



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

**Case References** : **LON/00BH/LSC/2021/0041**

**HMCTS Code (paper, video, audio)** : **P - Paper**

**Property** : **First Floor Flat, 69 Pevensey Road, London E7 0AR**

**Applicant** : **Lionel Curtis**

**Representative** : **Not Represented**

**Respondent** : **G & O Estates**

**Representative** : **Urbanpoint Property Management Ltd.**

**Type of Applications** : **For the determination of the reasonableness of and the liability to pay service charges**

**Tribunal Member** : **Tribunal Judge S. J.Walker**

**Date of Decision** : **18 May 2021**

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**DECISION**

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**Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £316.92 charged by the Respondent in respect of insurance costs in the 2020-2021 service charge year is reasonable and payable by the Applicant.

- (2) The application for an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge is refused.
- (3) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so that none of the landlord's litigation costs can be recovered as an administration fee is refused.

### **Reasons**

#### **The Application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether or not a service charge of £316.92 is payable in the 2020 – 2021 service charge year in respect of insurance of the property.
2. The Applicant also seeks an order for the limitation of the landlord's ability to recover their costs as a service charge under section 20C of the 1985 Act and an order to reduce or extinguish their liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the 2002 Act.
3. The application was made on 2 February 2021 and it identifies one single item of dispute, namely a charge of £316.92 in respect of insurance.
4. An oral case management hearing took place on 25 March 2021 by telephone conferencing which both the Applicant and the Respondent's representative attended. At that hearing the parties consented to the determination of the application without a hearing. The Tribunal considered rules 3 and 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and is satisfied that it is appropriate to determine the application on the papers alone.
5. Directions were issued on 25 March 2021 which, among other things, provided for the preparation of a bundle of documents. This direction was complied with and the Tribunal had before it an indexed bundle consisting of 42 pages. Some of the pages are numbered in handwriting at the top of the page and page references in what follows are to those numbers.
6. The relevant legal provisions are set out in the Appendix to this decision.

#### **The Background**

7. The property is a self-contained two-bedroom flat on the first floor of a converted house which contains one other flat.
8. Although no evidence of title was produced by either party there was no dispute that the freehold of the property is owned by the Respondent and that

the Applicant holds the property on a long lease made between London Property Developments Ltd. and Nicola Jean Watson for a term of 99 years from 24 June 1986.

### **The Lease**

9. The lease is at the end of the bundle. By clause 3(2) of the lease the landlord covenanted as follows;  
*“To insure and keep insured the demised premises in a sum not less than the full reinstatement value thereof as determined by the Lessor’s Surveyor (including Architect’s and Surveyor’s fees and loss of two years’ ground rent) against loss or damage by fire explosion or aircraft and other risks (including subsidence and heave) normally included in a Houseowner’s Comprehensive Policy with the Commercial Union Assurance Group or with such other insurance office or underwriters of repute to be specified by the Lessor and to make all payments necessary to maintain such insurance within seven days after the same shall be payable .....* “
10. The lease also provides for the payment by way of further rent by the tenant;  
*“a yearly sum equal to the sum or sums which the Lessor shall from time to time pay by way of premium (including any increased premium payable by reason of any act or mission of the Lessee) for keeping the demised premises insured against loss or damage by fire explosion or aircraft and other insured risks under the Lessor’s covenant in that behalf hereinafter contained... “*

### **Matters in Dispute**

11. The only matter in dispute between the parties is a charge of £316.92 made by the Respondent in respect of insurance cover. The evidence shows that up until 27 August 2020 the Respondent was not insuring the property. They then arranged for the property to be insured for the period from 27 August 2020 to 9 April 2021. The cost of this was £633.84 of which the Applicant’s half share was £316.92. An insurance valuation was undertaken which determined the value of the building as £355,973 (page 14).
12. The certificate of insurance is at page 15. It shows that the sum insured is £480,564 with a declared value of £355,973. The property owner’s liability is covered up to £10,000,000 and the sum insured for rent/alternative accommodation is £96,113. The perils covered are fire, explosion, lightning, aircraft, earthquake, riot, civil commotion, malicious persons, storm, flood, escape of water, impact, sprinkler leakage, theft, glass, subsidence, heave and landslip, terrorism (all risks) and any other cause not excluded. The premium is broken down as follows. £440.82 for the buildings, £93.85 for terrorism, £64.16 for tax and a policy charge of £35. The excesses are £100 for all claims save £500 for escape of water and £1,000 for subsidence, heave and landslip. The insurance valuation is at page 16.
13. The Applicant has not challenged the Respondent’s valuation of the building. Nor has he challenged the scope of the policy obtained by the Respondent.

Nowhere in his application or statement of case does he argue that the cover obtained goes beyond what is permitted by the lease or what is reasonable.

