

9200



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

Case Reference : **LON/00AU/LSC/2013/0386**

Property : **2 Stocks Lodge 28 Wilton Square
London N1 3DW**

Applicant : **Dr Stephen Hudson**

Representative : **In person**

Respondent : **Ms Helene Stewart**

Representative : **BLR Property Management Limited**

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

Tribunal Members : **Judge P Leighton LLB
Mr N Martindale FRICS**

Date and venue of PTR : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **19th August 2013**

DECISION

DECISION

introduction

- 1 By an application dated 4th June 2013 the applicant applied for a determination of his liability to pay service charges under section 27 A of the Landlord And Tenant Act 1985 (“the 1985 Act”) and an order limiting his liability for costs under section 20 C of the Act
- 2 Directions were given on 4th July 2013 and the matter came before the tribunal for hearing on 19th August 2013. The applicant appeared in person but the Respondent who was represented by BLR Property Management Ltd. did not appear
- 3 It appeared to the tribunal that the parties had not complied with the directions given on 4th July 2013 and in particular the applicant had failed to provide a statement of case and had failed to correlate the documents into a hearing bundle.
- 4 On the day of the hearing applicant produced a bundle of documents which did not comply with the directions as it failed to include the application the order of the directions and the relevant statements of case and the pages were unnumbered. The respondent submitted to the tribunal at 11.30 a.m. on the day of the hearing, a copy of the statement of case with supporting invoices and a letter inviting the tribunal to dismiss the application on the grounds that the applicant had failed to comply with directions 12 to 18. With the exception of the covering letter, the applicant had already produced these to the hearing earlier that day.
- 5 When questioned by the tribunal the applicant stated that he had not received a copy of the letter enclosing the tribunal's directions of 4th July although he had received an e-mail which made reference to the directions having been sent and a request for an additional fee for the hearing which he had paid.
- 6 It occurred to the tribunal that a number of documents which the applicant produced may not have been served on the respondent, so that the respondent had had no opportunity of commenting on them.

Accordingly the tribunal decided that it would only place reliance upon those documents which were common to both parties. This was not a significant disadvantage since the main issue which the tribunal is required to determine relates to a point of law and the correct interpretation of the 1985 Act

Background

- 7 The applicant is the leasehold owner of flat 2 Stocks Lodge, Wilton Square, Islington London N1 3 DW("the flat") under the terms of a lease dated 14th July 1961 for a term of 99 years from 25th March 1961
- 8 The applicant acquired the flat on 5th January 2001 and has held the lease since that date. He does not live at the property
- 9 By clause 4 (vi) the lessee covenants as follows: –
" to insure and keep insured the demise to premises against loss or damage by fire and such other risks (if any) as the lessors think fit in the sum of 2650 pounds or such greater sum as the lessors shall think fit in the name of the lessee and the lessors with such insurance office as the lessors shall determine and whenever required produce to the lessors the policy or policies of such insurance and the receipt for the last premium for the same and in the event of the demised premises been damaged or destroyed by fire possible to layout the insurance monies in the repair rebuilding or reinstatement of the demised premises."
- 10 The applicant also covenanted under clause 4 (ii) to *"contribute and pay one equal third part of the costs expenses outgoings and matters mentioned in the fourth schedule hereto"*
- 11 the fourth schedule sets out the costs expenses outgoings and matters in respect of which the lessee is to contribute. The only relevant clause under the schedule is item 6 which provides as follows
"The costs of insurance against third-party risks in respect of the mansion if such insurance shall in fact be taken out by the lessors."
- 12 For the whole of the period since the applicant acquired the lease he has received an invoice from the landlord or her agents demanding a sum in

respect of insurance, which has in effect been obtained by the landlord.

The only other items claimed in the demand relates to ground rent.

13 The demand which has been produced contains a summary of rights and obligations as required by the 2007 regulations which informs the tenant that he has a right to apply to a Leasehold Valuation Tribunal in respect of any items which may be disputed.

14 According to the applicant the lower flat (flat 1) is owned by an elderly lady who is no longer living at the premises and the lease of the upper flat (flat 3) is held by a Mr Waller with whom the applicant has had conversations from which he deduces that the leaseholder of flat 3 pays a sum of about 300 pounds per annum for insurance. It is not known what contributions are made by flat 1

The issue

15 In a letter sent to the tribunal and received on the day of the hearing the respondent through its agents have requested the tribunal to dismiss the application on the basis of the applicant's failure to comply with directions

16 Having questioned the applicant regarding the receipt of documents the tribunal is in some doubt as to whether in fact the directions which were sent had actually been received by him

17 The applicant attended the directions hearing and was informed that a copy of the directions would be sent to him. The tribunal considers that it was somewhat remiss of him to have failed to make further enquiries regarding the directions if indeed they were not received. he does not appear to have requested a further copy

18 The central issue raised in the respondent's statement of case concerns the jurisdiction of the tribunal to consider the application on the grounds that the amounts claimed by way of insurance are not recoverable as a "service charge" and therefore the tribunal has no jurisdiction to consider them.

