

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT Section 27A

LON/00AG/LSC/2006/0352

Property: 133 Camden Street, London NW1 0HX

Applicant: Mr M. Kempe

Respondent: Mrs K. Sprecher

Date of Application: 23 September 2006

Date of Directions: 12 October 2006

Date of Hearing: 16 January 2007

Appearances: each party appeared on their own behalf

Tribunal Mrs J.S. Pittaway LL.B(Chairman)
Mr I.Holdsworth MsC FRICS
Mrs G.Barrett JP

Date of Decision: 22 January 2007

133 Camden Street, London NW1 0HX

LON/00AG/LSC/2006/0352

Decision and Reasons

Decision

- 1. The Tribunal find that the insurance premium charged by the Respondent for the year commencing 25 March 2006 was unreasonable by reason of the sum insured and the incorrect information on which the premium had been calculated.**

- 2. The Tribunal do not however find that the insurance premium charged for the year commencing 25 March 2006 was unreasonable by reason of the quotes provided by the Applicant, which do not appear to be for comparable cover.**

- 3. The Tribunal, relying on their own knowledge and experience in the absence of evidence, determine that the premium payable by the Respondent should be reduced to, say, £600.**

Reasons

Introduction and Issues

- 1. This is an application by Mr Kempe under Section 27A Landlord and Tenant Act 1985 as amended by Commonhold and Leasehold Reform Act 2002 (the Landlord and Tenant Act 1985") for a determination as to the reasonableness of the insurance premium that he was charged in respect of the Property for the year 2006.**

- 2. The Applicant is the tenant of the Property under a lease dated 17 September 1978 made between K.Sprecher and R.Taylor (1) and P.C.Crumpton (2) ("the Lease"). Mrs Sprecher and Mr Taylor remain the landlord of the Property.**

3. There was no dispute between the parties as to whether an insurance premium was payable by Mr Kempe to his landlord under the Lease; the only issue between them was the amount payable.

The Hearing

1. The Hearing took place on 16 January 2007.

2. Both parties appeared in person.

3. By a letter of 23 November 2006 to the Tribunal Mrs Sprecher had questioned whether the Tribunal had jurisdiction to consider the Application as the insurance premium was not reserved as service charge under the Lease. The Tribunal raised this as an initial issue. Mrs Sprecher confirmed that she was now satisfied that the Tribunal had jurisdiction to consider an application in respect of the amount of an insurance premium whether or not expressly included as an item of service charge in the Lease.

4.1 Mr Kempe explained that the Property is a maisonette of one and a half bedrooms. It forms two floors of a three storey house ("the Building"), which also contains a lower ground floor flat, 133a Camden Street ("the Garden Flat"). Mr Kempe explained that he considered an insurance premium of £893.79 to be too high for a property of the type of his maisonette. Having received the demand from Mrs Sprecher for payment of this amount as insurance premium payable to the Property's insurers AXA he had obtained cheaper quotes and had written to Mrs Sprecher on 30 May 2006 stating that he had found more favourable quotes, the lowest being £125.28 for cover of £500,000 and offering to give her details of the insurers. In obtaining these quotes, from the internet Mr Kempe had supplied a rebuilding cost of £373,770, being the reinstatement cost used by AXA and had given the postcode of the Property. As the facility that he was using did not contemplate insurance of a maisonette the quotes were based on the closest alternative; a bay fronted detached house.

4.2 Mr Kempe confirmed that the quote was confined to the Property and did not include cover for the Garden Flat. He had not been asked for the claims history for the Building. He might have been asked the age of the Building but could not remember.

4.3 When Mr Kempe was asked to comment on the letter of 8 November 2006 from Mrs Sprecher's insurance brokers, St Giles Insurance & Finance Services Limited, in the bundle of documents before the Tribunal he did not consider that the market exercise which they had undertaken and to which they referred had been detailed enough.

4.4 Mr Kempe had also had a limited conversation with Andy Coulson of the insurance brokers, who had stated that he believed the premium to be reasonable for the area and size of property.

4.5 Mr Kempe had not sought further quotes after the initial quotes that he had obtained.

4.6 Mr Kempe appreciated the difference in type of property between that used for the broker's market exercise and that which he had undertaken but believed that the landlord could find cheaper insurance than that which had been taken out; and that it was the landlord's responsibility to do this.

5.1 Mrs Sprecher requested that the Tribunal ignore that part of her case as to liability, in respect of which there was no dispute.

5.2 Mrs Sprecher referred to the Lease provisions which defined the Building as comprising both the Property and the Garden Flat (Clause 1.1.3), which provided that the tenant of the Property pay 67% of the cost of insuring the Building (Clause 1.1.10) and the wide discretion that the landlord has in determining the insured risks (Clause 1.1.18)

5.3 Mrs Sprecher confirmed that there was one insurance policy covering the Building. Of the total premium of £1,412.48 the tenant of the Garden Flat paid

£518.96 and the tenant of the Property £893.79 (in each case inclusive of Insurance Premium Tax)

5.4 Mrs Sprecher pointed out that the landlord of the Property was both herself and Mr Taylor, but accepted that the Application could be made against her alone by reason of the joint and several liability of the landlord under the Lease.

