FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LSC/2023/0488**
Property	**:**	**69a Ormiston Grove, Shepherds Bush London W12 0JP**
Applicant	**:**	**Ormiston Property Management Limited**
Representative	**:**	**Mr A Dobbie of Shortlands Law Firm Ltd**
Respondent	**:**	**Ms Caroline Trindle**
Representative	**:**	**In person**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal member	**:**	**Mr A Harris LLM FRICS FCIArb**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**30 May 2024**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of insurance premiums for the years 2020, 2021, 2022, 2023.

2. There are parallel proceedings in the Willesden County Court in which an oral judgement was handed down on 16 April 2024 by Judge Griffiths. A file note prepared by the Claimant's solicitor is in the bundle although the wording is not agreed.

The hearing

3. The case was considered on the papers without a hearing. The tribunal had before it a main bundle of 313 pages, a pleadings bundle of 113 pages, an interim reply from the Claimant dated 26 April 2024, an email from the respondent dated 17 May 2024 and an authorities bundle index but no bundle.

4. The tribunal papers also contain material and arguments relating to the county court proceedings but as the court has already given judgement the arguments will not be considered further.

The background

5. The property which is the subject of this application is a mid-terrace property consisting of 2 purpose-built maisonettes, each with its own front door..

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.

7. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

8. The tribunal directions dated 5 March 2024 set out the following issues to be determined.

   (i) It is the Respondent's primary case that, because the Applicant, in breach of the terms of her lease, failed up until 2023 to insure in the joint names of the Applicant and Respondent, she is not liable to make any payment towards the costs of insurance.

   (ii) Alternatively, the Respondent argues that the policies obtained have been, for various reasons, unsuitable, and the costs unreasonable. The Respondent further argues that she has not been involved in the renewal process and accordingly has been denied the opportunity to comment and ensure that the insurance obtained was suitable.

   (iii) The only issue not dealt with by the Respondent, is the question of what would be a reasonable sum for insurance if the tribunal concluded that she was, in principle, liable to contribute something to the cost of insurance

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.

Lease clauses

10. The original lease means a lease dated 18 August 1971 for a term of 99 years from 23 July 1971. That lease was replaced by a new lease dated 17 March 2003 whereby in consideration of payment of £5000 the premises were let for a term of 125 years commencing on and including 1 January 2003 on the same terms and conditions as the original lease except as amended in the schedule. The schedule replaced clause 5 (2) of the original lease

11. Poor quality copies of the original lease have been provided with large chunks being illegible and references to handwritten notes which are not present. However the relevant clauses are legible and provide:

    …and also paying by way of further or additional rent from time to time a sum or sums equal to one half of the amount which the Lessors shall expend in effecting and maintaining the insurance of the building and any other buildings erected from time to time in addition to or in replacement thereof against loss or damage by fire storm and tempest in the full reinstatement value thereof and such other risks as the

lessors may from time to time reasonably determine such last mentioned rent to be paid without any deduction on demand

5(2) the lessor shall at all times in the joint names of the Lessor and the Lessee during the said term (unless such an insurance shall be vitiated by any act or default of the Lessee) insure to the full reinstatement value of the buildings against loss or damage by fire lightning explosion earthquake storm or flood water damage riot civil commotion vandalism theft subsidence and/or heed (sic) and landslip aircraft and things dropped therefrom property owners liability third-party liability (including adequate amounts in respect of professional costs) and such other risks (if any) as the lessor shall time to time think fit in some insurance office of repute and in the event of the buildings being damaged or destroyed by any of the insured risks as soon as reasonably practical to layout the insurance money is in the repair rebuilding or reinstatement of the buildings.

Is payment by the leaseholder for the insurance premium dependent on the policy being in joint names as provided for in the lease

12. This is the issue which has been determined by the County Court. The Court relied on the decision of the Upper Tribunal (Lands Chamber) in Brickfield Properties Ltd v Demetris Georgiades [2020] UKUT 0118 (LC) (Brickfield) and held that the repayment of insurance premium clause and the joint names clause are not dependent on each other and a failure to insure in joint names cannot be used as a reason not to pay the insurance premiums. The respondent may have other remedies which she can argue before the FTT. Accordingly the tribunal has no jurisdiction over this issue.

Reasonableness of insurance premiums

The tribunal's decision

13. The tribunal determines that the amount payable in respect of insurance is £2240.44 .

Reasons for the tribunal's decision

14. The Applicant considers that the property is insured in a way which complies with the insurance clauses of the lease in that the building is insured for the correct rebuilding cost and that he has done all he can to obtain cover in the joint names of the freeholder and leaseholder or alternatively has insured the property on a policy which complies with the lease. In support of this correspondence with the insurance brokers placing the policy is before the tribunal. There is also an assessment of the insurance reinstatement value dated 12 December 2019.

15. The Applicant insured the building for the years 2020, 2021 and 2022 in the name of the freeholder. The policy includes a general interest clause covering the interest of any freeholder, mortgagee, lessor or similar party with the interest of the leaseholder by name noted on the policy as a mortgagee under the heading of "other interest".

16. The Respondent argues that noting somebody on the policy is not the same as insuring in joint names. Insuring in joint names means that each policyholder can make claims directly to the insurance company whereas a person noted on the policy must go through the principal policyholder. The Respondent points out she is not and never has been a mortgagee.

