

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



**Residential  
Property  
TRIBUNAL SERVICE**

**JURISDICTION**

**DECISION**

Case Number	CHI/24UG/LSC/2008/0025
Property	31A London Road, Blackwater, Camberley, Surrey GU17 OAB
Applicant (Tenant)	Jason Payne
Respondent (Landlord)	Rasik Lakhani
Date of Decision	17 <sup>th</sup> June 2008
Tribunal Members	C.H.Harrison (Chairman) D.L.Edge FRICS.

## **BACKGROUND**

1. The Applicant is the tenant of 31A, London Road, Blackwater, Camberley, Surrey under a lease dated 9<sup>th</sup> November 1979 made between J.A. Flack, who was the Respondent landlord's predecessor in title (1) and the Applicant's predecessors B. Johnson and another (2). The lease is for a term of 99 years from 9<sup>th</sup> November 1979.
2. The Applicant submitted an application (dated 29 January 2008, but not received until 7 March 2008), under section 27A (and a related application under section 20C) of the Landlord and Tenant Act 1985 to the Leasehold Valuation Tribunal to determine certain service charge issues arising under the lease relating to insurance.
3. On 7<sup>th</sup> March 2008, the Tribunal issued directions that, consistent with the application, it should be determined on the basis of the parties' written representations, without an oral Hearing.

## **THE RELEVANT LAW**

4. Section 18(1) of the 1985 Act defines "service charge" as meaning, so far as material to this case, an amount payable by a tenant of a dwelling, as part of or in addition to the rent, which is payable ... for ...repairs, ...(and) insurance... and the whole or part of which varies or may vary according to the relevant costs.
5. Section 18(2) of the 1985 Act defines relevant costs as being the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable.
6. Section 19(1) of the 1985 Act provides, so far as material to this case, that relevant costs shall be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred ... and the amount payable shall be limited accordingly.
7. Section 21(1) of the 1985 Act provides that a tenant may require the landlord to provide the tenant with a written summary of relevant costs in relation to the service charges payable for certain accounting periods and section 21(4) places a statutory duty on the landlord to comply with the request within one month after certain dates prescribed by the section.
8. Section 27(A) of the 1985 Act provides, so far as is material to this case, that an application may be made to a Leasehold Valuation Tribunal to determine whether a service charge is payable and, if it is, ... (c) the amount which is payable, and (d) the date at or by which it is payable, whether or not any payment has, in fact, been made.

9. Section 20C of the 1985 Act provides, so far as material to this case, that a tenant may apply to a Leasehold Valuation Tribunal for an order that costs incurred or to be incurred by a landlord in connection with proceedings before the tribunal are not to be regarded as relevant costs for the purpose of determining the amount of any service charge.

## THE LEASE

10. Before addressing the detail of the application under section 27A, it is necessary to describe certain matters under the lease because they are relevant to the section 27A matters.
11. A recital to the lease defines the property known as 31 London Road, Blackwater Hampshire as "*the building*".
12. The premises demised by the lease comprise a maisonette located on the first floor of the building known as 31a London Road, Blackwater. Those premises are defined by clause 1 of the lease as "*the demised premises*".
13. Clause 1 reserves two rents. The first is a yearly rent of ten pounds, payable by quarterly instalments in advance on the usual quarter date in each year..... The second rent is reserved in these terms " ... *yielding and paying by way of additional rent annually in advance the sum or sums of money equal to one half of the amount which the Landlord may expend in effecting and maintaining the insurance of the demised building against loss or damage by fire or tempest in their full value*".
14. Clause 3(1) is a covenant by the tenant with the landlord "*To pay the reserved rent on the days and in the manner aforesaid*". In fact, there are two rents. By section 61 of the Law of Property Act 1925, the reference to a single rent may be construed as referring to 'rents' in the plural. Clause 1 of the lease does not state the days on which the insurance rent is payable. That is a matter for the Tribunal to determine.
15. Clause 5(1) is a covenant by the landlord with the tenant "*To insure and keep insured the building and any building erected in connection with it during the term hereby granted against loss or damage by fire and aircraft in an Insurance Office of repute to the full value thereof plus architects and surveyors fees and to make all payments necessary for the above purposes within seven days after the same shall respectively become payable and to produce to the Tenant on demand the Policy or Policies of such insurance and the receipt for every such payment*".
16. Clause 5(3) is a covenant by the landlord with the tenant to repair various structural parts of the building and clause 7 is expressed as an obligation to contribute one half of the cost of those works. The 50% payment is due to the landlord on demand. Clause 7 does not state expressly who is required to make the 50% contribution. The only conceivably sensible construction is that the contribution is due from the tenant.

