10014

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2013/0769**
Property	:	**FIRST FLOOR FLAT, 85 COURTHILL ROAD, LONDON SE13 6DW**
Applicant	:	**MS THI GAI QUACH**
Representative	:	**MR H V HUA (SPOUSE)**
Respondent	:	**G & O RENTS LTD**
Representative	:	**URBANPOINT PROPERTY MANAGEMENT LTD**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**MS L SMITH (LEGAL CHAIR)** **MS S COUGHLIN, MCIEH**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **22 April 2014**
Date of Decision	:	**12 May 2014**

DECISION

Decisions of the tribunal

(1) **The tribunal determines that the amount payable in respect of insurance premiums for the service charge years 2010-11, 2011-12, 2012-13 and 2013-14 is £3580.40**

(2) **The tribunal determines that the amount payable in respect of management fees for the service charge years 2010-11, 2011-12, 2012-13 and 2013-14 is £781.20 but that the audit and accountancy fees are not payable.**

(3) **In light of the agreement between the parties, the tribunal makes no determination in relation to the contributions to the Reserve Fund for the service charge years 2010-11, 2011-12, 2012-13 and 2013-14.**

(4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

(5) The tribunal determines that the Respondent shall pay the Applicant £220 within 28 days of this Decision, in respect of the reimbursement of 50% of the tribunal fees paid by the Applicant

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 2010-11, 2011-12, 2012-13 and 2013-14.

2. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

3. At the hearing, the Applicant was represented by her husband, Mr Hua, and the Respondent was represented by Mr N Adnan and Mr I Capjon, accounts manager and property manager respectively of Urbanpoint Property Management Ltd.

4. The Tribunal had before it a bundle of documents prepared by the Applicant.

The background

5. The property which is the subject of this application ("the Property") is a one bedroom, first floor flat in a house converted into 4 flats ("the

Building"). The Building is a mid-terraced house dating from about 1900.

6. 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.

7. The Applicant holds a long lease of the Property ("the Lease") which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the Lease are set out in Appendix 2 to this decision and are referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for the 4 years at issue relating to building insurance premiums

   (ii) The payability and/or reasonableness of service charges for the 4 years at issue relating to contributions to a reserve fund

   (iii) The payability and/or reasonableness of service charges for the 4 years at issue relating to management fees and audit and accountancy fees

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

Insurance premiums – (Applicant's share) £1068.11, £1117.68, £1139.71, £1150 (estimated)

10. The Applicant challenged the amounts payable for insurance premiums on the basis that they were unreasonable in amount.

The tribunal's decision

11. **The tribunal determines that the amount payable in respect of insurance premiums is £3580.40, being the amounts charged less 20% commission which has been received by the Respondent as commission and which appears to the Tribunal to be profit for which the Respondent should account to the Applicant.**

Reasons for the tribunal's decision

12. The Applicant explained that he and his wife were themselves landlords. They owned about 10 leasehold and freehold properties in the London area. As such, they were well aware of how to go about getting reasonably priced insurance. The Applicant had approached an insurance broker, Abacus Insurance Service. Mr Sweeney of Abacus had provided the Applicant with an insurance quotation for the Building which, at its highest, amounted to £1310.01 including insurance premium tax. This was roughly one-third to one-quarter of the premium charged by the Respondent. The Applicant also produced details of what he said was a similar property at 323 Baring Road where the insurance premium was only £762.44.

13. Mr Adnan and Mr Capjon disputed that the quotations on which the Applicant relied were a like for like policy. Mr Capjon had been in e mail contact with Mr Sweeney of Abacus to discuss the terms of the policy for which the quotation was given. Mr Sweeney had made clear in his e mail that the quotation was for a purpose built block of flats. Although he said that he could provide a quotation for a converted building, he was not asked to do so by either the Applicant or Mr Capjon. Mr Adnan and Mr Capjon pointed out that there were some particular requirements of the Respondent in relation to insurance which were not incorporated in the quotation which Mr Sweeney had provided. Notably, they pointed out that the Lease has no provision requiring consent of the Landlord to any sub-letting and the flats in the Building are mainly sub-let. As such, the Respondent has no details of those in occupation of the Building and requires insurance which would not allow the insurer to avoid a claim on the basis of not having that information if the claim were caused by one of those in occupation. Similarly, the Lease prevents use of the flats in the Building for business purposes but the Respondent has no way of knowing if any of those in occupation are contravening that clause and, again, the Respondent requires insurance which would cover a claim notwithstanding any occupation in breach of the terms of the Lease or where an incident was caused, for example, by a flat in the Building being left vacant. The Respondent's insurance also prevents the insurer from voiding the policy for late payment which is essential since there is a history of the tenants of the Building not paying service charges on time. The Respondent's insurance also includes day one inflation and covers terrorism and loss of rents.

