



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

Case reference : **LON/00ASL/SC2021/0055**

HMCTS code (paper, video, audio) : **P: Paper Determination**

Property : **62 Rydal Way, Ruislip, London HA4 0EU**

Applicant : **Philip Green**

Representative : **In person**

Respondent : **AJA Taylor Limited**

Representative : **Jane Taylor, Director**

Type of applications : **Liability to pay service charges**

Tribunal members : **Judge N Hawkes
Mr S F Mason BSc FRICS**

Dates of paper determination : **12 July 2021**

Date of decision : **12 July 2021**

DECISION

Decisions of the Tribunal

- (1) The Tribunal finds that the scope of this application is limited to the service charges which have been demanded in respect of the years 2013/2014 to 2021/2022. The Tribunal finds that the service charges which have been demanded in respect of these years are reasonable and payable.

- (2) The Tribunal does not have jurisdiction under section 27A of the Landlord and Tenant Act 1985 to make an order requiring a landlord to undertake work to a building.
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (4) The Tribunal does not make an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (5) The Tribunal does not make an order requiring the Respondent to reimburse Tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of actual service charges which are payable by the Applicant in respect of the service charge years 2013/2014 to 2021/2022 and in respect of the amount of future service charges which are payable by the Applicant up to the year 2025.
2. The Applicant challenges the landlord’s charges for arranging insurance and seeks the relief described below concerning the condition of the building in which 62 Rydal Way, Ruislip, London HA4 0EU (“the Property”) is situated.
3. It is not possible for the Tribunal to determine the amount of future charges which are yet to be demanded, about which no information has been supplied by the landlord. Accordingly, the scope of this determination is limited to the service charge years 2013/2014 to 2021/2022.
4. On 13 April 2021, Directions were issued allocating these proceedings to the paper track, unless either party requested an oral hearing. No party requested an oral hearing and the application was determined on the papers on 12 July 2021. It is noted that the timetable provided for in the Directions was amended by letter dated 14 June 2021.

The background

5. The Tribunal has been informed that the Property is a two bedroom first and second floor maisonette in a purpose-built block comprising six maisonettes situated above three flats.
6. The Applicant is the long lessee of the Property and the Respondent is his landlord. The original lease of the property was dated 30 September

1966. In 2020, a new lease was granted pursuant to the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Lease”) on the terms of the original lease, subject to certain specified variations.

7. Due to the Covid-19 pandemic, the Tribunal is not routinely carrying out physical inspections of properties. No party requested an inspection and the Tribunal was of the view that an inspection was not necessary or proportionate to the issues in dispute. Good quality colour photographs of the Property were provided.

The Insurance Premium Administration Fee

8. In the application, the Applicant states:

“The Landlord insists on adding 10% to the insurance premium required under 'Habendum' as an administration charge this is not permitted by the lease.

...

There is no provision DEED 1 (b) (Habendum) for an administration fee for providing obligatory insurance, it is also clear that garages are included in the Mansion”

9. The Lease includes provision at clause 1 that the lessee shall pay:

“by way of further or additional rent from time to time a sum or sums of money equal to the due proportion of the amount which the Lessors may expend in effecting or maintaining Insurance of the Mansion against loss or damage by fire and such other risks (if any) as the Lessors think fit as hereinafter mentioned”

10. The Mansion is defined as follows:

“the freehold property comprised in the title above referred to together with the block of four flats eight maisonettes and associated garages erected or in course of erection on part thereof and the curtilage thereof all which premises (comprising two areas) are shown for the purposes of identification only on the plan annexed hereto and thereon edged red and are hereinafter referred to as ‘the Mansion”

