

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTIONS 27A AND 20(C) OF THE
LANDLORD AND TENANT ACT 1985**

Property: 189b Worple Road, Raynes Park, London, SW20
8RE

Applicant: R Sena (tenant)

Respondents: Edward, Ethel and Martin Gait (landlords)

**Determination without an oral hearing in accordance with the procedure
laid down in regulation of the Leasehold Valuation Tribunals (Procedure)
(England) Regulations 2003**

The tribunal members: Lady Wilson
Mrs H C Bowers BSc (Econ) MRICS MSc

Decision: 14 March 2007

DECISION

1. We determine that the following insurance premiums are payable by the applicant:

Year	Premium	Applicant's 1/3rd Share
1995	£540.18	£180.06
1996	£540.18	£180.06
1997	£548.08	£182.69
1998	£548.08	£182.69
1999	£569.06	£189.69
2000	£749.49	£249.83
2001	£862.49	£287.50
2002	£1,078.10	£359.37
2003	£1,347.63	£449.21
2004	£1,483.88	£494.63
2005	£1,534.97	£511.66
2006	£1,586.55	£528.85

2. No order is made under section 20C of the Landlord and Tenant Act 1985.

BACKGROUND

3. The applicant tenant has applied under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of the service charges payable by him in respect of insurance premiums paid by the landlords for the period from 1995 to 2006. He has also applied under section 20C of the Act for an order limiting the recovery, through the service charge, of the respondents' costs incurred in connection with these proceedings.

4. This matter has, with the parties' consent, been dealt with under the procedure for which provision is made in regulation 13 of the Leasehold

Valuation Tribunal (Procedure) (England) Regulations 2003, on the basis of written representations and without an oral hearing.

THE FACTS

5. The applicant ("the tenant") is the leaseholder of 189b Worple Road, a second floor flat in a building with shop premises on the ground floor which is occupied by the respondents, and a flat on the first floor which is let on a long lease.

6. The lease of the tenant's flat is dated 18th September 1981. Clause 5 contains tenant's covenants to pay one half of the expenses and outgoings in relation to the service charges, which are more particularly described in Schedule 5.

7. Clause 5(g) of the lease provides "In determining the amount payable by the Lessee under the preceding sub-clauses hereof the Lessee shall take into account any sums paid or payable in relation to any said expenses and outgoings referred to in the Fifth Schedule by the tenant for the time being of the shop premises situated on the ground floor of the Building and if such shop premises are at any time vacant then the Lessor shall be deemed to have made such proper contribution or payment which would otherwise have been so paid or be payable by such tenant PROVIDED ALWAYS AND IT IS HEREBY AGREED that the Lessee shall be liable for 50% of the balance after such deduction as aforesaid AND PROVIDED ALWAYS that such contribution in respect of the said shop premises shall be a fair and reasonable proportion of the said expenses and outgoings." In practice, the applicant is asked to pay one third of the service charge expenditure.

8. By clause 6(1) of the lease the landlords covenant to insure the building. The fifth schedule sets out the items that are recoverable by the landlord from the tenant as service charges. In particular, clause 4 of the

fifth schedule includes the cost of insuring the building and clause 6 of the fifth schedule includes the fees and expenses incurred in the maintenance and management of running the building.

ISSUES IN DISPUTE

9. The applicant makes a number of allegations about the landlords' failure to comply with their covenants to repair, but enforcement of such obligations is not a matter which is within the tribunal's jurisdiction. The only issues which the tenant raises which are within our jurisdiction relate to his liability to pay a one third share of the premiums which the landlords have paid to insure the building. This issue requires consideration of the extent of the landlords' covenant to insure, and of whether the amount of the premiums was reasonable.

10. Section 19(1) of the Act provides that *Relevant costs shall be taken into account in determining the amount of a service charge payable period – (a) only to the extent that they are reasonably incurred, and (b) where they are incurred on the provision 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.*

11. Service charges, as defined by section 18(1) of the Act, include the cost of insurance.

12. The insurance premiums which the landlords have paid in respect of each year in dispute are:

1995	£540.18
1996	£540.18
1997	£548.08
1998	£548.08

1999	£569.06
2000	£749.49
2001	£862.49
2002	£1,078.10
2003	£1,347.63
2004	£1,483.88
2005	£1,534.97
2006	£1,586.55

13. The tenant says that the landlords have failed to obtain a competitive quotation for the insurance of the building. He also says that the insurance schedules include cover for landlords' contents with a declared value of £25,000, and he appears to suggest that this portion of the premium is in any event unreasonably incurred because such cover is not permitted by the lease.

14. The landlords' solicitors, Messrs Baron Grey, say that the landlords have negotiated commercially competitive insurance premiums and that, since there is no evidence from the tenant to suggest that the premiums are not competitive, the tribunal should determine that they are reasonable in amount and reasonably incurred.

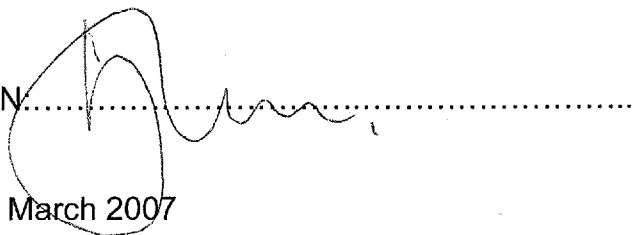
DECISION

15. There has been no evidence presented to us to show that the cost of insurance is unreasonable. Moreover the premiums appear to us to be within the range of what we would expect as reasonable premiums for a building of this type, with an element of commercial use. The cover appears to be adequate and there is no suggestion that the insurer is not reputable. We determine that the general level of insurance premiums is reasonable and that one third of them is recoverable from the tenant.

16 As to the issue which the tenant raises as to his liability to pay for the insurance of the contents of the common parts, clause 6(1) of the lease provides for the insurance of the "fixtures and fittings plant and machinery of the Lessor". The amount of cover for these items is £25,000 and the element in the premium in respect of it was £85 in 2001; £100 in 2002; £100 in 2003 and £128 in 2004. We have not been provided with any evidence to show that this element of the insurance is unreasonable, and we are satisfied that it falls within the landlord's covenant to insure.

17. As for section 20C, the respondents have been wholly successful and appear to us to have behaved reasonably in relation to the dispute. This does not appear to be a case where there was scope for mediation. Accordingly we make no order under the section.

CHAIRMAN.....

A handwritten signature in black ink, consisting of a large, stylized initial 'H' followed by a series of loops and a trailing flourish. The signature is written over a horizontal dotted line.

DATE: 14 March 2007