

LON/00AJ/LIS/2006/0093
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTIONS 27A & 20C OF THE
LANDLORD AND TENANT ACT 1985, LANDLORD AND TENANT
ACT 1987-PART IV, COMMONHOLD AND LEASEHOLD REFORM
ACT 2002-SECTION 168(4)

Address 157A Ruislip Road, Greenford, Middlesex, UB6 9QQ

Applicant Miss N Bhasin

Respondents Mr T S Bhachu

Hearing date 28 September 2006

Appearances Miss N Bhasin For the Applicant

Mr T S Bhachu For the Respondent
Mr C Bhachu

The Tribunal Mrs C A Lewis (Chairman)
Mrs J E Davies FRICS
Mr L G Packer

157 RUISLIP ROAD, GREENFORD, MIDDLESEX, UB6 9QQ

Preliminary

1. The application before the Tribunal were:-
 - (a) An application under Section 27A under the Landlord and Tenant Act 1985, as to the reasonableness of the cost of insurance charge for the service charge years 2004-2005 and 2005-2006;
 - (b) An application under Section 35(2) under the Landlord and Tenant Act 1987, as amended by the Commonhold and Leasehold Reform Act 2002;
 - (c) An application under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that breaches of covenants in the lease had taken place;
 - (d) An application under Section 20C of the Landlord and Tenant Act 1985 relating to costs of proceedings and the reimbursement of fees under regulation 9(1) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.
2. Miss Bhasin, the lessee, holds the property under the terms of a lease dated 23 December 1981 for a term of 99 years. The only service charge item provided by the landlord is the insurance, and the provision for insurance are Section 5(4) of the lease.
3. Miss Bhasin's flat, which has its own entrance, is one of three on the first floor above two ground floor shops. The shops are in use by the landlord, Mr Bhachu as Builders and Timber Merchants.
4. The Tribunal did not consider it was necessary to make an inspection of the premises.

The Hearing and Determination

5. At the hearing, Miss Bhasin and Mr T Bhachu were both present in person, and Mr C Bhachu accompanied his father.
6. At the time of the Pre-Trial Review, Directions had been issued dated 2 August 2006. These had stated that Miss Bhasin's application under Section 168(4) appeared to be misconceived and might be dismissed at the full hearing on 28 September.
7. At the hearing, the Tribunal referred the parties to the provisions of Section 168, and specifically Section 168(4), which states:-

A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred.

8. As the Section provides only for the landlord to make an application, the Tribunal have no jurisdiction to consider this application by the tenant. They therefore dismiss this application.
9. **The Application as to the Reasonableness of the Cost of Insurance for the years:-**
14 October 2004 to 13 October 2005, and 14 October 2005 to 13 October 2006
10. Miss Bhasin told the Tribunal that she considered that the present arrangement for insurance was unsatisfactory, particularly as it did not provide for recovery of loss of rental income in respect of the subletting of her flat. She produced several examples of alternative quotations which she had obtained over the internet. She said she was not concerned with the cost of the insurance, but with the quality of the service provided.
11. Mr Bhachu said that his insurance policy with Allianz Cornhill covered not just Bhasin's flat but the whole property, including the ground floor shop premises run as a Builders Merchants and the three flats above. The insurance was apportioned $\frac{1}{2}$ to the shop, and $\frac{1}{6}$ to each of the three flats. He had employed a broker to trawl the market in order to obtain the best quotation.
12. The Tribunal took the view that quotations obtained by Miss Bhasin over the internet were not necessarily geared to this specific range of properties, which was properly dealt with under one policy. The current cover had been obtained by Mr Bhachu by means of an insurance broker, and is with a company of repute as required by Section 5(4) of the lease.
13. It would have been helpful for Mr Bhachu to have kept Miss Bhasin fully informed of the provisions of the insurance policy and its range of cover. However, the Tribunal was satisfied that the premiums charged for the cover provided of £265 for the year 2004 to 2005, and £268.05 for the year 2005 to 2006 were both reasonable and payable under Section 27A of the Act.

Application under Part IV Landlord and Tenant Act 1987, for Variation of a Lease

14. Section 35 sets out the grounds on which any party to a long lease can make an application to the Tribunal for an order varying the lease on the grounds that the lease fails to make satisfactory provision. One of those is regarding the insurance.
15. Miss Bhasin considered that the terms of the lease were unsatisfactory as it allowed for the landlord to provide the insurance. She would prefer to be responsible for arranging insurance cover for herself and deal with the insurance company direct.
16. Mr Bhachu considered that the present insurance clause in the lease was satisfactory, and that if the tenant was allowed to insure her own part of the building this would impede him in dealing with the whole building efficiently,

and could well give rise to problems, particularly if there should be a substantial claim. It was more effective to insure the whole block on one policy, and common practice where there were various units for insurance to be obtained in a block policy.

17. The Tribunal having listened to all the evidence, and examining the provisions relating to insurance under the terms of the lease, find that the provisions are satisfactory, and such as to be expected within a lease of this type. They observe that the tenant can provide additional insurance cover to that provided under the service charge and lease provisions should she so wish.

Application under Section 20C Landlord and Tenant Act 1985

18. The landlord who had acted in person undertook not to add the cost of proceedings to the service charge in any event, and this application by the tenant was not proceeded with.

Reimbursement of Fees under Regulation 9(1) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

19. The tenant said that if the landlord's insurance company had paid promptly for the necessary work when essential repairs had been required after damage to her flat she would not have had to come to the Tribunal. She should not have suffered all the problems she had, and was now extremely out of pocket.
20. The landlord said that the tenant had instigated the case, and the service charge for insurance was fair.
21. The Tribunal considered that as their findings had been in the landlord's favour, they would not be justified in ordering the landlord to contribute towards the costs of the application fees.

Chairman C A Lewis

Date 13th October 2006

JG