5.5 It was Mrs Sprecher's contention that the issue was one of reasonableness; it was not a question of whether the premium was too high, but rather whether it was reasonable in the circumstances. The landlord had used professional insurance brokers and had relied on their expertise. Mr Kempe's alternative quotes had not been put to the brokers. The brokers had already sought and been unable to obtain a more competitive quote. On the basis of the advice that she had received she had believed the premium to be at the market rate. Mr Kempe's views on insurance had been taken into account in the past when at his request she had cancelled the cover against terrorism, which had previously been insured against, when the additional premium had become significant.

5.6 In response to Mr Kempe's letter of 30 May 2005 offering to give Mrs Sprecher details of the lower quotes that he had obtained Mrs Sprecher replied on 5 June 2006 querying whether Mr Kempe's quotes were for a similar level of cover and service and on the basis of insurance by a landlord rather than an owner-occupier. Unfortunately Mr Kempe did not receive the letter until a copy of which was sent to him on 13 October 2006.

5.7 Mrs Sprecher drew attention to the fact that following receipt of her letter of 13 September 2006 Mr Kempe had written to her on 14 September 2006 stating that he had forgotten about the matter and sending her a cheque for £1043.79, which covered the insurance premium and ground rent. She considered that this showed that the non-payment had not been a protest but rather an oversight, but agreed that the letter made it clear that the premium was being paid under protest. Mr Kempe had again written to Mrs Sprecher by a letter dated 18 September 2006 (which she had not received due to it being mis-addressed) again protesting against paying the premium.

6.1 Mrs Sprecher confirmed that the Garden Flat is also sold on a long lease, albeit actually let by the tenant on a short lease. She was not able to comment on the statement in the letter from the brokers of 8 November 2006 describing the cover as being in respect of a multi-unit block of flats. On being referred to the basis on insurance referring to communal contents cover of £20,000 Mrs Sprecher was unable to explain this as there are no common parts in the Building. She also confirmed that it was incorrect that the Building was built in 1900 and converted in 1960s, as it was built in or around 1998 (when the lease of the Property was granted) and is not a conversion. Mrs Sprecher agreed that it would be worth investigating these inaccurate details.

6.2 As to the rebuilding cost of £373,770 Mrs Sprecher said that she had not questioned this. She had moved the insurance to St Giles as part of a portfolio of properties. They had offered better terms on other properties in the portfolio and she had presumed that this was the case across the portfolio. She believed that the premiums were reduced because a whole portfolio was being insured. The premiums were not weighted in favour of some of the properties in the portfolio at the expense of others.

6.3 Mrs Sprecher could not recall that there had been a marked decrease in the insurance premiums as a result of switching placing the insurance to St Giles. She did remember that there had been a significant increase in level of premium in one year, but that applied to all the properties in the portfolio, not just this one.

The Relevant Provisions of the Lease

There was no issue between the parties as to the terms of the Lease.

The Relevant Statutory Provisions

Section 27A Landlord and Tenant Act 1985 provides

(1) An application may be made to the 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 by which it is payable; and
 - (e) the manner in which it is payable
- (2) Subsection (1) applies whether or not payment has been made

By Section 18(1) Landlord and Tenant Act 1985

"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.

Section 20C of the Landlord and Tenant Act 1985 enables a tenant to apply for the landlord's costs of proceedings before a leasehold valuation tribunal to be disregarded in calculating the service charge payable by the tenant.

The decision and reasons

1. The Tribunal were not persuaded that the quotes obtained by Mr Kempe were in respect of comparable cover. They did not contemplate insurance of the whole Building, only the Property, and were in respect of a detached house. They appeared to presume sole occupancy of the Building. Accordingly they were not of assistance in determining the amount of the insurance premium.

2. The Tribunal determine that the level of premium charged by AXA was too high by reason of the factual inaccuracies upon which it was based; namely that the Building was only two flats without common parts and that the Building was not a conversion with timber floors built in 1900. Consequently it is likely that the sum insured is too high.

3. Accordingly the Tribunal determine that a lesser amount of insurance premium was payable for the insurance year from 25 March 2006. In the absence of

any comparable evidence being offered as to the correct level of premium, on the basis of its own knowledge and experience the Tribunal determines that the insurance premium payable for the insurance year from 25 March 2006 should be, say, £600.

Costs

There being no lawyers instructed by Mrs Sprecher in connection with the Application she confirmed that the Landlord had not incurred any costs of proceedings that might otherwise have been the subject of an application by Mr Kempe under section 20C of the Landlord and Tenant Act 1985 as amended.

Chairman (Jim Paterson)

Date 22 January 2007 .