10853

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AT/LSC/2015/0021**
Property	:	**8 Stilehall Parade, London W4 3AG**
Applicant	:	**Michael Rowan**
Representative	:	
Respondent	:	**Tracy Caulfield**
Representative	:	
Type of Application	:	**Application for a determination of liability to pay and reasonableness of service charges**
Tribunal Members		**Judge Shaw** **Mr P Casey MRICS**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Interim Decision and Directions	:	**14 April 2015**

DECISION

INTRODUCTION

1. This case involves an application made by Michael Rowan ("The Applicant") for a determination as to the reasonableness and payability of service charges in respect of 8 Stilehall Parade, London N4 3AG ("the Property"), pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act"). The Applicant is the freehold owner and landlord of the property, which comprises 4 floors. The ground and basement floors are commercial premises. The first and second floors comprise a flat, the leasehold owner of which is Tracy Caulfield ("the Respondent"). A determination is ought in respect of maintenance and insurance contributions for the years 2008-2014.

2. Directions were given in this matter on 5th February 2015, following a Case Management Conference attended by both parties. The issues were identified at paragraph 4 of those Directions and have perhaps crystallised further as a result of the Statements of case served on both sides. As understood by the Tribunal, this case involves pre-eminently, a dispute as to the proper construction of the lease, as to the correct percentage contributions to be made by the respondent to the Applicant, in respect of the insurance costs for the Property. There does not appear to be any dispute that the percentage in respect on maintenance costs is 50%. There may also be outstanding issues as to the reasonableness of the costs, and the payability – with which the Tribunal will deal below.

3. This case is dealt with as a paper determination, on written representations by the parties and without their attendance.

The Percentage Contribution for Maintenance and Insurance

4. At clause 3 of the Lease dated 8th October 1997 (tab 7 of the bundle), the lessee covenants to pay a Maintenance Contribution computed in accordance with Part 1 of the Fourth Schedule to the lease.

5. Paragraph 2 of Part 1 of the Fourth Schedule states that:

" The maintenance Contribution....shall be one half of the expenses incurred for the purposes mentioned in Part 11 and in addition 25% of the costs incurred by the Lessor in effecting buildings insurance and third liability insurance for the Building"

6. Part 11, paragraph 1, defines the expenses incurred by the Lessor as, in part:
"The performance by the Lessor of his obligations in Clause 4(ii) of this Lease"

7. Clause 4(ii) of the Lease provides that the Lessor will:

".....keep insured the Property from loss or damage by fire and all other risks usually covered under a comprehensive buildings insurance policy....."

8. So the Lease is confusing. On the one hand it provides that the Lessee's contribution is one half of the maintenance costs – which costs under clause 4(ii) include insurance costs. On the other, the obfuscating words *".....and in addition 25% of the cost incurred by the Lessor in effecting buildings insurance and third party liability insurance for the Building"* are added at paragraph 2 of Part 1 of the Fourth Schedule, a mentioned above. Does this mean that the draftsman intended the insurance contribution not to be 50%, but 25% (despite what is said at clause 4 of the Lease and part 11 of Schedule Four)? Or in addition to the 50%, thus 75%?

9. The Lease is not, it seems to the Tribunal well drafted, but doing its best to construe it so as to give the arrangement business efficacy and some sense, the Tribunal notes that under clause 4(ii), the landlord's obligation is to insure *"the Property"*. The confusing further words added to paragraph 2 of Part 1 of the Fourth Schedule, refer to insurance for *"the Building"*. The Property is defined in the Recitals as effectively the whole of 8 Stilehall Road as edged blue on the plan

annexed to the Lease. *"The Building"* is similarly defined at (iii)(b) of the Recitals as all floors of the flat and the shop. A yet further definition of *"the Demised Premises"* appears at the First Schedule to the lease – effectively the Respondent's flat only, and edged red on a further plan.

10. It is perhaps possible that the draftsman envisaged a possibility that the Building might not always correspond exactly to the Property, and in this event, the Lessee would pay a further 25% contribution of such extra cost as might be incurred in insuring the Building as opposed to the Property. However, in this case, there is on the papers before the Tribunal no tangible distinction between the Property and the Building, and no further percentage over and above the half referred to at clause 4(ii) arises.

11. The best sense therefore that the Tribunal feels able to make of this Lease is that the primary obligation to pay half the insurance costs of the Property as defined in the lease (ie all 4 floors) prevails and is neither reduced nor increased by the further words referring to 25% in the Fourth Schedule, for the reason mentioned in paragraph 10 above.

THE REMAINING ISSUES

12. These can be dealt with relatively shortly. As far as the maintenance charges are concerned, the applicant states in terms in his application that "I do not wish to claim for any historical payments.....". This would appear a wise concession, because there is no evidence in the bundle provided of any demand complying with the statutory requirements ever having been made.

13. As for the insurance premiums, again there is no evidence of any statutorily compliant demands having been made, and unless and until such demands are made, no sums will be payable. It appears that the Applicant is out of time now for the bulk of the years in question, by virtue of the provisions of

section 20B of the Act. Accordingly no insurance premium contribution are payable by the Respondent unless statutorily compliant demands are made.

14. It is unclear as to whether there is an issue as to the quantum of the insurance premiums claimed. The details are in the bundle, which the tribunal has perused. The full figures appear at page 25 (and elsewhere) and seem to the tribunal to be reasonable – and there is no contrary evidence produced by the respondent in any event.

CONCLUSION

15. For the reasons indicated above, the Tribunal finds that, on a proper construction of this Lease, the Respondent's percentage contribution to both Maintenance Costs and the cost of insurance are 50%. The Applicant has abandoned any claim to historical maintenance charge arrears. There having been no valid demands, there are currently no contributions to insurance premium payable either, unless subsequent valid demands are made (insofar as remains possible under section 20B of the Act).

16. The Tribunal has considered whether a section 20C order should be made precluding the addition of the costs of this application to the service charge account. The Tribunal considers it appropriate to make such an order, because the lease in this case is obscure and the Respondent was entirely justified in seeking a ruling from the Tribunal – indeed both parties wished for a determination in this regard. A section 20C order is therefore made.

Tribunal Judge SHAW

14th April 2015