



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

**Case Reference** : LON/00BE/LSC/2014/194

**Property** : 19 Barforth Road, London SE15 3PS

**Applicant** : Mr K. Persson

**Representative** : In person

**Respondent** : Mr N.I. Dunsmore-Rouse

**Representative** : Mr N.J. Graves, BSc FRICS,  
Burnet Ware and Graves Limited

**Type of Application** : Section 27A Landlord and Tenant  
Act 1985  
Section 20C Landlord and Tenant  
Act 1985

**Tribunal Members** : Judge Dowell  
Mr D. Jagger FRICS

**Date of Decision** : 25 June 2014

---

**DECISION**

---

## **The Application**

1. This is an application dated 28 March 2014 under s.27A Landlord and Tenant Act 1985 (the Act) for a determination in respect of service charges for buildings insurance which have been charged to the applicant for 2012/2013 in the sum of £323.78 and 2013/2014 in the sum of £264.66.
2. On the same date the applicant made an application under s.20C of the Act.

## **The Law – Landlord and Tenant Act 1985**

### 3. 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 a Leasehold valuation 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 a Leasehold valuation 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.

## **The Lease**

4. The lease of 19 Barforth Road (ground floor and basement flat) is dated 6 August 2008 and made between N.I. Dunsmore-Rouse and S.G. Heiman (1) and Ms M. Toll and Karl Persson (2).
5. Paragraph (2) of the preamble states “the Lessor has previously granted a Lease of or intends hereafter to grant a lease of the flat in the Mansion other than the premises hereby demised and the Lessor has in such lease imposed or intends in such Lease to impose the restrictions set forth in the First Schedule hereto...”. The mansion is defined as “the freehold property consisting of the two flats known as 19 and 19A Barforth Road, London SE15 (called “the Building”) and grounds

thereof, all of which premises are referred as “the Mansion”. We were told by Mr Graves in an email dated 17 June 2014 that in fact the lessor had not granted a lease of the other flat, 19A Barforth Road and that this is let by the freeholder to tenants on an assured shorthold tenancy agreement.

6. The demise is set out in paragraph 1 of the lease “all that the flat (hereinafter called “the Flat”) known as 19 Barforth Road being on the ground and basement floors of the Building including one half of the depth of the structure between the ceilings of the Flat and the floors of the flat above it and the internal walls between the same level the situation whereof (together with the garden appertaining thereto) is shown on the plan annexed to the lease and thereon edged red.
7. Pursuant to clause 4(ii) of the lease the lessee covenanted to “Contribute and pay upon demand a one half share of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto....”.
8. The lessor’s covenants are set out in paragraph 5 of the lease which include “that the lessor will clean repair redecorate and maintain in good and substantial condition the roof foundations main structure and boundary walls paths and main water tanks gutters and rainwater pipes of the Mansion, gas and water pipes drains and electric cables and wires in under and upon the mansion enjoyed or used by the lessee in common with the owners and lessees of the other flats and the main entrances passage landings staircases and forecourt of the mansion and other parts of the mansion so enjoyed or used by the lessee in common as aforesaid”.
9. By Clause 5e the lessor covenants “to keep insured (unless such insurance shall be vitiated by any act or default of the lessee) the buildings against loss or damage by fire explosion storm tempest earthquake aircraft subsidence heave (insofar as it is possible to effect such cover on reasonable terms in the market place) and such other risks (if any) as the lessor thinks fit in some insurance office of repute in the full value thereof including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating thereof and whenever required to produce for inspection to the Lessee (but not more than once in any year) the policy or policies of such insurance and the receipt for payment of the last premium to the same and will in the event of the building or any part thereof being damaged or destroyed by fire or other insured risks as soon as reasonably practicable lay out the insurance monies in the repair rebuilding and reinstatement of the premises so damaged or destroyed subject to the Lessor at all times being able to obtain all necessary licences consents and permissions from all relevant authorities in this respect”.
10. Paragraph 1 of the Second Schedule gives the lessee “Full right and liberty for the Lessee and all persons authorised by him (in common

with all other persons entitled to the like right) at all times by day or by night and for all purposes to go pass and repass over and along the common hall forecourt and paths edged brown on the plan annexed hereto". This is evidence that there are common parts in the building.

