



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

Case reference : **LON/00AH/LSC/2022/0034**

**HMCTS code
(paper, video,
audio)** : **Face-to-face**

Property : **Flat 3, 23 Grange Road, Thornton
Heath, Surrey CR7 8SA**

Applicants : **Ondreji Duda and Katerina Dudova**

Representative : **Ms Marshall (lessee)**

Respondent : **Southern Land Securities Ltd**

Representative : **Mr Roberts of Together Property
Management**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge Tagliavini
Mr A Harris LLM FRICS FCI Arb**

**Venue & date of
hearing** : **10 Alfred Place, London WC1E 7LR
18 July 2022**

Date of decision : **22 July 2022**

DECISION

Decisions of the tribunal

- (1) The tribunal finds that all sums demanded from the Applicants by the Respondent for the service charge years 2021 and 2022, whether estimated or actual (insurance/terrorism cover) are reasonable and payable.
- (2) The tribunal makes 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.
- (3) No claim for legal costs or charges was made by the respondent and therefore no order is made under paragraph 5A of Schedule 11 of the Commonhold and Freehold Act 2002.

The application

1. The Applicants seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness of the service charges to be paid in respect of the years 2021 and 2022 and dispute the amount of £3,388.67. The Applicants also make an application under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The hearing

2. The Applicants did not attend the hearing and were represented by Ms Marshall a fellow lessee at 23 Grange Road* at the hearing and the Respondent was represented by Mr Roberts from the managing agents.

**Ms Marshall had believed she was also joined as an applicant. However, there had been no application made to the tribunal to be joined as a party and therefore Ms Marshall remained a representative of the Applicants.*

The background

3. The property which is the subject of this application is a two-bedroom flat on the first and second floors in a semi-detached house converted into three flats.
4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

5. The Applicants holds a long lease of the property dated 30 June 2016 granting a term of 125 years with effect from 1 January 2016, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge in every service charge year commencing 1st January. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

6. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The reasonableness of service charges for the years 2021 and 2022 relating to:
 - Insurance
 - Terrorism cover
 - Insurance Premium (2021 only)
 - Repairs (external/2021 and internal/2022)
 - Accountancy fees
 - Managing agents' fees
7. The tribunal noted that the disputed service charges, except for insurance/terrorism premiums, were estimated rather than the actual charges. Further, since 26 May 2022 as the leases had acquired the right to manage 23 Grange Road, no service charges were due for 2022 except for managing agent's fees and that sums had been re-credited to the lessees for 2021.
8. Consequently, the tribunal was able only to determine the reasonableness of estimated service charges for 2021/2022 and the actual insurance costs, the acquisition of the right to manage having superseded the Respondent's obligation to provide services.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Insurance/Insurance Premium (2021 & 2022) – the tribunal's decision

10. The tribunal finds all sums demanded in respect of the insurance premiums are reasonable and payable in accordance with paragraph 3.1 of the Fourth Schedule of the lease.

Reasons for the tribunal's decision

11. The tribunal accepts Mr Roberts explanation that the respondent acquired 23 Grange Road on 30 April 2021 and immediately acquired its own pro-rated insurance cover through its broker as part of a property portfolio, with cover on the same terms held by the previous freeholder although with a different insurer. This had the effect of creating ‘double recovery’ as insurance premiums having been demanded both by the previous and current freeholders.
12. The tribunal also accepted Mr Roberts’ explanation that the insurance costs appeared to have increased substantially, due to the former freeholder not passing on the full cost of the insurance premium to the leaseholders but for unknown reasons limited contributions to £75.00 per lessee.
13. Mr Roberts told the tribunal that insurance had been retendered in 2022 and the premium had in fact gone down.

Terrorism cover (2021 & 2022) – the tribunal’s decision

14. The tribunal finds the inclusion of terrorism cover is reasonable and in accordance with Schedule 6 of the lease and satisfies the definition of an ‘insured risk’ as per the Interpretation section of the lease.

Reasons for the tribunal’s decision

15. The tribunal accepts the words ‘fire and explosion’ are sufficiently wide to require the respondent to be required under the terms of the lease to acquire terrorism cover. Such cover is commonly provided by a specialist insurer as an addition to the main policy of insurance.

Repairs 2021 & 2022 (external and internal) – the tribunal’s decision

16. The tribunal finds all estimated costs for internal and external works of repair are reasonable and payable.

Reasons for the tribunal’s decision

17. The tribunal finds that the terms of the lease require the Respondent landlord to carry out repair to the exterior and common parts of 23 Grange Road. The tribunal finds that a prudent landlord commonly makes provision in the estimated service charge budget in respect of such costs and that in this instance, the costs claimed are reasonable.

Accountancy fees (2021 & 2022)

18. The tribunal finds the sums claimed are reasonable and payable.

Reasons for the tribunal's decision

18. The tribunal accepted Mr Roberts' explanation that an independent accountant was utilised for the preparation of service charge accounts and that the chosen accountancy firm has been a longstanding appointment of the Respondent. The tribunal does not accept the Applicants' assertion that these costs duplicated those of the managing agent or that the managing agent should be responsible for the preparation of service charge accounts.

Managing agent's fees 2021 & 2022 – the tribunal's decision

19. The tribunal finds these charges are reasonable and payable under the terms of the lease.

Reasons for the tribunal's decision

20. The tribunal accepts Mr Roberts' evidence that the fees charged by the previous freeholder's managing agents were higher than those currently charged. The tribunal finds that although a modest building it nevertheless requires management and the annual fee of £150 plus VAT per flat (pro-rated for 2022) is reasonable.

Application under s.20C

21. In the application form the Applicants applied for an order under section 20C of the 1985 Act. Taking into account the determinations above and having regard to the fact that the lessees have acquired the right to manage, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
22. As no claim for legal costs/ administration charges was made by the respondent and therefore no order is made under paragraph 5A of Schedule 11 of the Commonhold and Freehold Act 2002.

Name: Judge Tagliavini

Date: 22 July 2022

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).