10250

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBH/LSC/2014/0206**
Property	:	**Flat A, 150 Essex Road, Leyton, London E10 6BS**
Applicant	:	**Peter Burgess**
Representative	:	**Ms M Polinac – Counsel** **Instructed by PDC Legal Solicitors for the Applicant** **Mr N St Claire of Residential Block Management Services Limited (RBMS), managing agents for the Applicant**
Respondent	:	**Mr N M Carroll**
Representative	:	**In person**
Type of Application	:	**Section 27A and 20C of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr P M J Casey MRICS**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 17th September 2014**
Date of Decision	:	**15th October 2014**

DECISION

DECISION

The Tribunal makes the following findings:

1. **That the sum of £428.29 in respect of the insurance premium for the period March 2011 to 2012 and the sum of £424.43 for the insurance premium in respect of the period from March 2012 to 2013 are reasonable and payable in full by the Respondent.**

2. **The Tribunal finds that no further sums are due and payable by the Respondent.**

3. **The Tribunal remits back to the County Court at Cardiff under claim number 3YQ54192 the determination of the counter claim made by Mr Carroll in the proceedings between himself and the Applicant Mr Burgess. The question of costs arising in the County Court proceedings is also referred back to the County Court. The order of transfer to this Tribunal was dated 13th February 2014.**

BACKGROUND

1. This matter started life in the Northampton County Court as a result of a claim by Mr Burgess against Mr Carroll for arrears of service charges, details of which are set out on an arrears list which was attached to the particulars of claim. As a result of a defence file by Mr Carroll, which included a counter claim, the matter was transferred to the Cardiff County Court and subsequently to this Tribunal.

2. The arrears list highlights four specific items that are bring claimed. The first two relate to insurance premiums for the years ending March 2012 and 2013 in the sums of £428.29 and £424.43 respectively. In addition the arrears list also refers to two service charges on account for the year ending December 2010 and December 2011 in the sum of £150 each. Added to these sums appear in handwritten form on the arrears list a client fee of £90, PDC fee of £204.26 and an additional charge of £145.80. This makes the total sum claimed of £1,592.78.

3. By a defence dated 11th October 2013 Mr Carroll denied responsibility for the service charges, apparently largely on the basis that no maintenance works had been carried out and that the landlord had failed to observe its obligations to repair under the terms of the lease. There is also a suggestion that the insurance contract somehow forms a qualifying long term agreement for which there had been no consultation.

4. In respect of the building insurance cover it is alleged by Mr Carroll that the insurance was false having been typed up by the claimant, that a more cost effective insurance proposal put forward by him had been ignored and that there had been no response to claims made in respect to damage caused to the property for which Mr Carroll believed the insurance policy would provide cover.

5. In the counter claim Mr Carroll lists a number of allegations of failings on the part of the claimant which gives rise to a counter claim in the sum of £4,565 together with damages, which are unquantified, interest and costs.

6. On transfer to this Tribunal by an order dated 13th February 2014, directions were issued on 16th April 2014. The directions order, which was made following a review carried out on the papers before a Judge, the issues were highlighted and the directions confirmed that this Tribunal would not deal with the counter claim.

7. Following the directions a bundle was lodged with us by the Applicant prior to the Hearing which contained amongst other documents the Court papers, the Applicant's statement of case with various exhibits and a witness statement by a Mr Ken Moore. Following receipt of that bundle we also received a schedule of costs and an amended index with copies of the insurance summaries for the years in question and certain correspondence, particularly a letter to the Tribunal of 3rd July which confirmed the arrangements undertaken by the landlord to deal with insurance provisions.

8. A few days prior to the Hearing we received some papers from Mr Carroll. This included some further submissions on his case with a number of documents one of which appeared to be a customer information document provided to Miss Cornelia Lionel in respect of insurance but which on the face of it appeared only to relate to her flat, which was the other property in the building.

HEARING

9. The Hearing took place on the afternoon of 17th September. The Applicant was represented by Miss Polinac of Counsel, accompanied by Mr Nick St Clair of RBMS. Mr Carroll attended in person. It appears that Mr Moore, who was the maker of the statement on behalf of the managing agents, was not able to attend and Mr St Clair was therefore filling his shoes.

10. We had noted the terms of the Applicant's statement of case that confirmed at paragraph 9 the periods that were in dispute which had been transferred to us from the County Court. It confirmed that a reply to the defence and defence to the counter claim had been lodged. As was set out in the directions the counterclaim is a matter for the Court but some element of the reply to the defence went to issues before us. It is suggested that the administration charges are properly chargeable by virtue of clause 17.1 of the sixth schedule of Mr Carroll's lease, or alternatively, under Schedule 11 part I of the Commonhold and Leasehold Reform Act 2002.

11. Miss Polinac, on behalf of the Applicant, wished us to take into account an insurance premium for a period prior to the County Court proceedings. However, when it was pointed out to her that the account at page 75 of bundle dated 1st May 2014, showed no outstanding liability in respect of insurance premiums prior to the insurance premium for the period March 2011 to 2012, she accepted that there was no evidence before us to show that there was any earlier sum outstanding. There had been some initial confusion because it seems Mr Carroll had paid the sum of £383.12 following a letter to him in March of 2013. However, this related to a later insurance premium (2013-2014) and is not the subject of these proceedings.

