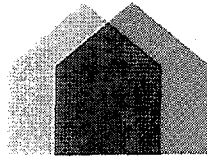


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Residential  
Property  
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**SECTION 27A LANDLORD & TENANT ACT 1985**

**REF: LON/00AC/LSC/2007/0080**

**743A FINCHLEY ROAD, LONDON NW11 8DL**

**RALEIGH CLOSE INVESTMENTS LIMITED**

**Applicant**

**MR A. M. K. YAZDIHA**

**Respondent**

Tribunal: Mr M Martynski (Solicitor)  
Mr P Tobin FRICS MCI Arb  
Ms T Downie MSc

Present at hearing: Ms L. Scott (Legal Assistant) (for the Applicant)  
Mr J. Levy (Applicant's witness)  
Mr C. Marelli (Applicant's witness)  
Mr A.M.K. Yazdiha

Date of hearing: 26 November 2007

Date of decision: 30 November 2007

**Summary of decision**

1. The insurance premiums claimed by the Applicant are reasonable and payable. As to other service charge items reference should be made to the decision and table below. The Tribunal finds that there is no provision in the lease for the Applicant to recover the costs of proceedings before the Tribunal by way of service charges.

## **Background**

2. This case was referred to the Tribunal from the Barnet County Court by order of D.J. Marin dated 28 February 2007. The proceedings in the County Court were issued by the Applicant and were (so far as the Tribunal is concerned) for a money judgement in respect of alleged unpaid service charges and insurance premiums in the sum of £5,710.46.

3. The Respondent is the long leaseholder of a flat in the building at 743 Finchley Road ('the Building'). There are two other flats in the Building which probably dates from the late Victorian period. The Building is a terraced property bordering a busy main thoroughfare. The Respondent's lease provides for payment by the lessee of service charges and insurance premiums calculated on a 33.33 percentage of the total expenditure for the Building.

## **The issues**

4. The service charges and insurance premiums claimed for were for the service charge years ending 1999 to 2004 and for interim charges for 2005. Because the dispute concerning insurance premiums raised the same issues over each service charge year, the issue of insurance premiums is dealt with as a separate issue. The remaining items in dispute are dealt with on a year to year basis.

## Insurance

5. The Respondent's case is that the insurance premiums payable over the years in question are too high and that he could and had obtained lower premiums. In considering the question of the premiums, there were two main issues. First, there was the issue of the value of what was being insured, this was essentially the rebuilding/re-instatement cost of the Building. The second issue was the actual risks that were being insured against.

6. As for the amount being insured, Mr Levy, a trainee surveyor employed by Benjamin Mire Chartered Surveyors, provided a reinstatement valuation in October 2007. He gave evidence to the Tribunal regarding his figures. The reinstatement figure for insurance purposes arrived at by Mr Levy was £524,000. It is important to bear in mind that this figure, as will always be the case in such matters, is an approximate figure. Mr Levy did not have the benefit of an internal inspection of the Building. He calculated an approximate internal area and applied a value to that figure adjusted for the Building's location. This resulted in a basic building price figure of £346,775 which then had added to it a figure of £25,000 for necessary adjustments and additions. The resulting figure was then further increased to allow for inflation on building costs up to the third quarter of 2009 (bearing in mind that if the Building were destroyed now, it would take some considerable time to go through the necessary processes leading to re-building). The figure was then further increased to allow for professional fees of 15%. There was then a final addition of £35,000 for demolition costs.

7. It was clear from Mr Levy's evidence that the figures that he relied on were produced in consultation with more senior colleagues and that he did not understand some parts of the process of the valuation exercise described above. It became

apparent during Mr Levy's evidence that his company was a part of the same family of companies as the current managing agents.

8. The Respondent disputed the initial figure used in the calculation as being too high and disputed the allowance for adjustments and additions on the grounds that the building was very simple and no allowance needed to be made for items such as period features. He disputed the allowance for inflation on the ground that the insurance provided by the insurers used by the Applicant gave an allowance for inflation on the re-instatement figure in the total amount of insurance provided. The Respondent stated that 15% for professional fees was at the very top end of the scale for such fees and that demolition costs would be far less than £35,000.

