

12092



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

**Case reference** : LON/00AY/LSC/2016/0273

**Property** : 31 Union Road, London SW4 6JQ

**Applicant** : Mr Julien Bach,  
Mr Gregory Blanche-Fraser and  
Mr Joe Sharp

**Representative** : Mr Julien Bach (in person)

**Respondent** : Mr David Glass

**Representative** : Mr Nigel Amos (Lorica Insurance  
Brokers)

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

**Tribunal members** : Judge Robert Latham  
Mr Luis Jarero BSc FRICS

**Date and Venue of  
Hearing** : 9 November 2016 at  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 19 December 2016

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**DECISION**

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**Decision of the Tribunal**

- (1) The Tribunal determines that the sum of £1,262.85 is payable in respect of insurance for the service charge year 2016/7 (each Applicant being liable for one third of this charge);
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or for the refund of tribunal fees.

## The Application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the Act”) in respect of the service charge payable in respect of insurance for the service charge year 2016/7. The application relates to 31 Union Road, London, SW4 6JQ (“the building”). The building is a four storey terraced property with three flats: Flat 1 (lower ground floor); Flat 2 (upper ground floor); and Flat 3 (the upper two floors. The sum in dispute is £1,262.85 in respect of which each Applicant is liable for one third.
  
2. On 16 September 2016, the Tribunal gave Directions, pursuant to which:
  - (i) The Respondent has filed a witness statement which stands as the Respondent’s Statement of Case (at p.111-211). The Respondent was required to set out the way in which the insurance in question has been obtained and what steps had been taken to test the market. The Respondent was further required to set out the claims history and any other relevant factors divulged to the insurance company. The Respondent has filed a witness statement from Mr Nigel Amos, an Account Director with Lorica Insurance Brokers (“Lorica”). The landlord requires the tenant to arrange insurance through Lorica who receives a commission of 20% for arranging the insurance and dealing with any claims. Mr Amos exhibits a copy of the current insurance policy (at p.114-175). In response to the application, the Respondent sought a number of further quotations to establish that the insurance charge is reasonable. Quotations were sought from ten insurers; seven of whom provided them. These ranged from £1,059.28 (p.189) to £1,986.90 (at p.198). Copies of the various quotes are provided at p.177-211)
  
  - (ii) The Applicants have filed their Statement of case at p.11-109. They have provided a copy of the 2015 Lorica Insurance Certificate (at p.28). They have taken the figures from this to obtain on-line quotes through Simply Business. The Finsbury Group quoted £502.70; whilst AXA quoted £716.50 (p.29). They also provide the 2016 Insurance Certificate (at p.30) and have used this to obtain on-line quotes from Dialdirect who quoted £460.14 (p.31) and the Post Office who quoted £463.94 (p.32). The Applicant concludes by requesting that the tenants are permitted to provide (a) their own building insurance coverage that complies with the scope of insurance required by the lease; and (b) the landlord with details of the insurance that they have arranged.
  
  - (iii) The Respondent has provided a second witness statement from Mr Amos in response (at p.217).
  
3. The relevant legal provisions are set out in the Appendix to this decision.

### The Hearing

4. Mr Julien Bach appeared on behalf of the three tenants. Mr Nigel Amos appeared for the landlord. Both elaborated upon their statement of cases and put questions to each other. In concluding his submissions, Mr Bach stated that he objected both to the amount payable in respect of the insurance and to the process whereby it is arranged.

### The Lease

5. The lease in respect of Flat 2 is dated 2 November 1983 and is at p.226. It is for a term of 99 years. There are three parties to the lease: (i) the lessor; (ii) 1 Union Road Management Limited (“the management company”) and (iii) the lessee. The Applicants each hold one share and are directors in the management company.
6. The covenants by the management company are set out in the Seventh Schedule. By paragraph 5, the management company covenants (emphasis added):

“to keep the Building insured at all times in the joint names of the Lessor and the Management Company against loss or damage by fire explosion storm flood tempest bursting of water pipes impact by vehicle or aircraft public and occupiers liability and any other risks which the Lessor or the Management Company may from time to time deem desirable with an insurance company approved by the Lessor and through the Lessors agency in a sum equal to the full reinstatement value thereof (which sum shall be reviewed and approved by the Lessor each year) together with Architects and Surveyors professional fees and two years loss of rent and service charge.....”

