is reasonable. However, the Applicant has not provided this Tribunal with any relevant information about the Landlord's insurance policy or any evidence that the policy is in force for 2020/2021.
41. The Tribunal has however concluded that if the terms of the policy held by the Landlord mirror the information which has been disclosed to the Tribunal, it is seeking to recover payment for covering risks which it is not entitled to recharge to the Applicants. The Incepta Renewal Information refers both to loss of rent cover and cover for plant and machinery.
42. This Tribunal is aware that there is a private drainage system which serves the entire site and which contains plant and machinery and therefore is minded to accept that it would be appropriate for the Landlord to include insurance cover for that system. However, it is also appropriate for the Landlord to notify the Applicants if the current policy does provide such cover.
43. What is unacceptable is for the policy to include loss of rent cover as this is not a cost that can be passed on to the leaseholders as the Tribunal determined in the May 2020 Decision (Paragraphs 125 and 126 of the May 2020 Decision).
44. On the basis that the Applicant has provided evidence that it can obtain insurance cover for £125,000 for a premium of £95.55 and taking into account that some adjustment should be made to take account of the insurance of the private drainage system, the Tribunal determines that a reasonable amount payable towards the insurance premium for 2020/2021 by each leaseholder is £150.

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.