9. The Tribunal accepted in general terms the figures put forward by Mr Levy. The figures were necessarily approximate but they did not appear to be out of line for what the Tribunal would expect to see for a building of this kind. The evidence in support of his position provided by the Respondent on this point was;

- (a) a list of recent sale prices for flats in the locality – the Tribunal rejected this evidence as not relevant to reinstatement cost
- (b) a letter from Mortgage Express dated 2 June 2006 giving a reinstatement value of just the Respondent's flat of £120,000 – the Tribunal rejected this evidence as it was not a figure for the Building and because it was not clear what factors had been taken into account in arriving at this figure, for example, it was not clear if this figure took account of re-building the roof and foundations. Extrapolating any meaningful figure for reinstatement of the Building from this letter would be impossible.
- (c) a mortgage valuation report dated 19 October 1998 giving a reinstatement value of the Respondent's flat of £81,000 – this was rejected for the same reasons given in sub-paragraph (b) above.

10. The figures used for reinstatement value by the Applicant for the years in question and the alternative figures suggested by the Respondent are as follows;

	Applicant	Respondent
99	£424,667	£250,000
00	£441,654	£265,000
01	£459,320	£280,000
02	£459,320	£300,000
03	£459,321	£320,000
04	£477,694	£340,000

Using the calculation set out by Mr Levy and the Tribunal's own knowledge, the Tribunal considers that the Applicant's figures for the above years are to be preferred to the Respondent's.

11. The issue of the actual premium paid by the Applicant based on the reinstatement values set out above was dealt with in evidence from Mr Marelli who is an insurance broker employed by Towergate ghbc. This company in its current and former guises had brokered the insurance for the Applicant for all the years in question.

12. Mr Marelli explained that the Applicant obtains its insurance on a block policy. The Applicant has thousands of properties within the block policy. As to the Applicant's property portfolio, Mr Marelli described it as being mainly made up of period converted properties. The Building was typical of the type of property in the portfolio. The portfolio included a small number of commercial properties which were typically shops on the ground floor of period residential properties.

13. The Applicant has very specific insurance requirements as follows;

- insurance must cover pre-existing subsidence (so that properties with a subsidence history which has not been disclosed are fully insured)
- no subjectivity (meaning that it did not matter who occupied the properties in the portfolio)
- contract works cover (this meant that insurance would not be invalidated by works carried out by lessees that had not been disclosed)
- the ability for lessees to benefit from access to a contractor to remedy disrepair in advance of the insurance claim and so prevent escalation of costs/disrepair

14. The fact that the Applicant had such specific requirements meant that the available market was reduced to no more than a handful of insurers.

15. The insurance sought also covered terrorism risks. If this was sought for one property, it had to be obtained for all the properties in the portfolio.

16. The premium on the insurance reflected the Applicant's claims history. The effect (in terms of premium amount) of that history was effectively spread amongst all the properties in the portfolio.

17. Mr Marelli accepted that the Building was insured to the Applicant's own particular requirements and that the result of this may be; (a) the premium payable is higher, and; (b) the Applicant is essentially insuring to its own business needs. By way of explanation of this second point, given the large amount of properties in the Applicant's portfolio, it is very much a business need for it to have insurance that is unaffected by a previous and undisclosed subsidence history. An example was given by Mr Marelli of a situation where there had been a change of managing agents for one of the Applicant's properties, the previous managing agent had been aware of a subsidence issue but had not passed this information to the new managing agent which had not disclosed the issue to the insurers thus leaving the Applicant exposed to uninsured losses.

18. It must be recognised that to some extent, the type of insurance obtained by the Applicant is of benefit to individual leaseholders. Even if in the above example of non-disclosure of subsidence the Applicant itself was ultimately liable for the cost of works to deal with the subsidence, there would have been a good deal of delay in getting the matter finally settled to the detriment of the leaseholders. The insurance to cover direct instruction of contractors by individual lessees obtained by the Applicant is clearly of benefit to leaseholders.