12. Insofar as the two sums of £150 were concerned, it was agreed that there were no reserve fund provisions in the lease. There is provision for payment on account to

be made but that is under the circumstances set in the terms of the lease which it may be helpful to refer to at this point.

13. Under the fourth schedule of Mr Carroll's lease (tenants covenants) at paragraphs 10, 11 and 12 there are the provisions dealing with the obligation to pay the costs and expenses of the landlord, the right for the landlord to demand half yearly estimated costs and the obligation on the landlord to provide a certificate in accordance with the sixth schedule of the lease. It is accepted by Mr Carroll that he has an obligation to pay the insurance premium and there is no argument that the lease provides for him to pay a moiety of all costs, charges and expenses incurred by the landlord under the provisions of the sixth schedule. He accepts also that there is an obligation to make a payment on demand but that such demand shall either be £50 per half year unless and until the expenses incurred by the landlord have been calculated or properly estimated.

14. Paragraph 12 of the schedule provides as follows: *"Within 21 days after receipt of a copy of the certification provided for by paragraph 7 of the sixth schedule hereto to pay to the landlord the amount (if any) appearing by such notice to be due to the landlord from the tenants."*

15. Turning to the sixth schedule, we find the landlords covenants which include the obligation to insure, to keep the retained parts and fixtures and fittings in good and substantial repair, to keep the entrance landings and communal areas clean and in good order and at paragraph 7 *"to keep proper books of account of all costs, charges and expenses incurred by the landlord in carrying out their obligations under this schedule and or in otherwise managing and administering the block and once in each year during the said term to certify (a) the total amount of such costs, charges and expenses for the period to which the certificate relates and (b) the proportionate amount due from the tenants to the landlord under paragraph 10 of the fourth schedule hereto after taking into account payments made in advance under paragraph 11 of the same schedule and to send a copy of the same to the tenants."*

16. It was conceded by Mr St Clair that no certificate had ever been issued by RBMS. He was initially uncertain as to the period for which his company had managed the block but it appears clear that it was prior to January of 2007 because an initial notice under Section 20 of the Act relating to major works had been issued by his company at that time.

17. As a result of the confirmation that no certificate had been issued and as it appeared that the £150 sought each year related to management fees and it appearing that no management had in fact taken place, Mr St.Clair confirmed that he would waive the claim for the two payments of £150 and that accordingly the only sums that remained in dispute, save for the administration charges, were the insurance premiums for the two years referred above.

18. We then heard from Miss Polinac in connection with the three additional payments which appear on the arrears list attached to the particulars of claim. These were, as we stated above, a client fee of £90, PDC's fees of £204.26 and the additional charge of £145.80. Before we deal with the evidence relating to those we should also record that it was accepted that the demands sent by the managing

agents RBMS did not comply with the provisions of Section 47 of the Landlord and Tenant Act 1987. The landlord's address was not shown on any of the demands. The only address being shown was that of the agents.

19. In respect of the three sums it was in each case suggested by Miss Polinac that the lease provided for the recovery of costs by reference to paragraph 14 of the fourth schedule which enabled the landlord to recover the costs which may be incurred in contemplation of proceedings under the Law of Property Act 1925, that paragraphs 2 and 4 of the fourth schedule (tenants covenants) also enabled the recovery of these items of expenditure. Paragraph 2 of the fourth schedule sets out the tenant's obligations to discharge future rates, taxes, assessments and outgoings and paragraph 10 as we have referred to above deals with the obligation to pay costs, charges and expenses that the landlord incurs in connection with the management of the block either in carrying out the obligations under the sixth schedule or other works or things of improvement. We were told that the charge of £145.80 was apparently PDC Legal's costs of drafting the particulars of claim and that was also recoverable under the provisions cited above.

20. Mr Carroll asked certain questions which were not relevant to the matters before us, although we did understand that RBMS receives 20% commission from the insurance company but in return for that commission they handle all claims and other administrative matters associated with the insurance. We were told the commission is disclosed to the Applicant, who apparently receives no benefit himself.

21. Mr Carroll's assertions in respect of the insurance premiums were that they were too high. He said there had been a number of claims, four in total, relating to the property one of which included some flooding to his flat caused from the flat above, some damage to fencing and walling and a broken drain. None had apparently been pursued through the insurance company despite Mr Carroll's wish that they would. He told us he had moved to the property in 2007 and sold in December of last year.

22. He did tell us that with the information he now had he would accept that the insurance was in place at all times and asked us consider the information obtained by his fellow tenant, Miss Lionel, which showed insurance cover at a considerably lower sum. However, he was not able to tell us what information she had given to the company to provide the quote and nor was he able to confirm that the quote related to the totality of the building and not, as appeared on the face of the document, just to Miss Lionel's flat. It was noted, however, that the insurance summaries relied on by the Applicant do not include the tenant's details which is an error because they should do so under the terms of the lease. Mr St Clair told us he would make sure that going forward that position was rectified.

