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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference :	CHI/00MS/LSC/2016/0096
Property :	47-83 Rollesbrook Gardens, Southampton. SO15 5WB
Applicants :	Mr Rupan Sarma & Various leaseholders
Representative :	---
Respondent :	Tapestart Limited
Representative :	---
Type of Application:	Application for determination of liability to pay and reasonableness of service charges pursuant to Section 27A Landlord and Tenant Act 1985 ("the 1985 Act")
Tribunal Member s:	Judge P J Barber Mr P D Turner-Powell Valuer Member
Date of Decision :	12th January 2017

DECISION

Decision

1. In regard to the Applicants` claim for determination of reasonableness of buildings insurance recharged for each of the service charge years 2010/11 to 2016/17 inclusive, pursuant to section 27A of the 1985 Act, the Tribunal determines that the premiums charged are reasonable and payable.
2. In regard to the Applicants` claim for an order pursuant to Section 20C of the 1985 Act in connection with the Respondent landlord`s costs incurred in relation to these proceedings, the Tribunal determines that none of the Respondent`s costs in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by any of the lessees.

Reasons

Introduction

3. This matter, being a claim for determination of liability to pay and reasonableness of service charges, derives from an application received by the Tribunal on 12th October 2016. The application is for determination of reasonableness of buildings insurance premiums payable in each of the service charge years 2010/11; 2011/12; 2012/13; 2013/14; 2014/15; 2015/16 and 2016/17. The application is also for determination under section 20C of the 1985 Act as to whether the Respondent landlord`s costs in relation to these proceedings are to be regarded as relevant costs to be taken into account, in determining future service charges.
4. Directions were issued by the Tribunal to the parties on 24th October 2016, providing that the application should be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of the date of receipt of those directions. No request for oral hearing has been received from either party.

The Law

5. Section 19(1) of the 1985 Act provides that :-

   "19 Limitation of service charges: reasonableness

   (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 provision 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.

6. Section 20C (1) and (3) of the 1985 Act provide that:-

   "20C Limitation of service charges: costs of proceedings

(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 the First-tier 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) ....

(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.

7. Section 27A(1) of the 1985 Act provides that:-

(1) An application may be made to the appropriate 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.

The written representations

8. By letter dated 11th November 2016, the Applicants broadly submitted that the buildings insurance premiums for the years 2010/11 to 2016/17 inclusive were unreasonably excessive and referred to quotations they had obtained which they said were substantially lower; the Applicants further objected to the Respondent landlord using Compton Insurance Services to provide insurance premiums on the basis that Mr Peter Ballard, being a director of the Respondent company Tapestart Limited, is also a director of Compton Group and Compton Insurance Services, resulting they said, in the relationship between the landlord and the insurance providers not being at arms` length. The Applicants submitted that clause 7.1 in the Lease states that the building insurance premiums are part of the service charge and that it should be reasonable. The Applicants referred to insurance premiums being charged by the Respondent for the year 2016/17 equating to a sum of £563.60 per flat, whilst the Applicants had obtained quotations variously from other insurers with comparable levels of cover, resulting in a sum per flat ranging from £165.61 to £312.62. The Applicants also submitted that a further quote had been obtained from Allianz on an assumption of no claims having been made, resulting in a sum of £123.48 per flat; the Applicants submitted that this demonstrated that the premiums charged in earlier years prior to 2016/17, ranging from £280.09 to £476.64 per flat were similarly excessive. The Applicants also referred to premiums payable equating to £146.45 per flat for a comparable block of flats at 85-106 Rollesbrook Gardens, and being adjacent to the Property.

