



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

**Case Reference** : **MAN/00BY/LSC/2014/0002**

**Property** : **87,87A and 87B Anfield Road, Liverpool L4  
0TJ**

**Applicants** : **Elmdon Real Estate LLP**

**Respondent** : **Amjad Latif**

**Type of  
Application** : **Landlord & Tenant Act 1985 – Section 27A(1)  
Landlord & Tenant Act 1985 – Section 20C**

**Tribunal Members** : **Mr J R Rimmer  
Mr W D T Roberts**

**Date of Decision** : **25<sup>th</sup> June 2014**

**DECISION**

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## **Order**

**(1) The insurance premiums for 2011, 2012 and 2013 referred to in the application are not recoverable from the Respondent.**

**(2) An order under Section 20C Landlord and Tenant Act 1985 is made in favour of the Respondent.**

### **A. Application and background**

1. The Applicant is the Landlord of a building situated at the junction of Anfield Road and Sunbury Road in the Anfield district of Liverpool. The Respondent is the leaseholder of three flats which occupy most of the building, there being an additional ground floor, derelict rear room. From the documentation provided to the Tribunal it appears that the leases of the flats are granted for 125 years at a ground rent which increases according to a formula in the lease.
2. The Landlord's application relates only to the matter of insurance premiums payable in respect of the building which have not been paid by the Respondent, although other arrears also appear to have accrued in respect of a fixed service charge provided for in the leases and various charges in relation to attempts to collect the arrears. These were all set out in schedules of arrears in relation to each of the three flats and provided by the Landlord. The Landlord has not sought any determination by the Tribunal in relation to those fixed service charges and any issue in relation to the payability, or otherwise, of the administration charges would be determinable within an application under Section 158 and Schedule 11 Commonhold and Leasehold Reform Act 2002.
3. On 11<sup>th</sup> March 2014 Deputy Regional Judge Holbrook gave directions as to the future conduct of the application and as those directions are pertinent to the Tribunal's findings they are appended to this decision.
4. Thereafter both parties provided further documentation and the Respondent provided a detailed submission outlining his views, not only in relation to the reasonableness or otherwise of the insurance premiums payable, but also the additional charges referred to in the Schedules of arrears. Additionally the Respondent provided his own alternative quotation for insurance cover for the building at significantly lower cost than that currently and recently incurred by the Applicant

- 5 The copy lease that was provided to the Tribunal is that relating to the first floor flat known as 87A, Anfield Road and in the absence of any further copy leases relating to the other flats the Tribunal assumes that it has been left to presume that so far as is relevant to this application, any provision as to payment and collection of service charges are identical. The clauses in that lease which relate to the obligation of the Tenant to make payments to the Landlord are to be found at various places in the lease:
- Clause 2 provides that the rent, in addition to the annual payment for the occupation of the property, includes all sums payable under Clause 4 of the lease
  - Clause 4 requires the Tenant to pay to the Landlord “annually the sum of £ 300.00 or such greater sum as the Landlord shall in his absolute discretion deem reasonable...on account of all monies expended or reasonably certified by the Landlord or his Managing Agents, Surveyors or Solicitors as being reasonably necessary to be expended by the Landlord... for the purpose of the Landlord complying with the covenants on his part contained in Clause 5”
  - Clause 4(3) requires an account to be prepared annually by the Landlord and audited by an independent accountant as soon as practicable and a copy of the account and accountant’s certificate are to be served on the Tenant.
  - Clause 5 provides the usual covenant by the Landlord in respect of repair and maintenance of the structure and common parts to the building and also a covenant to insure the building in respect of what are the usual risks covered by such a policy of insurance.

