



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

Case Reference : CHI/00HN/LSC/2017/0012

Property : 397 and 399 Charminster Road,
Bournemouth, BH8 9QT

Applicants : Maria Jose Luna and Brian Potter

Respondent : Elmdon Real Estate LLP

Type of Application : Sections 27A and 20C Landlord & Tenant
Act 1985

Tribunal Members : Judge N Jutton

Date of Decision : 3 May 2017

DECISION

1 **Introduction**

2 397-399 Charminster Road, Bournemouth, is a detached property converted into 2 one bedroom flats. The first Applicant Maria Jose Luna is the lessee of 397 Charminster Road which she holds under the terms of a lease dated 12 August 1986 and made between Geoffrey Vranck and Raymond Darryl Godber (1) and Timothy John Bawn (2) and which is for a term of 99 years from 12 August 1986 (the 397 lease). The second Applicant Brian Potter is the lessee of 399 Charminster Road which he holds under the terms of a lease dated 31 May 1988 and made between Geoffrey Vranck and Raymond Darryl Godber (1) and Raymond Dean Foster and Teresa Anne Wilson (2) and which is for a term of 99 years from 31 May 1988 (the 399 lease).

3 The Applicants apply to the Tribunal for a determination of liability to pay and reasonableness of service charges. In particular, whether a building insurance premium of £577.55 (inclusive of Insurance Premium Tax) for buildings insurance commencing on 1 January 2017 is payable and if so, whether it is reasonably incurred. The Applicants also make an application pursuant to section 20C of the Landlord & Tenant Act 1985 for an Order that all or any of the costs incurred by the Respondent in connection with these 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 Applicants.

4 Directions were made by the Tribunal on 14 February 2017. They provided that the application form submitted by the Applicants would stand as their case. They provided for the Respondent to submit a Statement of Case in response and for the Applicants to submit a brief supplemental reply if they wished. The Directions also provided that the matter would be determined on paper without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of receipt of the Directions. No objections have been received and accordingly the Tribunal has proceeded to make its determination on paper without a hearing.

5 **Documents**

6 The Tribunal had before it a bundle of documents comprising the following:

- i The application made by the Applicants dated 17 January 2017.
- ii The Directions made by the Tribunal on 14 February 2017.
- iii The 397 lease.
- iv The 399 lease.

- v A bundle of quotations obtained by the Applicants for the cost of insuring the Property.
- vi A Statement of Case in the form of a letter dated 23 February 2017 on behalf of the Respondent together with a letter to the Respondent from its insurance brokers Ferguson Green Insurance Services dated 23 February 2017, and copy insurance schedules for the property dating back to May 2011 and ending with an insurance policy schedule commencing on 1 January 2017 arranged with AXA Insurance UK Plc.

7 The Law

- 8 The statutory provisions relevant to service charge applications are to be found in sections 18, 19, 20C and 27A of the Landlord and Tenant Act 1985 (the 1985 Act). They provide as follows:

The 1985 Act

- 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.*
- 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 provision 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*

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.

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 leasehold valuation tribunal, or the First-Tier 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.

(2) The application shall be made –.....

(ba) in the case of proceedings before the First-Tier Tribunal, to the Tribunal.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

9 The 397 Lease and the 399 Lease

10 Clause 1 in both the 397 and 399 lease is in identical terms and provides that in each case the lessee shall pay to the lessor by way of further or additional rent from time to time:

“... the sum or sums of money equal to one half of the amount which the Lessors may expend in effecting and maintaining the insurance of the Building against loss or damage by fire and such other risks as the Lessors think fit as hereinafter mentioned, such last mentioned rent to be paid without deduction”.

11 In each lease, clause 2(a) provides as follows:

*“2. The Lessees hereby covenant with the Lessor as follows:-
(a) to pay the said rent during the said term at the times and in the manner aforesaid without any deduction”.*

12 By clause 4(b) of both leases, the lessor covenants with the lessee as follows:

“That the Lessors at all times during the said term (unless such insurance shall be vitiated by any act or default of the Lessees) will insure and keep insured the Building in the joint names of the Lessors and the Lessees against loss or damage by fire and such other risks as the Lessors think fit in some insurance office of repute to the full reinstatement value thereof (including architects and surveyors’ fees) and whenever required produce to the Lessees the Policy or Policies of such insurance and a receipt for the last premium for the same and will in the event of the Building being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the Building”.

13 The 4th schedule of each lease sets out the costs, expenses and outgoings and other matters in respect of which the lessee is to contribute by way of a service charge and includes:

“3 The cost of insuring and keeping insured the Building against loss or damage by fire and such other risks as the Lessors think fit.

.....
5 All other expenses (if any) properly incurred by the Lessors in and about the maintenance and convenient management and running of the Building”.

14 **The Issues**

15 There are two issues before the Tribunal:

- i. Whether a buildings insurance premium of £577.55 for the year commencing 1 January 2017 is payable by the Applicants as a service charge and if so, whether it is reasonable.
- ii. Whether the Tribunal should make an Order that all or any of the costs incurred by the Respondent in connection with these 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 Applicants.