14. There was much discussion at the hearing about whether the Respondent was over-insuring the Building in terms of its value. Mr Adnan and Mr Capjon pointed to what they said was a valuation in a Building Condition Survey carried out in 2007 which stated that the value for reinstatement of the Building was £638,310. The Tribunal did not read that as being a valuation in particular because there was no indication as to how that figure had been reached. This was simply a statement of what the value was in the insurance at that date. The

Respondent's agents had commissioned a desktop valuation as a result of this dispute which gave a valuation (declared value) of £722,000 as at 24 July 2013. The current building declared value is £865,906 so it would appear that the Building may be slightly over-insured but the Tribunal had no evidence as to the effect of that on the premium.

15. There was also much discussion about the level of the sum insured when compared with the declared value. The policy for 2011-2012 for example showed a declared value of £824,672 whereas the sum insured is £1,113,307. Mr Hua made the point that a landlord could effectively insure for what it liked and pass on the cost to the tenants and that the figure bore no resemblance to the real value. The Tribunal was shown the backsheet to the policy extracts document which indicated that the sum insured was the declared value adjusted by an additional 35% to allow for building cost inflation. However, this sheet states in terms that "The insurer does not charge for this uplift". Therefore, it is the declared value which the Tribunal has to consider when assessing whether the Respondent has acted reasonably in setting the level. Ultimately, there was no real evidence that the declared value was excessive. The desktop valuation was not a full valuation and in any event the difference between that and the declared value is not particularly significant nor might it make very much difference to the premium charged. The Tribunal observes that the public liability insurance covered by the Respondent's policy is £5million whereas £2 million is more usual but, again, there was no evidence before the Tribunal that the level of this element of the insurance was unnecessarily inflating the insurance premium.

16. Mr Adnan and Mr Capjon did mention that the insurance was negotiated by the Respondent for its entire portfolio. This might mean that the premium is actually competitive or it might equally mean that it is uncompetitive because of the range of property covered by it. Mr Adnan and Mr Capjon did indicate during the hearing that if Mr Hua wished to discuss with them taking the insurance out of the block policy and negotiating insurance only for the Building, they would be willing to take the Respondent's instructions on this. This might be to the benefit of the Applicant particularly where the Tribunal was informed that in all the time that Urbanpoint had managed the Building there had been no claims on the insurance.

17. The Tribunal was provided with a letter dated 28 January 2014 from the Respondent's insurance broker, Genavco Insurance, a Lloyd's broker and risk manager. This set out with more particularity the specific provisions of the insurance policy and explained why the Respondent considered those necessary and reasonable. The letter continues "At renewal every year we test the market to ensure that the terms being quoted by AXA are competitive,and that any other quotes will provide the wider cover required by the freeholders". Indeed, Mr Adnan and Mr Capjon referred to the insurer having recently changed from AXA to NIG, although AXA had been the insurer for many years.

The Tribunal had no reason to doubt the truth of what was said in the insurance broker's letter about market testing and accepts what was said by Mr Adnan and Mr Capjon that the types of insurer for a policy of this nature are likely to be the larger companies.

18. Mr Adnan and Mr Capjon confirmed that Genavco has no association with G&O Rents Ltd. They did however confirm that the Respondent receives 20% commission from Genavco. Since there was no evidence provided to the Tribunal that this represented payment for any service provided by the Respondent, the Tribunal assumes this to be pure profit for which the Respondent should accordingly account to the Applicant when claiming the premium back through the service charge. Accordingly, whilst the Tribunal accepts that the amount of the insurance arranged and the premium therefor are reasonable, the Tribunal has discounted the figures charged by 20% by way of a refund of the commission.

