RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.27A Landlord &Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CH1/00LC/LSC/2008/0133

In the matter of 7a Longley Road, Rochester, ME1 2HD

Applicants (Lessees): Miss. C Prendergast
Mrs. C Gambrill
c/o D Gambrill
R.King
c/o Tim Cracklen
Dr. A Lupin

Respondent (Landlord): Leasehold Property Management Ltd
c/o SIMRAC Property Management Ltd

Date of Application: 4th December 2008

Tribunal Members: Mr. S Lal LI.M, Barrister (Legal Chairman)
Mr. C White FRICS
Mr. P. Gammon

Date of Decision: 26th February 2009

Application

1. The Applicants applied to the Tribunal by way of application received on 4th December 2008 under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine their liability to pay insurance premiums in respect of 7a Longley Road, Rochester, ME1 2HD ("the property") for the years 2005, 2006, 2007 and 2008. Specifically the Applicants wished for a ruling as to the reasonableness of the insurance premiums as demanded under the terms of their lease for Flats A, B, C and D. The liability to pay has never been in dispute nor has the proportion due under the lease, namely one quarter share.

2. Directions were issued on the 10th December 2008. Both parties to the proceedings were invited to send to the Tribunal written representations which include a Statement of Case which they have both done. These are referred to below.

The Law

3. The statutory provisions primarily relevant to applications of this nature are to be found in section 18, 19 and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract form each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes 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 relevant costs."

"Relevant costs" are the cost or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.

4. Section 19 provides that :

"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, 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 reasonable standard

and the amount payable shall be limited accordingly."

5. Subsections (1) and (2) of section 27A of the Act provide that :

"(1) An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable and, if it is, as to-

a. the person to whom it is payable
b. the person by whom it is payable,
c. the amount which is payable,
d. the date at or by which it is payable, and
e. the manner in which it is payable.

The Inspection

6. The members of the Tribunal inspected the property on the 26th February 2009. It is a Victorian two storey double fronted house with a loft conversion which has been converted into flour flats. Flats A and B are accessed from the front of the property and the other two flats are accessed via rear stairs. The Tribunal were able to inspect the property both internally and externally and the two ground floor flats are one bedroom and the other flats are two bed roomed as they have a converted attic space. There is a hard surfaced area to the side and rear of the property, most of which belongs to Flat A. The common parts are minimal, in effect the entrance hall for Flat A and B.

The Issue

7. The only matter in dispute was the reasonableness of the insurance premiums for the years 2005, 2006, 2007 and 2008.

The Case for the Applicant

8. Miss. Prendergast for the Applicants adopted her written submissions of 26th January 2009 and 23rd February 2009 and the documents attached thereto. She stated to the Tribunal that in respect of the history of her dealings with the Respondent, she had contacted them in August 2007 when she queried the premium and that she did not receive a reply until 15th October 2008. She says that the Respondents have never provided evidence of competitive quotes for the various years and her suspicion is that the block policy although showing a sum in terms of its cost is in actual fact actually cheaper in what is actually paid to the insurer because her understanding is that the adjoining terrace is also insured by the same provider, in effect the Respondent is privy to a discount in respect of what is actually paid.

9. She submitted that the policy in its present form was a "Rolls Royce" type of insurance and did not reflect the modest nature of the subject property. She referred to the need to insure what she termed as core elements such as basic buildings insurance, subsidence, terrorism, and public liability. In effect her submission was that "reasonableness" if it does not equate to the cheapest cannot mean that it has to be the most expensive either.

10. In support of her assertion, she has supplied evidence of comparative quotes from Fortis Commercial and MMA Property Owners as well as the Halifax. She stated that the Norwich Union via Fusion Insurance Services Ltd had charged a premium in 2005 of £152.81 for her flat alone as opposed to the £271.98 demanded of her as her share by the Respondent. The quote from the Halifax for 2005 was £122.33 in respect of buildings insurance plus £59.12 for contents cover and that from Fortis was £608.23 per annum plus a broker's commission.

11. She was also able to produce a more recent estimate dated 23rd February 2009 from Martin Insurance Services Limited which is a as near as comparative quote based on the actual policy supplied by the Respondents in response to Directions made by this Tribunal for the same to be served. The above company acknowledge that no two policies will be the same, have nevertheless managed to obtain a policy for the subject property with an annual premium of £851.01 based on the Standard Cover provided by NIG.