19. The Respondent had obtained his own insurance quotes. One quote from Redcliffe Associates in the sum of £937.12 was for an unspecified block of flats. The

other quote was from Stride Commercial Insurance in the sum of £1,050. This quote was however given without the broker having the benefit of the claims history for the building and was subject to; (a) a possible survey; (b) a statement of fact, and; (c) a subsidence questionnaire. The quote was based on an estimated reinstatement value of £500,000 which may not be sufficient. The Tribunal felt that neither quote was made on the basis of sufficient information to be of any use in the proceedings. The Respondent further referred to buildings insurance that he had obtained in respect of his own individual flat in 2003. The total premium for that insurance was a little under £300. Again the Tribunal rejected this evidence as it fell far short of a properly informed quote for the Building.

20. Clause 2 of the Respondent's lease obliges the Respondent to pay one-third toward the cost of insurance for the Building. Clause 6(A) of the lease obliges the landlord to insure. The relevant part of those clauses are as follows;

ALSO YEILDING AND PAYING by way of further or additional rent from time to time throughout the said term a sum or sums of money equal to (i) one-third part of the amount which the Lessors may spend in effecting or maintaining the insurance of the Building including professional fees against loss or damage by fire explosion storm tempest earthquake and (in peacetime) aircraft and such other risks (if any) as the Lessors think fit (hereinafter referred to as "the insured risks").....

Insure and keep insured ..... the Building against loss or damage by the insured risks in some insurance office of repute in the full reinstatement value thereof including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating thereof .....

21. The terms of the lease therefore give the Applicant a wide scope as to the risk insured against. That is not to say that this allows the Applicant to insure against unreasonable (so far as the leaseholders are concerned) risks resulting in unreasonable premiums.

22. The Applicant is, as a matter of law, entitled to insure the Building by way of the inclusion of that Building in block insurance. There is clearly a business advantage to the Applicant in insuring in the way that it has. However that produces benefits for the leaseholders. The Tribunal was satisfied from Mr Marelli's evidence that the Applicant tested the market regularly and obtained, within its terms of reference, the most competitive premium. There is no doubt that the Respondent may have been able to obtain cheaper premiums for the years in dispute. However that in itself does not mean that the premiums paid by the Applicant are unreasonable. In looking at the premiums in question the Tribunal took account of its own knowledge as an expert Tribunal and whilst it found that the premiums were at the high end of the scale for a building such as the one in this case, they were not so high as to be unreasonable in all the circumstances of this case.

#### The service charge year 1998/99

23. The amount claimed for this year is £239.12. Due to the fact that the managing agents had changed over the years, the Applicant did not have the necessary documents to show what this charge was for. Accordingly the Tribunal is unable to say that this charge is either reasonable or payable by the Respondent.

The service charge year 1999/00

24. The amount claimed for this year is £888.82. This sum is partly made up of two lots of surveyor's fees in the total (proportionate) sum of £219.24. For the same reasons as set out in the paragraph above, the Applicant did not have the necessary documents to show what this charge was for. Accordingly the Tribunal is unable to say that this charge is either reasonable or payable by the Respondent.

25. The Respondent objected to charges of £111.62 for a blocked drain and £116.33 for downpipe and gutter clearance. The Tribunal considered both charges to be reasonable.

26. No objection was made to the management fees for this year.

The service charge year 2000/01

27. No objection (save for insurance premiums) was made for the claims for this year.

The service charge year 2001/02

28. No objection (save for insurance premiums) was made for the claims for this year. It should however be noted that there is an arithmetical error in the claim for this year (see the table at the end of this decision).

The service charge year 2002/03

29. There were no accounts for this year. However it was clear that a buildings insurance premium for this year was paid. The Respondent's share of that was over £700. The amount claimed for this year was less than this, £673.34, and so must be payable given that this sum does not even cover the insurance premium payable.

The service charge year 2003/04

30. The only other charge for this year apart from insurance was a management fee of £423 for the Building of which the Respondent's share amounted to £141.00. The Respondent's objection to the management fee was based on the fact that the managing agents had little to do in this year. The Tribunal finds this sum to be payable. The managing agents were charging a fixed fee which was reasonable. The fact that they may have not have had a great deal of work to do was not relevant. One would not be able to retain managing agents for less than this sum.

The service charge year 2004/05

31. The position and the Tribunal's decision for this year is exactly the same as for the preceding year save that the managing agent's fee was a little higher.

