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

Case reference : **LON/00BF/LSC/2023/0155**

Property : **18 Bute Court Bute Road Wallington
Sutton SM6 8AG**

Applicant : **Tomasz Skrzypczyk (1)
Bozena Glinska (2)**

Representative : **In person**

Respondent : **Townsmede Properties Limited**

Representative : **Amber Turner**

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 : **Mrs E Flint FRICS
Mr O Dowty MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **11 October 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the insurance premiums for the years 2017, 2021, 2022 and 2023 are not payable by the Applicants.
- (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) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and (where applicable) administration charges payable by the Applicants in respect of the service charge years 2017, 2018, 2019, 2020, 2021, 2022 and 2023.

The hearing

2. The Applicants appeared in person and the Respondent was represented by Amber Turner of counsel at the hearing.

The background

3. The property which is the subject of this application is a ground floor flat in a two storey block of twelve flats accessed via three staircases. All of the flats provide the same size accommodation. The development comprises two twelve flat blocks, a service road providing car parking for approximately six cars and three garages which the freeholder has let out to a third party.
4. The Applicants are the leaseholders under a lease for 125 years from 22 October 2001 which was made on the same terms and conditions as those contained in a lease dated 14 October 1957 which obliged the Applicants to pay, on the first quarter day following the renewal of the fire insurance, a fair proportion of the fire insurance premium.
5. The Respondent is the freeholder of the development.
6. 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.

The issues

7. The matters in dispute were the reasonableness and payability of the insurance premium for each of the years in question, the amount of the excess and whether the costs were payable by reason of section 20B of the Landlord and Tenant Act 1985.
8. Miss Turner, on behalf of the Respondent, confirmed that the years in dispute were now limited to 2017, 2021, 2022 and 2023 as the Respondent had conceded on the remaining years.
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.

Payability and reasonableness of the annual premium

10. Miss Turner stated that the invoices still in question were as follows:

£539.54 for the period 2 June 2017 – 1 June 2028 (1st invoice)

£706.94 for the period 2 June 2021 – 1 June 2022 (2nd invoice)

£762.88 for the period 2 June 2022 – 1 June 2023 (3rd invoice)

£908.43 for the period 2 June 2023 – 1 June 2024 (4th Invoice)
11. The first invoice was received by the Applicants on or around 26 March 2018, the second and third invoices were received on 13 or 14 November 2022. The applicants advised the managing agent that they had taken out insurance in respect of their flat themselves. This information was forwarded to the insurance broker and renewal information was not sent to the applicants whilst the broker was looking into the matter. Although the insurance was renewed each year. Renewal information was sent from November 2022 onwards.
12. Miss Turner accepted that whilst there was evidence that the 1st, 3rd and 4th invoices above were served within the eighteen months timescale in s20B, she could not show that the 2nd invoice had been received within the eighteen month period. She was not able to confirm when the costs were incurred, only that the insurance invoice had been issued on 25 March 2021 and received by the Applicants on 13 or 14 November 2022.
13. Miss Turner referred to the statutory framework set out in Ss 18 (1), 19 (1) and 20B of the 1985 Act which were all applicable to this application. The relevant sections are set out in the Appendix to the decision.

14. She referred to *Cos Services Ltd v Nicholson* [2017] UKUT 382 (LC); [2018] L. & T.R. 5, HHJ Bridge held:

The burden is on the landlord to satisfy the relevant tribunal on the balance of probabilities that the costs in question have been reasonably incurred (at [37]).

The tribunal is required to go beyond the issue of the rationality of the landlord's decision-making and to consider in addition whether the sum being charged is, in all the circumstances, a reasonable charge. This is a two-stage test (at [47]).

It is not necessary for the landlord to show that the insurance premium is the lowest available in the market. However, the tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease, and the potential liabilities to be insured against (at [48]).

The tribunal will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may place quotations before the tribunal, but they must ensure that the policies are genuinely comparable in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease (at [48]).

It is open to any landlord with a number of properties to negotiate a block policy covering the entirety, or a significant part, of their portfolio. However, it is necessary for the landlord to satisfy the tribunal that the block policy has not resulted in a substantially higher premium that has been passed on to the tenants of a particular building without any significant compensating advantages to them (at [49]).

