12408

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BA/LSC/2017/0078**
Property	:	**First Floor Flat, 28 Boundary Road, London SW19 2AN**
Applicant	:	**Stephen McKenzie**
Respondent	:	**Abbeyladder Ltd**
Representative	:	**George Ide LLP**
Type of Application	:	**Liability to pay service charges**
Tribunal	:	**Judge Nicol** **Mr JF Barlow FRICS** **Ms L Hart**
Date of Decision	:	**25th September 2017**

DECISION

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1. The amounts charged by the Respondent in respect of buildings insurance for the years 2010 to 2016 have been unreasonable and the amounts payable by the Applicant are limited to the sums set out in the final column of the table in paragraph 5 below.
2. The Tribunal has no jurisdiction to declare limits on future service charges in advance of their being demanded and so the Tribunal has refused the application to the extent that it refers to future years.

The Tribunal's reasons

1. The Applicant is the lessee of one of the two flats at the subject property, a converted house. The Respondent is the freeholder and their managing agents are Hampton Wick Estates Ltd.

2. The Applicant's lease has been extended by express surrender and re-grant but the deed of surrender and re-grant specifically incorporates terms from the old lease including, at the end of clause 1, an obligation to pay half of the Respondent's expenditure in effecting and maintaining the insurance of the building, including commission.

3. The Applicant believes the insurance premiums arranged for the Respondent by their agents' brokers, Princess Insurance Agencies ("PIA"), to have been too high. The charge to him has risen from £491.94 in 2010 to £679.13 in 2016. He has provided the following evidence:

   (a) An AA report has stated that buildings insurance premiums have been declining industry-wide between 2012 and 2016.

   (b) Three quotes for landlord's insurance of the subject property from Liverpool Victoria, Endsleigh/NIG and Deacon, effective December 2016, January 2017 and April 2017 respectively, at what would be an average cost to him of £248.94.

4. According to the witness statement of Christopher Case, the property manager employed by Hampton Wick Estate Ltd, the Respondent receives 10% commission from each insurance premium to cover the cost of claims-handling. This element was not specifically challenged by the Applicant and appears reasonable to the Tribunal. The Applicant's figure derived from his three quotes does not take this into account. When commission is stripped from the insurance premium for 2016, the average of the Applicant's three quotes is 40% of the amount charged on behalf of the Respondent.

5. From the above matters and the parties' written representations, the Tribunal has derived the following table:

Date	Service Charge	Charge without commission	40% of the charge w/o commission	Plus commission at 10%
Nov 2010	491.94	447.22	178.89	196.78
Nov 2011	543.75	494.32	197.73	217.50
Nov 2012	556.41	506.01	202.40	222.64
Nov 2013	571.25	519.32	207.73	228.50
Nov 2014	609.17	553.79	221.52	243.67
Nov 2015	656.30	596.64	238.66	262.52
Nov 2016	679.13	617.39	246.96	271.65

6. By the Tribunal's calculation on the basis of the Applicant's evidence, the final column in the above table shows the amounts which would be reasonable for the Applicant to pay in respect of the buildings insurance. There is obviously a substantial difference between those figures and the amounts actually charged. In his witness statement, Mr Case has sought to justify the higher figures.

7. Mr Case has pointed to two aspects. Firstly, he has provided evidence that PIA have carried out a market-testing exercise. Unfortunately, the market-testing exercise has no relation to the subject property. It is notable that the subject property has no claims history but the properties which appear to have been used in the market-testing exercise did not include the subject property and have substantial claims histories. According to the results of the exercise, presented by HW Wood Ltd, two insurers refused to provide quotes due to the poor loss history. It is inevitable that this would have resulted in higher quotes than would have been the case if a quote had been sought for the subject property alone. Mr Case asserted that the claims histories of other properties within the Respondent's portfolio did not affect the premium charged for the subject property but, if this market-testing exercise was in any way the basis for that premium, it is difficult to see how he can be correct.

8. Secondly, Mr Case listed a number of advantages that the insurance arranged on behalf of the Respondent allegedly provided, including guaranteed cover at renewal irrespective of whether the premium has been paid, claims settlement authority up to a fixed level without reference to loss adjusters, a panel of approved contractors and coverage for sub-tenants who are students, benefit claimants or asylum-seekers. However, Mr Case provided no evidence that these benefits are unique, required or added anything to the premium. Many of the quoted advantages sound like industry standard practice and would be expected from other insurers as well.

9. It is clear that the Respondent has not given any individual attention to the insurance needs of the subject property. This is demonstrated in part by the fact that the Respondent has not revalued the rebuild cost of the subject property in accordance with industry good practice during the years in dispute in this claim. Of course the Respondent is entitled as a matter of general principle to adopt a portfolio-based approach in insuring its properties but that does not give them free rein to charge whatever sums are derived from that process in all circumstances.

10. The Tribunal had a particular problem with the sums set out in the insurance certificates as the premiums for the subject property for each year. Mr Case gave no evidence as to how those particular sums were calculated. There was no line of reasoning connecting the market-testing approach across an entire portfolio to the particular sums charged for the subject property.

11. For the reasons set out above, the Tribunal is satisfied that the Applicant has established that the amounts charged to him on behalf of the Respondent for buildings insurance for the years 2010-2016 are unreasonable. The Tribunal has further decided that a reasonable amount for each year would be the figure given in the final column of the table at paragraph 5 above.

12. The Applicant also sought a "ruling or assurances ... that the premiums will be no higher than that which can be obtained on the open market for an equivalent level of cover." The Tribunal can understand why the Applicant has asked for such relief but it does not have the power to grant it. The Tribunal's jurisdiction is limited to deciding the reasonableness and payability of sums actually demanded, not sums which might be demanded in future.

Name: NK Nicol **Date:** 25th September 2017

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate 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.