



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

Case reference : **LON/00AY/LSC/2024/0081**

Property : **3 & 3A Lendal Terrace London SW4 7UU**

Applicant : **Mr Alan Featherstone**

Representative : **In person**

Respondent : **Mr Tony Christie**

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 members : **Mr C Norman FRICS
Ms MacLeod MCIEH**

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

Date of Hearing : **12 August 2024**

Date of decision : **10 November 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) so that not more than half of the landlord’s costs of the Tribunal proceedings may be passed to the lessees through any service charge.
- (3) The Tribunal further orders under Paragraph 5A of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that not more than half of the landlord’s litigation costs may be recovered via an administration charge.
- (4) The Tribunal determines that the Respondent shall pay the Applicant £150 within 28 days of this Decision, in respect of the reimbursement of half the Tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 as to the amount of service charges payable by the Applicant in respect of the service charge years 2022, 2023 and 2024. The specific issues raised were the level of the insurance premium, the correct percentage of the insurance premium payable under the lease, and the recovery of a 50% contribution to the cost of an emergency gutter repair carried out by the Applicant in 2023.
2. The Applicant also sought orders under section 20C of the 1985 Act and paragraph 5A Schedule 11 of the 2002 Act.

The hearing

3. The Applicant and Respondent both appeared in person.
4. Immediately prior to the hearing the Respondent handed up a bundle of 34 pages which had previously be sent to the Applicant. The Applicant provided an electronic bundle of 198 pages.

The background

5. The property is the first and second floor maisonette of a mid-terraced converted house.

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 Applicant 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 Applicant's Case

8. The Applicant complained that he was being overcharged for building insurance. In January 2020 he had made a claim. The lease provided that his contribution was 50% but the landlord was claiming a higher percentage because of the claim. The amount disputed for 2022 was £45.00. He had obtained a quotation.
9. The same applied in 2023 with the disputed sum being £45.95. For that year, the Applicant also disputed the insurance cover which he considered excessive. He had obtained another quotation.
10. For 2024 the Applicant also obtained an insurance quotation. He had also carried out a building reinstatement valuation using BCIS data. The freeholder was claiming £401.46 whereas 50% of his quote was £209.15.
11. During 2023 the external guttering and facia over the public footpath became very unstable and required urgent repair. The freeholder was contacted but being overseas was unable to deal with it himself and asked the Applicant to deal with it. Although also overseas, the Applicant dealt with it, keeping the freeholder informed. The repair cost was £450 which the Applicant paid in full. Under the lease terms the Applicant sought a 50% contribution from the freeholder.
12. The Applicant also claimed that the freeholder had made three claims under the insurance policy himself.
13. The Applicant's case was expanded in a short Scott Schedule in accordance with the directions. He also produced alternative insurance quotes. In February 2022 a quote from Abacus Insurance was obtained for £450.89 for the building. On 22 December 2023 the Applicant obtained a quotation from LMR Insurance Services Ltd showing a premium of £418.29. The Applicant also included a residential and commercial property quotation from DOA insurance brokers covering the period 21 January 2024 to 20 January 2025. The premium was £393.29 with a building declared value of £440,000. The schedule stated that there had been no claims in the last five years.

14. Photographic evidence of a fallen gutter was provided and messages from a roofer giving a quotation of £445. The Respondent replied, “I’m not in UK so I suggest you should get estimates for work to be carried out because as you say we don’t want the situation to get any worse”. There was also message evidence that the Applicant had made the payment to the roofer.

The Respondent’s Case

15. The Respondent challenged the jurisdiction of the Tribunal on the basis that paragraph 4 (d) of the lease stated that disputes should be referred to a single arbitrator in accordance with the provisions of the Arbitration Act 1950. The Tribunal decided that it did have jurisdiction and proceeded to hear the case, for reasons set out below.
16. The Respondent’s case was that the escape of water in 2020 from the Applicant’s maisonette had caused an increase in the insurance premium which he should therefore pay for. The insurance premiums for the building were reasonable and payable. The rebuilding cost had been provided by a broker. The Applicant had obtained quotes which were based on inaccurate information as to the claims history. The quotes were therefore unreliable. The £5000 contents element did not increase the policy cost. The Respondent had a block policy. The building sum insured should be £503,736 as advised by his broker and not £440,000 as contended by the Applicant. BCIS calculations gave a wide range of values.

