

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

DETERMINATION BY LEASEHOLD VALUATION TRIBUNAL

Landlord and Tenant Act 1985 s.27A
Commonhold & Leasehold Reform Act 2002 Schedule 11

LON/00BH/LIS/2007/0023

Address: 62 Blyth Road
London E17 8HR

Applicant: Ms Andrea Johnson

Respondent: Regis Group (Barclays) Freeholds Ltd
Pier Management, managing agents

Tribunal members: Mr NK Nicol
Mr N Martindale
Mr D Wills

1. The Applicant applied on 16th February 2007 for a determination as to the payability of the following charges levied by the Respondents:-
 - (a) Insurance premium for 2003-4 of £248.33;
 - (b) Insurance premium for 2004-5 of £258.26;
 - (c) Administration charges for two arrears reminders of £23.50 each;
 - (d) Administration charge of £100 for a letter to the Applicant's mortgagees about alleged arrears; and
 - (e) Insurance premiums for future years.
2. For the reasons set out below, the Tribunal has determined, on the papers and without a hearing, that the insurance premium for 2003-4 and the administration charges are not payable in their entirety. Further directions are set out at the end of this determination in respect of the reasonableness of the insurance premium for 2004-5 and later years. The Tribunal has also decided to order that the costs of these proceedings should not be added to the service charge and the Respondent must reimburse the application fee the Applicant paid to the Tribunal.

The Facts

3. The Applicant has a lease for 99 years, commencing 24th June 1986, for 62 Blyth Road, London E17 8HR. The Regis Group purchased the freehold on 30th May 2002 and Pier Management took over the management from 1st April 2003. They also respectively own and manage a number of other properties in Blyth Road and neighbouring Hibbert Road.

4. The Applicant's lease contains the following relevant clauses:-
1. ...the Lessor DOTH HEREBY demise unto the Lessee ... YIELDING AND PAYING on demand by way of further rent a yearly sum equal to the sum or sums which the Lessor shall from time to time pay by way of premium ... for keeping the demised premises insured against loss or damage by fire explosion or aircraft and other insured risks under the Lessor's covenant in that behalf hereinafter contained the said further rent to be paid once a year on the said twenty fourth day of June in each year.
 3. THE LESSOR HEREBY COVENANTS with the Lessee:
 - (2) To insure and keep insured the demised premises in a sum not less than the full re-instatement value thereof as determined by the Lessor's Surveyor ... against loss or damage by fire explosion or aircraft and other risks normally included in a homeowners comprehensive policy with the Commercial Union Assurance Group or with such other insurance office or underwriters of repute to be specified by the Lessor and to make all payments necessary to maintain such insurance within seven days after the same shall become payable and whenever so required to produce the policy for such insurances and the receipt for the premium for the current year ... PROVIDED that during such time or times as the demised premises shall be Mortgaged to a Building Society or Local Authority the above provisions relating to the insurance by the Lessor shall not take effect so long as such Building Society or Local Authority Mortgagee (i) satisfies the Lessor that it has in fact insured the demised premises for a full reinstatement value in accordance with the provisions of this sub Clause with a first class Insurance Company ...
5. In accordance with the Tribunal's directions of 22nd February 2007, both parties sent in statements and supporting documentary evidence. That evidence shows that Pier Management arranged buildings insurance with Allianz Cornhill for the years 2003-6, starting on 30th May each year, but did not demand payment from the Applicant for the premium until they sent an invoice for all three years on 29th April 2005. Statements from some neighbours suggest they suffered similar experiences. At no time has Pier Management explained why the demands for 2003-4 and 2004-5 were so late.
6. In response, the Applicant wrote on 24th May 2005. She pointed out that she had, from 2003, chased Pier Management for details of the insurance and copies of the policies by telephone on an unspecified number of occasions. Not having had a response, she had arranged her own insurance with Norwich Union for the years 2003-5. She sent a cheque for the premium for 2005-6.
7. Pier Management responded on 26th May 2005 finally enclosing the insurance certificates for all three years and asking for payment of the balance of their invoice of 29th April 2005. The Applicant replied by letter dated 29th May 2005 raising various queries. She also telephoned and was told her account would be put on hold, or "suppressed" in Pier Management's phraseology. They wrote on 20th June 2005 (apparently mis-dated 2003) apologising for but not explaining their delays and demanding payment again. They promised the policy for the current year would be forthcoming later. The Applicant wrote again on 30th July 2005, thanking Pier Management for their letter of 20th June 2005, but pointing out that they had not addressed her queries of 29th May 2005. Pier Management replied on 28th

September 2005 purporting to answer her query about the amount of the insurance premium but not addressing her other queries.

8. The parties do not appear to have corresponded further until Pier Management sent two "Notices of Intended Action Following Default in Payment" for the sum of £553.59 in February and March 2006. For each of these two letters, they placed charges of £23.50 on the Applicant's account. The Applicant objected by letter dated 31st March 2006 although she did pay the insurance premium for 2004-5 by cheque sent under cover of a letter dated 7th April 2006.
9. On 2nd June 2006 she wrote to point out that Pier Management had delayed again in invoicing her for the insurance. On 13th June 2006 they invoiced her for the insurance for 2003-4 and 2006-7 and the two aforementioned administration charges, called Arrears Reminder Charges. The Applicant replied on 14th June 2006 asserting that she had been told in telephone conversations that the two administration charges would be removed from her account. Pier Management said in their reply of 26th June 2006 that they had no record of this.
10. The Applicant then spoke by telephone to Mr Brand at Pier Management. She understood that he would be looking into her queries. She chased this by letter dated 16th August 2006 but there was no response. Instead, without warning, Pier Management wrote to the Applicant's mortgagees, Northern Rock, on 19th December 2006 alleging that she owed £471.58 and that they would add £100 to her account as an administration charge for sending the letter. The Applicant responded with a detailed letter before action dated 2nd February 2007 but there was no response before these proceedings were issued two weeks later.