12. The respondents submitted a fire insurance valuation from Ringley Chartered Surveyors dated 26th January 2009. This followed complaints over the previous years from Ms Prendergast that the building was under insured. It was prepared following an inspection of the exterior and common parts.

13. At the hearing Ms Prendergast was initially happy with the total figure of £500,416 as it was near her views that the building should be insured for £500,000. She agreed that she had not had a valuation to justify this figure. She did not understand the valuation and had some reservations about some of the figures. Mr White, the chartered surveyor on the tribunal, explained the basis of the valuation and there was discussion about the calculation.

14. Before the hearing the tribunal had inspected the roof room of flat C and had reservations about the size shown in the valuation under the heading of 'Areas' Mr Cracklen acting for the lessee confirmed the two roof rooms were the same size and were no more than 16 square metres each. It was noted that the Respondents valuer had not inspected internally. The tribunal has adopted a total area for the roof rooms of 32 metres.

15. Mr White confirmed that it was not normal practice to value roof rooms at the same rate as the main house as there was a measure of double counting. The main rate including the roof space. These were very basic roof rooms without windows – just roof lights. The applicants agreed with this and consequently the tribunal adopted a rate for the roof rooms of £600 sq.m. This with the reduced size reduced the basic sum insured from £426,365.00 to £350,535.

16. The applicants did not understand why the figures had been enhanced in respect of kitchens and bathrooms. Mr White explained that this was because the rate used was based on a house and a house only had one bathroom and kitchen not four. The additional cost related to the house being converted to four flats. The applicants did not dispute the unit cost of £7,250 for kitchens and £4,150 for the bathrooms. The tribunal agreed to the enhancements but only in respect of three as the house would have already have one built into the rate used. This reduced the enhancement figure from £45,600 to £34,200.

17. The applicants disputed the number of double glazed windows installed. The valuation included 16 @ 2.5 sq.m each. They confirmed 2 in 7A, 1 in 7C and 3 in 7B. None in 7D. They did not dispute the rate £79.06 sq.m. The tribunal accepted the applicant's evidence and reduced the cost of this item from £3,162.40 to £1185.9.

18. Ms Prendergast for the applicants disputed the existence of the fire alarm system and said nothing other than individual smoke alarms fitted by the fire brigade were in place. This was confirmed by the other two lessees present.

The Case for the Respondent

19. The Respondents did not attend the hearing. They indicated in their letter of 19th February 2009 that they would not do so in order to save costs and because they had nothing further to add to their written submissions. They were entitled to do this and the Tribunal draws no adverse inference from their non-attendance. The Tribunal has had full regard to their written submissions and the documents they have attached.

20. In their submission dated 20th January 2009, Stevenson's Solicitors on behalf of the Respondent point out that it is only the lessees of Flat A and B who have not paid the sum demanded of them. They say that they have no record of any previous complaint made by Miss. Prendergast prior to her letter of the 18th June 2007.

21. They point out that the insurance has been take out with a reputable English insurance company called AXA Insurance Plc and they ask that the Tribunal makes an Order for the premiums to be paid in accordance with the Certificates of Insurance that they have provided in respect of the years in dispute.

22. In their further submission of 19th February 2009, the Respondent provides a Policy Comparison document between the actual policy and the Fortis and MNA policies as advocated by the Applicant. They refer to the many superior aspects of the AXA policy for this type pf building. They have also provided an up to date insurance value and say that the current policy "fits like a glove", being a professionally tailored policy for the circumstances. They highlight the fact that it is not for the Respondent to put into place the cheapest policy and that their product is a superior policy to the Fortis Policy. They enclose a copy of the actual AXA policy although not what has actually been paid. (The Tribunal has dealt with the insurance valuation above when Miss. Prendergast was asked to comment on it).

23. In their latest submission dated 25th February 2009, the Respondent through their solicitors reiterates that the Applicants appear to have missed the "fundamental point that as with most things in life ones gets what one pays for." They specifically ask for the latest quote obtained by NIG to be disregarded on the basis that that policy was for a lesser sum insured referring to their valuation Report.