16 The Applicants' Case

- 17 The Applicants dispute the amount of the insurance premium of £577.55 (the figure in the application form given by the Applicants is £577.66 but from the papers the figure appears to be £577.55 inclusive of administration fees and insurance premium tax). That figure, say the Applicants, is excessive. That adequate cover could be obtained for a much lower premium.
- 18 The Applicants have obtained some alternative quotes. They were concerned to obtain quotes for appropriate buildings insurance they say similar to the present cover or 'adequate' to their needs. They are as follows:
- i. Allianz, premium £264.16 (net of insurance premium tax) plus administration fee of £25. Buildings insurance cover £368,000.
 - ii. Liverpool Victoria, premium £316.70 (net of IPT) plus administration fee of £50. Buildings insurance cover £305,829.
 - iii. AXA Insurance UK Plc, premium £287.06 (net of IPT) plus administration fee of £10. Buildings insurance cover £352,880.
 - iv. Covea Insurance, premium £319.06 (plus IPT) plus administration fee of £25. Buildings insurance cover up to £500,000.
 - v. Flex Insurance (Plum Underwriting Limited), premium £254.31 (plus IPT) plus administration fee of £40. Sum insured £253,000.

The sum insured under the terms of the AXA Insurance UK Plc block policy put forward by the Respondent is £327,119.

- 19 In the circumstances, the Applicants say that the premium sought by the Respondent of £470.50 plus insurance premium tax of £47.05 plus administration fee of £60, a total of £577.55 is unreasonable. That such a premium is unnecessarily high when compared to the quotes that they have obtained.
- 20 It is, the Applicants say, reasonable of them to make this application. They say that since the Respondent acquired the property, the amount of buildings insurance premium has increased yearly from £444 in 2010 to £1047.62 in 2016. They say it is only because they have challenged the amount of the insurance premium with the Respondent that the proposed premium for the year starting 1 January 2017 was reduced to £577.55 (inclusive of IPT and administration charges). It follows that in all the circumstances, it is the Applicants' case that they are justified in making this application.

21 The Respondent's Case

22 The Respondent says that it insures its portfolio of properties under the terms of a block policy. It says that it is entitled to do so. That it employs an insurance broker, Ferguson Green Insurance Services, to arrange insurance for it. The broker says that it attempted to market the Respondent's portfolio of properties for insurance purposes for the renewal in 2017, but unfortunately they were only able to obtain interest from AXA Insurance UK Plc. That because the property portfolio had "*suffered badly for claims, especially in 2016 and we were unable to garner any interest elsewhere*". They make the point that as the cover is a block policy (insuring their portfolio of properties), it is not possible for them to insure one property separately. That if they were to insure separately those properties such as the Applicants' properties which are relatively claim free, they would have a problem in obtaining cover for the rest of their properties which do not have such a good claims record.

23 The Tribunal's Decision

24 The question which the Tribunal must ask itself is not whether the cost of insurance is the cheapest available, but whether the cost of insurance is 'reasonably incurred'. Are the Respondent's actions in arranging insurance through a block policy appropriate and properly effected in accordance with the terms of the lease? If the premium charged appears high in comparison with other rates available on a like for like basis in the insurance market, is there evidence of a special feature of the transaction which took it outside of the Respondent's normal course of business?

25 The Tribunal is satisfied that it is reasonable for a lessor who owns a portfolio of properties to insure its portfolio through a block policy. That is a common arrangement. It reduces the amount of administration that the lessor incurs. There is nothing from the paperwork to suggest that the policy obtained by the brokers has not been competitively obtained.

26 The Tribunal has sympathy with the Applicants' position. It is clear from the quotations obtained by the Applicants that if the property was insured on a stand-alone basis (as opposed to part of a block policy covering a portfolio of properties) that the cost of insurance would be lower. However, the Tribunal is satisfied that it is reasonable for the Respondent as a commercial landlord to insure the property as part of a block policy covering its portfolio of properties. It does so in the ordinary course of its business. The Respondent's insurance brokers say that they attempted to market the Respondent's portfolio of properties for insurance purposes for renewal in 2017 but were unable to 'garner' any interest other than from AXA Insurance UK Plc.

- 27 The Applicants may feel aggrieved that they may be paying the price of other properties in the Respondent's portfolio of properties being subject to insurance claims whilst their own property is claim free or relatively claim free. That would be understandable. However, the question as stated for the Tribunal is whether or not the proposed insurance premium has been reasonably incurred by the Respondent in the ordinary course of its business. The Tribunal is satisfied that that is the case. There is no evidence before the Tribunal that another block policy upon the same terms could have been obtained elsewhere for a lower premium. Indeed, the Respondent's insurance brokers say they have tried but that has not proved possible. The quotations obtained by the Applicants are not for the cost of a block policy but are standalone quotations for the Property.
- 28 The Tribunal notes that the premium for the year commencing 1 January 2017 is substantially lower than that which has been charged for previous years and it notes that that follows, on the Applicants' case, representations made by the Applicants to the Respondent. The Respondent is encouraged to have regard in the future to representations made by the Applicants.
- 29 **The Section 20C Application**
- 30 Neither party has taken the Tribunal to any provisions in the lease which they say would allow or not allow the Respondent to recover any costs it incurs in relation to these proceedings from the Applicants as part of their service charge. Nor does the Respondent make any submissions as regards the section 20C application.
- 31 The Tribunal is satisfied that given the history of insurance premiums demanded by the Respondent from the Applicants as part of their service charge as set out by the Applicants, that it was reasonable for the Applicants to make this application. In all the circumstances, the Tribunal determines that all or any of the costs incurred by the Respondent in connection with these 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 Applicants.
- 32 **Summary of the Tribunal's Findings**
- 33 That the insurance premium of £577.55 (inclusive of IPT and administration fees) for the year commencing 1 January 2017 which the Respondent seeks to recover from the Applicants as part of their service charge is reasonably incurred and is payable by the Applicants.
- 34 That all or any of the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any charge payable by the Applicants.

Dated this 3rd day of May 2017

Judge N Jutton

Appeals

1. 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.
2. 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.
3. 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.
4. 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.