17. Although the Respondents name was finally included on the insurance policy covering 2023 she was not involved in the renewal process. The insurance purchased was based on a commercial block policy and the Respondent considers the amount claimed is unreasonable. The Respondent argues that the insured business is defined as a residential management company or association whereas the Respondent is an individual, the property is defined as a block of flats where is this is a terraced house divided into 2 flats and finally the legal expenses insurance is for residential management companies and therefore includes various insured events not appropriate for the Respondent. The Tribunal is not persuaded by these arguments. The Applicant is a residential management company, the property is a block of 2 flats and Applicant is a residential management company.

18. The Applicant argues that in assessing whether the insurance rent is reasonable, the tribunal should consider the two-stage test set out in Waaler v Hounslow (LBC [2017] 1 WLR 2817): was the lessors decision-making process reasonable and is the sum charged reasonable in the light of market evidence.

19. The Applicant argues it followed a reasonable process by using Lansdown Insurance Brokers to find a competitive quote at arm's length and placing insurance with a reputable company (Allianz) on that company's policy terms.

20. The Respondent argues in her email of 17 May 2024 that the Applicant relies on emails from brokers but they are giving expert evidence and there is no direction for expert evidence and she should be given the opportunity to provide her own expert evidence on the issue. The Tribunal does not accept this argument. The correspondence is contemporaneous with the placing of the policy and is an explanation of what was done.

21. In her statement dated 21 March 2024 the Respondent gives details of the insurance arranged on the adjoining property 71/71A Ormiston Grove which she owns and in the material years has been insured in the

joint names of the freeholder and leaseholder even though this is not a requirement of the lease. Copies of the policies are attached to the statement. The tribunal accept this as evidence that in the material years cover could be obtained in joint names.

Reasonableness of the policy costs

22. The principal driving factors in the level of a premium are the sum insured, the risks insured, levels of excess and the claims history of the property.

23. In setting the amount of the sum insured the Applicant relies on the desktop rebuild cost assessment provided by Rebuild Cost Assessment, a company regulated by the RICS. The report shows that the current sum insured including VAT was £749,858. The assessment recommended a sum of £1,023,284 including VAT with other permanent structures (a low brick wall) of £14,000 totalling £1,037,664 including VAT. The tribunal considers the methodology is appropriate and notes the assessment has been provided by a chartered surveyor. It is not appropriate for the tribunal to provide its own assessment.

24. The Respondent relies on the insurance for 71/71 A Ormiston Grove which for the year November 2022 November 2021 was insured for £392,000 with loss of rent, of £163,170. No information has been provided as to how the sum insured was assessed.

25. The tribunal prefers the evidence of the Applicant and accepts that reliance on a rebuild cost assessment prepared by a qualified surveyor is to be preferred to a sum insured on another policy without any explanation.

26. The evidence includes an email dated 15 June 2021 from the brokers reporting to the Applicant that the Respondent had notified a claim direct to the insurance company and that the company would deal with the Respondent direct.

27. In Brickfield the Upper Tribunal held that the respondent leaseholder was liable to pay the insurance costs as demanded by the landlord which the FTT decided were reasonable. The 2nd leg of the decision covered the question of whether the appellant landlord was in breach of the clause requiring insurance to be in the joint names of the Lessor and the Lessee. The Upper Tribunal discussed the various factors but declined to decide the point as it was not necessary to decide the outcome of the appeal in that case. The policy wording in that case was different from the subject case. The tribunal considers that the question is fact specific.

28. This brings us back to the question of whether the premiums are reasonable. It is the view of the tribunal that they were. The policy is based on an appropriate sum insured and arranged through a broker by market testing. No comparable quotations have been provided on the same basis.

29. That being so the central question is whether the policy sufficiently complied with the requirements of the lease to insure in joint names and if not this means the Respondent does not have to pay towards the insurance.

30. It is undoubtedly the case that the building has been insured for an appropriate sum over the relevant periods and that the Respondent has been able to claim under the policies. In the circumstances of this particular case, the noting of the Respondent by name and the fact she was able to pursue a claim directly with the insurance company the tribunal considers that it is reasonable that the Respondent is liable to reimburse 50% of the insurance premiums.

Costs

31. The Applicant has put forward two bases for assessing costs. Firstly for proceedings relating to service of section 146 notice and secondly for costs in the tribunal under rule 13. The tribunal has no jurisdiction under section 146 and no claim has been made by the Applicant for such costs and the tribunal will not consider this head further.

32. The Applicant seeks costs on an indemnity basis under rule 13 of the Tribunal Rules on the grounds of unreasonable and vexatious behaviour by the Respondent.

33. The test for awarding costs under rule 13 are set out in a case known as Willow Court (Willow Court Management Co (1985) Ltd and Alexander (LRX/90/2015).

34. Under rule 13 in leasehold management cases the FTT has power to award costs only if a person has acted unreasonably in bringing, defending or conducting proceedings. At paragraph 24 the Upper Tribunal said

"Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?

35. In this case there is a considerable history of disagreement between the parties but this is over a point on which there is no binding authority namely whether the failure to insure in joint names means that the leaseholder does not have to reimburse the landlord for insurance. That being the case in the circumstances of this particular matter the tribunal does not consider that the conduct of the Respondent has been vexatious or unreasonable and the application for rule 13 costs is denied.

Name: A Harris **Date:** 30 May 2024

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).