17. Clause 6(1) is a provision which entitles the tenant to suspend payments of the rents reserved by the lease for so long as the landlord fails to observe and perform its obligations under the lease, if the tenant has first put the landlord on notice of the alleged failure to observe and perform and has required the landlord to put matters right within one month after the date of the notice.

#### **DETERMINATION UNDER SECTION 27A**

18. The Applicant seeks the Tribunal's determination of a number of issues for the years 2003-04; 2004-05; 2005-06; 2006-07; and 2007-2008. Before dealing with them, the Tribunal should comment on the Respondent's assertion in his written representations that there is no service charge as such in the lease. In fact, the lease contains two service charges for the purposes of section 18 of the 1985 Act. The first is the insurance rent referred to in paragraph 13 above. The second is the payment under clause 7 referred to in paragraph 16 above.
19. The Applicant asks whether he is liable to pay the insurance premium specified in respect of the years 2003-2004; 2004-2005 and 2005-2006, notwithstanding that no evidence of payment of the insurance premium by the Respondent had been provided. Evidence of payment of the premium by the landlord is not expressed as a pre-condition of the tenant's obligation to pay the insurance rent. Clause 3(1) of the lease is expressed in absolute terms. It is not qualified in any way. The Respondent's obligation under clause 5(1) to provide the Applicant with the receipt for the insurance premium is a separate obligation. The Applicant is not entitled to withhold payment of the insurance rent under clause 3(1) until he sees evidence of payment by the Respondent, unless he can invoke the rent suspension provisions of clause 6(1). Equally, the Respondent is not entitled to delay providing the Applicant with evidence of payment until he receives the insurance rent. The two obligations, though obviously connected in terms of subject matter, are independent of each other. Accordingly, the Tribunal determines the answer to this question in the affirmative, i.e. he is liable to pay the insurance premium for those 3 years.
20. But the Applicant's questions may seek a determination about whether the demand for the specified amount for each of the years in question is the correct amount of the service charge. There are two issues relevant to that question.
21. The first issue arises from the fact that the insurance rent is stated to be one half of the landlord's expenditure on insurance in respect of "*the demised building*". That expression is not defined in the lease. Does the expression mean "*the demised premises*", as defined in clause 1, or "*the building*", as defined in the recital to the lease? It would be an odd result if the insurance rent equates to 50% of the cost of insuring the first floor maisonette. The natural reading of the words used, in their overall context, suggests the correct interpretation is that the insurance rent equates to 50% of the cost of insuring the building as a whole, as distinct from any part of the building. The Tribunal takes some comfort in applying that interpretation from the fact that the parties to the

lease agreed that the second service charge under clause 7 is also 50% of relevant costs incurred, under clause 5(3), in respect of the building.

