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File Ref No. MAN/00CB/LSC/2012/0083

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Leasehold Valuation Tribunal of the Northern Rent Assessment Panel (LVT)

Sections 27A and 19 Landlord and Tenant Act 1985 (the Act)

Subject Property: First Floor Flat, 91A Rowson St Wallasey CH45 2LY
at the Building 145 Victoria Rd & 91 Rowson St,
Wallasey CH45 9LB

Applicant/Lessee: Philip Edward Lake

Respondent/Lessor: Adam Enterprises Limited (Company Number
00956791)

LVT Members: Roger Arden and Laurence Bennett

Date of Determination: 16th October 2012

Background

1. The LVT has received an application dated 27th May 2012 for a determination of liability to pay and reasonableness of the service charge for the 6 month period 5th October 2011 to 5th April 2012 in relation to the fire buildings insurance

Neither party has requested an oral hearing.

The Law

2.1 Section 18 of the Act in summary provides that the meaning of "service charge" payable by a tenant as part of, or in addition to, the rent extends to insurance and the whole or part of which varies or may vary according to the relevant costs.

2.2 Section 19 of the Act in summary provides that the relevant costs are limited in the amount payable only to the extent that they are reasonably incurred and only if the services or works are of a reasonable standard.

2.3 No guidance is given in the Act as to the meaning of "reasonably incurred", however, some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal – particularly as to what constitutes excessive expenditure in the context of insurance placement where the attitude of insurers to risk and their pricing structures can legitimately vary.

2.4 Section 27A(1) of the Act provides that an application may be made to a LVT for a determination whether a service charge is payable and if it is, as to:

- the person by whom it is payable;
- the person to whom it is payable;
- the amount which is payable; and
- the manner in which it is payable.

2.5

Section 21B of the Act (added by Section 153 of the Commonhold and Leasehold Reform Act 2002) provides in summary that a demand for payment of a service charge has to be accompanied by a summary of Tenants Rights and Obligations in a form prescribed by statutory instrument made for the purpose (i.e. the Service Charges) Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007 – S.I. 2007 No 1257)

The Lease of the subject Property (Land Registry title number MS529533)

3.1 The Lease is dated 24th October 2006 and granted by the Lessor Arthur Neil Thomas to the Applicant/Lessee for a term of 999 years from that date at a peppercorn rent. The property is briefly described as a two bedroomed first floor flat being part of the Building known as 145 Victoria Road and 91 Rowson Street, Wallasey. The Building comprises business premises on the ground floor and another flat on the second floor.

3.2 By clause 2(i)(c) the Lessee covenants to pay one third of the expenses incurred by the Lessor in respect of the cost of insuring the Building... and payment to be made within 14 days of demand being made by the landlord (substantially the words in the Lease).

3.3 By clause 3(b) the Lessor covenants to insure and to keep insured the whole of the Building against loss or damage by fire, lightning, explosion, storm, tempest, flood, bursting and overflowing of water tanks apparatus or pipes, impact for aircraft and other aerial devices and any article dropped therefrom, earthquake, riot, or civil commotion and such other risks (if any) as the Lessor thinks fit in some insurance office of repute in a sum equal to the full replacement costs thereof or such greater sum as the Lessor shall think fit and whenever required produce to the Lessee the policy or policies of such insurance and the receipt for the last premium for the same (substantially the words in the Lease and referred to by the parties as the Fire Buildings Insurance).

The Fire Buildings Insurance Issue

4.1 In or about October 2011 the Respondent/Lessor acquired the Building with notice of the Applicant's Lease of the subject property and promptly proceeded to discharge the duty of compliance with its obligations under the Lease for the insurance of the Building (it is apprehended that the current insurance was cancelled upon completion of the acquisition).

4.2 The Applicant/Lessee disputes the demand by the Respondent/Lessor for 6 months premium £278.30 with the question – "is this amount fair" (his words) and further comments that he was not consulted on the cost nor the landlord "have never included our rights as leaseholders" (the Applicant/Lessee's own words)

Evidence

5. Further to the application and in response to the Directions of the LVT made 27th June 2012, the following have been received for the LVT's consideration:

- Respondent's Statement of Case dated 13th July 2012 with accompanying bundle of documents. This included copy Lease, Land Registry title entries, copy insurance policy and a enumerated copy correspondence and invoices;
- Also received was the Respondent's Statement of Costs;
- The Applicant's statement in reply of 16th July 2012;
- Respondent's solicitors letter dated 18th July 2012 with copies of the two prescribed forms relating to the Service charges and Administration charges addressed to the Applicant.

Consideration and Conclusion

6.1 From the evidence adduced from the papers before the LVT both parties accept the principle that as the Lease provides the Respondent as Lessor has obligations to undertake and maintain the insurance of the Building and the Applicant /lessee pays a contribution of one third of the expenses therefore – meaning the premium which is to be paid within the specified time.

6.2 To recover this contribution statute intervenes and the manner of the demand is constrained by notice in the prescribed form. This was not addressed by or on behalf of the Lessor until the Respondents solicitors in their letter of the 18 July.

6.3 The Lessors first demand is in any event made in error. As a result of a credit note the net sum is £259. 29p for the six months period to 5 April – being the date for renewal of the Lessors block policy.

The figures are as follows:-

Brokers invoice 14 November 2011 (primecover)	£834. 91p
Less deduction for business interruption cover (in full)	57. 04
Net for the subject property £259. 29 being one third of	£777. 87

6.4 The insurance is in the hands of the Lessor to be arranged with an "Office of repute" as indeed it seems to be. It does not mean the cheapest and should be viewed broadly and with commonsense – especially in this context as mentioned in the third paragraph of 2.3 above.

6.5 The Tribunal notes the brokers letter of 29th June 2012 explaining the period of the insurance and the timing of renewal to coincide with the Lessors renewal of insurance with other property which on any reasonable view must make for good business and an opportunity for a good price – this is reflected and confirmed in the penultimate paragraph of the brokers letter.

6.7 The Applicant /lessee asks "is this amount a fair charge" – a proper question to press and resist " the blandishments" of the Lessor and their solicitors by making this application. It is by this means that the demand can be tested to ensure the premium demanded has been reasonably incurred , and may be for a reasonable amount – which the tribunal is satisfied it is and the insurance is of a reasonable standard to comply with Section 27A of the Act.

6.8 The Respondents Statement of Case in its last paragraph requests the dismissal of the application and further submits the application is frivolous and vexatious. The Respondent solicitors assess a figure of £1636. 80p costs. Any award by the LVTI must not exceed £500. (Para 10 of Sch 12 Commonhold and Leasehold Reform Act 2002). In the view of the LVT the Respondent/lessor has not always adopted or followed the correct procedures. It notes that the tone of their correspondence gives undue concern to the applicant/lessee (who uses the words "becoming threatening and bullying"). As already commented upon the application was necessarily made and the tribunal declines the Respondents request.

The Order

7. The applicant is to pay the respondent the sum of £259. 29p being the recoverable amount as the reasonable insurance premium demanded pursuant to the lease for the period to 5 April 2012

16th October 2012



Roger Arden
Chairman