The Law

11. The relevant parts of the Landlord and Tenant Act 1985 include the following:-
 - 18. Meaning of "service charge" and "relevant costs"**
 - (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 ... insurance ...
 - 19. Limitation of service charges: reasonableness**
 - (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 ...
 - 20B Limitation of service charges: time limit on making demands**
 - (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then ... the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
 - 20C Limitation of service charges: costs of proceedings**
 - (1) 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 ... leasehold valuation tribunal ... 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 ...

- (3) The ... tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

27A Liability to pay service charges: jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable ...
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for ... insurance ... a service charge would be payable for the costs ...

12. The relevant parts of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 include the following:

1. Meaning of "administration charge"

- (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.

2. Reasonableness of administration charges

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

4. Notice in connection with demands for administration charges

- (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
- (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

5. Liability to pay administration charges

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable ...

Determination

13. In accordance with s.20B of the Landlord and Tenant Act 1985, the insurance premium for the year 2003-4 cannot be payable because it was demanded on 29th April 2005, more than 18 months after the cost was incurred in or around May 2003.
14. The £100 administration charge for the letter to the mortgagee was principally incurred in chasing the insurance premium for 2003-4. Since that premium was never payable, the letter should not have been sent and this administration charge cannot be payable.
15. The two administration charges of £23.50 were incurred following a delay in the Applicant's payment of the insurance premium for 2004-5 between April 2005 and April 2006. However, this followed the Respondent's entirely unexplained delay of over a year in charging for the premium in the first place or in responding to the Applicant's telephone requests for copies of the insurance policies. If it were not for the fact that the Applicant had not put her requests for copies in writing, in accordance with paragraph 3 of the Schedule to the Landlord and Tenant Act 1985, the Respondents may well have committed a criminal offence under paragraph 6 of the same Schedule. It is also noteworthy that the Respondents did not comply with paragraph 4(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in levying the administration charges. In the circumstances, the Tribunal is satisfied that these administration charges were not reasonably incurred.
16. There is a *prima facie* case for saying that the insurance premiums incurred by the Respondents are unreasonably high. They appear to provide far higher cover than is necessary and are substantially higher than the premiums arranged by the Applicant herself with her own insurers. However, the application itself does not challenge the reasonableness of the premiums and it is not clear that the Respondent has had a proper opportunity to put any submissions they may want to make on this point. Therefore, the Tribunal has provided in directions set out at the end of this determination for both parties to make further submissions on this point.
17. The Applicant objected to the fact that clause 3(2) of her lease substantially limited her ability to provide her own insurance. Although the Tribunal has a power under Part IV of the Landlord and Tenant Act 1987 to vary insurance provisions of a lease, no application has been made in this respect and it is far from clear at this stage that a variation should be made. In the circumstances, the Tribunal has no power to change the means by which the Respondents arrange the buildings insurance for the subject property.

Costs

18. Both the Tribunal, in its directions order, and the Applicant, in a letter dated 26th February 2007, invited the Respondents to resolve this dispute by mediation. They did not respond. Together with their other failures of communication mentioned above, this demonstrates an unacceptable attitude. The Respondents should be looking at all times to resolve disputes and avoid litigation with the minimum of inconvenience and cost to all parties. In the circumstances, the Tribunal is satisfied that it is just and equitable to order in accordance with s.20C of the Landlord and Tenant Act 1985 that any costs incurred by the Respondents in

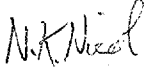
relation to these proceedings should not be added to any service charge payable by the Applicant.

19. The Tribunal has the power under reg.9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 to order the Respondents to reimburse the Applicant for the application fee. In the light of the matters set out above, the Tribunal is satisfied that it is entirely appropriate to do so.

Conclusion

20. In the circumstances, the Tribunal has made the determination summarised in paragraph 2 above and now directs as follows:-
- (i) The Applicant shall by **25th April 2007** file with the Tribunal and serve on the Respondents an indexed and paginated bundle containing any further submissions in support of her assertion that the insurance premiums levied by the Respondents are unreasonable in amount and any relevant documents on which she intends to rely which have not already been provided. If no further submissions are received by the Tribunal, this application will be deemed to have been finally determined.
 - (ii) The Respondent shall by **9th May 2007** file with the Tribunal and serve on the Applicant an indexed and paginated bundle containing any submissions in response to the further submissions of the Applicant and any relevant documents on which they intend to rely and which are not already in the Applicant's bundle or previously provided.
 - (iii) The Tribunal will consider the application on the papers as soon as practicable thereafter unless either party writes to the Tribunal before that date requesting an oral hearing.

Non-compliance with the Tribunal's Directions may result in prejudice to a party's case. In particular, failure to provide evidence as directed may result in the Tribunal deciding to debar the defaulter from relying on such evidence at the full hearing. In the case of the Applicant non-compliance could result in dismissal of the application in accordance with regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.

Chairman 
Mr N.K. Nicol

Date: 11th April 2007