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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BB/LSC/2013/0602**

Property : **Ground Floor Flat, 13a Redclyffe Road, East Ham, London E6 1DT**

Applicant : **Meryon Properties Ltd**

Representative : **Circle Residential Management Ltd**

Respondent : **Ms Laura Lewis**

Representative : **None**

Type of Application : **For the determination of the reasonableness of and the liability to pay a service charge and administration charges**

Tribunal Members : **Judge O'Sullivan**

Date and venue of Hearing : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **17 December 2013**

DECISION

Decisions of the tribunal

- (1) The Respondent no longer challenges the cost of buildings insurance in the sum of £337 for 2013/14 and thus the tribunal makes no decision in this regard.
- (2) The legal costs claimed under the County Court case reference 2QZ50682 of £2049.69 are disallowed.

The application

1. The Applicant seeks and the tribunal is required to make pursuant to a transfer from the County Court a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent.
2. Proceedings were originally issued in the Bow County Court under claim nos. 2QT41610, 2QZ50682, 3QT45261 and 3QT30852. Case number 2QT41610 has already been the subject of a determination under case reference LON/OOBB/LSC/2013/0281 in which it was found that buildings insurance in the sum of £435.44 was found reasonable.
3. The relevant legal provisions are set out in the Appendix to this decision.
4. Directions were made dated 3 October 2013 which provided for this matter to be considered by way of a paper determination in the week commencing 16 December 2013.

The background

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 Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. The relevant issues for determination were identified in the directions as follows:

Case number 2QZ50682 -	agent's fees £540
	Legal costs for attendance £2049.69
Case number 3QT30852 -	Only ground rent remains in contention which will be remitted to the County Court
Case number 3QT45261 -	buildings insurance on the sum of £447 for 13/14, all other sums in those proceedings have been withdrawn

8. In the statement of case dated 22 November 2013 the Applicant confirmed that it wishes to proceed in its claim in relation to the legal costs in the sum of £2049.69 and the insurance in the sum of £447 for 2013/14, all other heads of claim having been confirmed as withdrawn.
9. Having considered submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Buildings insurance 12/13 £447

10. The Applicant sought the tribunal's determination in respect of the buildings insurance for 2013/14 in the sum of £447. The Applicant relied upon a letter dated 25 November 2013 enclosed at page 167 of the hearing bundle in which the Respondent states that *"this item can be noted as being settled and subsequently removed from the current proceedings"*.
11. As the Respondent has admitted this sum the tribunal did not consider it any further.

Legal costs £2049.69

12. These costs were heard to relate to relate to attendance at a court hearing for claim number 2QT41650. This case was subsequently transferred to the tribunal under case reference LON/OOBB/LSC/2013/028 and the tribunal found in favour of the Applicant in finding that the sum of £435.44 in respect of buildings insurance was payable.

13. A breakdown of the costs was provided at page 27 of the bundle. This totalled £2079.69. This was badly photocopied and difficult to read in places. However it could be seen that the time appeared to relate to a 10 minute hearing in the county court. A charge of £112.50 related to the consideration of a defence and preparation of a hearing bundle, a further charge of £225 related to a further review of all documents and some 6 hours of time totalling £1350 was claimed for travelling time. Only 0.167 of an hour in the sum claimed of £37.58 related to time spent at a hearing. The Applicant does not provide any detail of this hearing.
14. The landlord relies on clause 5(k) of the lease which contains a covenant on the part of the lessee;

“to pay all expenses (including Solicitor’s and Surveyor’s fees) incurred by the Landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court.”
15. The landlord relies on the decision *69 Marina and Oram and another [2011] EXCA Civ 1258* and says that the non payment of the insurance constitutes a breach by the tenant of a covenant in their lease. The Applicant’s position that the fees charged are recoverable under the terms of the lease and are reasonable. It is submitted that it is reasonable for the Respondent to reimburse the Applicant for the costs incurred and that the Applicant should not be put to the cost of a successful outcome if the costs could have been avoided by a reasonable Respondent.

The Respondent’s case

16. In a statement dated 3 November 2013 the Respondent states that she was not present at the hearing on 13 November 2012 as she had not received notice. Judgement was entered in the Applicant’s favour in the sum of £1619.51. Costs and travel were also ordered in the sums of £80 and £76 respectively. The judgement was subsequently set aside and the case transferred to the tribunal.
17. The Respondent questions whether the Applicant is entitled to make this further application for the legal costs when she says presumably a schedule of costs was before the Court at the hearing on 13 November 2012 and rejected with the sum of £80 being granted only. The Respondent also says that at the previous hearing at the tribunal the Applicant applied for an order for these same costs and the claim was rejected. She relies on a document headed LJL3 and an excerpt from the tribunal’s decision marked LJL4.

The tribunal's decision

18. The tribunal determines that the claim for legal costs of £2049.69 should be disallowed.

Reasons for the tribunal's decision

19. The tribunal accepts in principle that costs incurred in connection with proceedings and in relation to a breach of covenant for failure to pay service charges can be considered as expenses incurred in contemplation of proceedings for forfeiture under section 146 of the Law of Property Act 1925.
20. The tribunal therefore went on to consider whether those costs were reasonable. The amount awarded by the tribunal in this case in respect of buildings insurance was only £435.44. The Respondent provided the tribunal with a copy of an order from the County Court which showed that judgement had originally been given in the sum of £1619.51. The tribunal was provided with no other evidence from the Applicant as to the other items included in those proceedings. However it notes from correspondence in the Respondent's bundle that it appears that the claim included agent's fees in the sum of £540 and a fee for a section 146 notice in the sum of £540. These were disputed on the basis that no formal demand for buildings insurance had been received and no determination had been obtained prior to the service of a section 146 notice. Although the lessee confirms that she does not dispute the buildings insurance she says at this time no formal demand had been received. It appears that these two sums of £540 were subsequently conceded by the Applicant.
21. Turning to the costs themselves the tribunal was dismayed at the amount of time spent by the management company on what should have been a straightforward matter. Some 1.5 hours were spent preparing for a short hearing. Some 6 hours of travel time was claimed when given the nature of the application it may have been wise to consider instructing a local agent.
22. The Applicant says that it should not be put to the cost of a successful outcome of the costs could have been avoided by a reasonable Respondent. The tribunal notes however that in the case reference LON/OOBB/LSC/2013/0281 relied upon by the Applicant the tribunal was asked to make an order under Rule 13. It declined to do so noting that *"although the tribunal have found against her the tribunal have not found that she acted unreasonably in defending the claim"*.
23. Given that large sums were conceded by the Applicant in the proceedings, that the sum finally found reasonable by the Tribunal was only £435.44, taking into account the previous tribunal's comments on

the applications for costs in those proceedings and given the level of the costs themselves which are disproportionate to the sum in dispute the tribunal considers it would be wholly unreasonable to allow costs in this instance.

24. The tribunal would mention that the schedule of costs relied on by the Respondent and marked as LJL3 however seemed to relate to a hearing on 21 May 2013 rather than the court hearing in respect of which the costs are claimed. The costs which were considered by the tribunal under reference LON/OOBB/LSC/2013/028 appear to be the costs of the tribunal proceedings themselves rather than the costs incurred in the County Court.

Name: S O'Sullivan

Date: 17 December 2013

Appendix of relevant legislation

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 the appropriate 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 the appropriate 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).