



LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985**

Case Reference: LON/00BJ/LSC/2012/0127

Premises: Flat 2, Sadlers House, 180 Lower Richmond
Road, London SW15 1LY

Applicant (landlord): The Affordable Art Fair Ltd.

Respondent (tenant): Mrs Charmian Connell

**Leasehold Valuation
Tribunal:** Ms F Dickie, Barrister, Chairman
Mr J Avery, FRICS

Date of Decision: 30 May 2012

Summary of tribunal's determination

1. All insurance premiums demanded as follows are reasonable and payable.

- 2008 £415.75 (adjusted by £11.40 credit for 10 days)
- 2009 £415.75
- 2010 £436.54
- 2011 £458.37

Preliminary

2. Pursuant to the application made under section 27A of the Landlord and Tenant Act 1985, the Applicant seeks a determination whether service charges for insurance are reasonable. The years in question are 2008 to 2012. The subject premises are a self-contained flat within a four storey building formerly used as a public house. The building was converted in

2006 into two residential flats above and a commercial property (comprising offices and a gallery) on the ground and lower ground floors.

3. The tribunal issued directions dated 23 February 2012 for the matter to be determined on the papers unless a hearing was requested. No such request has been received and the tribunal has proceeded to determine this application without an oral hearing.
4. Clause 1.13 of the lease provides that the Insurance Rent Proportion is:

“one-third or such proportion as the Surveyor shall reasonably and properly determine as the fair and proper and reasonable proportion from time to time having regard to the size use and location of the Premises.”

The Applicant's Case

5. Insurance premiums have been charged as set out in paragraph 1 of this decision. The landlord has referred to disputes raised by the Respondent in 2009 and 2010, and to her satisfaction with the landlord's replies, but there is no evidence that she agreed to or admitted the service charges in question. She was dissatisfied with the rebuild valuation of the property, and in the Summer of 2010 the landlord instructed Landmark Chartered Surveyors to produce an insurance valuation.
6. That valuation, being the “current minimum figure” recommended by the surveyor for buildings insurance purposes, was £1,000,000 (rounded up from £990,000). A copy of this report has been provided to the tribunal. The rebuild value of the commercial premises was assessed at £500,000, the common parts at £70,000, and £210,000 for each of the flats. The landlord considers that a 5% annual increase in the rebuild valuation is not related to the value of the property, but is an increase for inflation on building materials etc.
7. On the further direction of the tribunal, the landlord has produced the policy schedules and certificates of insurance for the years 2010 and 2011. These show that the building's declared value was £992,250 in 2010 and £1,041,863 in 2011. Evidence of the insurance for 2008 and 2009 has also been produced showing declared values of £900,000 and £945,000 respectively. The Applicant has also produced a series of emails between 17 December 2008 and 11 May 2009 between the landlord and insurance broker, from which it is clear that the insurer, Zurich, inspected the property in or before May 2009.
8. The landlord's argument on the interpretation of Clause 1.3 is that at the time of drafting and completion of the leases the property was in the exact same configuration that it is currently and that the Respondent is bound by its terms as drafted. The saving provision regarding the surveyor reassessing the property is, in its opinion, only to be undertaken in the event of reconfiguration of the property whereby a re-calculation of the proportions will be required.

9. The landlord observes that the reason why insurance was cheaper in the first year, when the freehold was owned by First Quantum, was because they had a specialist policy for property developers, and insurance was based on the building being empty at the time. It reports that the insurer has confirmed that there is no element of business insurance in the policy.

The Respondent's Case

10. The Respondent takes a different view. She purchased the subject premises in December 2006 and the service charge, including insurance, was £460.23 for the first year. The Affordable Art Fair Ltd. bought the freehold in December 2007. The Respondent owns a house very close by with a square footage of 152 sq metres and a rebuild cost of £202,000, and her insurance premium was £234.67. She raises 2 arguments:

Method of Calculation

11. The Respondent considers the alternative method of calculation is fairer, by allowing the proportion to be amended providing "such other proportion as the Surveyor shall reasonably and properly determine as the fair and proper and reasonable proportion from time to time having regard to size, use and location of the Premises". She seeks a proportion based on the size of the premises.
12. The Respondent's solicitors wrote to the Applicant on 2 February 2011 setting out that their interpretation of Clause 1.13 is that she can insist on a determination by "the Surveyor", and in the absence of such determination she should contribute a sum equivalent to the percentage of her footage plus a 1/3 of the common parts.

Insurance too High

13. The Respondent considers the insurance policy is unfairly weighted in favour of the business of an art gallery. She considers there is unnecessary cover for residential premises. She also notes that the insured value of the building in 2007 was £1,350,000 and in 2008 was £1,417,500. The last two insurance policy schedules produced by the landlord do not show the insured value of the building (but the certificates now disclosed do so).

Decision of the Tribunal

14. The tribunal is satisfied on the evidence that all declared values are supported by the insurance valuation and were appropriate in amount. Contrary to the belief of the Respondent, the building was not therefore over-insured. The relevant figure for the purpose of the insurance valuation is the "declared value". The "Buildings sum insured", which is around 40% higher than the declared value in this case, represents the reinstatement cost taking into account a prospective increase in the cost of reinstatement from the date of valuation to the date of settlement of a claim.

15. The Insurance Rent Proportion is dealt with in Clause 1.13 of the lease, and the Fifth Schedule contains covenants with regard to insurance. The landlord bears the liability to “insure the Building in its full reinstatement value” for “such sum as shall from time to time represent the full cost of rebuilding and reinstatement of the Building and the Estate...”.
16. The Fifth Schedule contains detailed provisions regarding insurance, but the tribunal finds that it does not give the tenant an express or implied right to insist on a determination of the landlord’s Surveyor under Clause 1.3.
17. The insurance rent proportion is defined in the lease as one third, and the landlord has the right, acting reasonably, to determine an alternative method of apportionment to apply. Since there is no evidence of a change of the “size, use and location” of the building since its conversion and initial letting, the tribunal finds that the landlord is right to conclude that it is inappropriate for the Surveyor to determine the insurance apportionment.
18. The parties entered into an agreement on precise terms and it is proper to interpret Clause 1.3 as allowing for reapportionment where the proportion of one third becomes inappropriate owing to a change in circumstances. It is illogical to suggest that this proportion was inappropriate when the lease was created, and there has been no change of circumstances to date.

Name: 
Ms F Dickie

Date: 30 May 2012