### **Inspection**

- 6 On the morning of 25<sup>th</sup> June 2014 the Tribunal inspected the exterior and common parts of 87, Anfield Road and found the building to be constructed of Accrington brick under a slate roof, situated at the corner of Anfield Road and Sunbury Road. Although situated in a residential district, the property is in close proximity to a major association football venue. The three flats in the ownership of the Tenant comprise the flats on each of the three floors of the building: that on the ground floor has a separate entrance directly to the street while those on the first and second floors have a common entrance, hall, stairway and landing. To the rear of the ground floor flat there is another derelict room or room that appears to have suffered recent fire damage and which is not in the ownership of the Respondent. There does not appear to be access from the flats to the yard at the back of that room and which abuts the rear alleyway. All the common parts and exterior appear to be in reasonable condition and it appears from what is said in the submission of the Respondent that he regards himself as responsible and paid for restoring the building to its current condition.

## **Evidence**

- 7 The directions made by the Deputy Regional Judge on 11<sup>th</sup> March 2014 required the Applicant to provide certain documents but at the time of it convening to make its determination, the Tribunal had not been provided with any of those items a-d referred to in paragraph 2 of those directions although it was able to consider the copy lease supplied to identify the relevant clauses that might pertain to the insurance premium. All that appeared to be supplied in lieu of accounts, budgets demands and invoices were schedules of arrears for the years in question. No copy of any summary of rights and obligations was supplied.
- 8 Notwithstanding that lack of documentation the Respondent:
- Challenged the cost of insurance for the building and provided a quotation of his own
  - Submitted that insurance had not been in place in 2011 otherwise he would have submitted a claim for work that was required
  - Made observations on the various administration charges levied
  - Suggested no services were provided for the £300.00 annual charge.
- 9 Nothing supplied by either party suggested that there were any accounts, audited or otherwise, relating to the service charges, any budgets for any service charge year, or any statements of rights and obligations in existence.

## **Conclusion and Reasons**

- 10 The starting point in relation to the law setting out the Tribunal's jurisdiction in relation to service charges is found in Section 19 Landlord and Tenant Act 1985 which provides:
- (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
- 11 Further section 27A Landlord and Tenant Act 1985 provides:
- (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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

12 The payability of service charges is also governed by Sections 21, 21A and 21B of that Act which are not set out verbatim here but might be summarised thus:

- The Landlord must provide a statement of account for service charges for each accounting period not less than 6 months after the end of the relevant period.
- That statement must contain an appropriate accountant's certificate and summary of rights and obligations
- Any provisions in the lease relating to charges for late payment are unenforceable.

13 The Tribunal also notes the provision in Clause 4(3) of the lease, referred to in paragraph 5, above, relating to the provision of audited accounts and an accountant's certificate to the Tenant.

14 In the absence of any other provision in the lease relating to recovery by the Landlord of the insurance premium for the building it may only be recovered as part of the additional rent under Clause 2 of the lease as part of the service charges within Clause 4. In order to be recoverable the Landlord has to comply with both the statutory provisions of the Landlord and Tenant Act 1985 and the requirements of Clause 4(3) of the lease. The evidence before the Tribunal in this case is that the Applicant has not done so and those premiums are not recoverable.

15 For the avoidance of doubt the Tribunal concluded that the Schedule to the 2012 insurance policy contains a typographical error and the Buildings Sum Insured is £324,000 which the Tribunal believes to be consistent with the other figures referred to in that Schedule and then the Schedule for the following year. Furthermore the Tribunal did not consider the premiums to be anything other than reasonable given the risks involved and the location of the property. The Tribunal is not satisfied that the quotation obtained by the tenant matches like with like and notes particularly the reference to "professional" occupiers.

## **Section 20C Application**

- 16 The Respondent seeks an order from the Tribunal under section 20C Landlord and Tenant Act 2013 in relation to any professional costs or fees by the Applicant in relation to this Application. Section 20C is quite straightforward and sets out what the powers are that the Tribunal has:-
- (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... or leasehold valuation tribunal... 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-...
    - (b) In the case of proceedings before a leasehold valuation tribunal to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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
- 17 In the absence of any direct representations upon the point the Tribunal is of the view that given its conclusions, which are favourable to the Respondent, it would be just and equitable to make an order under section 20C and the interests of justice are best served by an order to prevent the Applicant's costs of these proceedings being added to future service charges.