In the FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Tribunal Case reference	:	**LON/00BD/LSC/2024/0504**
Property	:	**10a Teddington Park Road, TW11 8ND**
Applicant	:	**Tanya Thornber**
Respondent	:	**Paul Taylor**
Type of application	:	**Transfer from County Court**
Tribunal	:	**Deputy Regional Tribunal Judge Martyński** **Mr S Wheeler MCIEH CEnvH**
Date of hearing	:	**18 December 2024**
Present at hearing	:	**Ms Thornber** **Mr Taylor**
Date of decision	:	**3 January 2025**

DECISION

Decision summary

1. The amount outstanding in respect of Buildings Insurance is not payable by the Respondent.

2. The cost of the works to the water mains is not payable by the Respondent.

3. The cost of the 'works' is not payable by the Respondent.

4. The Respondent is to pay to the Applicant the sum of £220.00, that being the hearing fee paid by the Applicant to the tribunal.

5. The parties resolved all matters in dispute at the hearing. The Respondent has paid the ground rent and has paid a substantial part of the insurance premium. The Applicant agreed not to pursue the claim in the County

Court for interest and costs. Accordingly, although this matter is returned to the County Court, no further action is required from the Court.

Background

6. The Claimant/Applicant issued proceedings in the County Court on 29 April 2024 making a claim as follows:

Ground Rent	£270.00
Building insurance	£1,349.38
Water mains	£450.00
Works	£1,817.00
Interest	

7. A Defence was filed on 3 June 2024. The Defence simply requested that the matter be transferred to this tribunal

8. On 15 August DJ Hartley made an order transferring the case to the tribunal asking the tribunal to deal with all aspects of the case. The tribunal has however confined itself to making decisions only regarding those matters within its jurisdiction (those being, the payability of the Buildings Insurance, Water mains and works). However, as noted in the summary above, at the hearing, the parties reached agreement regarding the matters falling outside of the tribunal's jurisdiction (those being, interest, the County Court issue fee and Ground Rent).

The building and the lease

9. The subject building is a two-storey end of terrace house. The building has been converted into two flats, one on each storey. Each flat has a separate main entrance door at ground floor level. The Respondent resides at, and is the long leaseholder of the upper flat. The Applicant resides at, and is the long leaseholder of the ground floor flat. The Applicant also owns the freehold interest in the building.

10. The leases for the flats seek to, as far as possible, remove the freeholder from the maintenance and running of the building. Under the terms of the leases, each leaseholder is responsible for the maintenance and repair of their part of the building. For example, the Respondent's lease provides that he is responsible for (inter alia) the repair of the roof structure, gutters, downpipes and chimneys. Further, the Respondent's lease obliges him to insure his part of the building (clause 15). Conversely, the lease of the ground floor flat provides that the leaseholder of that flat is responsible for the maintenance and repair of the foundations and drains and the common pathway and bin area and the insurance of that part of the building. The leases then provide for the right for a leaseholder to claim half the costs of the maintenance and repair obligations from the other leaseholder. [see clauses 2.(6) and 2(7)(iii) of the Respondent's lease]

11. A separate lease provision provides for the leaseholder to pay a due proportion of the costs of maintaining and repairing areas and services

which are used by both leaseholders. [clause 2.(7)(i) of the Respondent's lease].

12. The Respondent's lease contains provisions for the landlord to step in and deal with maintenance, repair and insurance in default of the leaseholder complying with the obligations under the lease. In default of maintenance and repair, the landlord has the right to carry out that maintenance and repair and to be reimbursed by the leaseholder (clause 11 of the Respondent's lease). In default of the obligation to insure, the landlord can effect the insurance, the cost of which is to be paid by the leaseholder. [see clause 15(ii) of the Respondent's lease].

The relevant law

13. In section 18 Landlord and Tenant Act 1985, a 'Service Charge' is defined as;
'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, improvement 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'

14. The demand of a Service Charge by a landlord and its payability is subject to statutory regulation. Section 19 of the 1985 Act provides that a Service Charge is only payable to the extent that the costs have been reasonably incurred and if the works or services that the costs relate to are of a reasonable standard.

15. Section 20 of the 1985 Act provides that a landlord must consult a tenant if that landlord is going to carry out works that will result in a cost to the tenant exceeding an 'appropriate amount'. Consultation is a formal process and the steps that need to be taken are set out in regulations. The amount of the 'appropriate amount' is currently set at £250.00. If a landlord does not comply with the obligation to consult regarding works, then the amount that can be recovered from a leaseholder regarding those works is limited to £250.00. If a landlord has failed to comply with the consultation regulations, it is open to the landlord to make an application to the tribunal to waive the statutory requirements, in whole or in part, to consult a leaseholder (section 20ZA of the 1985 Act). The tribunal can waive the obligation to consult if it considers that it is 'reasonable' to do so. However, no such application was made by the Applicant.

16. Further regulation regarding Service Charges is set out in sections 47 & 48 Landlord and Tenant Act 1987. Together those sections provide that a demand for a Service Charge is not payable unless and until; (a) the demand contains the name and address of the landlord, and; (b) the landlord has provided the tenant with an address in England and Wales at which notices may be served by the tenant.