11. The Fourth Schedule, paragraph 5, requires the lessee to contribute to "The costs of insurance premiums payable by the Lessor for taking out and maintaining in force the insurance policy or policies referred to in clause 5(e) hereof and such other insurances as the Lessor may from time to time deem necessary and desirable".

### **Demands for Insurance**

12. There were 4 requests for payment in the bundle. These were all from "Burnet Ware" which is the trading name for Burnet Ware and Graves Ltd, the managing agents and they were all addressed to Miss M Toll. They are as follows:

12 September 2012:	"One year insurance £323.78"
3 January 2013:	"One year insurance £323.78"
13 February 2013:	"One year insurance £323.78"
27 February 2103:	"One year insurance £323.78"

13. We have noted that the lessors are represented by managing agents and that Mr Graves, a director of this company, is representing the lessors in this case. We are concerned to note that the service charge demands which have been sent to the applicants do not comply with ss.47 and 48 Landlord and Tenant Act 1987. Service charge demands must comply with this Act and must be accompanied by a summary of rights and obligations.
14. S.47 requires that any written demand for service charges must contain the name and address of the landlord. This is not satisfied by giving details of an agent. In the case of an individual, as in this case, the address must be the individual's home or other place where they carry on business.
15. If a service charge demand does not contain the landlord's address and an address for service the service charges are not due until that information is supplied.
16. In addition a demand for payment of service charges must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to the charges. These provisions are to be found in s.21B of the Act. The form of summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 S.I. No. 1257. The summary must be printed or typed in a font no smaller than 10 point.
17. A tenant who has received a demand that does not contain such a summary, as in this case, may withhold payment. The purpose of these

provisions is to inform tenants of their rights, recognising that they are unlikely to be aware of what those rights are. A person who is unaware of his or her rights cannot be expected to assert them as appears to be the case with the applicant.

18. Once the landlords have complied with these requirements in relation to both ss.47 and 48 Landlord and Tenant Act 1987 and s.21B Landlord and Tenant Act 1985 then the service charges become due, subject to this determination.

### **The Applicant's Case**

19. The applicant's case is set out in simple terms in the application form. Mr Persson's complaint is:

- (1) he and his joint owner Miss Toll are paying for more than their fair share of the building insurance as stipulated in the lease.
- (2) They are paying for elements of insurance such as rent insurance, property owner's liability insurance and employer's liability insurance not applicable to their property and therefore as property owners they should not be liable for these costs and only liable for the buildings insurance.
- (3) Despite repeated requests to inspect the documentation relating to the relevant policy he has been denied this by the managing agent. They had requested both from the landlord and the managing agent a breakdown complete with relevant backup and detailed calculations to satisfy them that the cost of the insurance premium is feasible to validate the invoice from the managing agents and a receipt for the payment or payments of the last premium from the insurer and a copy of the current insurance policy to which they are entitled under the terms of their lease.

20. The joint owner of the lease, who is not named on the application form but is named on the lease, Ms Michelle Toll has obtained alternative quotes from gocompare.com. This information has been obtained from the Building Cost Information Service of the Royal Institution of Chartered Surveyors.

### **The Respondent's Case**

21. The respondent is represented by Mr Michael J. Graves of Burnet Ware and Graves Limited who are the managing agents for this property. With his bundle Mr Graves presented an invoice from D.E. Ford Insurance Brokers dated 24 September 2013 for a residential property owner's insurance policy with AXA Insurance UK Plc in the total sum of £24,200. He also produced the Property Investor's Protection Plan Policy from AXA dated October 2013 and an updated policy schedule for the period 6 June 2013 to 5 June 2014 but did not show the premium for 19 and/or 19A Barforth Road. It showed as "Premises 84" 19 Barforth Road showing buildings cover of £120,556 being the

declared value and rental income insured at £24,111. For "Premises 85" 19A Barforth Road the declared value was £143,160 and rental income insured at £28,632 for 36 months.