The Lease

17. By a lease dated 24 February 2020 (following surrender and renewal) the flat was demised for a term expiring on 24 December 2174. By Part 6 of the Schedule to the lease, the due proportion of the lessee’s contribution to service charges and insurance costs was one half. By clause 1(c) the lessee covenanted to pay by way of additional rent the due proportion of such sum or sums as the lessor shall pay for keeping the building insured against fire public liability and such other risks as the lessor shall deem necessary or expedient such additional rent to be paid on demand...
18. By clause 1 (f), the lessee covenanted to contribute and pay the due proportion of the costs and expenses of the service obligations...
19. By clause 3 (b) (i) the lessor covenanted with the lessee to maintain repair redecorate and renew the common parts and service conduits and the estate and so far as applicable and practicable to keep the same reasonably lighted and in good condition and cultivation and (ii) so often as reasonably necessary ...to decorate such part of the external walls (if any) previously so decorated and repaint the exterior ironwork

gutters pipes and woodwork of the building in a proper and workmanlike manner and with suitable materials.

Findings

Jurisdiction

20. Section 27A of the 1985 act provides as follows

No application under subsection (1) or (3) [for the determination of reasonableness and payability of the service charge] may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

21. It follows that a pre-dispute arbitration clause such as that found in the lease does not remove the jurisdiction of the Tribunal. Accordingly the Tribunal had jurisdiction to hear the case.

Insurance

22. The only BCIS calculation in the bundle [168]¹ describes the property as two flats contained within a two-storey terraced house and gives a model-based cost of £350,000. This is factually incorrect as the building has three stories. The Tribunal was unable to identify the source of the £440,000 adopted by the Applicant. In any event the Applicant is not giving expert evidence and such evidence of rebuilding as is provided by him has to be afforded limited weight. The Tribunal agrees that BCIS can give a wide range of outcomes. The Tribunal prefers the Respondent's case on the sum insured, being based on his brokers' advice.

23. Furthermore the Tribunal finds that the claims history was not disclosed to insurers when the Applicant sought quotes because he was unaware of the full history and that there had been four claims since

¹ numbers within square brackets denote bundle page numbers

2020 affecting the policy. The Tribunal finds that the landlord's insurance costs for this three-storey mid-terraced building in an inner London area are reasonable. It therefore finds that the premiums sought for the years in question are reasonably incurred and that the due proportion is payable by the Applicant.

24. However the Tribunal finds that the lease is clear that the due proportion is 50% of the total cost and this is not subject to variation in the event of claims by a lessee. The Tribunal therefore finds that in respect of each of the years in dispute the liability of the Applicant is 50%.
25. Therefore, the Tribunal finds the following sums payable from which payments made to date should be deducted:

Insurance Premiums

| | | | |
|------|---------|--|--|
| 2022 | £365.87 | | |
| 2023 | £371.09 | | |
| 2024 | £372.09 | | |

Recovery of the costs of emergency gutter repair

26. This is not a service charge item but a claim for payment made by the Applicant on behalf of the Respondent. However the Tribunal has jurisdiction to set off counterclaims against service charges otherwise payable. There is clear evidence that the expenditure was necessary and reasonable and that the landlord had given his approval. Accordingly the Tribunal determines that the sum of £225 should be set off service charges otherwise payable.

Application under s.20C and refund of fees

27. Having heard the submissions from the parties and taking into account the determinations above, 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 on more than half of its costs incurred in connection with the proceedings before the Tribunal through the service charge. The Tribunal further orders that not more than half of the landlord's litigation costs may be recovered via an administration charge. The landlord is directed to repay to the Applicant half of his application and hearing fees within 28 days.

Name: Mr C Norman FRICS

Date: 10 November 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).