Contributions to Reserve Fund - (Applicant's share) £250, £0, £562.50 credit, £125

19. The Applicant challenged the service charge item for contribution to the Reserve Fund on the basis that there had been a decision of the Southern Rent Assessment Panel in relation to G&O Rents Ltd where they had been told to stop charging these sums and to refund the sums charged. The Applicant also argued that a Reserve Fund was unnecessary.

The tribunal's decision

20. As shown by the above, the Applicant has in fact been refunded more than she has paid for the 4 years in dispute. Mr Adnan and Mr Capjon also confirmed that it was the position that the Applicant had been or would be refunded all the amounts paid in this regard and that the Respondent would not charge for Reserve Fund contributions in future. It appeared to the Tribunal that in fact the Lease would not permit recovery of the service charge in advance in any event. **In light of the agreement between the parties, the tribunal makes no determination in this regard.**

Management fees – (Applicant's share) £187.20, £192, £198, £216; Audit and Accountancy Fees – (Applicant's share) £32.25, £32.25, £33, £32.50

21. The Applicant challenged these sums on the basis that they were excessive given the level of management involved. He also argued that the audit and accountancy charges should be part of the management fees and should not be invoiced separately.

The tribunal's decision

22. The tribunal determines that the amount payable in respect of management fees for the four service charge years in issue is £781.20 but that audit and accountancy fees are not payable under the Lease.

Reasons for the tribunal's decision

23. Again, Mr Hua relied on his and his wife's experience in this area. He also relied on the service charge for 323 Baring Road as well as the service charge for a flat in Lewisham which appeared to be owned by London Borough of Lewisham. The Tribunal did not consider the evidence provided to be particularly useful as it had no evidence as to the level of management involved in managing those properties and the second was in any event a local authority block to which very different considerations would apply.

24. The Tribunal did though express its concern that the Lease may not in fact allow the Respondent to recover management fees at all and the Applicant adopted that argument in reply and indicated that for that reason he did not consider that he should pay the management fees at all.

25. The Tribunal received evidence from Mr Adnan and Mr Capjon about the work involved in management of the Building and does not consider that the amounts charged for management or audit and accountancy are unreasonable in amount, except in relation to 2013-14 where the management fee increased from around £190 to £216 with no explanation of what amounted to a 10% increase on the previous year (although this is still an estimate). The Tribunal considers that a reasonable figure for 2013-14 would be £204 which represents the same 3% increase on the previous year as reflected in relation to the earlier fees.

26. In relation to payability, Mr Adnan and Mr Capjon relied on the fact that the Respondent has a contract with Urbanpoint to manage the Building thereby delegating its responsibilities under the Lease and the Respondent pays for that service and should therefore be able to pass its charges back to the tenants by way of the service charge.

27. Ultimately, payability of the management fees is a matter of interpretation of this rather unusual Lease. Having considered the Lease for itself, the Tribunal is of the view that the management fee is payable but that the audit and accountancy charge is not payable. It is clear that the Lessee under the Lease agrees to pay for insurance (clause 2(2)), the expense of repair, maintenance, support, rebuilding and cleaning of the structure of the Building and common parts (clause

2(9)) and cleaning and lighting of the hall, landings and staircases (clause 2(10) – although there was no evidence that the Respondent in fact provides this service. There are mirror obligations on the Respondent in clauses 3(2) and 3(5). In the view of the Tribunal "expense" in this regard is sufficiently widely drawn to enable the Respondent to recover the indirect expense also of the management of its obligations under the Lease in this regard. There is also a separate clause requiring the Lessee to pay for solicitors and surveyors costs for dealing with the remedy of any breach of covenant which, again, is wide enough to permit the Respondent to charge for the management of the service charge recovery to avoid such a breach. There is also an obligation on the Respondent to deal with breaches by other Lessees which might prejudicially affect the Lessee under the Lease (clause 3(4)) and failure by other Lessees to pay the service charge would be capable of falling within that description so that the Lessee would be required to pay the Lessor under that clause to deal with such breaches.