22. Sally Firth, Account Executive at D.E. Ford Insurance Brokers has stated that the insurance for 19 Barforth Road covers
  - Rebuild value building sum insurance - £120,556
  - Rent insurance included up to 20% of the building sum insured
  - Property owner's liability sum insured - £5 million
  - Employer's liability sum insured - £10 million
  - Premium - £323.78 plus 6% insurance premium tax = £343.21.
23. In a letter dated 28 October 2013 to Mr Persson, Mr Graves states that he has made enquiries with the insurance broker who has replied "in simplified terms, insurers arrive at a premium by applying a rate to the building sum insured. In the case of 19 Barforth Road the declared value is at £120,556. As such, the calculation is £120,556 x 0.22% which equals £264.66 plus 6% insurance premium. The rate required (0.22%) is higher than I would anticipate for a domestic policy as the rate takes into account the property, loss of rent, property owner's liability and employer's liability risks (the policy is "all encompassing" and the rates includes provision for the liabilities and loss of rent automatically).
24. In a letter dated 2 June 2014 Zach Gray Director of D.E. Ford Insurance Brokers in a letter to Mr Graves states that "the policy cover arranged on behalf of Rouse Estates exceeds the requirements for policy cover as set out in the lease agreement". This letter states that the policy cover extends to include loss of rent and alternative accommodation costs. The cost of rent insurance at 19 Barforth Road for the forthcoming 2014 period is £14.81 including 6% insurance premium. The letter goes on to explain the reasons for employer's liability and property owner's liability.
25. Further the letter states that alternative premiums had been obtained and although these include the specific areas of cover that he considers are necessary the premium has been reduced from the 2012 renewal to the 2013 renewal "as a result of D.E. Ford carrying out a marketing exercise at renewal 2013. As a result AXA were able to agree a reduction in premium".
26. On 18 June 2014 the tribunal received the renewal schedule from AXA for the year 6 June 2014 to 5 June 2015. This year is not part of the challenge to the insurance costs which we are considering. However this renewal schedule is the first time that we have seen a cover summary which sets out the amount of insurance for 19 Barforth Road and 19A Barforth Road as part of a total buildings cover of £236,918. 19 Barforth Road is shown as property cover £217.39 and 19A Barforth Road property cover is £258.14. Within the schedule "Premises 84" are 19 Barforth Road with a declared value of £122,847 and 19A Barforth

Road with a declared value of £145,880. Again rental income for 36 months has been covered for both properties.

## **Discussion**

27. The service charges in dispute are contributions to insurance premiums for the years 6 June 2012 to 5 June 2013 and 6 June 2013 to 5 June 2014. The sum for 2012/13 which has been charged is £323.78 and for 2013/14 is £264.66.
28. The sum to be charged for 6 June 2014 to 5 June 2015, according to the current insurance schedule is £217.39.
29. S.19(1) of the Act states that relevant costs should be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred. S.18 of the Act states that “service charge” means an amount payable by a tenant of a dwelling which is payable for.... insurance....”.
30. S.27A of the Act gives the tribunal jurisdiction to make a determination as to whether a service charge is payable.
31. The starting point to determine liability is the lease. The relevant provisions of the lease are set out above. In our opinion paragraph 2 of the preamble and clause 4(ii) of the lease makes it quite clear that the intention of the lessors when this lease was granted was to insure the two flats as one building. This would be normal practice and there can be no other explanation for the lessors’ statement at the beginning of the lease that they intend to grant a lease of the upstairs flat in the same terms as the lease of the subject flat and further paragraph 4(ii) requires the lessee to contribute and pay “a one half share of the costs expenses outgoings and matters mentioned in the Fourth Schedule”. The Fourth Schedule includes insurance costs. However as neither party has raised this matter we have concluded that we must determine this application on the basis that both parties have decided that the two flats should be insured separately.
32. Clause 5 (e) of the lease sets out the lessor’s insuring obligations which are relied on by Mr Graves in his letter of 5 June 2014 written to the tribunal. The clause gives the landlord wide discretion as to the terms of the insurance. However this is still subject to our determination as to whether the insurance costs are reasonably incurred. Importantly, clause 5(e) requires the landlord, as set out in Mr Graves’ letter of 5 June 2014 “whenever required to produce for inspection to the lessee (but not more than once in any year) the policy or policies of such insurance and the receipt for payment of the last premium for the same”. The applicant on numerous occasions asked for production for inspection of the policy of insurance and the receipt for payment of the last premium. It was only because he made this application to the tribunal that he saw the insurance policy for 2013/14. As far as we are aware he has not seen the insurance policy for 2012/13.



