



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

Case Reference : **MAN/00BN/LSC/2022/0080**

Property : **Flat 1 Tara Apartments, 12 St. Mary's Hall Road, Manchester M8 5DZ**

Applicant : **Jagtar Rai**

Respondent : **Claratom Limited**

Type of Application : **Landlord and Tenant Act 1985 ("1985 Act") – s 27A
Commonhold and Leasehold Reform Act 2002 ("2002 Act")– Sch 11 para 5A
1985 Act – s 20C**

Tribunal : **Tribunal Judge W L Brown
Mr W Reynolds MRICS (Valuer Member),**

Date of Decision : **10 August 2023**

Date of Determination : **31 October 2023**

DECISION

- (i) No sums are payable by the Applicant to the Respondent regarding insurance costs identified in the Application.
- (ii) Order made under section 20C 1985 Act

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REASONS

Background

1. The Tribunal received an application dated 24 August 2022 from the Applicant (the Application) for a determination under Section 27A of the 1985 Act as to reasonableness and payability of service charges for service charge years 2017 - 2020 inclusive. The Application was also for an order preventing the costs incurred in connection with these proceedings from being recovered as part of the service charge and for an order reducing or extinguishing the Applicant's liability to pay a particular administration charge in respect of costs incurred in connection with these proceedings.
2. Directions were made by the Tribunal on 19 December 2022.
3. The Respondent did not engage in the proceedings and by Order dated 13 June 2023 was barred from further participation in the case.
4. No objection was presented to the appeal being decided without a hearing. Having considered the Tribunal bundle and the requirements of rules 2 and 31 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 the Tribunal was satisfied that it was able to decide the case in this way.
5. From the papers the Tribunal understood the Property to be a 1 bed flat in a converted house.

Issue

6. The Applicant included in the Application a request for determination regarding ground rent demands. Such requests for payment are not within the Tribunal's jurisdiction and in any event, subsequent to the Application, the Applicant removed these charges from the disputed items. However, the Tribunal was able to consider the remainder of the sums claimed as referable in each year as Insurance Premium:

2017 - £223.07
2018 - £312.72
2019 - £625.43
2020 - £470.58.

7. Arising from the Application was validity of the demands for payment.

The Principal Law for the Application

8. Section 18 of the 1985 Act states

Meaning of “service charge” and “relevant costs”.

(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 of the 1985 Act states

Limitation of service charges: reasonableness

(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 provision of services or the carrying out of works, only for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than as reasonable as so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.

9. Section 27A of the 1985 Act states

Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether 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 service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -*
- 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.*

10. Also of relevance is Schedule 11 of the 2002 Act which states

Meaning of “administration charge”.

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.*

.....

(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.*

Reasonableness of administration charges.

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

.....

Liability to pay administration charges

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.*

As to timelimit for demanding service charges

11. Section 20B 1985 Act states

Limitation of service charges: time limit on making demands.

(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.

As to content of service charge demands

12. Section 47 Landlord and Tenant Act 1987 provides that any written demand for service charges must include the name and address of the landlord, and section 48 provides that a Landlord must provide the Tenant with an address in England and Wales at which notices may be served on them by the Tenant.

13. Section 21B 1985 Act provides that a demand for service charge must include a summary of Tenants' rights and obligations. That content is prescribed by Regulation 3 of The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007, which requires the document to be legible in type-written or printed form of at least 10 point; include the title "Service Charges – Summary of Tenants' rights and obligations"; and include the statement set out in Regulation 3(b) – which comprises 12 paragraphs.,

Applicant's case

14. The Applicant alleged that he had received no demand to pay insurance premiums until 13 May 2022 when during the course of selling the Property he was required to pay invoices from the Respondent (in addition to ground rent demands) so as to facilitate completion of the sale. He had understood the insurance cost was within the monthly £158 service charge which he had been paying. Further, despite request he had not received receipts for the insurance premiums. He was concerned to recover the payments he had made, which he argued he should not have had to pay.

The Tribunal's Findings and Determinations

15. The Applicant named as Respondent to the Application "Nicholas Selmes"; the Tribunal found from the evidence of the invoices (see paragraph 17) that the landlord under the Lease was Claratom Limited, which name the

Applicant included as the Respondent's address. We were satisfied that this company is the correct Respondent to the Application.

