

12114



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

Case Reference : **CHI/29UG/LSC/2016/0066**

Property : **17 and 17A Milton Place,
Gravesend, Kent, DA12 2BT**

Applicant : **Christopher Girvan**

Respondent : **Fairfield Rents Ltd**

Representative : **Urbanpoint Property
Management Ltd**

Type of Application : **s.27A LTA '85**

Tribunal Members : **Judge D Dovar
Mr C Harbridge FRICS**

Date of Decision : **16th November 2016**

DECISION

© CROWN COPYRIGHT 2016

1. This an application for the determination of the payability of service charges for the years ending 2013 to 2016 and for the anticipated expenditure for the year ending 2017. Following directions given on 11th July 2016, this matter has been determined under rule 31 of the Tribunal Procedure Rules 2013 without a hearing. An inspection of the Properties was carried out on 21st October 2016 where the Tribunal was accompanied by Mr Girvan the Applicant and Mr Capson, Property Manager for Urbanpoint Property who represent the Respondent, Fairfield Rents Limited.
2. The two issues for determination are:
 - a. the insurance premiums payable, the Applicant maintains that they are unreasonable; and
 - b. the apportionment of the service charges.

Inspection and description of the Property

3. 17 Milton Place Gravesend is an inner-terrace 5 storey house with a rear vault which extends, at the lower ground floor level, beneath the rear paved courtyard, from which, via steps, access is gained. The Property was built, the Tribunal was advised, about 180 years ago, and was converted into its present configuration of 4 self-contained flats, and the rear vaulted area in about 1990. Access to the upper 2 flats is by a rear communal access staircase.
4. The construction is traditional with solid brick walls which are finished to the front elevation in a parapet. The main roof is of pitched mansard

design and clad in natural slate, accommodating bay windows in front and rear mansards. Roof pitches over the rear roofs are of mono pitch design and clad in slate. Windows are framed in timber, of sliding sash design and are single glazed. The lower ground floor flat has a bay window extending into the front light well, and small ironwork balconies feature to the front two first floor full-height windows openings. There is no lift to the upper floors.

5. The Tribunal inspected the ground floor flat, no. 17 Milton Place and the Lower Ground Floor Flat no 17A. Both have direct access from Milton Place, and both comprise centrally heated one-bed roomed flats. No access could be gained to the rear vaulted area. The building appeared to be in generally good condition.

Insurance premiums

6. The Tribunal has been provided with a copy of the lease for flat 17, which is said to be a representative lease.
7. The insurance obligations on the Respondent are contained at clause 6 (2). That provides that the landlord must insure and keep insured the building 'against loss or damage by fire including third party liability and such other risk (if any) as the Landlord or the Tenant think fit in some insurance office of repute in the full reinstatement value together with ... such professional fees and the costs of removal of debris and two years loss of rent ...'

Sum Insured / Declared Value

8. The Applicant was concerned that the declared value / sum insured was too high and therefore had pushed up the premium. The Respondent stated that the declared value had not been actually recalculated since 2007 when it was valued at £446,497. Since then that figure had been adjusted annually, but there had been no revaluation.
9. The sum insured / declared values for the years in question were (with the premiums charged each year noted in parenthesis): 2013, £818,105 / £606,004 (£2,364.66); 2014, £822,116 / £608,975 (£2,424.42); 2015, £866,512 / £641,861 (£2,670.90); and 2016 (estimated £2,500); 2017 (estimated £2,845).
10. As a result of the issues raised by the Applicant, the Respondent commissioned a revaluation. A surveyor was sent round who could not get access to all the Property and so instead of working with what had been ascertained, the Respondent instructed a risk management and business security consultant to carry out a desktop revaluation. They concluded that the revaluation for this Property was, as at October 2015 £675,000 (or £810,000 if VAT was payable).

Policy terms

11. The Respondent provided a copy of the insurance policy and details of what was covered. The insurance was part of a block policy which covered an unknown number of the Respondent's other properties in unknown areas of the country.

Alternative quotations

12. The Applicant had provided two alternative quotes for the Property. One through Rentguard insurance for the period to the end of May 2017, based on a declared value of £641,861 had a premium of £761.77. Although the Tribunal noted that that did not appear to cover as much as the Respondent's cover, including no loss of rent or terrorism. The second quote, for the same declared value through SLIS was £808.26. Again that did not appear to provide the same level of cover as the Respondent's policy.