23. Late in the day, PDC Legal had submitted a statement of costs. It is not wholly clear on what basis these costs were being sought. Miss Polinac accepted that Mr Carroll had not acted unreasonably and that accordingly Regulation 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 would not apply. She confirmed that the Applicant was entirely reliant on the terms of the lease. She was invited to consider the matter further with Mr St Clair given the discussions we had in respect of the non-compliance with Section 47 of the 1987

Act and the acceptance by Mr Sinclair that no accounting certificate had ever been provided by the landlord as required under the provisions of the lease. Following a short adjournment, Miss Polinac confirmed that she was not instructed to pursue the claim for costs as set out on the PDC Legal costs summary. That concluded the evidence before us.

THE LAW

24. The law applicable to this matter is set out on the schedule attached.

FINDINGS

25. Before we deal with the insurance premiums and costs that are claimed in the County Court summons, we will deal those matters which were conceded by the Applicants so there is a certain formality.

26. It was accepted that the two sums of £150 are not payable by Mr Carroll and accordingly we disallow the sum of £300 from the amount claimed in the County Court.

27. It was conceded by the Applicants that the claim for costs as set out on the statement of costs for summary assessment dated 12th September 2014 by PDC Legal are not recoverable from Mr Carroll, we understood either as a service charge or under the provisions of rule 13 (see above).

28. We therefore consider the three additional items set out on the arrears list in handwritten format namely the client fee of £90, PDC fee of £204.26 and the additional charge of £145.80. Our findings in respect of these matters are that the lease makes no provision of the recovery of these costs. The provision for the recovery of costs in respect of proceedings contemplated under the Law of Property Act 1925 is not relevant. No order for possession was sought in the County Court proceedings and accordingly it would not seem to us that this provision of the lease provides any assistance for the Applicant. There are no other terms of the lease which we find would enable recovery of these costs. There is no specific reference to legal fees or administration charges. It was suggested that the fees incurred may be recoverable under the provisions of schedule 11 of the Commonhold and Leasehold Reform Act 2002. The only possible provision could be under paragraph 1(1)(c). We find that if that were to apply, in any event these costs would not be recoverable from Mr Carroll. Our reasoning for so saying is that the landlord has failed to provide the accounting certificate, which in our view trips off the obligation to make the payments sought by the invoices rendered and that secondly, the invoices, taken to be the demands, fall foul of Section 47 of the 1987 Act and accordingly until they are corrected mean that Mr Carroll has no obligation to make such a payment. That being the case costs incurred in attempting to recover the monies must in our finding fail. We should also record that the lease does not appear to provide for the recovery of the insurance premium as a separate rent but merely as a service charge under the sixth schedule. In those circumstances, it seems to us under the terms of the lease and by reference to Section 47 of the 1987 Act, Mr Carroll's obligation to make any of these payments has yet to fall due. However, we record the fact that Mr Carroll, realistically in our view, confirmed that there was no necessity for the Applicants

to re-serve the demand or a certificate in respect of the years in dispute. We confirmed with him that it did not in our opinion affect his counter claim. In those circumstances, therefore, the three sums included in the particulars claim for costs are not recoverable from Mr Carroll.

29. We turn then to the question of insurance premiums for the two years. We do not propose to deal with any earlier years. We are charged to determine those matters transferred to us by the County Court and that includes just the two insurance premiums for the years ending March 2012 and 2013 in the sums of £428.29 and £429.43 respectively. We heard from the Applicant's representatives that RBMS approach brokers who in turn provide quotes. There is evidence of the change of insurers on the summaries provided to us and it is also confirmed that the managing agents are members of ARMA and FCA registered introducers of the insurance brokers. The production of the summaries showed that the premiums had been paid. It does appear that the insurance is reducing as the premium payable for the year ending February 2014 had reduced to a total sum of £766.23 from a figure of £848.85 the year before.

30. The evidence provided by Mr Carroll was not compelling. He had not in fact sought this information himself and was unable to tell us what details may have been given by Miss Lionel to the insurance brokers. The document on the face of it appeared to relate solely to the cover for Flat 150B at the property and did not include terrorism cover which is within the scope of the present policy. In those circumstances we find that the premiums for the two years are reasonable and are payable by Mr Carroll. Payment should be made as soon as possible and Mr Carroll should endeavour to come to terms with the Applicant as to a payment programme if he cannot afford to settle the sums immediately. Enforcement of the payment would rest with the County Court.

31. The Applicant's representatives confirmed that there would be no claim for the costs incurred in the proceedings before us. That being the case and as Mr Carroll did not make an application under section 20C we make no further findings in respect of the costs of these proceedings.

32. As we have indicated at the start of the case, the counter claim and any claim for County Court costs must be referred back to the court for determination. It is hoped, however, that the parties may be able to reach some agreement on that point which would obviate the necessity of further litigation.

Andrew Dutton

Judge: _____

A A Dutton

Date: 15th October 2014

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 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 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 that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.