



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

Case reference : **LON/00AD/LSC/2019/0186**

Property : **Blocks 1 to 31 (excluding Block 23),
The Mariners Walk Estate, Erith,
Kent**

Applicant : **Mariners Walk Management
Company Ltd**

Representative : **Not represented**

Respondent : **Sinclair Gardens Investments
(Kensington) Limited**

Representative : **First Management Ltd t/a Hurst
Managements**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Judge P Korn
Mr D Jagger MRICS
Mr A Ring**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **18th July 2019**

DECISION ON PRELIMINARY ISSUE

Decision of the tribunal

The tribunal determines that it has no jurisdiction under section 27A of the Landlord and Tenant Act 1985 to determine the Applicant's application.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in connection with the reasonableness of building insurance premiums for 2018.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The Property is a series of purpose-built blocks of flats. The Applicant is the management company under the leases of those flats (where those flats are held under long leases by a leaseholder) and the Respondent is the landlord under those leases.
4. A sample lease has been supplied and it is common ground between the parties that the leases are each in the same form for all purposes relevant to this application. Under paragraph 2 of Part 1 of the Fifth Schedule to each lease the management company covenants with the landlord and with the relevant leaseholder to insure the relevant building against a set of insurable risks. As part of that covenant the management company is required to keep the building insured "*for such sum as the Landlord thinks fit ... and if directed by the Landlord through a company nominated by the Landlord and if required through any agency of the Landlord in that company*".
5. In its application, the Applicant states that the Respondent has directed it to place insurance in 2018 as directed by the Respondent at a total cost of £67,157.76. It has sourced alternative quotations for £52,292.91 and £54,605.18 on what it describes as a 'like for like' basis but the Respondent is insisting that it must place insurance with the company which is quoting £67,157.76 and that it must take out an additional policy for property owner's liability insurance even though the alternative quotations included this cover.
6. The Applicant seeks a determination as to whether it is reasonable for the Respondent to insist on the more expensive cover. The Respondent submits that the tribunal has no jurisdiction to make a determination on this issue. Accordingly, this case has been set down for a determination – on the basis of the papers alone (i.e. without an oral hearing) – of the preliminary question as to whether the tribunal has jurisdiction to deal with the Applicant's application.

The parties' representations on the preliminary issue

Respondent's submissions

7. The Respondent states that the insurance is effected by the Applicant, and not by the landlord. The insurance premiums are paid direct by the Applicant to the insurers and are not recovered as service charge by the landlord. In the Respondent's submission, section 27A of the 1985 Act does not apply and the tribunal does not have jurisdiction to make a determination under that section.
8. The Respondent also states that a tenant has a right to challenge the choice of insurers pursuant to paragraph 8 of the Schedule to the 1985 Act if the insurance available from the nominated insurer is unsatisfactory or if the premiums are excessive.

Applicant's submissions

9. The Applicant states that the Respondent has been using the provisions of paragraph 2 of Part 1 of the Fifth Schedule to the lease to exclude the Applicant from any involvement in arranging the insurance even though it is responsible for management and is invariably the first port of call in the event of any insurance claims.
10. The Applicant does not agree that the tribunal has no jurisdiction. In particular it notes the decision of the First-tier Tribunal in 2009 (Ref: LON/ooAD/LSC/2009/0637) when it allowed the Applicant to seek a determination against the Respondent regarding the reasonableness of the insurance premiums, and it states that nothing has changed since that time.
11. The Applicant also states that it has no direct dealings with the insurer. The insurance cover is placed in the name of "Sinclair Gardens Investments (Kensington) Ltd, any Management Company a party to the lease and any tenant holding a long leasehold interest in the insured property and their mortgagees". If the Applicant was effecting the insurance the insurance cover would not refer to it in generic terms. The Applicant has also referred to correspondence which it states shows that the Respondent is in full control of the insurance, as it expressed concerns about aspects of the insurance arrangements and these concerns were passed on to the Respondent by the insurance agency and then either dismissed or (in one case) accepted by the Respondent.
12. As regards payment, the Applicant pays the insurance premiums to the Respondent's agent. The cost is then passed on to leaseholders by way of service charge.

The tribunal's analysis

13. Under section 27A(1) of the 1985 Act, *“an application may be made to the appropriate tribunal for a determination whether a service charge is payable ...”*. Under section 27A(3) of the 1985 Act, *“an application may also be made to the appropriate 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 ...”*.
14. The phrase “service charge” is defined in section 18 as *“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”*.
15. It is clear, therefore, that a service charge can include costs payable for insurance and that section 27A can cover costs already incurred and costs to be incurred in the future.
16. The Respondent has suggested that the way to challenge the insurance premiums is not via section 27A of the 1985 Act but through paragraph 8 of the Schedule to the 1985 Act. However, paragraph 8(1) states that paragraph 8 *“applies where a tenancy of a dwelling requires the tenant to insure the dwelling with an insurer nominated or approved by the landlord”*, and so it is of no relevance to the present case as the lease does not require the tenant to insure the premises.
17. The Applicant has referred us to a previous decision of the First-tier Tribunal (FTT). In that case the factual finding of the FTT was that the management company had ceded responsibility to the landlord to insure the Property and that the Respondent (back in 2009) was insuring the Property itself. The challenge was therefore to the insurance premiums charged by the landlord as a service charge.
18. The factual position now appears to be different, despite the Applicant's suggestion that nothing has changed. In its application the Applicant describes the question that it wishes the tribunal to decide as being whether it is reasonable for the landlord to instruct the management company to place the insurance with another company. The lease clearly places responsibility on the management company for arranging the insurance and there is no evidence of any formal variation of the lease nor that the informal arrangements in place in 2009 are still in place. On the contrary, whilst the Applicant has raised objections as to the Respondent's involvement in the process it has not sought to argue that the landlord itself arranges the insurance. As regards the exact degree of the Respondent's involvement in the process, although it is not relevant for current purposes to comment on what level of

involvement is appropriate, it is clear that the lease envisages the possibility of at least some involvement by virtue of the fact that the lease entitles the landlord to direct that insurance be effected through a company nominated by the landlord and through any agency of the landlord in that company.

19. The difficulty from a jurisdictional perspective is that, in our view, the insurance premiums which are the subject of this application are not service charges in the context of a challenge to those premiums by the Applicant to the Respondent. If these sums have been charged to leaseholders through the service charge then in principle it should be open to one or more leaseholders to challenge the reasonableness of the sums charged under section 27A(1). Alternatively, if the Applicant has not yet charged these sums to leaseholders then it is at least arguable that the Applicant could seek a determination under section 27A(3) as to whether the sums would be reasonable if charged, but in such a scenario the correct respondents would in our view be the leaseholders, not the landlord.
20. However, as between the Applicant and the Respondent the insurance premiums are not, in our view, service charge items and nor are they prospective service charge items. They will be service charge items as between the Applicant and the leaseholders once demanded and – as noted above – could arguably be subject to a determination under section 27A(3) if not yet demanded, but only on the basis of the leaseholders being the respondents.

Cost applications

21. If either party wishes to make any cost application that party must do so within **14 days** after the date of this decision. Any such application must be sent to the tribunal and copied to the other party. It must include a proper explanation as to the basis for the application and any necessary supporting evidence as to the costs claimed. If a cost application is made by a party, the other party may respond in writing to that application. Any such response must be sent to the tribunal and copied to the other party within **28 days** after the date of this decision.

Name: Judge P Korn

Date: 18th July 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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.