The Tribunal's Decision

24. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in Plough Investments Ltds v Manchester City Council [1989] 1 EGLR 244 that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease.

25. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself. Ultimately it is for the court or tribunal to do decide on the basis of the evidence before it and exercising its own expertise. In that regard the LVT is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it.

26. The starting point for the Tribunal's analysis was its assessment of the insurance valuation and Tribunal, who had had the benefit of both and external and internal inspection were not prepared to adopt what to them seemed an inflated valuation as contained the Report prepared by Ringley Property Solution dated 9th February 2009. This was because in the assessment of the Tribunal the valuer had adopted as a basis of valuation certain items that could not in the opinion of the Tribunal be properly counted towards the same (see paragraphs 14-17 above). The effect of this was that the sum insured for the current year (June 2008 to June 2009) is more accurately £398,008.36 including professional fees and Vat on those fees.

27. The Tribunal then had regard to the actual policy in place. The Tribunal were of the opinion that aspects of the AXA policy were more appropriate to what maybe described as a block policy rather than for a modest converted house. For example a number of items are wholly irrelevant to the subject property such as insurance against theft of keys which in the AXA policy is described as cover without limit although in the Fortis and MNA comparison is limited to £1000 and £5000 respectively. If one examines the AXA policy in respect of keys it includes electronic key cards and reprogramming costs which are not applicable to the subject property. Only two of the flats share a communal entrance area and if keys are lost or stolen it will be a relatively minimal expenditure for the matter to be remedied.

28. The present AXA policy also refers to fire and intruder alarm and closed circuit television systems and resetting expenses. The Tribunal were unable to observe any of these in its inspection and indeed the subject property has none of these facilities. There was a provision in respect of the removal of fallen trees. The Tribunal were able to observe no such risk in what was a corner property in a built up residential area. There is a provision in the AXA policy for a sprinkler system and there was none in place, indeed the outside space is mostly concreted over. Far from the AXA policy "fitting like a glove" as advanced by the Respondents solicitors, it was clear to the Tribunal that many aspects of it were wholly irrelevant to the needs of the subject property and were more akin to a residential block type policy.

29. The Tribunal were of the view that the quote supplied by NIG was more appropriate to the subject property as it reflected the nature of the property and the protection of the core elements as part of its standard cover. However the Tribunal is mindful that something can still be reasonable even if it is more comprehensive and therefore more expensive and that reasonable need not be equated with being the cheapest.

30. In effect the notion of "reasonableness" has within it a scale and something may still be viewed as "reasonable" even though it may be at different points within that scale. However what concerned the Tribunal in the instant case was that the quote from NIG of £851.01 which was something in the region of being £400 pounds less than the AXA quote (just over 30%) and which was a quote that was more appropriate to the subject property and was so different to what was being charged by AXA.

31. In the circumstances the Tribunal find that the sums listed by AXA on their various certificates of insurance for the years in question, (the Tribunal has no evidence as to what is actually paid as the Respondents have never supplied this information) is an unreasonable sum by reference to the NIG policy which is a reasonable sum.

32. The NIG policy is quoted at being £851 for 2009. The Tribunal in its decision will reduce this by 5% for each preceding year as this reflects in broad terms the 5% increase for each of the insurance years as demanded by the Respondents. The following figures are therefore the reasonable sums that are payable by the Applicants in respect of the years in dispute, each Flat need pay one quarter of the amount as per their obligation under the lease. Monies already paid will count towards any contribution due.

33. This produces therefore the following sums as reasonable amounts for the years in question using the NIG policy of 2009 as a starting point in defining what is a reasonable premium.

Year 2008	£809
Year 2007	£769
Year 2006	£731
Year 2005	£695

34. The Tribunal also confirms the sum insured for the current year (June 2008 to June 2009) is £398,008.36 including professional fees and Vat on those fees.

35. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicants have succeeded in respect of their submissions and the Tribunal is satisfied that the Respondent's did not reply to the initial letter written by Miss. Prendergast in August 2007 until almost a year later. The Tribunal directs that no part of the Respondent's relevant cost incurred in the application shall be added to the service charges. The Tribunal further directs that the Respondents do pay the Applicants fee in respect of this application.

Chairman.....

Date 26/2/09