



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

Case Reference : LON/00BB/LSC/2015/0228

Property : 20B Howards Road London E13
8AY

Applicant : Navy Properties Limited
(Landlord)

Representative : Mr M. Paine Circle Residential
Limited

Respondent : Mr P.O.Ogeh

Representative : Rest Harrow Solicitors LLP

Type of Application : For the determination of the
reasonableness of and the liability
to pay service charge under s27A
Landlord and Tenant Act 1985 (the
“Act”)

Tribunal Members : Judge Pittaway
Mrs S Redmond MRICS

**Date and venue of
Determination** : Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013

Date of Decision : 10 Alfred Place, London WC1E 7LR

22 July 2015

DECISION

Decisions of the tribunal

1. The respondent tenant should be responsible for paying one-quarter of the insurance premium for so long as the premium is for the insurance of 16 and 18 Howards Road as well as 20 and 20B Howards Road.
2. The tribunal make no determination as to costs and reimbursement of fees under Rule 13.

The application

1. By an application dated 26 May 2015 the Applicant Landlord sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness of an apportioned insurance premium of £1,290.61 payable by the Respondent Tenant for insuring his flat for the period 27 March 2015 to 26 March 2016.
2. The application also requested a determination on costs and reimbursement of fees under Rule 13.
3. The Tribunal issued directions on 8 June 2015 in which it directed that each party provide a statement of case. The Tribunal further indicated that they considered the matter suitable for determination on paper; that is without an oral hearing or inspection, unless any party requested an oral hearing. No oral hearing was requested.
4. The relevant legal provisions are set out in the Appendix to this decision.

The evidence

1. The tribunal has had regard to the statements of case of the Applicant dated 16 June 2015 and of the Respondent dated 1 July 2015 and the supporting documentation referred to in each statement, to the extent relevant to the matter in dispute between the parties in reaching their decision.
2. The respondent is the tenant of the Property under a lease dated 17 January 2006. Recital (1) of the Lease states that the Landlord is ***"registered at HM Land Registry under the above Title Number as proprietor with Title Absolute of the above mentioned freehold property comprising four flats all of which property is hereinafter referred to as ("the Building")"***. No title number is given in the Lease for the Landlord's freehold. The Lease reserves as rent, at clause 1 of the Lease, ***"one half proportion of the sum or sums which the Landlord shall from time to time pay by way of premium or premiums for***

keeping the Building and all fixtures therein (not being Tenants fixtures) insured..". In clause 6 of the Lease the landlord covenants to "***insure and keep insured the property***".

3. It is the applicant landlord's submission that the issues to be decided by the tribunal are
 - 3.1. the reasonableness of the buildings insurance premium and payability by the respondent tenant; and
 - 3.2. the percentage of the insurance premium payable by the respondent tenant.
4. The respondent tenant in his statement of case did not dispute the reasonableness of the buildings insurance nor its payability, but disputed being liable for one half of the premium, contending that he should only be liable for one quarter.
5. The applicant landlord submitted that "upon review of the true construction of the lease, it is noted that the Tenant is liable for a half cost of the insurance and not a quarter of the Buildings insurance", relying on clause 1 of the Lease which requires payment of one half of the cost of insuring the Building and the statement in recital (1) that there are four flats in the "Building".
6. The respondent tenant submitted that clause 1 of the lease contains an obvious mistake in that there are four leases in the Building, that the applicant has historically only sought to recover one quarter of the premium for the respondent and that the lease should be read and construed as if clause 1 referred to "one-quarter" rather than "one half".
7. The applicant landlord submitted that it was not open to the tribunal to vary the terms of the lease under this application, as it was not an application under section 35 or 37 of the Landlord and Tenant Act 1987.
8. The bundle before the tribunal included a copy of a settlement consent order of the tribunal dated 1 April 2015 which referred to "the only issue remaining was a claim for £523.83 in respect of the insurance premium claimed for the period 27th March 2014 to 26 March 2015".

Reasons for the tribunal's decision

1. The tribunal have limited their consideration to the percentage of the insurance premium payable by the respondent tenant, as he did not dispute the reasonableness nor payability of the insurance premium.
2. The tribunal agree with the applicant that it is not open to the tribunal to vary the terms of the lease under this application.
3. The tribunal do not agree with the respondent that clause 1 must be construed as if clause 1 of the lease referred to "one-quarter" and not "one-half".
4. The tribunal have considered the true construction of the term "Building" on the basis of the evidence before it; and consider that the Building is 20 Howards Road, excluding 16 and 18 Howards Road for the following reasons;
 - 4.1. There are drafting mistakes in the lease. The description of the demise in the Fourth Schedule does not coincide with the description in the demise in clause 1 which refers to the ground floor. (The registered title to the flat states it to be on the first floor.) It is therefore possible that the reference to the Building containing four flats is a mistake as it is inconsistent with the tenant being obliged to pay one half of the insurance premium.
 - 4.2. Recital (1) refers to a non existent title number so the tribunal have no evidence as to what constituted the "Building" in 2006 when the Lease was granted and are unable to ascertain whether the recital is correct. The official copies for the applicant's freehold title show its extent now, not when the lease was granted. Recital (1) refers to "four flats" but recitals are background statements; they are not of themselves definitive. The lease plan, which is required to be definitive as to the demise, may be considered of more evidential use. This plan shows a building of two flats, with the adjacent building being so described, as "adjacent".
 - 4.3. Until the current year the evidence indicates that the landlord has only demanded one quarter of the insurance premium for 16,18, 20 and 20b from the respondent tenant, an indication that they too considered the "Building" referred to in the lease to consist of two flats.

Accordingly the tribunal consider that one half of the premium is one half of the premium for 20 and 20 B Howards Road; and, in the absence of any evidence to the contrary, one-quarter of the premium for 16,18, 20 and 20B Howards Road.

5. There were no submissions by either party before the tribunal in relation to Rule 13 costs.

Name: Judge Pittaway

Date: 22 July 2015

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 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.