15. Miss Turner asserted that as the Respondent was required under the lease to insure against loss or damage by fire it had acted appropriately in taking out the buildings insurance because it was no longer possible to insure against fire only. Therefore, the Respondent's obligation to pay a fair proportion of the fire insurance premium in respect of Bute Court is engaged.
16. The property is insured as part of the block of flats of which it forms part. The insurance for the Respondent's portfolio is obtained via Lockton Companies LLP which acts as a wholesale insurance broker. Insurers are approached to quote for the portfolio: eleven insurers were approached in 2022 and two in 2023. On both occasions AXA were chosen as offering cover on the best terms.

17. The process adopted illustrates that the Respondent's decision making was rational: the specialist broker's advice had been followed following a testing of the market.
18. She stated that the premiums had been reasonably incurred. The Applicants had not been able to provide like for like premiums, only quotations for their individual flat whereas the buildings insurance would include the common parts. She was not able to point to any evidence in the bundle to illustrate how the "fair proportion" had been calculated or what was included in the portfolio of which Bute Court formed part.
19. Mr Skrzypczyk said that he had asked to see the quotations without any success. He wanted a fair deal. He had not been able to obtain a quotation for the Building. The quotation for his flat included cover for any part of the common parts for which he was legally responsible, the costs were between £160 and £200 per year for a more comprehensive policy. He was concerned that the charges were not reasonable.
20. He referred to a report by ABI which showed that the premium for the flat was more than the average cost for an average sized home; the flat is smaller than an average size home. He was not saying that the premium should be the cheapest but it should be reasonable. However, the cover exceeded what was required by the lease.
21. He was also concerned that the premium was not shared equally among the lessees. All the flats were of the same size, he could not understand why the premium for his flat was more than that for any other flat. He referred to the invoice for Flat 6 where the premium was £475.15 for the year commencing 2 June 2023, whereas the premium for Flat 18 was £908.43. He had seen five or six invoices; they were all for different amounts.
22. Mr Skrzypczyk said that he had not wanted to come to the Tribunal, they had hoped to sort the matter out amicably with the managing agent. However, the agent was dismissive, the insurance premiums had been paid under protest.
23. Miss Turner in closing said that there were greater risks insuring a block of flats rather than an individual flat and reiterated that the common parts were included in the block policy.

The tribunal's decision and reasons

24. The Tribunal determines that none of the insurance premiums are payable.

25. The Tribunal determines that on the balance of probabilities, doing the best it can on the very limited information available, that the 2nd invoice in respect of 2021-22 was not received within 18 months of the costs being incurred. Therefore it is not payable.
26. As regards the remaining invoices in dispute, the Respondent has failed to engage with the Tribunal or the Applicants or produce any evidence to explain how the policy complies with the covenants in the lease. The original lease was granted in 1957; it was subject to a surrender and regrant in 2001 when the opportunity arose to deal with the situation of not being able to obtain insurance cover for loss or damage by fire only. Indeed, there were some amendments made to the original terms on the regrant but not in respect of altering the fire insurance to a standard building insurance. Alternatively, the Respondent could have made an application to vary the leases within the block.
27. Since all the flats are of the same size it is incomprehensible on the evidence available that a fair proportion of the premium for the building can vary from one flat to another and certainly not from £465.15 to £908.43 for the same period. The latter figure cannot be defined as reasonable. We had no evidence of any alternative amount for the premium under the terms of the lease since the quotations the Applicants had obtained were for superior cover to that required under the lease.

Application under s.20C and refund of fees

28. In the application form, the Applicant applied for an order under section 20C of the 1985 Act and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. As the respondent has failed to effectively participate in these proceedings and appears not to have complied with the terms of the applicant's lease. The Tribunal determines that it is just and equitable in the circumstances for an order to be made, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal on to the Applicants.
29. In the Directions the parties were advised that the Tribunal would also consider reimbursement of the fees paid by the Applicants. In light of the Tribunal's findings above, the Tribunal determines it is reasonable and appropriate to require the respondent to reimburse the applicant the cost of the application and hearing fee.

Name: E Flint

Date: 11 October 2023

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).