7. The type of portfolio arrangement which we are asked to consider was reviewed by the Court of Appeal in *Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* (1996) 29 HLR 444. The Court gave effect to the terms of the lease. This Tribunal has no jurisdiction to permit either the tenants or the management company to arrange their own building insurance. Our sole jurisdiction is to consider the reasonableness of the insurance premium secured through the landlord.

### The Background

8. The building is part of a large property portfolio of some 800 properties owned by the Respondent landlord. Mr Amos describes how due to the size, complexity of administration and the specific cover required, the landlord elects to insure all his properties on a portfolio basis. Lorica

receives a 20% commission for arranging the insurance and dealing with claims. Lorica re-markets the portfolio periodically.

9. Up until 2010, insurance was arranged by Towergate who arranged insurance through AXA, the premium for the building being £2,565.64 in 2008 and £2,779.95 in 2009. Mr Bach produced the Insurance Certificates which are at p.13 and 14. In 2010, Lorica arranged insurance through Fortis at a premium of £2,703.38. The Certificate is at p.15
10. The tenants suggest that the landlord has conceded on two occasions that the premiums demanded have been unreasonable and has agreed to make refunds. Mr Amos disputed this. In 2011, Lorica had arranged insurance through Ageas at a premium of £2,781.71 (Certificate at p.15). However, the tenants objected to this and, in particular, to the inclusion of terrorism and home emergency cover. These were removed from the policy and this reduced the premium to £1,314.18. This is confirmed by the certificate which is at p.16. However, these two elements on their own only reduced the premium by £282.39 (£183.99 + £98.40). It is apparent that the tenants secured a significant reduction in the premium through their intervention.
11. In 2012, Ageas increased their premium to £1,407.75, a 7% increase (Certificate at p.18). In 2013, Lorica transferred the policy to AXA at a premium of £1,438.13, an increase of 2% (Certificate at p.19). As a result of the tenant's intervention, AXA reduced this to £1,052.63. The Insurance Certificate is at p.20. The reduction is largely explained by the removal of the terrorism cover (£287.91) and the resultant reduction in the insurance premium tax (6% at the time).
12. Over the subsequent years, there have been modest increases in the premium:
  - (i) 2014: Premium £1,086.57, a 3.2% increase (Certificate at p.21). Mr Amos described this as a 1.2% index linked increase to the reinstatement value and a 2% insurer increase. Mr Amos noted that between 2013 and 2014, AXA had changed their policy. No longer did they quote separate figures for the declared value and the sum insured. The declared value was now the critical issue and there was no limit to the sum insured.
  - (ii) 2015: Premium £1,175.12, an 8.1% increase (Certificate at p.22). This as a 5% index linked increase to the reinstatement value and a 3% insurer increase. The declared value was increased from £665,540 to 698,817.
  - (iii) 2016: Premium £1,262.85, a 7.4% increase (Certificate at p.23). This reflected three factors: (a) insurance premium tax

was increased from 6% to 9.5%; (b) a 3% index linked increase to the reinstatement value and a 1% insurer increase. The current declared value is £719,781.

### **Submissions of the Parties**

13. Mr Amos argued that the quotations obtained by the tenants were not like for like. The current policy is at p.114-175. He identifies three additional items required by the landlord:

(i) No pre-existing subsidence exclusion. This means that all properties within the portfolio can be transferred to another insurer without leaving any potentially distressed properties without cover and the freeholder unable to fulfil their lease obligations;

(ii) All properties remain insured despite a change of tenant which has not been disclosed. Lessees may sub-let their properties without the consent or knowledge of the landlord to groups perceived by the insurer to be high risk.

(iii) The risk of third party contractors working on site without notifying the insurer.

14. Mr Amos argued that it is not sufficient merely to seek alternative quotes based on the building value (£719,781). Other factors will be relevant such as the contents (contents of communal areas are insured at £25,000), the occupancy, the claims history, the extent of the cover required (the landlord seeks all risks), the loss of rental income (the current policy is 30% of the building value), the extent of public liability (£5m) and employer's liability (£10m).

15. In the light of this application, Mr Amos carried out their own market exercise and obtained the following quotes (excluding the £40 Lorica administration fee which should strictly be ignored): (i) e-underwriting: £1,059.28 (particulars at p.189); (ii) Allianz: £1,164.50; (iii) Liverpool Victoria: £1,647.59 (p.193); (iv) Royal & Sun Alliance: £1,774.83 (p.203); (v) Covea Insurance: £1,964.02 (p178)); and (vi) One Commercial: £1,986.90 (p.198). Three insurers declined to quote, namely Aviva Insurance, NIG and QBE Insurance.

