

10225



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

**Case Reference** : **LON/00BJ/LSC/2014/0075**

**Property** : **Flat 2, 103 Pendle Road, London  
SW16 6RX**

**Applicant** : **Mr I.R Jackson**

**Representative** : **None**

**Respondent** : **Cormorant Limited**

**Representative** : **Mr Wijeyaratne of Counsel**

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

**Tribunal Members** : **Judge S O'Sullivan  
Mr W R Shaw FRICS**

**Date and venue of  
Hearing** : **14 May 2014 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **7 July 2014**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £150 per year excluding vat is payable by the Applicant in respect of management charges for the service charge years 2011-2013.
- (2) The tribunal determines that the amount payable in respect of insurance is £800 per year.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (4) The tribunal determines that the Respondent shall pay the Applicant £315 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") payable by the Applicant in respect of the service charge years 2012 and 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant appeared in person at the hearing and was represented by his son. The Respondent was represented by Counsel with Mr Case, the property manager also in attendance.

### **The background**

4. The property which is the subject of this application is a flat contained in a house converted into 2 flats.
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 Applicant 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.

7. Directions were made in this matter dated 4 March 2014 and in accordance with those directions the parties made statements of case and lodged bundles for use at the hearing.

### **The issues**

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of the management charge for each of the service charge years 2011, 2012 and 2013
  - (ii) The payability and reasonableness of the insurance for the service charge years 2011, 2012 and 2013.
9. Although 2011 was not part of the initial application on application by the Applicant the tribunal agreed to consider the 2011 charges, the Respondent having confirmed it was content for the tribunal to do so. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Management charges**

#### **The Applicant's case**

10. For each of the service charge years 2011 to 2013 the Applicant was charged a management charge of £250, the total management charge for the house being £500.
11. The Applicant had purchased his flat in 2011. He did not challenge that a management charge was payable pursuant to the lease. However he did challenge the reasonableness of the management charge. We heard that the property was a semi detached house converted into two flats which required very little management. The house contained very small communal parts which consisted of an internal 2 metre passageway. There were 2 locks on the front door which had not been changed since the Applicant purchased the flat. He had never seen anyone from the managing agents visit the property and did not think that any visit had taken place since 2011. No repairs were carried out or inspections made to his knowledge. In his opinion he considered very little management had

taken place. He accepted that some management charge was payable in respect of preparing the statement of account, sending out invoices and arranging insurance. He considered a total sum of around £300 was appropriate, his share of that being £150.

12. The Applicant relied upon several previous decisions of the tribunal reference LON/OOAP/LSC/2010/80, LON/OOAH/LSC/2009/0770 and LON/OOAH/LSC/2007/0345.

### **The Respondent's case**

13. The Respondent relied upon the witness statement of Mr Case, the property manager, who appeared in person to give evidence to the tribunal.
14. Counsel took the tribunal through the previous decisions of the tribunal. He emphasised that the previous decisions relied upon by the Applicant were not binding on the tribunal.
15. The management fee was based on a flat fee per annum. There is no written management agreement. The tribunal heard that the management covered such matters as rent collection and administration and estate management which was said to include matters such as arranging and supervising maintenance contracts, making regular visits to the building, attending to normal routine management enquiries and dealing generally with normal day to day minor repairs.
16. On questioning by the tribunal Mr Case conceded that he did not have keys to the property and had not been able to inspect the internal common parts. We heard that he considered that he was able to carry out internal inspections adequately through the letterbox. Equally we heard that by using the side access he was able to see the side elevation although he accepted he could not see the rear elevation. This had been his practice since 2006. He relied upon a letter dated 21 June 2013 in which he had requested a key. He confirmed that he had not previously requested a key over the period from 2011 despite not having a key to enable access. We heard that Mr Case did not make inspection notes unless some action was required and so none were available for the tribunal. He considered the property was in sound condition.
17. Mr Case confirmed that the charges were a flat fee set in comparison with other properties. As this block was uncomplicated this was the flat fee. The landlord had acquired the property in 2006. It was accepted that the leaseholders had painted the exterior of the property and carried out the cleaning at the property.

### **The tribunal's decision**

18. The tribunal determines that the amount payable by the Applicant in respect of management charges for each of the service charge years 2011, 2012 and 2013 is £150.

### **Reasons for the decision**

19. We were surprised to see that no management agreement existed between the Respondent and the managing agents. We accept that pursuant to the lease a management charge is recoverable by the landlord in respect of its carrying out of its obligations under the lease. We therefore went on to consider the reasonableness of the amount of the management charge. After considering the evidence of both parties we concluded that the management charges were excessive. This property requires very minimal management. We were not impressed with Mr Case's evidence in relation to his inspections of the property. It did not appear to us on the basis of the evidence that regular inspections had taken place and that in any event the scope of the inspections had been extremely limited and of little practical use. We have taken into account the previous decisions relied upon although we accept that these are persuasive rather than binding.
20. Having considered all of the evidence before us we therefore concluded that a management fee of £300 per annum was appropriate for the whole property, the Applicant's share being £150. These amounts are net of Vat.