16. The Tribunal first considered the rights and obligations under the lease of the Property dated 8 May 2011 (the Lease), a copy of which was provided by the Applicant. It is for a term of 125 years from 8 May 2011, at an escalating ground rent commencing at £150 per year. Pertinent to the Issues we found in clause 2.3(b) Tenant obligation to pay an Insurance Rent, separately defined as a proportion of the Landlord's cost to effect and maintain insurance of the Building of which the Property forms part.

17. The Tribunal had no evidence to contradict the Applicant's position regarding the demands for Insurance contribution set out in paragraph 14. He provided to the Tribunal copies of 2 invoices (the Invoices) to him from the Respondent. The first is dated 28 March 2019 which itemised insurance from 25 March 2017 to 30 December 2017, 31 December 2017 to 30 December 2018 and 31 December 2018 to 30 December 2019. The second invoice is dated 12 March 2021, itemizing insurance from 31 December 2019 to 30 December 2020 and from 31 December 2020 to 30 December 2021.

18. The Tribunal found that the Insurance Rent demand by the invoices was a variable cost in accordance with section 18(1) 1985 Act and that the Tribunal is able to make determinations under section 27A 1985 Act.

19. The Tribunal found a consequence arose from the invoices for insurance not being provided until 13 May 2022. Section 20B 1985 Act (see paragraph 11) provides that the tenant (the Applicant) has no obligation to pay relevant costs incurred more than 18 months before the demand. We found no evidence of prior notification of the incurring of such costs so as to engage the saving provision of section 20B(2) 1985 Act. The consequence is that at best, the insurance contribution claimed in the Invoices provided no earlier than 13 May 2022 could be for costs incurred no earlier than 14 November 2020.

20. Attached at Annex A is an extract of the Landlord covenants from Schedule 6 of the Lease regarding provision by the landlord to the tenant of information on insurance.

21. However, regarding the form of the demands within the Invoices the Tribunal found that they did not include the prescribed summary of tenant's rights – see paragraph 13. In consequence the invoices are invalid as proper demands for payment of a variable cost. There was no evidence as to when insurance costs were incurred by the Respondent. Common practice would be for insurance to be paid for in advance. Therefore, on a balance of probabilities the insurance cost of the last year claimed in the Invoices would be no later than 30 December 2020. The effect of the finding in the previous paragraph, however, is that the potential last date for supplying of a compliant demand has passed. It therefore followed that the Tribunal does not need to consider reasonableness of the insurance costs, about which no evidence was provided, as the Respondent cannot recover any of the sums demanded for insurance within the Invoices, or now, otherwise.

22. The Tribunal has no power to order repayment of sums paid, however. That may be for another jurisdiction.

23. As to the element of the Application concerning administration charges, none were drawn to our attention as having been demanded of the Applicant and therefore we have no determination to make.

24. The Applicant has been successful and while the lack of engagement by the Respondent suggests no proceedings-related costs would be incurred, the Tribunal found no reason not to make an order under section 20C 1985 Act preventing the Respondent recovering any costs of these proceedings through the service charge.

Tribunal Judge Leslie Brown.
10 August 2023.

Annex A

2.2 To serve on the Tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the Building (after any discount or commission but including IPT). Such notice shall state:

(a) the date by which the gross premium is payable to the Landlord's insurers; and

(b) the Insurance Rent payable by the Tenant, how it has been calculated and the date on which it is payable.

2.3 In relation to any insurance effected by the Landlord under this clause, the Landlord shall:

(a) at the request of the Tenant supply the Tenant with:

(i) a copy of the insurance policy and schedule; and

(ii) a copy of the receipt for the current year's premium.

(b) notify the Tenant of any change in the scope, level or terms of cover as soon as reasonably practicable after the Landlord has become aware of the change;

(c) use reasonable endeavours to procure that the insurance policy contains a non-invalidating provision in favour of the Landlord in respect of any act or default of the Tenant or any other occupier of the building; and

(d) procure that the interest of the Tenant and its mortgagees are noted on the insurance policy, either by way of a general noting of tenants' and mortgagees' interests under the conditions of the insurance policy or (provided that the Landlord has been notified of any assignment to, the Tenant pursuant to paragraph 9.6 of Schedule 4) specifically.