12546

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AZ/LSC/2017/0339**
Property	:	**4-14 Barmeston Road Catford London SE6 3BH**
Applicant	:	**Matthew Graux Martin Allen Jaspreet Bahra and Paul Glover**
Representative	:	-
Respondent	:	**RG Reversions 2014 Limited**
Representative	:	**Edmund Walters, Legal Counsel**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Professor Robert M Abbey** **Michael Cartwright FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**04 December 2017**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the sums demanded for insurance premiums for the periods 2015-2016, 2016-2017 and 2017-2018 are payable by the Applicant in respect of the service charges for the years set out above as the charges appear reasonable for insurance premiums for this property.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2015-2016 and 2016-2017 and 2017-2018 regarding the reasonableness of insurance premiums.

2. The relevant legal provisions are set out in the Appendix to this decision. Rights of appeal are also set out in the annex to this decision.

The determination

3. The parties to the dispute originally agreed that the matter could be dealt with on paper and written submissions were therefore made on that basis. However, subsequently Directions were issued by the Tribunal requiring an oral hearing which took place on 29 November 2017.

The background

4. The property which is the subject of this application is a group of blocks on the site comprising five 2 bedroom purpose built flats on top of a converted brick warehouse, (used for commercial purposes, (stated in the hearing to be for Use Class B1)), and two 2 bedroom flats to the front of the property all within the plot known as 4-14 Barmeston Road Catford.

5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The applicants hold residential leases and the tribunal was shown a specimen lease of flat 4A being for a term of 125 years from 25 December 2009 at a commencing rent of £275 p.a. The service charge proportion was expressed to be 7.14% and hence this would be the proportion to be paid of an insurance premium charged as a service charge.

7. The lease schedule nine provides that the landlord will insure with an insurance company of repute. It refers to insured risks and this is defined in the definition section of the lease to include usual risks such as but not limited to fire terrorism storm flood escape of water and such other risks as the lessor may reasonably decide as appropriate. The eighth schedule of the lease obliges the tenant to pay to the landlord a fair and reasonable proportion of the costs of insuring or 7.14% depending on the wording of the lease.

The issues

8. The parties identified the relevant issues for determination in relation to the insurance premiums that form part of the variable service charges as follows:

   (i) Was the insurance policy arranged for the property a qualifying long term agreement

   (ii) A challenge to the level of the premium based upon an alternative quote.

9. Having considered oral and written submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Reasons for the tribunal's decision

10. Dealing first with the qualifying long term agreement point such an agreement must be for more than a year in duration. Section 20ZA relates to consultation requirements and provides as follows:

> *"(1)Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*
> *(2)In section 20 and this section—*
> *"qualifying works" means works on a building or any other premises, and*
> ***"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.***

11. All the insurance policy periods under scrutiny by this tribunal were for a year or less and in those circumstances cannot be long term qualifying agreements.

12. Turning to the challenge to the level of the premium based upon an alternative quote this issue relates to the amount of the premium. The applicant challenges the amount of the premium having they say sourced one other estimate from another broker based they assert on the same property valuation and claims history as made available to them. However, it was clear and accepted that the excesses are different which would affect the premium as a consequence.

13. The respondent says that it is under no legal obligation to obtain the cheapest insurance policy for the property. The lease simply requires the respondent to insure with a company of repute. The respondent also says that the lease does not require the landlord to ensure that the level of the premium be reasonable but notwithstanding this, the respondent has made an effort to secure an appropriate insurance policy with a reputable company at the lowest level it is able to achieve through an exercise carried out by their insurance broker.

14. The tribunal is satisfied that Axa, the current insurer, is an insurance company of repute and that as such there is compliance with the lease covenant in that regard. In the cases of *Berrycroft Management Co Limited v Sinclair Gardens Investment (Kensington) Limited* 1997 1EGLR 47 and *Havenridge Limited v Boston Dyers Limited* [1994] 49 EG 111(CA) it was made clear that the landlord does not have to accept the cheapest quotation but the landlord must insure with a reputable company as is the case in this dispute.

15. From *Forcelux v Sweetman* [2001] 2 EGLR 173 it is apparent that a landlord should test the market when considering an insurance quote. In this dispute it was demonstrated that a market analysis was undertaken by the respondent's broker whereby several insurance companies were approached to test the market insurance premium rates. However, full details of this testing exercise were not disclosed and this is regrettable as the tribunal had to rely upon an email from the broker confirming the same. It would have assisted the tribunal if it had before it details of the other quotations mentioned by the brokers in the email from Chris Anelay an Insurance Administrator with the Brokers Lockton.

16. In the absence of further and exact comparable evidence from the applicant for very similar blocks and alternative premium quotations for an exact like for like cover it is difficult for the tribunal to say the premiums charged are unreasonably incurred. This has left the tribunal with little alternative other than to confirm the adequacy of the premiums charged, which it now does. The Tribunal has some sympathy with the applicants in that it appreciates the difficulty in getting comparable quotes when you are not the freeholder but comparable evidence is the best form of evidence the Tribunal can consider.

17. It was apparent to the tribunal that this dispute has arisen because of a failure on the part of the lessor to keep the lessees advised of possible developments regarding insurance. It was plain to the tribunal that when the lessor decided to revalue the property for insurance purposes they only advised the tenants of this after the revaluation had taken place and when the increased premium was demanded. This is poor management and it is to be hoped that in future the lessor will pre-warn the lessees of impending changes that could impact upon the premiums to be paid.

Name:	Professor Robert M. Abbey	**Date:**	04 December 2017

ANNEX - Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

<u>Commonhold and Leasehold Reform Act 2002</u>

<u>Schedule 11, paragraph 1</u>

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
   (a) specified in his lease, nor
   (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
   (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).