14. The Applicant's case was that the sum charged was excessive and he relied on two alternative quotations. The first is from Barclays and is at pages 19 to 23. Annual payment figures of £191.79 and £117.28 are given. However, no indication is given as to the information provided when obtaining the quote and no details are given of the extent of the cover provided. In the view of the Tribunal insufficient information is provided about this quotation in order for it to be regarded as a reliable comparator.
15. The other quotation relied on by the Applicant is from Aviva and is at pages 25 and 26. The declared value of the building and the sum insured are the same as in the policy obtained by the landlord. However, the cover is not the same. In particular there is no cover for terrorism. The annual premium for the building is £462.76, the total sum being £518.30. The excess for general claims is £250 as opposed to £100 in the case of the landlord's policy, though the excesses for water escape and fire, aircraft etc. are less than in the case of the landlord's policy. The cover is for a year, not 32 weeks as in the case of the landlord's policy. The Tribunal also notes that in the details of the property provided by the Applicant he has described the property as being purpose built, whereas the property is, in fact, a converted house. This is a relevant factor when considering insurance cover. Although the policy cover is similar, it is certainly not an exact comparison for that provided by the Respondent.
16. The principal difference between the Respondent's policy and the quote obtained by the Applicant is the provision of cover for risks arising from terrorism. In the Tribunal's view such cover is within the terms of the lease as it amounts to another risk which is normally included in a houseowner's comprehensive policy – certainly for properties in London. In any event, it was not the Applicant's case that terrorism cover should not be included.
17. There was also no suggestion by the Applicant that the Respondent had obtained the insurance cover other than in the open market at arm's length.
18. In considering the question of insurance costs the Tribunal has regard to the guidance given by the Upper Tribunal in the case of Sinclair Gardens Investments (Kensington) Ltd. -v- Avon Estates (London) Ltd. [2016] UKUT 317. This confirmed that a landlord is not obliged to "shop around" for insurance. The Upper Tribunal stated the position as follows;  
*"So long as the insurance is obtained in the market and at arm's length then the premium is reasonably incurred. There is nothing to suggest that the insurance was arranged otherwise than in the normal course of business, and the appellant did not seek to adduce evidence to support such a contention. The appellant's complaint is that it might be possible to obtain a cheaper rate, but it is not for the landlord to establish ..... that the insurance premium was the cheapest that could be found in order for the costs to have been reasonably incurred."*

19. In this case the Tribunal is satisfied that the insurance was obtained by the Respondent in the market and at arm's length. It is also satisfied that the extent of the cover is within the scope allowed for by the lease and is reasonable. Whilst the Applicant can show that similar cover can be obtained more cheaply, that is beside the point. The question is whether or not it was reasonable for the Respondent to obtain this cover at this cost. The Tribunal is satisfied that it was. This is not a case where the difference in the cost between the landlord's cover and the quotes obtained by the tenant is so great as to give rise to an indication that the higher costs are inherently unreasonable. Indeed, once allowance is made for an additional cost for terrorism cover there is little difference between the parties.
20. The only issue for the Tribunal is to determine whether the insurance charge is reasonable or not. In his statement of case the Applicant also raises issues about whether or not he should be re-imbursed for the costs of obtaining his own insurance. That is not something which falls within the jurisdiction of this Tribunal. The lease places an obligation on the landlord to insure and a right to recover the cost of that insurance.

**Applications under s.20C of the 1985 Act and Para 5A of Schedule 11 of the 2002 Act**

21. In his application the Applicant applied for an order under section 20C of the 1985 Act and for an order under para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
22. The test for whether orders should be made under these provisions is whether or not the making of such an order is just and equitable. The Tribunal bears in mind the history of the proceedings. It also has regard to the relative success achieved by the parties. In this case the Respondent has been entirely successful and there is nothing to suggest that they have acted in any way unreasonably in resisting the application. The Tribunal therefore concludes that it would be neither just nor equitable to make an order under either provision.

**Name:** Tribunal Judge  
S.J. Walker

**Date:** 18 May 2021

**ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and

- (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;  
and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

### **Section 27A**

- (1) An application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance

- with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]



### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
  - (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

### **Section 20ZA**

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements

in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

- (2) In section 20 and this section –
  - “qualifying works” means works on a building or any other premises, and
  - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
  - (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord
  - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
  - (b) to obtain estimates for proposed works or agreements,
  - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements
- (6) Regulations under section 20 or this section
  - (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

### **Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

### **Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate Tribunal for a determination whether an administration charge is payable and, if it is, as to—
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or
  - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

**Schedule 11, paragraph 5A**

- 5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.
  - (3)In this paragraph—
    - (a)“litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
    - (b)“the relevant court or Tribunal” means the court or Tribunal mentioned in the table in relation to those proceedings.