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Residential  
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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00BB/LSC/2013/0091

**Premises:** Flats 1 and 2, 28 Bignold Road, Forest Gate  
London E7 0EX

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**Applicant(s):** Chamber Estates Limited

**Representative:** Carol Nelson MIRPM of Circle residential  
Management Limited

**Respondent(s):** Anthony Niako

**Representative:** Chris Solicitors

**Date of determination:** 27 May 2013

**Leasehold Valuation  
Tribunal:** Ms N Haria LLB (Hons)  
Ms M Krisko FRICS

**Date of decision:**

## **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £1,207.55 is payable by the Respondent to the Applicant in respect of the building insurance premium for the period 3 November 2012 to 2 November 2013.

## **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 payable by the Respondent in respect of the building insurance premium for the period 3 November 2012 to 2 November 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

3. The parties did not request a hearing. Accordingly the matter was determined on the papers.

## **The background**

4. The properties which are the subject of this application are two one bedroom flats in a two storey end of terrace converted house. The Respondent owns the leasehold interest in both flats and there are no other flats in the building.
5. 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.
6. The specific provisions of the lease and will be referred to below, where appropriate.

## **The Applicant's case:**

7. The Applicant submits an application for the determination of the liability to pay and the reasonableness of the buildings insurance premium for the period from 2 November 2012 to 3 November 2013 relating to the property.
8. The Applicant relies on the written submissions of Ms Nelson in the statement of case in support of the application. Basically Ms Nelson submits the building insurance premium of £1,253.44 is reasonable. She states that it is well established that although the cost of services must be reasonable, the fact that they may be obtained at a lesser cost does not render the actual costs unreasonable. She relies on the case of Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd [1997] 29HLR 444 in support.

9. She relies on clause 5(b) of the lease under which the tenant covenants "...to pay and indemnify the Landlord and the owner of the Other Premises, a one half cost against all outgoing and the Mutual Charges payable in respect of the Property....."
10. She refers to the definition of "the Mutual Charges" under clause 1(h) which defines them to be "...those shared obligations and expenses imposed by the terms of this Lease ( whether imposed upon them separately as Lessees, or jointly as the Landlord) as to the repair decoration maintenance renewal and insurance of the Building ..."
11. Ms Nelson also refers to clause 7(e) of the lease under which the landlord covenants to insure the property.
12. Ms Nelson submits that the Applicant has fulfilled its obligation under clause 79e) of the lease to insure the building and that the Respondent is liable to the Applicant for the costs of the insurance.
13. She states that prior to the Applicant's acquisition of the freehold interest in the property the previous lessor had insured the property for £375,000. Upon acquisition of freehold interest in the property in 2010, the Applicant insured the building for an insured risk of £375,000. The current sum insured is £406,350. A copy of the insurance schedule is produced. She contends that the sum insured reflects the size, age, location and nature of construction of the property.
14. Ms Nelson confirms that she had undertaken an analysis of three other properties within the area, namely, 30 St Georges Avenue, 2 Kitchener Road and 10 Derby Road and she produced the results. She pointed out that all three properties have a similar rating ranging from 30p/3100 cover to 27p/£100 cover. She confirmed that 28 Bignold Road was rated at 30p/£100 cover.
15. Ms Nelson confirms that the Applicant is not connected with the broker in any way other than the usual principal/ agent relationship and that the freeholder does not receive any commission payments or other incentive from the broker.
16. Ms Nelson states that the Applicant financed the cost of the building insurance using Premium Credit, and a copy of the paperwork in support of the finance was produced.
17. Ms Nelson states that the Respondent has not demonstrated that the insurance could be obtained at a lesser cost and has provided no alternative insurance quotes.

**The Respondent's Case:**



18. The Tribunal received no submissions from the Respondent or his representative. The Applicant produced a copy of a letter dated 6 March 2013 from Chris Solicitors addressed to Circle Residential Management Ltd which basically states that the Respondent does not dispute the charge but is merely asking for a breakdown and statements regarding the service charges.
19. Having considered the evidence and submissions and all of the documents provided, the Tribunal has made determinations on the various issues as follows.

### **The Tribunal's decision**

20. The Tribunal determines that the amount payable by the Respondent in respect of the building insurance premium due for both flats 1 and 2 for the period 3 November 2012 to 2 November 2013 is a total of £1,207.55.

### **Reasons for the Tribunal's decision**

21. On the evidence produced which included copies of the office copy entries of the registered freehold title to 28 Bignold Road the Tribunal is satisfied that the Applicant holds the freehold title to 28 Bignold Road.
22. The lease provides that the Applicant as landlord is required to insure the property and the Respondent as the lessee has covenanted to pay to the Applicant the cost of such insurance.
23. The Tribunal notes that the insurance has been placed with AVIVA Insurance Limited, a reputable insurance company. The Tribunal notes that the Respondent has not disputed the liability to pay the insurance premium or the reasonableness of the premium. The Tribunal noted the analysis of three other properties within the area submitted by Ms Nelson, but as this was not supported by details of the risks covered, or details as to the age character and size of the properties themselves, the Tribunal found this evidence to be of little assistance as comparable evidence. On the evidence produced the Tribunal finds the placing of the insurance to be an arms length transaction in the market place pursuant to the expert advice of insurance brokers. Since neither party produced any evidence of comparable quotes from other insurance companies in respect of the property, the Tribunal using its own knowledge and experience and finds the Insurance premium to be within a reasonable market range. Accordingly, the Tribunal finds the insurance premium of £1207.55 to be reasonable in relation to the sum insured and the Tribunal find the insurance premium to be reasonably incurred.
24. The Tribunal considered the provisions of the lease and determines that the cost of financing the payment of the Insurance premium was not reasonably incurred. The Tribunal is not satisfied that the lease permits the recovery of the cost of such a loan. The Applicant has given no explanation as to why it was necessary to obtain a loan to finance the payment of the insurance premium.

The Applicant has produced no evidence to show that the cost incurred has been reasonably incurred or that the amount incurred is reasonable. In the absence of any evidence or submissions as to the reasonableness of the loan the Tribunal cannot be satisfied that the sum was reasonably incurred or that the amount incurred is reasonable. Accordingly, the Tribunal finds the Respondent is not liable to pay the cost of the loan from Premium Credit.

25. The Tribunal notes that the lease does not specify a date on which the "Mutual Charge" is payable. The Tribunal notes that there is no balancing provision in the lease to deal with any under or over payments. Since the lease is silent as to when the Mutual Charge is to be paid the Tribunal is of the view that this should be construed contra proferentum as against the landlord, thus the payment is due after it has been incurred and demanded the landlord. In this case the Applicant has produced evidence to show the premium has been incurred they Applicant has not produced copies of the demands for payment issued prior to the demands dated 13 February 2013 entitled "Pre-Action Payment Request". The Tribunal noted that these demands are dated after the date of the application to the Tribunal.

Chairman:

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N Haria

Date:

## Appendix of relevant legislation

### Landlord and Tenant Act 1985

#### Section 18

- (1) In the following provisions of this Act "service charge" means 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, improvements 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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) 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.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

### **Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

#### **Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

### **Commonhold and Leasehold Reform Act 2002**

#### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or



- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

### **Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

### **Schedule 11, paragraph 5**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

**Schedule 12, paragraph 10**

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
  - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.