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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 SECTION 27A

LON/00BA/LSC/2010/0319

Premises	**116/116A Cherrywood Lane, Morden, Surrey SM4 4HB**
Applicants:	**(1) Mr Tony Marshall** **(2) Ms Joan Fradley**
Respondent:	**Sinclair Gardens Investments (Kensington) Limited**
Represented by	**Mr A Wijeyaratne -Counsel**
Date of Hearing:	**24 August 2010**
Tribunal:	**Ms M Daley LLB (Hons)** **Mr T Sennett MA FCIEH** **Mrs R Turner BA JP**
Date of decision:	**06 October 2010**

1. Background

(a) The property, which is the subject of this application, is a house built in about the 1930s, which has been converted into two flats, which are let on long leases and occupied by the two applicants.

(b) The Applicants seek a determination of liability to pay service charges in relation to the cost of the insurance premiums for the periods-: 2008, 2009 and 2010.

(c) Directions were given on 13 May 2010. The Directions provided that a hearing bundle should be prepared by 30 July 2010. At the hearing the Respondent submitted written submissions and legal authorities.

(d) Counsel submitted that this document had been sent to his instructing solicitor on 19 August 2010. The Tribunal noted that the Applicants had not received the document until the morning of the hearing and given this, if any issue of prejudice to the Applicants arose, they would consider whether an adjournment was necessary.

The Hearing

1. Mr Marshall, represented both applicants, the second Applicant was not present at the hearing. The Respondent was represented by, Mr Wijeyaratne, Counsel and Mr Kelly the Director of Hurst Managements, who gave evidence on the Respondents' behalf.
2. Mr Marshall in his statement of case referred to the cost of the insurance for the three years in question which was as follows-:
   2008-£558.10
   2009-£535.55
   2010-£556.14
3. Mr Marshall stated that he considered the cost of the insurance to be excessive, and he referred the Tribunal to alternative quotations, which he had obtained which were as follows-:
   Motor and Home Direct Insurance Services -£311.25.
   Motor and Home Direct (Torquay) £286.25
   A –Plan Insurance £227.99
4. On the basis of the quotations that he had obtained, he considered that the cost of service charges for insurance should have been in the region

of £154-£150 for each of the years in question. He considered that all of the quotations were from A* Starred providers which were comparable to those used by the Respondent. He also considered that the premiums quoted reflected the good claims history of the building and the stable occupancy, in that each flat was occupied by a leaseholder, and was not subject to sub-letting.

5. Mr Marshall also did not accept that the premium charges, for terrorism cover (included in insuring the building), were reasonable and payable. He did not accept that this type of cover was necessary given the location of the property, the fact that neither property was subject to a mortgage, and as a result this was not a requirement of the lender. In addition, neither of the Applicants had been consulted about the need for this type of cover.

6. In cross-examination, Mr Marshall accepted that the lease provided for insurance premiums to be payable by the leaseholder and that pursuant to clauses 3 and (2) of Schedule 5 there was an obligation on the landlord to insure the property. He also accepted that although there were additional quotations from Churchill Insurance and from the website "Go Compare" no specific reliance was placed upon these quotations. Mr Marshall also accepted that he had not completed a proposal form, and that his approach had been as an owner- occupier albeit on a long lease, as opposed to a Landlord and this distinction affected the landlord's ability to use the comparison website.

7. Mr Marshall also accepted that the Landlord had no control over the occupancy of the building, and in effect this meant that the leaseholders could sublet their flats to any of a given number of occupants who might be deemed to present additional risks to the insurance providers.

8. Mr Marshall in answer to the Tribunal accepted that his quotations did not have terrorism cover. He did not however accept that this was necessary as he considered the lack of Terrorism Cover as a risk that the Applicants were prepared to take.

9. In reply Mr Wijeyaratne relied upon the two detailed statements produced by Mr Kelly. The statements set out the approach adopted by the landlord, and the relationship between the landlord and Princess

Insurance Agencies ("PIA") who were responsible for arranging insurance and dealing with the administration for 15,000 flats which made up the landlord's portfolio. PIA were responsible for preparing the insurance portfolio schedules for the building along with schedules for Engineering (lift) and other insurance for the 15,000 properties. The portfolio properties had two renewal dates for the insurance, one in September and one in November. The Advantage of this was to ensure that all of the properties were insured and that this arrangement was reasonable and easier to administer than having different renewal dates for the various properties. Terrorism cover had been in place as a separate item in the insurance schedule since 2003 with a pre-existing level of cover included in earlier insurance premiums. The fifth schedule to the lease was broad enough to encompass terrorism cover where the Landlord chose to include it in the cover provisions for the property.

10. The market testing process involved putting a sample of 10-12 properties together, to ensure that the quotation reflected the various types of properties within the portfolio. PIA then approached a London city based broker (HW Woods) who had specialist knowledge of the market to carry out the negotiations on their behalf. As well as negotiating, HW Woods gave advice on the factors that affected the insurance market and made recommendations as whether or not a quotation should be accepted.

11. Mr Kelly had carried out a similar exercise to that undertaken by the Applicants of trying to obtain additional quotations by approaching the market as a Landlord purchaser, and had disclosed the features such as the wide range of potential occupancy. This had resulted in his being unable to obtain a quotation in the domestic market but being directed to specialist sites dealing with Landlord proposals.. His approaches to the specialist landlord market had lead to his being able to obtain insurance quotations in the region of £480- £1300. The average was within the range of the actual cost of the premium. In his experience the current rate was £3 per £1000 of the reinstatement value and this was within the industry norm set on in the insurance rating guide.

