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REF LON 00AJ/LSC/2010/0035

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985
SECTION 27A

AND IN THE MATTER OF Top Floor and Ground Floor Flats 52
Newton Avenue London W3 8AL

Applicants

(1) David Anderson Smith
(2) Vincent Wong

Respondent

Michael Lawson

The Tribunal

Mr P L Leighton LLB (Hons)
Mr C Kane FRICS

Date of Decision

28th April 2010

Introduction

- 1 By an application dated 23rd January 2010 the Applicants applied to the Tribunal for a determination of their liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 ("the Act") in respect of the property known as 52 Newton Avenue Acton London W3 8AL ("the property").
- 2 The property is a Victorian house divided into two flats and the First Applicant is the leaseholder of the top floor flat and the second Applicant the leaseholder of the ground floor flat.
- 3 Directions were given on 5th February 2010 and it was directed that the matter should be dealt with as a paper determination at the request of all the parties.

The Issue

- 4 The only issue with which the Tribunal is concerned is that of the insurance of the property in question for the years 2003 to 2009. The Applicants contend that the premiums from Royal and Sun Alliance Insurance are far too high and that they are able to arrange insurance for the premises at much lower figure.

The Lease

- 5 By Clause 6(e) of the lease the lessor covenants "to insure and keep insured in the names of the lessor and the lessee and their mortgagees (if so requested) the property and the other flat against public and third-party liability loss or damage by fire explosion storm lightning tempest earthquake aircraft in peace time and things drop therefrom and risk of explosion and damage in connection with the boilers and heating operation and all plant associated with it and risks civil commotion malicious damage heating pipes and apparatus and against the requirements of any public authority on rebuilding and such other risks as the lessor thinks fit in an insurance office of repute or Lloyd's underwriters in the full rebuilding costs thereof."

- 6 By Clause 5(a) the lessee covenants to pay the rent and the additional rent out of the property at the time and in the manner aforesaid without deduction. In Clause 1(h) of the definitions "additional rent " means a fair proportion the property to be determined by the proportion that the rateable value of the property bears to the rateable value of the building of such sum or sums as the lessor shall from time to time pay in respect of premium for insuring the building and any new erections erections improvements and additions thereon or thereto in accordance with the lessor's covenant herein contained ".
- 7 The insurance premiums have risen from £783.75 in 2003 and has risen to £1161.06 for 2009 for the building element alone The top floor flat is liable to pay 51.44% of the insurance and the ground floor 48.56%.

The Evidence

- 8 Mr Anderson Smith in his submission says that the insurance premium is too high in comparison with other quotes obtained from a broker. He also maintains that the sum insured is too high in comparison with the house next door at 54 Newton Avenue. That property is currently insured for £263,000 against £312,378 for the subject property so that he contends that it is 19% over insured.
- 9 The amount charged for Mr Wong's insurance for the current year is £638 for 48.56% of the building insurance and the balance payable by Mr Anderson Smith making a total of £1314 including public liability and Insurance premium tax,
- 10 Mr Wong has similar arguments that the quotation from Royal and Sun Alliance is too high in comparison with those produced by his broker
- 11 Mr Anderson Smith in his statement submits the quotations for the years in question Paragraph 3 from Axa. He refers to it and exhibits a letter from Allcover He says it is for a sum insured of £317,000 but does not say how much is charged for the building insurance only.

The brokers stated that annual premium would be £782.27 for a sum insured of £317,000 compared with the landlord's insurance for the same year of £1314.57 for a sum insured of £312,378.

12 There are additional sums for public liability and Insurance premium tax so that it is difficult to obtain a direct like for like quotation.

13 The landlord Mr Lawson in his evidence admits that he has not tested the market. He says he has always used Royal and Sun Alliance since before 2003 and always found them very reliable and competitive. He also stated that where there is delay in payment of the premium they do not allow the policy to lapse and that there have been many occasions when Mr Wong in particular has been late paying his share of the premium.

The Law

14 Section 19 of the Act provides that relevant costs incurred are only recoverable to the extent to which they are reasonably incurred. It has been held in numerous cases and particularly in the recent case of **Forcelux-v-Sweetman** that the landlord is not obliged to accept the cheapest insurer provided that the premium charged is within the range of a reasonable market price.

15 Section 30A of the Act confers rights upon tenants as set out in the Schedule to the Act. Paragraph 8 of the Schedule grants various rights to the tenant where he is required to insure under the lease with an insurer nominated or approved by the landlord. As Mr Lawson correctly submits the paragraph does not apply where the landlord himself insures under the lease.

