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

Case reference : LON/00AJ/LSC/2014/0270

Property : 53 Webster Gardens, Ealing,
London W5 5MB (“the flat”)

Applicants : Michael Paul Smyth and
Edel Anne Finn (“the tenants”)

Representative : In person

Respondent: : Halin Properties (GR) (“the
landlord”)

Representative : Middlesex Property Management
Ltd

Type of application : Liability to pay service charges

Tribunal Judge : Angus Andrew
Marina Krisko FRICS

Date of decision : 23 July 2014

DECISION

Decision

1. The insurance premium of £251.71 was reasonably incurred and that sum is payable by the tenants to the landlord as a service charge.
2. We declined to order the landlord to reimburse the fees incurred by the tenants in these proceedings.
3. We decline to make an order preventing the landlord from recovering all or any of its costs incurred in these proceedings through any service charge that may be payable by the tenants.

The application

4. By their application received on 19 May 2014 the tenants sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) of their liability to pay a service charge of £251.71 in respect of the buildings insurance premium incurred by the landlord in respect of the year commencing 1 April 2014. They also sought an order under section 20C of the Act preventing the landlord from recovering its cost incurred in these proceedings through the service charge. The tenants paid an application fee to the tribunal and we are entitled to order the landlord to reimburse the tenants with all or part of that fee.
5. A tribunal member considered the application on 20 May 2014 and issued directions. In particular she directed that the application should be dealt with on consideration of the documents alone and without an oral hearing. The directions appeared to have been complied with and the tribunal received two copies of a document bundle. Neither party requested an oral hearing.
6. The relevant legal provisions are set out in the Appendix to this decision.

Background

7. The flat is an upper maisonette and the tenants hold it under a lease dated 27 January 1958. The lease is a full repairing lease and is a product of its time. It does not make any provisions for payment of a service charge as such. The landlord’s obligations are limited. It is however obliged to insure the flat in its full value “*and to make all payments necessary for that purpose within seven days*”. The tenants are obliged to repay the insurance premium to the landlord.
8. It seems that the landlord has a large portfolio of properties and insurance is placed through Deacon which is the trading name of Property and Commercial Ltd. They are a firm of brokers and placed the insurance in

the market. It seems that Deacon initially placed the insurance with Aviva at a total premium of £304.45 including insurance premium tax of £17.23. For reasons that will become apparent the tenants considered that the premium was too high and complained to the managing agents who requested Deacon to go back to the market. They obtained a quotation from Zurich at a reduced premium of £251.71 including insurance premium tax of £14.25. It is however worth noting that the reduced quotation was obtained at a price. The Aviva quotation was on the basis of a general excess of £50 whereas as the Zurich quotation was on the basis of a £250 excess. Nevertheless the insurance was placed with Zurich and the tenants paid the premium under protest because they did not want to run the risk of their flat being uninsured.

9. The tenants object to the premium principally on ground that much cheaper insurance can be obtained elsewhere. In particular they rely on a number of online quotations included in the document bundle. The presentation of these quotations is somewhat confusing but as we understand position they rely principally upon quotations obtained from a comparison website. The search result indicates a range of premiums from £63.60 from insurance with Esure to £205.08 for insurance with Tesco Bank.
10. In addition the tenants object to the commission paid by Zurich to the brokers and the managing agents. This is explained in a letter from Deacon to the tenants dated 15 April 2014 and we refer to the matter in more detail below. The total commission is £59.36 of which £35.62 is paid to the managing agents and £23.74 to Deacon.

Reasons for our decision

11. Section 19(1)(a) of the Act does not require the landlord to insure the property with the cheapest provider. For any particular items of expenditure including insurers premiums there will always be a band of reasonable cost and the issue is whether the expenditure, in this case the insurance premium, falls within that band.
12. Insurance placed through brokers is invariably more expensive than insurance obtained as a result of an online inquiry but there are valid reasons for that. As explained in Deacon's letter of 15 April 2014 the premium through the commissions paid to the brokers and the managing agent's covers the cost of placing the insurance, issuing the policy documents and dealing with any future claims. Those services add value to the policy such that the resulting increase in the premium cannot be said to be unreasonably incurred.
13. The responsibility for insuring the flat rests with the landlord. It would be unreasonable to require a landlord with a large portfolio to insure those properties online and on an individual basis as suggested by the tenants. It is reasonable for any landlord with large portfolio of properties to instruct a reputable insurance broker to test the market and to place its insurance

with a reputable company. That is what this landlord has done and we do not consider that it can be criticised for it.

14. Furthermore if the commission is excluded from the policy the premium is lower than two of the online quotations obtained by the tenants through an online comparison site thus indicating that it falls within the band of reasonable cost to which we have referred.
15. As far as the commission is concerned it is part of the cost of obtaining insurance cover. The landlord is obliged "*to make all payments necessary for that purpose within 7 days*" and consequently we consider that the tenants are obliged under their obligations in the lease to pay the full premium including any commission element.
16. Consequently and for each of the above reasons we are satisfied that the insurance premium was reasonably incurred and that a service charge is payable in respect of it.
17. We now turn to the tenants 20C application. They have been wholly unsuccessful in these proceedings. In the event that the landlord may be entitled to recover any costs incurred in these proceedings through a service charge there are no grounds for preventing it from doing so and we therefore decline to make an order under section 20C of the Act. For similar reasons we decline to order the landlord to reimburse the fees of £65 incurred by the tenants in making their application to the Tribunal.
18. In a letter of 27 June 2014 in the hearing bundle the landlord asks the tribunal to award costs of £420 including VAT under clause 2(2) of the lease. That clause relates to the payment of rates and other statutory outgoings and charges imposed on the flat. It cannot be extended to cover the payment of costs incurred in the conduct of these proceedings even though the costs do not in themselves appear unreasonable.

Name: Angus Andrew

Date: 23 July 2014

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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.