19 As this issue is essentially a question of law and since the relevant material was before the tribunal it considered that it should make a decision on this point. Each side has had the opportunity of putting their submissions

before the tribunal, the applicant orally, and the respondent in her statement of case.

- 20 In the circumstances it appeared to the tribunal to be in the public interest for it to make a determination on the question of jurisdiction and to consider in the light of that determination what the action if any need be taken.

Submissions

- 21 In the respondent's statement of case the relevant submissions in relation to jurisdiction are set out in paragraphs 5 to 8.
- 22 In paragraph 6 it is stated that the cost of the insurance premium is not a service charge as the costs are incurred by the leaseholders of the building whose interests are automatically noted on the policy and not the respondent who has no obligation to insure the building. The respondent therefore submits that sums billed to the applicant in respect of the insurance premium are not service charges within the meaning of section 18 of the Act which he set out below
- 23 The respondent draws specific attention to the definition of "relevant costs" under section 18 (2) which are defined as "the cost 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."
- 24 The respondent contends that the insurance premium cannot be regarded as relevant costs nor as an amount payable as part of or in addition to the rent as under the lease the placement of the insurance and payment is the responsibility of the leaseholders. It is contended therefore that the tribunal does not have jurisdiction to determine the application under section 27 A of the 1985 Act.
- 25 The tenant submits that the amount claimed is a service charge, in that it has always been treated as such by the landlord. It has been claimed regularly and since 2007 has been accompanied by a summary of rights and obligations which can only apply to service charges

- 26 In addition the tenant submits that there are a number of items included in the insurance claim which relate among other things to the liability of the landlord and that this aspect of the claim would in any event be covered by clause 6 of the fourth schedule.
- 27 The tenant also submits that "incurred" in the context of this legislation could simply be the meaning "paid" and that once the landlord has paid the insurance and seeks to recover it under the lease it becomes a service charge.

The Tribunal's Decision

- 28 The tribunal has been unable to find any binding legal authority on the question of whether if a landlord pays an insurance premium which the tenant has covenanted to pay and seeks to recover , that such recovery is in the nature of a service charge.
- 29 In the view of the tribunal the question hinges on the meaning of the word "incurred". It has a meaning which is wider than the word "paid" and appears to import an element of obligation.
- 30 It is clear that the payment is not made on behalf of the landlord, although the premium documents disclosed by the landlord state that Mrs Stewart is the insured.
- 31 There are different elements to the insurance but it appears to the tribunal that the main element of building insurance is an obligation incurred by the tenant but paid by the landlord's representative. In this context the landlord is acting as agent for the tenant and would be entitled to recover the premiums paid on the normal principles of agency.
- 32 The tribunal has jurisdiction to determine under section 27 A whether a service charge is payable. In this context the tribunal has to consider the nature of the payment and whether it is in fact a service charge and if so whether it is otherwise payable. If it is not a service charge it is clearly not payable under section 27A
- 33 The tribunal is of the opinion that any part of the insurance which reflects cover for the landlord's third-party liability is a service charge within the

meaning of the fourth schedule and recoverable as a service charge . As far as the remainder is concerned the tribunal is not satisfied that this constitutes a service charge and whilst it may be recoverable it is not a matter which the tribunal is entitled to determine.

- 34 The tribunal considered whether the submission of an invoice containing a summary of rights and obligations would amount to an estoppel. It concluded however that if the payment in question is not properly characterised as a service charge within the meaning of the Act, an error by the landlord in the submission of an erroneous document could not make it so.
- 35 The tribunal is however entitled to determine the reasonableness of any insurance premium in respect of the landlord's third-party liability. It has at present no evidence before it on which to make such a determination, although it considers that the extent of such cover should not in any event exceed 10 percent of the total premium and could probably be obtained for less than £150 per annum for the whole building.
- 36 If the parties wish to make written submissions in respect of this item the tribunal will grant an extension until 2 September 2013 to enable them to do so. If, however neither party wishes to incur the cost of making further submissions on such a relatively small sum the tribunal will order that the tenant should pay the sum of £50 per annum for each of the six years which he has disputed making a total of £300 in respect of the landlord's third party liability
- 37 With regard to the remaining elements of the insurance the landlord will have to take such steps as she considers necessary in order to determine the appropriate sums recoverable.

Chairman Judge Peter Leighton LLB

Date 19th August 2013

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 a Leasehold valuation 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 a Leasehold valuation 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.