



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

Case reference	:	LON/00AL/LSC/2016/0205
Property	:	139B McLeod Road, London, SE2 0BN
Applicant	:	Emma Black
Respondent	:	Carmen Zapatewro
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal members	:	Judge Robert Latham Patrick Casey MRICS
Venue	:	Paper determination on 10 August at 10 Alfred Place, London WC1E 7LR
Date of decision	:	15 August 2016

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sums demanded in respect of insurance, namely £175.28 for 132 days in 2015 and £158.01 for 119 days in 2016, are not payable.
- (2) The Tribunal determines that the Respondent shall pay the Applicant £65 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 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2015 and 2016. The Applicant only challenges the sums payable in respect of insurance, namely £175.28 for 132 days in 2015 (22 August to 31 December) and £158.01 for 119 days in 2016 (1 January to 27 April). The Applicant stated that she was content for the Tribunal to determine the application on the papers.
2. The Applicant further complains that the landlord has failed to provide proof of insurance despite numerous request for the same. She notes that it is a summary offence for a landlord to fail to comply with such requests and asks the Tribunal to determine whether the landlord is liable for a fine and to instruct the landlord to produce proof of insurance cover for the current year and to do so in a timely way in future years.
3. On 20 May, the Tribunal gave Directions:
 - (i) The Tribunal noted that its jurisdiction under Section 27A of the Act is limited to making a determination as to whether the sums claimed are reasonable and payable.
 - (ii) By 10 June, the landlord was directed to disclose all relevant documents, including all insurance policies. The landlord has failed to comply with this Direction. The Applicant explains that she has had no recent contact with her landlord. However, she has spoken to the Respondent's brother. On 26 June, he provided her with a copy of the insurance police for the period 28 April 2016 to 27 April 2017. No policy has been provided for the period 22 August 2015 to 27 April 2016.
 - (ii) By 1 July, the Applicant was directed to prepare and serve a Bundle of Documents including her Statement of Case. The Applicant has complied with this Direction. In her Statement of Case, she describes the steps she has take to obtain copies of the relevant insurance policies from her landlord. She has provided copies of the insurance schedules for the periods (a) 22 August 2013 to 21 August 2014 (at 5.5.1); (b) 22 August 2014 to 21 August 2015 (at 5.5.5). We note that this policy was not issued until 17 March 2015; (c) 28 April 2016 to 27 April 2017 (5.5.7). No insurance policy has been provided for the period 22 August 2015 to 27 April 2016. Despite the Applicant being directed to the limits to its jurisdiction, the Applicant continues to ask the Tribunal to determine whether a fine is due and to enforce the terms of her lease.

(iii) By 22 July 2016, the Respondent was directed to file her Bundle of Documents and Statement of Case. She has failed to do so.

4. The relevant legal provisions are set out in the Appendix to this decision.

The Background

5. 139 McCleod Road is a two storey Victorian end of terrace property with two flats. The Applicant is the tenant of Flat B which is a two bedroom flat on the first floor. She acquired her leasehold interest on 27 November 2013. She currently lives in Hebden Bridge in Yorkshire.
6. The Respondent owns both the freehold of the property and the leasehold interest in the ground floor flat. She has lived at the flat but it has been empty for over a year. The Respondent still uses it as her correspondence address. The Applicant has also communicated with her at 5 Gulliver Road, SE16, the address given on the insurance schedule.
7. The lease is dated 1 December 1986. By Cause 5(5), the landlord covenants to insure the property and “whenever reasonably required to do so, to produce to the Tenant a copy of any relevant policy of insurance and the receipt for the last premium”. The property is to be insured to its full reinstatement value.
8. The Tribunal has been provided with a quantity of e-mail correspondence between the parties. The Applicant has also communicated with the Respondent’s brother. The Applicant has made a number of requests for details of the insurance cover. The policies for three years have now been disclosed (at 5.5.1 to 5.5.9). The most recent policy was only provided on 26 June 2016.

The Tribunal’s Determination

9. The Tribunal only has jurisdiction under Section 27A of the Act to determine whether the insurance sums claimed are reasonable and payable. The Tribunal has no jurisdiction to determine whether any fine is due or to enforce the terms of the lease.
10. We do however record that the Applicant is entitled to be provided with a copy of the relevant insurance policy and details of the premiums payable under both her lease and the Act. She has an interest in ensuring that the property is fully insured. Her Building Society requires proof of cover.

11. We note that in 2016 the insurance was transferred from Zurich to PPI. The declared value of the property has been reduced from £500,000 and £250,000 and the premium has been reduced from £889.39 to £594.61. The Respondent must satisfy herself that this cover is adequate.
12. We find that the Applicant has made numerous requests for copies of the relevant policies and the premiums payable. The Respondent has not responded promptly to these requests.
13. We set out our decision briefly. The Applicant only challenges the sums payable in respect of insurance for the period 22 August 2015 to 27 April 2016. There is no evidence that the property was insured for this period. The Applicant paid a total of £333.29 for this period. We are satisfied that this sum was not payable.
14. There is no evidence that the Respondent has made lawful demands for service charges accompanied by the summary of rights and obligations required by Section 21B of the Act. However, it is not necessary for us to determine this point. We advise the Respondent to seek legal advice on her responsibilities as landlord. Otherwise, she is likely to face further, and expensive, litigation.
15. The Applicant applies for a refund of the tribunal fees that she had paid in respect of the application. In the light of our findings, we are satisfied that it is appropriate to order the Respondent to refund the fee of £65 paid by the Applicant within 28 days of the date of this decision.

Judge Robert Latham
15 August 2016

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application

for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

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.