



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

Case Reference : CAM/26UD/LSC/2015/0056

Property : 71B Cundalls Road, Ware, Herts. SG12 7DJ

Applicant Representative : Adam Beale
: F A Beale

Respondent : Riversmead Housing Association Ltd

Date of Application : 26th June 2015

Type of Application : to determine reasonableness and
payability of service charges

Tribunal Members : David S Brown FRICS (Chair)
Bruce M Edgington (Regional Judge)

Date of Decision : 25th August 2015

DECISION

The charges for “Building Insurance/Property Insurance” for the years beginning 1st April 2012, 2013, 2014 and 2015 are not payable because they have not been calculated in accordance with the terms of the lease. Such charges in the future will only be payable if computed in accordance with Clause 4(1)(b)(iv) of the lease.

The Respondent shall reimburse to the Applicant the application fee of £65 within 28 days of the date of this decision.

STATEMENT OF REASONS

Background and Application

1. The Applicant has asked the Tribunal to decide three questions –
 - Whether the Riversmead Housing Association (“Riversmead”) can charge buildings insurance by floor area when the lease states that all service charges, including insurance, should be divided as one ninth equal part;
 - Whether Riversmead can demand payment of the insurance charge in two half yearly instalments;

- If Riversmead wishes to change the insurance calculation, should it negotiate a Deed of Variation to effect that change?
2. Section 27A of the Landlord and Tenant Act 1985 provides that an application may be made to the tribunal *“for a determination whether a service charge is payable”*. The questions posed by the Applicant fall within the ambit of *“payability”*.
 3. A Directions Order was issued on 8th July 2015. This included notice to the parties that the Tribunal was content for the matter to be dealt with on a consideration of the papers only and the decision would not be made before 25th August but an oral hearing would be arranged if either party requested one. No such request has been made.
 4. The Directions Order cited East Hertfordshire District Council as the Respondent. Mr F A Beale wrote to the Tribunal querying whether the Respondent was the Council as it had placed its housing stock into a limited company, Riversmead Housing Association Ltd, which forms part of Network Housing Group. He was asked to let the Tribunal know if someone other than the Council is now the landlord and advised that it may be sensible for him to obtain a copy of the proprietorship register at the Land Registry and forward it to the Tribunal.
 5. Mr Beale has provided a copy of the registered title of the flat, number HD 242396, showing the registered owner as Adam Derek Beale. The Property Register section refers to the original lease under which the Council was the landlord. The only reference to Riversmead is an entry that the terms of the lease were varied on 07.10.2004 by a deed made between Riversmead and Mark Peter Roberts.
 6. The case papers include copies of service charge demands made by Riversmead and also correspondence from them to the Tribunal, from which it is clear that the Riversmead regards itself as the Respondent and we have proceeded on that basis.

The Lease

7. We have been provided with a copy of a lease dated 11th April 1988 between East Hertfordshire District Council and Brian Geoffrey Clark.
8. By Clause 4 of the lease, the Lessee covenants to pay to the Lessor *“a one-ninth equal part (or such other proportion as may be calculated in accordance with the provisions of paragraph (1) of the Second Schedule hereto in the case of facilities used also by persons not being occupiers of the Building) of the following:-*

Sub paragraph (a) then lists costs of decorating and associated repairs (*“the painting charge”*)

and sub paragraph (b) lists at (i) to (iii)

“cleaning, maintenance, repair and renewal of the Premises or any part thereof and of the common service installations.... provision of services to the common parts of the premises”

and at (iv)

“keeping the Premises insured if the Lessor so desires against loss or damage by fire and such other risks as the Lessor may from time to time consider desirable (including the cost of any increased premium payable by reason of any act or omission by the Lessee) or paying into its own insurance fund any sum or sums in respect of any such matter as aforesaid so far as the Lessor is from time to time permitted to charge the cost of such insurance to the Lessee and the Lessor hereby covenants with the Lessee that when required to do so the Lessor will produce to the Lessee or to his duly authorised representative a copy of any insurance policy effected by the Lessor in respect of the premises

Followed by (*hereinafter called “the service charge”*)

9. “The Premises” is defined as
“the Building and all that land and outbuildings occupied and used by the owners tenants and occupiers of the flats comprised in the Building”.
10. “The Building” is defined as
“the building situate at Cundalls Road Ware (of which the said flat forms part) and known as Nos 70 70A 70B 71 71A 71B and 72 72A and 72B Cundalls Road Ware”.

The Applicant’s case

11. Mr Beale states that in April 2012 Riversmead increased the buildings insurance charge without justification. When asked to justify the increase, Riversmead informed him that the buildings insurance was now calculated by floor area per flat and not divided equally by the number of flats in the block. They provided no calculation or documentation to support the figure produced.
12. He has requested that the lease be updated by a deed of variation, with an extension of lease years as consideration for his agreement, or reverting to the original computation of the insurance charge. Riversmead have refused, citing clause 4(2) of the lease, which refers to twice yearly payment of the ground rent. Mr Beale is seeking clarification of the correct building insurance costs for 2012, 2013, 2104 and 2015 and beyond with appropriate documentation.