33. In addition, neither he nor we have seen the receipt for payment of the last premium for the two sums in question in this case. We have seen a letter at page 4.41 of the applicant's bundle from D.E. Ford Insurance Brokers headed "To whom it may concern" which sets out the renewal premium of £343.21 for 19 Barforth Road. We have also seen at page 8.31 of the bundle an invoice from D.E. Ford Insurance Brokers addressed to Rouse Estates c/o Burnet Ware and Graves Limited for a "residential property owner's" policy with AXA Insurance UK Plc insurance policy no. SDPPP6843934 for the period 6 June 2013 to 5 June 2014 in the total sum of £22,830.19. Mr Graves has given no explanation as to why the landlord is and continues to be in breach of the lease in relation to this requirement.

### **Decision**

34. As we have set out above the lessees are not liable for payment of the insurance service charges unless and until the landlord serves service charge demands in accordance with the statutory requirements.
35. From the documents with which we have been supplied, and the information given by Mr Graves, we are aware that 19A Barforth Road is let on an assured shorthold tenancy.
36. Although the lease is generous in its provisions to the lessor in respect of insurance and gives the lessor considerable discretion we do not consider that insurance costs are reasonably incurred to insure this leasehold property against loss of rent. The insurance broker refers to loss of rent and alternative accommodation but we can see no reference to alternative accommodation in the policy. There is no reason why the applicant should be liable for loss of rent which would clearly be more appropriate to properties which are let out on tenancies as is the case with the upper unit in this building. However this is a small amount. We have been told in the letter from the insurance broker dated 2 June 2014 that the cost of rent insurance for the forthcoming 2014 period is £14.81 including 6% insurance premium tax. We assume "forthcoming 2014 period" to mean 2014/15. However as we have no other evidence placed before us we use the figure of £14.81 for the previous two years which we are determining.
37. We do not accept that the quotes which have been obtained from gocompare.com are satisfactory "like for like" quotes for insurance for this property. The applicant is a lessee and is bound by the terms of the lease in respect of insurance. This gives the landlord considerable discretion.
38. We have been given no explanation for the considerable reduction in insurance for the three years for which figures have been given to us. These are:
- 2012/13 - £323.78
  - 2013/14 - £246.66

- 2014/15 - £217.39

39. We have not been given any evidence in respect of a change of circumstance which would justify these reductions. We therefore determine that for the years 2012/13 and 2013/14 the buildings insurance should be capped at £217.39. From that figure we deduct £14.81 for the rent insurance which we do not consider has been reasonably incurred for this property. However we do accept that the lessor is permitted to include in the insurance employer's liability and property owner's liability.
40. Accordingly, our determination is that the insurance service charge payable by the lessees of 19 Barforth Road for 2012/13 is £202.58 and for 2013/14 is also £202.58.

### **Section 20C application**

41. The applicant made an application under s.20C of the Act 1985 dated 28 March 2014 at the same as he made his application under s.27A of the Act.
42. The grounds of the application are set out in paragraph 13 of the application form. The final paragraph states "coming to the tribunal could have been avoided had only the managing agent been more forthcoming with relevant facts, however, we feel that the matter is at a stalemate and we do not know what to do next. Our aim has always been to solve this matter amicably. It is not right that we should have to bear any costs of the managing agent defending his actions before the tribunal because of poor administrative practices and the withholding of reasonable, third party backup to validate the invoice".
43. In the Directions dated 16 April 2014, in paragraph 6, it was ordered that the respondent should include in their paperwork a response to the application under s.20C on or before 2 May 2014. The respondents did not include a response to the s.20C application.

### **The Law – Landlord and Tenant Act 1985**

44. Section 20C – Landlord and Tenant Act 1985
- (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 leasehold valuation 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 a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

## **Decision**

45. We grant an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant. We accept that the applicant had no alternative but to make this application to the tribunal and we have found that the landlord is in clear breach of the lease and also in breach of the law in relation to the service of service charge demands. Having considered all the evidence before us we have reduced the sums payable by the applicant in respect of buildings insurance for the years 2012/13 and 2013/14.
46. For the same reasons, we make an order that the respondent should reimburse the applicant with the whole of the fees paid to the tribunal for these proceedings being the sum of £90. This sum should be paid to the applicant within 21 days of the date of this decision. This order is made pursuant to Rule 13 (2) and (3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

---

Jane Dowell

25 June 2014