11. Clause 5(b) of the Lease provides:

“That the Lessors will at all times during the said term (unless such insurance shall be vitiated by any act or default of the Lessee or the owner lessee or occupier of any other flat maisonette or garage

comprised in the Mansion) procure that all parts of the Mansion are insured and kept insured against loss or damage by fire and such other risks (if any) as the Lessors think fit in some insurance office or offices of repute in the total sum of Sixty thousand pounds (£60,000) or such greater sum as the Lessors shall think fit and whenever required produce to the Lessee for inspection the policy or policies of such insurance and the receipt for the last premium for the same and will in the event of the Mansion being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance moneys in the repair rebuilding or reinstatement of the Mansion the Lessors making up any deficiency out of their own moneys”

12. By paragraph 4 of the Fourth Schedule to the Lease, the lessee is required to contribute to:

“4. The cost of insurance against third-party risks in respect of the Mansion if such insurance shall in fact be taken out by the Lessors.”

13. By paragraph 9 of the Fourth Schedule to the Lease:

“9. An addition of ten per cent shall be added to the costs expenses outgoings and matters referred to in the preceding paragraphs of this Schedule for administration expenses.”

14. The Respondent has obtained one insurance policy per year which includes both insurance against third-party risks and buildings insurance. A sum amounting to 10% of the premium has been charged to the Applicant by the Respondent for arranging this insurance. In respect of the year 2013/2014 this charge amounted to £10.40 and by 2021/2022 it had risen to £29.51, due to an increase in the cost of the insurance premium.

15. Ms Jane Taylor, a Director of the Respondent company, has provided a statement on behalf of the Respondent. She states:

“Concerning buildings insurance, I attach marked ‘JT3’ a copy of an up-to date policy. The lease obliges the landlord to insure against fire and ‘such other risks (if any) as the Lessors think fit as hereinafter mentioned’. This clearly refers to the other risks as set out in paragraph 4 of the Fourth Schedule. The buildings policy that I have taken out relates to fire and other risks including property owners’ cover. It would be artificial and unrealistic to divide the insurance premium between buildings risk and third-party risks and only charge an administration fee on the third-party risks part of the premium as the time expended in arranging insurance relates to the whole of the policy.”

16. Under paragraphs 4 and 9 the Fourth Schedule to the Lease, the Applicant is required to pay 10% of the cost of insurance against third-party risks “for the landlord’s administration expenses”.
17. Hill & Redman’s Law of Landlord and Tenant provides at [941]:

“In general, the lease is construed with reference to the circumstances existing at the time of execution”.
18. Construing the lease as a whole, we find that the cost of the insurance against third-party risks is the cost of the policy which covers third party risks notwithstanding that the policy may also cover other risks. The purpose of the 10% is to cover the landlord’s administration expenses and, both at the time the lease was entered into and now, the administration expenses are not incurred on an item by item basis but in arranging the policy as a whole.

The charges for work to the Building in which the Property is situated

19. In respect of the work carried out to the building in all service charge years, the Applicant states: *“Reasonable cost for work done”*. Accordingly, he does not seek any reduction in the sums payable to date by way of service charge.
20. The Applicant instead relies upon Respondent’s repairing covenants in the Lease; asserts that the Respondent is in breach of covenant (and that the Respondent has been in breach of covenant for many years); and he asks the Tribunal to determine what work should be undertaken by Respondent, specifying a timeframe.
21. This application has been brought under section 27A of the Landlord and Tenant Act 1985 and the Tribunal does not have jurisdiction under section 27A to make an order requiring a landlord to undertake work to a building. The Applicant may wish to obtain independent legal advice concerning any legal remedies which he may have if the Respondent is in breach of the repairing covenants in the Lease.

Orders concerning costs

22. Having considered all the circumstances of this case and placing weight on the fact that the Applicant has not been successful in this application, the Tribunal does not make orders under section 20C of the Landlord and Tenant Act 1985, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, or requiring the reimbursement of Tribunal fees. The Tribunal makes no finding as to whether the landlord’s costs are potentially recoverable under the terms of the Lease, having heard no argument on this issue.

Name: Judge N Hawkes

Date: 12 July 2021