The service charge year 2005/06

32. In the County Court proceedings, the Applicant makes a claim in respect of what is described as a demand for '*payment on account of service charges*' in the sum of £617.19. This sum is made up of insurance premium and other service charges. There is no provision for payments on account in the Respondent's lease. However the lease does provide for payment of; (a) insurance premiums that have been paid by the lessor, the payment by the lessee to be made within seven days of demand [clause 2 of the lease], and; (b) contributions to service charge expenditure incurred by the

lessor, the payment by the lessee to be made within fourteen days of demand [clause 5(2) of the lease].

33. There was no evidence before the Tribunal of a demand made to the Respondent for either insurance premiums or service charges for the period in question (that being 26 March to 25 September 2005). All that was shown to the Tribunal was an estimated account of service charges and insurance costs to be incurred in that year. Accordingly the Tribunal cannot say that the sums claimed for this year are payable.

#### Service of demands and the authority of the Applicant's managing agents

34. The Respondent raised the issue of the demands for payment sent by the Applicant and the issues of when and where they were sent. The Tribunal declined to deal with these issues as they had been determined by the County Court.

35. The Respondent raised a further issue saying that he had not received written confirmation from the Applicant that it had appointed the various managing agents that had made demands from him. The Tribunal concludes that any lack of written confirmation as alleged, even if proved, would not mean that service charges and insurance premiums that were otherwise reasonable and payable were not payable.

#### **Costs**

36. The Respondent made an application pursuant to section 20C Landlord & Tenant Act 1985. Section 20C (1) provides as follows;

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, or the Lands 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.

37. Given that the Tribunal has found largely in favour of the Applicant it does not make any order under section 20C. The Tribunal however went on to consider whether not the Respondent's lease allows the recovery of the costs of the proceedings before the Tribunal. The Applicant sought to rely on the provisions of the lease at clause 6(E) which provides as follows;

For the purposes of performing the covenants on the part of the Lessors herein contained employ or engage on such terms and conditions as the Lessors shall in their absolute discretion think fit suitable staff and such other persons (including contractors and surveyors) as the Lessors may from time to time consider necessary all proper fees charges and expenses thus incurred being deemed part of the respective costs of fulfilling the respective obligations contained in sub-clauses (B) (C) and (D) of this Clause 6

38. The Tribunal did not consider this wording to be sufficiently clear to allow the recovery of the costs of the proceedings through the service charge.

**Table of the Tribunal's decisions and the effect on the sums demanded in the County Court proceedings**

<b>Year and service charge item</b>	<b>Amount (Respondent's apportioned share)</b>	<b>Tribunal's decision</b>
<b>1998/99</b> Item/s unclear	£239.12	Not payable
<b>1999/00</b> 1. Insurance 2. Repairs 3. Cleaning 4. Survey 5. Management 6. Survey	£476.10 £37.21 £38.78 £20.56 £117.50 £198.67 <hr/> £888.82	Payable Payable Payable Not payable Payable Not payable <hr/> £669.59
<b>2000/01</b> 1. Insurance 2. Repairs 3. Management	£524.08 £37.21 £39.16 <hr/> £600.45	Payable Payable Payable <hr/> £600.45
<b>2001/2</b> 1. Insurance 2. Repairs 3. Management	£628.90 £38.68 £39.17 <hr/> £706.74	Payable Payable Payable <hr/> £706.34 – figure claimed in proceedings is £802.07 due to arithmetical mistake
<b>2002/3</b> Insurance	£673.34	Payable
<b>2003/4</b> 1. Insurance 2. Management	£759.61 £141.00 <hr/> £900.61	Payable Payable <hr/> £900.61
<b>2004/05</b> 1. Insurance 2. Management	£836.11 £458.24 <hr/> £988.86	Payable Payable <hr/> £988.86
<b>2005</b> 1. Insurance 2. Bank charges 3. Management 4. Repairs 5. Asbestos	£416.67 £1.67  £88.12 £66.67 £44.06 <hr/> £617.19	Not payable Not payable  Not payable Not payable Not payable <hr/> £0.00



*Mark Martynski*

Mark Martynski – Tribunal Chairman

30 November 2007