12. In his closing submissions, Mr Wijeyaratne referred to a number of authorities including the case of *Berrycroft Management Co Limited – v- Sinclair Gardens Investments (Kensington)* Ltd at page 8 of the Land's Tribunal's decision it was stated as follows-: "... *[A]s in my judgment it is, then the fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insurers might have charged...If he approaches one insurer, being one insurer of repute, and a premium is paid in the normal course of business as between them reflecting the insured's usual rate of business of that kind, then in my judgment the landlord is entitled to succeed. The safeguard for the tenant is that if the rate appears to be high in comparison with other rates that are available in the insurance markets of the time, then the landlord can be called upon to prove that there was no special feature of the transaction which took it outside the normal course of business"* Counsel also referred to *Forelux Limited-v- Sweetman* in support of his proposition that the question of whether the costs were, reasonably incurred was-: "*not interchangeable with the question of whether the relevant service could have been obtained more cheaply."*

13. Mr Wijeyaratne also relied upon the decision in *Williams-v- Southwark* in support of his proposition that the fact that commission was paid to the Landlord, was not of itself sufficient to disturb the premium, where it could be shown that this did not affect the overall cost of the insurance.

14.. Mr Wijeyaratne on behalf of the landlord submitted that the Applicants insurance quotations were not like for like in that it was not a landlord's insurance. The Landlord had acted reasonably in using reputable brokers and insurance providers, and that the arrangements for obtaining block policies could be justified by reference to the requirements on the landlord to carry out its obligations to arrange insurance for a number of properties. Furthermore, market testing was an integral part of their process in letting insurance on the portfolio.

15. Mr Marshall repeated his assertions, and placed some reliance upon the fact that since his claim was issued in the Tribunal the landlord had managed to achieve a reduction. He considered that the claims history ought to have been taken into account as should the actual occupancy of the property to obtain a reasonable quotation for the insurance premium. Mr Marshall also renewed the Applicants request for an order under section 20C of the Landlord and Tenant Act 1985.

16. Mr Wijeyaratne objected to this application, and did not accept the Tribunal's view that the Tribunal needed to consider whether the cost of the legal proceedings was recoverable by reference to the lease. He considered that the only test applicable by the Tribunal was whether it was just and equitable in all the circumstances.

The Law

Section 18(1) of the Landlord and Tenant Act 1985 ("the Act") provides that, for the purposes of the relevant parts of the 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 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 the relevant costs.

Section 19(1) 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 a reasonable standard:

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that, where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A (1) of the Act provides that that 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 by whom it is payable,
(b) the person to 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.

[Section 27A(3) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.]

The Tribunal's decision

a) The Tribunal having listened carefully to the evidence and having considered the authorities presented by counsel, find on a balance of probabilities that the sums claimed by the Landlord for insurance were reasonably incurred and accordingly are payable. In coming to this conclusion, the Tribunal has considered the authorities, in particular

Forcelux Ltd-v-Sweetman, and the commercial reality that the arrangements for obtaining block policies could be justified by reference to the requirements on the landlord to carry out its obligations to arrange insurance for a number of properties.

b) The Tribunal accept that in reality this has resulted in the Applicant not being able to rely upon the normal discounts which may be available with the freedom that comes with arranging your own insurance, and this is particularly so in a competitive market.

c) The Tribunal noted with some interest, that following the issue of the Application, and prior to the hearing on 24 August 2010, Greg Cutler (from PIA) sent a fax to Liberty Underwriters on 4.6.10 asking for the premium to be reviewed. At that stage the premium for the premises was £926.20. On 24 June 2010, the underwriters replied agreeing a reduction of almost £200. This was in view of the fact that there had been "no losses in the 10 years".

d) The Tribunal consider that the Landlord was in a position to use its considerable buying power to obtain a reduction on the Applicants' behalf, although we stop short at finding that they were under an obligation to do so.

e) Given that this reduction was based on a 10 year no claim history, this suggests that (simply by asking) it may have been possible to reduce the cost of the premium payable at an earlier stage.

f) The Tribunal accept that this reduction would not have been achieved without the issue of the proceedings. The Tribunal nevertheless find that the service charges for 2008, 2009 and 2010 for insurance are reasonable and payable.

g) On the question of terrorism cover, the Tribunal notes that the Applicants did not seek alternative quotations or offer evidence to counter the Landlord's reason for having such cover in place. The Tribunal was informed that cover had been in place as a separately identifiable charge

since 2003 for this property and that previously it had been included in the global sum. The Tribunal finds that the need for cover is within the discretion of the Landlord to decide and that the charges for the years in question are reasonable and payable.

The Applicant's Application in accordance with section 20C

h) The Tribunal having considered all of the circumstances of this case, in particular the terms of the lease, (as they relate to the payment of legal costs as a service charge) do not accept that the lease enables recovery of the legal costs. If the Tribunal are wrong concerning this, then we consider that given the not insubstantial reduction in the premium, which was obtained as a result of the Application, it is just and equitable to make the Section 20 C Application sought.

CHAIRMAN.....

DATE.....6 - 10 - 2010.....