The Tribunal's Determination

16 The rate charged for the landlord's insurance is 42p in the £ as opposed to 24p in the £ for tenants' quotation but this does not represent a straight comparison and it is difficult for the Tribunal to assess the market rate. With regard to the amount insured there is no evidence from either side as to the rebuilding valuation cost. The only evidence is a mortgage valuation produced by in 2007 and the Tribunal does not consider this to

be a reliable figure. In Section 9 of the mortgage valuation a reinstatement value £100,000 in 2007 is suggested.

17 Mr Anderson Smith suggests £250,000 as reasonable cost for rebuilding for which it should be insured. The tribunal considers that this figure is nearer the correct amount but the insurers and Mr Lawson consider that it is insured for an appropriate amount but he too has produced no reliable evidence to support this.

18 In the absence of any clear evidence the Tribunal feels unable to say that the insurance for previous years was excessive and is not therefore prepared to intervene in those cases although the Tribunal has considerable sympathy with the tenants and has a suspicion that the insurance in this case for those years is very much on the high side. The landlord has the right to insure with an insurer of his choice. The Applicants have not proven it is unreasonable. The Axa quote is for a similar sum insured and Axa is much cheaper. The Tribunal is not satisfied however, that it is a like for like quotation.

20 The tenants have not produced any quotes for earlier years

Although they challenge the amounts charged from 2003 onwards.

For 2009/10 the amount claimed by the landlord is £1314.57 including public liability and terrorism of which £1161 appears to relate to building insurance

21 The tenants have a quote for 2008/9 for £715.77 based on the same sum insured and for 2009/10 the sum of £649.13 excluding terrorism insurance which is usually about £150 extra making a sum of £799.13 including terrorism cover.

22 The Tribunal cannot make a determination for the previous years on the evidence before it. Even the evidence on the proper market rate for insurance is unclear.

- 23 However, the landlord has made no effort at all to consider alternative quotes for the current year although asked to do so. He maintains that his long-term relationship with the insurer justifies maintaining the existing policy, together with the ability to pay after the due date of the renewal. He also makes a number of criticisms of direct insurers regarding the enquiries which they might make and the likelihood of their rejecting claims whereas Royal and Sun Alliance have met all claims
- 24 He does not give a detailed claims history for the building but does not suggest it is heavy. He does not state either whether he receives any commission from the insurer for placing the policy with RSA.
- 25 Although the evidence is not entirely clear the Tribunal is persuaded on the balance of probabilities that this insurance is too high for the building. Although no direct evidence was given of the property next door at 54 the Tribunal assumes that it is probably of a similar if not identical character to the subject property and Mr Anderson Smith and Mr Wong undoubtedly feel a strong sense of grievance at what they are being asked to pay.
- 26 In the future the landlord should in the view of the Tribunal endeavour to obtain competitive quotations with a view to ascertaining the best value for the tenants. As he correctly states he need not accept the cheapest quotation particularly where the level of cover or the claims service is less satisfactory He must, however, test the market to ensure that the premium, which he accepts, is within the market range.
- 27 In view of the dispute as to the amount insured the Tribunal would also expect the landlord to carry out a building reinstatement valuation to see whether the building is over insured.
- 28 The difficulty with a paper determination in a case such as this is that it is difficult to investigate or interrogate the figures put before the Tribunal in any detail to ensure that like for like figures are obtained.
- 29 Doing the best it can on the material before it and using its own experience of levels of insurance in the market the tribunal has concluded that a building of this type could obtain a good standard of insurance cover

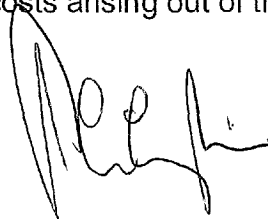
for no more than £1000. The tribunal is therefore prepared to cap the premium for the current year at £1000 without prejudice to any view it might take in future years based on evidence which might be submitted by either party.

Section 20C Costs

30 The Tribunal has not considered in detail the clause in the lease, which might permit the landlord to claim any costs arising out of these proceedings because it is satisfied that it ought to disallow any costs being added to the service charge account. Having regard to the landlord's refusal to consider any alternative quotes after being expressly asked to do by the leaseholders the tribunal would consider it unjust and inequitable for them to have to pay any costs arising out of this application

Chairman Peter Leighton

Date 28th April 2010

A handwritten signature in black ink, appearing to read 'Peter Leighton', is written over the signature line. The signature is fluid and cursive, with a large initial 'P' and a distinct 'L'.