28. However, there is no provision in the Lease for accounts to be audited. The amounts covered by the service charge are quite limited as shown by the service charge invoices and there is no reason why an audit should be necessary. Since the Lease does not require audited accounts, there can be no obligation under the Lease for the Lessee to pay for the audit and accountancy charges if the Respondent chooses to provide audited accounts. Of course, there is nothing to prevent the Respondent reaching agreement with the Lessees of the Building outside the Lease to pay for this service if the Lessees themselves require audited accounts for their own purposes.

Application under s.20C and refund of fees

29. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund 50% of any fees paid by the Applicant within 28 days of the date of this decision. Whilst the Applicant was justified in part in making this application, she has only succeeded in part and the order made reflects the view of the Tribunal as to the extent to which she has succeeded.

30. In the application form/statement of case and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, and although Mr Adnan and Mr Capjon indicated that the Respondent would not pass on the costs of the Tribunal proceedings, the tribunal determines that no order under

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

section 20C should be made (although it doubts that the Respondent would be able to recover the cost in any event under the Lease). In the view of the Tribunal, both parties have won and lost in equal parts in relation to the issues in dispute and it would therefore not be just and equitable to make the order sought.

Name: Ms L Smith **Date:** 12 May 2014

Appendix 1

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.

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.

Appendix 2

Relevant clauses of the Lease

Clause 2

2. THE Lessee HEREBY COVENANTS with the Lessor in manner following that is to say:

....

(2) To pay by way of additional rent a sum or sums of money equal to one quarter of the amount of money which the Lessor may expend in effecting and maintaining the Insurance of the Building against loss or damage by fire storm or tempest in its full value such additional rent to be paid on the next due rent day after the Insurance Premium falls due

.....

(9) At all times during the said term to pay and contribute one quarter of the expense of making repairing maintaining supporting rebuilding and cleansing the foundations of the Building and the roof and roof timbers and all ways forecourt entrance hall landings and staircases passageways pathways sewers drains pipes cisterns gutters party walls party structures fences easements and appurtenances belonging to or used or capable of being used by the Lessee in common with the Lessor or by the Lessee or occupier of the remainder of the Building

(10) At all times during the said term to pay and contribute one third of the expense of cleansing and lighting the entrance hall landings and staircases.

.....

(21) To pay all costs charges and expenses including solicitors costs and Surveyors fees incurred by the Lessor for the purpose of or incidental to the preparation and service of Notice under Section 146 of the Law of Property Act 1925 requiring the Lessee to remedy the breach of any of the covenants herein contained notwithstanding forfeiture for such breach may be avoided otherwise than by relief granted by the Court.

....

Clause 3

3. THE Lessor HEREBY COVENANTS with the Lessee as follows:

.....

(2) At all times during the said term to maintain and repair the foundations of the Building and the roof and roof timbers and all forecourts entrance hall landings and staircases and other common parts and all ways passageways pathways sewers drains pipes watercourses water pipes gutters roofs party walls party structures fences easements and appurtenances belonging to or used or capable of being used by the Lessor in common with the Lessee and the occupier of the remainder of the Building and to maintain the remainder of the Building in such repair and condition as shall be necessary to secure to the demised premises the rights of support and protection hereinbefore referred to and keep the exterior of the remainder of

the Building in a reasonable decorative condition and to keep the entrance hall landings and staircases adequately cleansed and lighted .....

....

(4) At the request of the Lessee (and subject to payment by the Lessee of and provision beforehand of security for the costs of the Lessor on a complete indemnity basis) to enforce any covenants entered into by a tenant of the remainder of the Building a breach of which might prejudicially affect the Lessee of the demised premises

(5) To insure and keep insured the Building against loss or damage by fire storm tempest and other risks normally covered by a comprehensive policy in an Insurance Officer of repute to the full value thereof plus architects and surveyors fees and on demand to provide the Lessee with a copy of such policy and the receipt for the last premium and to forthwith lay out all monies received by virtue of such insurance in reinstating the Building and to make up any deficiency out of the Lessor's own monies.