16. The tenants rely on three on-line quotations:

(i) Simply Business (p.29). The building is valued at £750k. AXA quoted £716.50 but it seems that the cover is less extensive than the quote accepted by the Respondent. Thus alternative accommodation is limited to £150k and for a period of 24 months. The Respondent's policy has a higher limit of £216k and is for an unlimited period; it also covers loss of rent. Mr Bach relied on the quote from Finsbury in the

sum of £502.70. Alternative accommodation is limited to £100k. Their policy summary is at p.105-109. There are a number of exclusions at p.106 including “damage caused by corrosion, rust, wet or dry rot” and “damage caused by persons lawfully on the premises”.

(ii) Dialdirect quoted £460.14 (p.31). The building is valued at £720k. The details of the policy are set out at p.67-103. The loss or rent/alternative accommodation is limited to £15k (see p.75). There is no cover for accidental damage. Only sections 1, 3, 4, 5, 14 & 15 of the Homes Insurance Policy apply. Cover is not provided for theft or escape of water where the “home” is unoccupied for more than the permitted period. This suggests that the policy relates to a single dwelling, rather a building consisting of three flats.

(iii) The Post Office quoted £463.94 (p.32). The building is valued at £720k. The details of the policy are set out at p.41-65 and are similar to those provided by Dialdirect. Again, the loss or rent/alternative accommodation is limited to £15k (see p.41). Only sections 1, 3, 4, 5, 14 & 15 of the Homes Insurance Policy apply. Details of the exclusions are provided at p.43-44. There is no cover for accidental damage (Section 2). Cover is not provided for theft or escape of water where the “home” is unoccupied for more than the permitted period. Claims are limited to £1m (p.58).

17. Mr Amos suggested that these policies would not provide adequate cover in the following situations: (i) riot or civil commotion; (ii) damage from theft; (iii) escape of water; (iv) impact damage; (v) leakage of oil; (vi) falling trees; and (vii) accidental damage, for example where a tenant leaves a plug in the bath or a basin.

### **Our Determination**

18. The Tribunal is satisfied that the 2016 insurance premium of £1,262.85 payable for the service charge year 2016/7 is reasonable. Insofar as it is in dispute in these proceedings, we are also satisfied that the 2015 premium of £1,175.12 payable for 2015/6 is reasonable. We reach this decision for the following reasons:

(i) We are satisfied that the landlord is entitled to ensure that his interests are properly covered. We are not satisfied that the quotes obtained by the tenants cover the matters specified in [13] above. The landlord has shown a degree of flexibility, for example excluding terrorism. He would have been entitled to insist that this risk was included.

(ii) We are not satisfied that the quotes provided by the tenants are “like for like” for the more general cover provided by AXA. The Tribunal has been provided with a full copy of the cover provided by AXA. The

tenants would have been in a stronger position had they provided this to those from whom they sought quotes and asked the insurer to offer like for like cover. We are also satisfied that the 20% commission payable to Lorica is reasonable having regard to the service that they provide in arranging insurance and dealing with claims (see *Williams v Southwark LBC* (2001) 33 HLR 22).

(iii) Lorica does test the market on a regular basis. They have also carried out their own market testing since this application was issued (see [15] above). These suggest that the current premium is well within the range of quotes provided by other insurers for a like for like policy.

(iv) We have also analysed the increase in premiums over recent years. These increases have been adequately explained by increases in the value of the building and in insurance premium tax.

19. We are not without sympathy for the tenants. They did secure a significant reduction in the premium in 2011 which was significantly more than the exclusion of cover for terrorism and home emergencies (see [10] above). However, the reduction that they secured in 2013, is largely explained by the exclusion of cover for acts of terrorism. Their current premium is £1,262.85, compared with £2,279.95 in 2009. They have been justified in subjecting the insurance premiums demanded by their landlord to anxious scrutiny. They now have details of the full cover provided by the landlord's policy. If they are able to identify an insurer who is willing to offer a significant reduction in premium for like for like, they should ask their landlord to obtain their own quote from that insurer. The landlord is under a duty to regularly test the market to ensure that tenants are required to pay an insurance premium that is reasonable.

#### **Application under s.20C and Refund of Fees**

20. At the end of the hearing, the Applicants made an application for a refund of the fees that they have paid and 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 is not minded to make any order either for the refund of fees or under Section 20C. The tenants have failed in their application.

**Judge Robert Latham**

**19 December 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

#### 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.

### **Section 20C**

- (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 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.