17. Yet further regulation comes from section 21B of the 1985 Act which provides that a demand for the payment of a Service Charge must be accompanied by a summary of the rights and obligations of the tenant in relation to Service Charges (the wording of that summary is set out in regulations made under the 1985 Act which can be easily found on the internet). The penalty for not supplying this information with a demand for Service Charges is that tenant has no obligation to pay the demand.

Background to the disputed charges

18. The Applicant purchased her flat along with the freehold of the building. Since purchasing her flat, she has carried out improvement and extension works to her flat. Without going into unnecessary detail, there has been a dispute between the parties regarding maintenance. The Applicant carried out works to the gutters, downpipes, eves and facias. She sought to recover some or all of the costs of this from the Respondent. The Respondent's case on this point was partly that the works were done as a result of the Applicant's own improvement/extension works to her own property.

19. As to the costs of the water mains claimed by the Applicant, she stated that whilst Thames Water was repairing a water leak, they recommended the replacement of the lead pipes leading to the building. The Applicant instructed Thames Water to proceed with this work.

20. So far as insurance is concerned, the parties appeared to be happy for this to be arranged by the Applicant. However, the Respondent was concerned at the cost of the premium. He was concerned that; (a) the building had been extended by the Applicant, possibly increasing the premium, and; (b) that the building cost insured by the Applicant was far too high.

The tribunal's decisions

Works - £1,817.00

21. The tribunal is satisfied that under the Respondent's lease, the Applicant was entitled to carry out maintenance and repair to the structure of the upper floor in default of that work being carried out by the Respondent. However, and putting aside the dispute as to whether those works were necessary or appropriate, the Applicant admitted that she had made no formal demand regarding those works and that she had not complied with the statutory obligations regarding consultation with the Respondent regarding those works. As there has been no formal demand for the costs of these works, the costs are not currently payable by the Respondent. Even if there had been a formal demand which complied with the statutory requirements, the Respondent's liability for those costs would be limited to £250.00.

22. Given the findings above and the agreements made between the parties at the hearing, the tribunal has not fully investigated or made any decision as to the reasonableness of the works.

Water mains - £450.00

23. The Respondent's case on this point was that the works carried out were advisory only. There was no evidence that it was necessary for the pipes to be replaced.

24. Again, the Applicant accepted that she had made no formal demand for this sum, nor had she gone through the statutory consultation requirements in respect of the work. Accordingly, the sum is not presently payable and even if it had been lawfully demanded, the amount payable would be limited to £250.00.

25. Given the tribunal's decision above, we did not fully explore the dispute over the reasonableness of the works and make no formal decision regarding that. However, we observe that it does appear, on the Applicant's own case, that there was no pressing need for this work to be done. The work may have been an improvement only and if that is the case, the costs of that work would not be payable by the Respondent.

Insurance - £1,349.38

26. Just before the hearing, the Respondent paid to the Applicant the sum of £960.75 in respect of the insurance costs claimed. The Respondent raised the question as to whether the costs of insurance were higher following the Applicant's works to the building and the fact that on the insurance certificate the 'declared value' was put at £1,250,000. The Respondent considered that this value was in fact the re-building cost, and, if he were correct, that cost should be a fraction of the amount in the certificate. The Applicant stated that she had gone through a broker to survey the market and obtain the insurance and that the 'declared value' was the sum, or the range, as advised by the broker.

27. The parties agreed that no-one quite knew whether the 'declared value' given to obtain the insurance was correct. The Applicant agreed to go back to her broker to clarify the issue.

28. As there had been no formal demand for the insurance, the tribunal has to find that the balance due at the date of the hearing is not payable at present.

Costs (tribunal fees)

29. As to the fees paid by the Applicant to the tribunal, the parties agreed that the Respondent would pay the hearing fee of £220.00 to the Applicant. The tribunal was happy to endorse this agreement.

30. Whilst we have largely found against the Applicant on the issues, our findings were based on technical failures on the part of the Applicant. We note that the Applicant was successful to the extent that payments in

respect of Ground Rent and insurance were made. We further note, in respect of insurance, that the Respondent did not have any evidence that the insurance premium was excessive (for example by way of obtaining alternative quotes) and the fact that he failed to pay towards the insurance until the last moment despite the fact that he had a primary obligation under the lease to secure insurance and despite the fact that, even if he disputed the overall reasonableness of the insurance premium, subject to getting a technically valid demand, he would have been aware of his obligation to pay at least something towards that cost. Further, we consider that the parties benefitted from the examination of the matter by the tribunal (particularly with the clarification of the lease terms).

31. Accordingly, overall, we considered that a resolution which involved the Applicant not pursuing the matters further in the County Court, nor claiming the County Court issue fee, and with the Respondent paying towards the costs of the proceedings by way of the £220 hearing fee, was a fair result of the proceedings.

32. The payment of £220 is to be made directly to the Applicant by the Respondent within 28 days of the date of this decision. The Respondent is not entitled to a fee waiver under the fees rules as he is not paying the fee to the tribunal. He is reimbursing the Applicant, as a result of the tribunal's powers to order such reimbursement pursuant to Rule 13(2) Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

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).