The Respondent’s Case

13. Riversmead have not submitted a statement as directed but wrote a letter to the Tribunal in response to the application.
14. They say that Riversmead is part of a larger Registered Housing Provider, Network Housing Group. Since 2012, in order to get efficiencies of cost, Network has procured insurance for leaseholders throughout the group, rather than on a block by block basis. There is one block policy covering approximately 3000 properties and which calculated the premium based on floor area. They do not have a quotation only for the subject block of flats. To

arrive at a "raw" figure for insurance to the subject block they multiply all the premiums for the block by nine to arrive at total policy cost and then divide by nine to accord with the lease provisions.

15. They add that there are significant differences in the excesses applied for each group and this affects the premium. They consider that their approach is reasonable and in line with the way that insurance is charged out in the sector. They are entitled to charge the insurance in two instalments.
16. In reply to the above, Mr F Beale wrote to the Tribunal pointing out that multiplying the premiums by nine and then dividing the result by nine is irrelevant. He contends that Riversmead must show the calculation of the premiums for the nine flats in the block and then divide that amount by nine in accordance with the lease. It is their responsibility to ensure that the insurance arrangements comply with the terms of the lease.
17. We have been provided with various copy documents. In February 2012 Riversmead served on Mr Beale a notice of proposal to enter into a long term agreement for the provision of insurance, under the section 20 consultation procedure. No further details of the procedure have been provided.
18. On 30th April 2012, Riversmead wrote to Mr Beale explaining that they know the floor area of each property covered by the insurance policy and divide the annual insurance premium between each leasehold property according to the floor area. They previously used a different calculation to reclaim the insurance cost but it was under recovered. Their Accounts and Home Ownership Assistant, Jackie Brixey, confirmed this in a letter dated 12th October 2012.
19. Copies of service charge demands for the years commencing 1st April 2010 and 2011 show the charge for building insurance per property to be one ninth of the actual cost. The demands thereafter merely show an insurance cost per property.

Discussion and Conclusions

20. The starting point, as in all such cases, is the lease. This sets out the liability of the lessee to pay the service charge and the basis on which the lessor must compute it. The parties are bound by the lease terms unless they are varied by mutual agreement or by statutory procedure or by operation of law.
21. The relevant provisions of this lease have not been so varied. Under Clause 4(b), Mr Beale is liable to pay one ninth of the costs and expenses incurred by Riversmead in keeping the Premises insured, the Premises being the block of flats and their appurtenances at 70-72B Cundalls Road, Ware.
22. It is not open to Riversmead to alter that provision unilaterally. A lessor may, in principle, arranging a block policy to cover a large number of residential units, indeed many do this in order to achieve efficiencies of scale and reduce the overall cost, but it must be arranged in such a way that the service charge provision for each unit can be computed in accordance with its lease. In this case, it is incumbent upon Riversmead to arrange the insurance in such a way

that the cost of insuring the subject block is ascertainable and divided into nine equal parts, one part to be charged to flat 71B.

23. The explanations by Riversmead as to how it has computed Mr Beale's insurance charge are contradictory. In their letters to Mr Beale, they say that they have separate policies for leaseholders and tenants and so they cannot apportion the insurance cost as described in the lease and as his is the only leasehold flat in the block his service charge relates specifically to his property. It appears from these letters that they calculate the insurance cost on Mr Beale's flat as a proportion of the overall premium for the group policy on leasehold properties by reference to floor area, which is logical but, as they admit, not in accordance with the lease. Their letter to the Tribunal states that they multiply all the premiums for the block by nine and divide the result by nine to accord with the lease provisions, which is frankly nonsensical.
24. The computation of the insurance charge for the years in question is therefore not in accordance with the lease provisions and those amounts are not payable. In the absence of a proper variation of the relevant lease terms, Mr Beale is liable to pay one ninth of the insurance cost for the block once that has been properly ascertained and correctly demanded.
25. We would also point out that Clause 4(b)(iv) includes a covenant by the lessor to produce to the lessee or his agent a copy of any insurance policy effected by the lessor in respect of the premises when required to do so. Riversmead is bound by that covenant.
26. On the question of payment by instalments, it is clear that "the service charge" covers all of the items listed in Clause 4(1)(b)(i)-(iv), including the cost of insurance and by virtue of Clause 4(2) it is payable in two equal instalments on 1st April and 1st October.
27. In view of our finding that the insurance charge for the years in question is not payable and the fact that Mr Beale has been unable to resolve the situation through correspondence with Riversmead, it is reasonable and equitable to require Riversmead to reimburse to Mr Beale the application fee of £65. We make an order to that effect under Rule 13 of *The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013*.

D S Brown FRICS (Chair)