### **Insurance**

21. The sums charged in respect of insurance are as follows;

2011 £1481.65

2012 £1439.36

2013 £1475.80

22. These sums include terrorism insurance in each case in the region of £129.
23. In each of the service charge years in question the insurance was placed through Cullenglow Limited trading as Princess Insurance Agencies.

### **The Applicant's case**

24. The Applicant says that the insurance premiums are simply too high and are further inflated by the addition of terrorism cover. The Applicant says that although the value of buildings cover has risen only from £267,000 in 2005 to almost £297,000 today the premium has risen from £496 to £1418 over the same period. The Applicant suggests that the market is not being properly tested. He also suggests that the 10% commission received by the managing agents acts as a disincentive for them to obtain a more competitive rate.
25. The Applicant says that all comparable quotations were obtained on a like for like basis. As the leaseholders at the property are all professional with no intention of letting their flats the occupation was confirmed as by leaseholders.
26. The Applicant again relied upon several previous decisions of the tribunal reference LON/OOAP/LSC/2010/80, LON/OOAH/LSC/2009/0770 and LON/OOAH/LSC/2007/0345.
27. The Applicant relies on competitive quotations he has obtained from brokers as follows;
  - a. Allianz Insurance plc - £686.62. This was based on buildings cover of £296,589 with no terrorism cover.
  - b. Commercial Express - £775.19. This cover was based on buildings cover of £296,589 and included terrorism cover.

### **The Respondent's case**

28. Counsel first referred us to a letter from Princess Insurance Agencies dated 12 May 2014 which he says sets out the process carried out. We heard that the landlord insures by portfolio but that this is not block insurance, each property has its own premium fixed in accordance with its own requirements. The letter from Princess also sets out the position in relation to terrorism insurance, this states that the risk exposure to terrorism is small but considered appropriate even in areas of London such as this.
29. The Respondent also says that the quotations relied upon by the Applicant are not like for like. This is because the quotation from Commercial Express indicates that the property is occupied by the leaseholder when the landlord's policy is on the basis that the property could be let to persons in full time benefits. The landlord says that this is material as the

landlord is not in a position to say on what basis the property is occupied when placing the insurance.

30. Counsel for the landlord did accept that the quotations obtained by the Applicant were otherwise on a like for like basis.
31. Counsel relied on the authorities of *Berrycroft Management Company Limited v Sinclair Garden Investments (Kensington) Limited* and *Forcelux Limited v Sweetman*. The insurance was said to be placed in the ordinary course of business and the premiums were determined for that property in accordance with its own specific requirements. There has been a change of insurer between 2009 and 2010.

### **The tribunal's decision**

32. We determine that for the three years in question a reasonable charge for buildings insurance including terrorism, public liability and commission payable to the managing agents/brokers is £800 per year. See below for comment

### **Reasons for the tribunal's decision**

33. It is difficult for leaseholders to challenge landlord's insurance policies. However it is clear that the leaseholders have worked hard to obtain comparable quotations which in the case of the quotation from Commerical Express is almost half of the current premium.
34. The quotations are challenged as it is said that the basis of occupation is not comparable. The landlord says that the landlord cannot be expected to enquire upon what basis each property is occupied and that it is entitled to insure on the basis that the property may be let to persons on full time benefits. The Applicant says that the property comprises only two flats, both of which are occupied by long leaseholders and it would be reasonable for the landlord to make this enquiry and insure on that basis. Given the disparity in the insurance premium the tribunal agrees. The landlord says each property is insured according to its own requirements and we consider it is reasonable for that to extend to the nature of the occupation.
35. The landlord accepted that the quotations were comparable in all other instances.
36. We consider it reasonable to include terrorism insurance.

37. In our opinion therefore the costs incurred for insurance have not been reasonably incurred. Although we accept the ruling of *Berrycroft* we do not consider it gives the landlord the power to charge manifestly unreasonable insurance premiums.
38. We consider the quotation obtained by the Applicant from Commercial Express is in a reasonable range. The total premium including terrorism insurance is £775.19. Rounding this figure up we allow the sum of £800.
- 39. Application under s.20C and refund of fees**
40. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the sum of £315 paid by the Applicant in respect of the application and hearing fees within 28 days of the date of this decision.
41. In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** S O'Sullivan

**Date:** 16 July 2014

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169