9. The Respondent stated its` case by a witness statement dated 29th November 2016, provided by its` in-house solicitor, James McCarry and in which it was acknowledged that the onus under Section 19(1) of the 1985 Act is on the Respondent to show that the insurance costs have been reasonably incurred. In broad terms, Mr McCarry submitted that the Tribunal should decide whether the

insurance cover is in accordance with the terms of the lease and whether the premiums are reasonably incurred, not necessarily whether they are the cheapest. Mr McCarry appended a copy of the first named Applicant`s lease dated 29th July 2002 ("the Lease"), and referred to clause 8.5(a) of the Lease being, he said, the relevant obligation as to insurance. Mr McCarry further explained that the Property is currently insured by Liverpool Victoria and that the Respondent insures all properties in its` portfolio exceeding 4,000 units, with a single insurer, including cover for accidental damage and acts of terrorism and providing against risks arising as a result of the leases in the block, not including restrictions against particular types of sub-tenancies or occupancies. Mr McCarry submitted that it was well established that a landlord may insure all its` properties with a single insurer, so long as it fully complies with its` obligations as set out in the insurance provisions of the lease. Mr McCarry further explained that Compton Insurance Services uses a London Broker, Genavco, which regularly checks the open insurance market on behalf of the Respondent; adding that the Respondent`s insurance of the Property has been with 4 different companies since it acquired the Property in 2005, indicating that some periodic review had taken place. Mr McCarry said that the role of Compton Insurance Services is purely administrative and that the placing of the insurance is carried out by the broker, Genavco. Mr MCarry further referred to a claims history for the Property including 19 claims since 2006. In regard to the comparable quotes referred to by the Applicants, Mr McCarry submitted that they were not entirely on a like for like basis, referring variously to differences in the level of property owners` liability indemnity cover and the amount of some of the policy excesses; reference was also made to Schedule A accompanying the comparable quotations, including for example discrepancies as to information provided, concerning whether cover is included for students, DSS, housing associations or asylum seekers, whether or not there is a lift, and not requiring terrorism cover. Mr McCarry also referred to a note received from the Respondent`s broker, Genavco, which included a reference to some insurers offering introductory low rate premiums to attract business, with higher premiums following in subsequent years; it was suggested that for such a large portfolio as held by the Respondent, it would not be prudent to chase introductory deals from year to year, resulting in the market quickly closing its` door. Mr McCarry further submitted that there was no evidence that Liverpool Victoria`s premium is excessive and that case law established that a landlord is not obliged to "shop around" to obtain the cheapest premiums and that if a policy is competitively obtained in accordance with market rates, the cost of the premium was reasonably incurred.

10. In a supplementary letter of response dated 3rd December 2016, the Applicants enclosed details of the directorship of Compton Insurance Services, Compton Group and the Respondent, Tapestart Limited and asserted that the relationship between Compton Insurance Services (CIS) and Liverpool Victoria had not been disclosed, suggesting it was fair to assume an administrative charge by CIS equating to 50% to 70% of the premium paid. The Applicants appended a copy of the decision in *Avon Estates (London) Limited v Sinclair Gardens Investments (Kensington) Limited [2013] UKUT 0264 (LC)* which they said provided that in order for an insurance premium to be "reasonably incurred", the landlord must have negotiated it at arms` length in the market, or prove the amount charged is representative of the market rate, adding that it is fair to assume that the insurance premium charged is neither representative nor competitive to the market rate. The

Applicants commented that their comparable quotes based on previous claims, were on or very close to a like for like basis and that the differences could not account for the higher premiums.

11. The bundle of documents provided to the Tribunal also included copies of the insurance demands, a statement by Ann Wellman of No. 76 Rollesbrook Gardens and, in regard to the comparable quotes, Schedule A "Your Information", copies of Schedule B quotations, and various other proposal documents.

Consideration

12. The Tribunal has taken into account all the written representations and such case papers as have been provided and to which it has been specifically referred.