Conclusion on premiums

13. Although the Tribunal considered the declared value relied on by the Respondent appeared high, the Applicant hadn't produced any counter-valuation, but had just queried theirs. The Tribunal also noted that the Applicant had adopted the Respondent's 2015 declared value in order to obtain his own quotes.
14. The Tribunal was concerned that the Respondent had instructed a surveyor who had carried out a partial inspection but did not complete it because of access problems. Instead of that surveyor continuing their revaluation, the matter was handed over to another company to carry out a desktop survey. Even then the figure was significantly less than that that had been used to obtain previous years cover. Whilst the Respondent claimed that the revaluation of £810,000 supported the premiums claimed, the Tribunal did not consider that to be the case, when the revaluation was less than the 2013 sum insured figure.

15. The Tribunal was also concerned about the use of a block policy and the paucity of information provided as to the scope of other properties within that block policy. It raises a concern that the Applicant could be paying for cover for cover that might not apply to them, and was inappropriate. Whilst the Respondent's cover was superior, not all of it appeared to relate to this Property; such as garden squares, security systems, landscaping, a failure to obtain cover (which is something that the tenant should not be paying for in any case), roads, pavements, car parks, street furniture, contents of common parts. The Respondent had also refused to respond on enquiries made by the Applicant as to any commissions that had been obtained by the Respondent.
16. Whilst the Tribunal also had concerns over the quotations obtained by the Applicant, they did indicate that the current premiums were too high.
17. Bearing in mind that the Landlord does not have to obtain the cheapest cover, the factors set out above are sufficient for the Tribunal to consider that the premiums demanded are too high for this Property. In light of that and taking a broad approach (adjusting down to take into account the issues raised above, but not as much as suggested by the alternative quotes which are not completely comparable), the Tribunal finds that for the years in question the following premiums are payable:
 - a. 2013, £1,325
 - b. 2014, £1,360

c. 2015, £1,500

d. 2016, £1,400

e. 2017, £1,600

Apportionment

18. Contrary to the Respondent's case, there is no fixed percentage apportionment in the lease. Clause 2 (1) (2) provides that the apportionment is a 'fair proportion'.
19. There are four residential units in the Property. There is also a vault for which a separate service charge is paid; currently 23.8%. Given that a contribution is being paid from five units, the Tribunal considers that in those circumstances it is appropriate to take that into account when assessing what a fair proportion is. The Tribunal notes that the vault is not residential, however, it is fairly extensive and benefits from part of the structure of the Property. Further, the Tribunal notes that the only internal common parts relate to the other two, upper flats, in the Property. Finally the Respondent has accepted that there is some need for recalibration and has suggested working out the proportion on a measured basis. The Tribunal has not been provided with any measurements.
20. In the circumstances, the Tribunal considers that a fair proportion would be 10% attributable to the vault with the remaining 90% divided equally amongst the residential units; i.e. 22.5% each.

21. It has been suggested that the leases need varying in order to accommodate the fact that currently the Respondent is recovering in excess of 100%. Given that there are no fixed percentages in the lease, that problem does not arise. The Tribunal is able to determine the fair proportion payable under s.27A of the Landlord and Tenant Act 1985.

Conclusion

22. As a result of the two determinations above, the total service charge for the years in question should be adjusted to the sums set out below for each flat (the sum being the same for each flat given the fact that each pays 22.5% of the total cost incurred);

a. 2013, £733.75

b. 2014, £762.38

c. 2015, £1,076.28

d. 2016, £904.50

e. 2017, £972

23. The Respondent has asked for their costs. The Applicant has asked for an order under s.20C of the Landlord and Tenant Act 1985. The Tribunal refuses the Respondent's costs application and makes an order under s.20C prohibiting any of the Respondent's costs being placed through the service charge. The Tribunal considers that the Applicant was justified in making this application and that the Respondent has failed to deal properly with the issues raised in correspondence and has

still failed in this application to provide proper information on matters such as the basis of its service charge apportionment, the scope of the block insurance policy and whether any commission is obtained.

A handwritten signature in black ink, appearing to read "D. Dovar", with a long, sweeping horizontal flourish extending to the right.

Judge D Dovar

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.