22. The second issue relevant to the amount of the insurance service charge for the year in question, and for every other year during the term of the lease, is that the landlord's relevant costs (to which the service charge contributes one half) are limited to the amount which the landlord may expend on insurance (of the building) against loss or damage "*by fire or tempest*". Those are the only insurance risks, the cost of which is recoverable under the lease. The fact that the landlord is not contractually obliged to insure against *tempest* is irrelevant. If, but only if, the landlord chooses to insure that risk, the service charge extends to 50% of that cost. The fact that the landlord is obliged to insure against loss or damage caused by aircraft and against certain professional fees does not mean that the insurance service charge extends to the cost of doing so. Those risks are not covered by the insurance service charge.
23. Accordingly, if the Applicant's question seeks a determination of the amount of the service charge, the best the Tribunal can, and does, determine is that the amount of the insurance service charge for any year is 50% of so much, and no more, of the amount which the landlord may expend in effecting and maintaining the insurance of the building against loss or damage by fire or tempest, in the building's full value. Before the landlord demands the service charge, it is necessary for him to obtain an insurance apportionment of any higher amount of premium he pays for for a greater spread of risks, so that the service charge is limited to the risks of fire and tempest.
24. The Applicant asks the Tribunal to determine the beginning and end dates of the accounting period for the insurance service charge for each of the several years from 2003 to 2008. The Tribunal determines that the insurance service charge is due, on demand, annually in advance, in respect of any period, not exceeding one year in duration, for which the relevant insurance cost, or estimated cost, described in paragraph 23 above, is incurred or is to be incurred. The beginning and end dates are determined by the annual insurance period.
25. The Applicant asks the Tribunal to determine whether the tenant is liable to pay an insurance service charge in respect of an insured period of less than twelve months. The Tribunal determines that the tenant is so liable. However, the insurance service charge is due for payment annually in advance. If the landlord seeks more than one payment in any period of twelve months and if the reason and common sense of the parties cannot sort out what is due, it would be a matter for either party to make an application for a further determination under section 27A of the 1985 Act.
26. The Applicant also requests the Tribunal to determine four other matters:
  - a. The making of an order that the Respondent produces insurance documents. The Tribunal has no jurisdiction to make such an order.

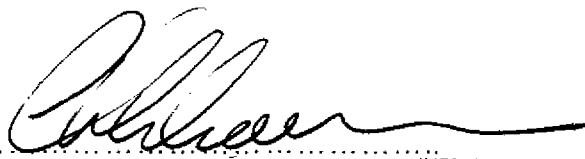
- b. Whether the building was and is insured during the period from 23<sup>rd</sup> August 2006 to August 2008 in the context that no evidence of such insurance has been provided to the Applicant. The Tribunal cannot determine that question. The jurisdiction for inquiring into compliance with the landlord's covenants contained in the lease, and for ordering compliance with the statutory duty under section 21 of the 1985 Act, is vested in the Courts and not in the Tribunal.
- c. Clarification of the period for payment of the annual ground rent. The Tribunal has no jurisdiction to determine matters of construction which are not connected to service charge issues. The Tribunal nevertheless observes that the calculation of the term of the lease and of the dates on which instalments of the yearly ground rent are due are clear on the face of the lease
- d. An award of costs against the Respondent. Whilst the Tribunal considers that it would have assisted the Applicant in his concerns about insurance if the Respondent had been more fullsome in correspondence with the Applicant, in answering the Applicant's concerns, the Tribunal does not consider it would be appropriate in all the circumstances to make an award for costs against the Respondent.

#### **DETERMINATION UNDER SECTION 20C**

27. Nevertheless, the Tribunal does consider that it is just and equitable in the circumstances to make an order under section 20C of the 1985 Act. Accordingly the Tribunal orders that all of the costs incurred, or to be incurred, by the Respondent in connection with these 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.

#### **THE DRAFTING OF THE LEASE**

28. This paragraph is added by the Tribunal as a comment of informal assistance to the parties and does not form part of the Tribunal's determination of the Application. The Tribunal considers that the lease is not well drafted, indeed in some instances it is badly drafted. The Tribunal considers that the poor quality of some of the drafting may have contributed to the parties' problems. The Applicant may, apparently, be considering extending the term of the lease. If so, that might present a good opportunity for the parties to address these issues which the parties might, perhaps, wish to address in any event.



**C.H.Harrison Chairman**

**17<sup>th</sup> June 2008**