13. The Tribunal notes that whilst comparables have been obtained by the Applicants and provided for the year 2016/17, they have not been so provided for the earlier years in respect of which the claim is made, save for the quote from Allianz, which the Applicants said was received on the basis of no claims having been made, so as to provide a comparison with charges made in the earlier years. However the Respondent`s statement indicated that since 2006 there have been 19 claims reported. Accordingly the Tribunal considers the evidence provided as to comparable premiums for the years prior to 2016/17 to be unclear, based seemingly erroneously on a single quote obtained on the basis of no claims having been made.

14. In regard to the lower premiums payable for buildings insurance for the similar adjacent block at 85-106 Rollesbrook Gardens, whilst the Tribunal understands that the Applicants may feel a degree of frustration, such adjacent block is not owned by the Respondent; no specific evidence had been produced to verify the premiums for such adjacent block and accordingly the Tribunal is of the view that comparison is largely anecdotal only, and not directly relevant.

15. In regard to whether or not the Applicants` comparables had been obtained on a truly "like for like" basis, the Tribunal notes that there are at least some differences. Also, the landlord`s covenant at Clause 8.5(a) of the Lease provides as follows:

"to keep the Estate (including the Landlord`s fixtures fittings and furnishings) insured with an insurance office or underwriters and through any agency including the Landlord`s as decided from time to time by the Landlord (unless the insurance is rendered void by any act or omission of the Tenant or persons claiming under the Tenant) in the sole name of the Landlord against loss or damage by fire lightning aircraft explosion earthquake storm flood escape of water or oil riot malicious damage theft or attempted theft falling trees and branches and aerials subsidence heave landslip collision accidental breakage of glass and sanitary ware and accidental damage to underground services and such other risks as are usually covered under a comprehensive policy of insurance covering blocks of flats (subject to excesses exclusions and limitations as the insurers may require) and any other risk as the Landlord thinks fit such insurance so far as practicable to comply with the usual requirements of mortgages of domestic residential property for the full reinstatement value of the Building (including all professional fees debris removal and site clearance

and the cost of work which may be necessary by or by virtue of any Act of Parliament) and for three years` loss of rent."

The Tribunal notes from the above clause that the landlord has a considerably broad power and discretion under the Lease to determine both the means by which insurance is arranged and also the extent of risks to be covered "*as it thinks fit*". The Applicants has asserted that under clause 7.1 of the Lease, there is a requirement for the insurance premiums to be reasonable; however clause 7.1 is in fact a covenant by the tenant, to pay contributions by way of service charge

"...of the amount which the Landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure..."

Accordingly the reference in clause 7.1 is not to reasonableness of the premium, but to the anticipatory amounts which the landlord may require on account or in advance.

16. In relation to the assumptions made by the Applicants as to large administrative charges being made by Compton Insurance Services, the Tribunal finds that no clear or unequivocal evidence has been provided to that effect. In regard to the reference by the Applicants to the decision in *Avon Estates (London) Limited*, the Tribunal considers that there is sufficient evidence provided that the letting of the insurance by Genavco, equates to negotiation at arms` length.

17. The Tribunal is further satisfied on the basis of the evidence given, that the insurance has been arranged on the open market through a broker, with a reputable insurer, in accordance with the broad discretion of the landlord for arranging such insurance and on terms at its` discretion, under the Lease. Whilst the premium does appear to be relatively high, the Tribunal accepts that the landlord is not obliged to shop around for the lowest quote in each year and that it appears to have moved the insurance during the period of its ownership, thus providing some evidence as to review being carried out from time to time. The Tribunal further accepts that in the case of a large property portfolio, it may not be entirely practical or desirable to opt for the lowest or loss leading quote from a succession of different insurers, on a year by year basis.

18. In regard however to the Section 20C application, the Tribunal has some sympathy with the application made in this instance and accepts that on the face of it, given relatively high premiums and seemingly much lower comparative rates, the Applicants made this application in good faith and with a degree of justification in their view. Accordingly the Tribunal exercises its` broad discretion as it considers just and equitable in the circumstances, and determines that none of the Respondent`s costs in these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by any of the lessees.

19. The decision is made accordingly.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.