



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

Case reference : **LON/00AE/LSC/2021/0415**

Property : **33B Burnt Oak Broadway, Edgware,
Middlesex HA8 5JZ**

Applicant : **Manjulben Khinji Halai**

Representative : **N/A**

Respondent : **Mr Rajesh Prataprai Malkan and Mrs
Arvinda Rajesh Malkan**

Representative : **Berry Smith LLP**

Type of application : **Application for a determination of
liability to pay and reasonableness of
service charge pursuant to section 27A
of the Landlord and Tenant Act 1985**

Tribunal member : **Judge Tagliavini**

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

Date of decision : **29 November 2023**

DECISION

The tribunal's decision

1. The tribunal makes the following decisions:
 - (i) The respondents failed to insure the property known as 33 Burnt Oak Broadway, Edgware, Middlesex HA8 5JZ ('the Building') for the service charge years 2015 to 2018 in the name of the respondent lessors. Therefore the whole of the following premiums are not reasonable or payable by the applicant.

YE 2015: Insurance £388.76
YE 2016: Insurance £464.95
YE 2017: Insurance £401.73
YE 2018: Insurance £468.13
 - (ii) There is no provision in the lease for the recovery of an administration charge from the applicant in respect of the insurance premium. Therefore, this fee is not payable by the applicant.

YE 2020/2021 and 2022
Administration fees of £30 x 3 = £90.00
 - (iii) The 25% percentage charged to the applicant in respect of the insurance premium is reasonable. The lease provides the respondent with a 'fair and reasonable' discretion as to how service charges (including insurance) are apportioned; clause 2(6).
 - (iv) The insurance premiums for the service charge years 2019 to 2022 are not reasonable in amount as the Schedule of Cover does not comply with the respondents' insurance obligations under the terms of the lease and include heads of insurance that affect and benefit only the commercial unit. These elements are not reasonably payable by the applicant and should be deducted.
 - (v) The tribunal makes an order under s.20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the costs of this application can be passed on to the applicant/lessees through the service charges and/or are extinguished.
 - (vi) The respondent's claim for costs is dismissed. The tribunal is a 'no costs' jurisdiction and can only make an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. No such application has been made by the respondent.

- (vii) The tribunal makes an order requiring the respondents to reimburse the applicant with the application fee of £100 and any hearing fee (if applicable).
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The application

2. The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable in relation to the service charge years 2015-2020 inclusive. It is understood the sum relates to insurance charges for the years 2015 – 2020 inclusive, plus a £30 administration fee in 2020.
3. The applicant also applies for a determination under S.20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Background

4. The applicant is the long leaseholder under a lease dated 15 August 1990 granting a term of 125 years with effect from 24 June 1990 of the premises known as 33B Burnt Oak Broadway, Edgware, Middlesex HA8 5JZ. This is a maisonette flat situated in a building comprising two residential units over commercial premises ('the Building'). The respondents became the registered freeholders of the Building on 24.07.2014.
5. The applicant says that the landlords have not complied with the relevant statutory requirements and that insurance policies provided to them are not in the name of the freeholders and they do not accept the insurance as being attributable to their building. They do not believe they are therefore required to pay the premiums claimed.
6. Clause 4(b) of the lease the lessor (respondents) undertake:

To insure (unless the so effected shall become void or voidable through or by reason of any act neglect or default of the Lessee his servants agents licensee or invitees) and keep insured the Building against loss or damage by fire and such other risks as the Lessors may reasonably think desirable in some insurance office or with underwriters of repute in the full rebuilding value thereof and for two years' loss of rent and in case of destruction

or damage by fire unless payment of any moneys payable under any policy of insurance shall be refused either in whole or part by reason of any act neglect or default of the Lessee or the servants agents or licensee of the Lessee to apply all monies received under or by virtue of such insurance as aforesaid save those relating to the loss of rent in rebuilding or reinstatement of the demised premises or any part thereof shall be frustrated then the insurance moneys save those relating to the loss of rent shall be divided between the Lessors and the Lessee according to their respective interests in the demised premises to be determined in case of dispute by an independent valuer to be agreed upon by the parties or in default of agreement to be appointed by the President for the time being of the Royal Institute of Chartered Surveyors

The issues

7. In the directions dated 7 July 2023 the tribunal identified the issues between the parties in respect of the service charge years ending 2015 to 2022 as:
 - (i) Whether the applicant is liable to pay the insurance premium demanded by the landlord in each year in question. The applicant alleges that the insured under the insurance policy provided is not the landlord.
 - (ii) Whether the policy is that which the landlords are required to effect under the terms of the lease.
 - (iii) Whether the applicant is liable to pay an administration charge in the service charge year 2020 (and any subsequent years in which such a charge has been levied).
 - (iv) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made
 - (v) Whether an order for reimbursement of application/ hearing fees should be made

The hearing

8. Neither party requested an oral hearing the application was determined on the papers provided in the form of a bundle of 189 (electronic) pages.

The tribunal's reasons

9. The tribunal finds the Schedules of Insurance name Twist Ice Cream Limited (a coffee, tea and ice cream shop) as the insured in respect of the risk address at 33, 33a and 33b Burnt Oak Broadway, Edgware, HA8 5JZ. For the service charge years 2015, 2016, 2017 and 2018. The tribunal finds the letter of 24/06/2017 from the respondents to the lessee of 33a Burnt Oak Broadway, states 'We have purchased buildings insurance for the property.'
10. The tribunal finds this statement is incorrect, as the respondents are not the named insured as required by the lease. Further, the tribunal finds the Schedule of Insurance includes a number of heads of cover which relate solely to the commercial premises (computer equipment, contents, stock, theft by employees) and not to the residential units and therefore, cannot be considered to be reasonably payable under the terms of the lease or reasonable in amount.
11. The tribunal finds the insurance premium for 2019, 2020, 2021 and 2022 records the respondents' names as the insured. These policies appear to cover not only the subject Building but also a small portfolio of other properties owned by the respondents. The tribunal is satisfied these policies have been obtained with the assistance of a broker and find there is nothing unreasonable in seeking to take out insurance for the Building as part of a portfolio of properties.
12. The tribunal finds the lease makes no provision for the collection of administration charges in respect of the insurance premium and the respondents have not referred the tribunal to any clause in the lease that would allow them to do so.
13. In the circumstances the tribunal finds it is reasonable and appropriate to make an order under s.20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the respondents' costs of this litigation can be recovered through the service charges and are otherwise extinguished.
14. Further, the tribunal considers it reasonable to make an order the respondents to reimburse the applicant's application fee of £100.
15. The tribunal dismisses the respondents' 'unofficial' claim for costs supported by a Costs Schedule in the sum of £3,085.20. The tribunal is a 'no costs' jurisdiction and the respondents have neither explained under what provision they are seeking their costs or have in fact, made any application for costs.

Name: Judge Tagliavini

Date: 29 November 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 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).