



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference: : CHI/29UH/LIS/2014/0045

Property: : 2 Edelin Road, Bearsted, Maidstone, Kent ME14 4RD

Applicant: : Mr R L Datson

Representative: :

Respondents: : E&J Estates

Representatives: :

Type of application: : Liability to pay service charges

Tribunal member: : Mr D Banfield FRICS

Date of hearing: : On the papers on 8 January 2015

Date of Decision: : 14 January 2015

DECISION

Decision

1. **That the sum of £1,042.76 is payable for insurance for the period 29 September 2010 to 24 March 2015.**
2. **No order to be made under S.20C of the Landlord and Tenant Act 1985**

Background

3. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. The challenged years are 2010 to 2014 and the challenge relates solely to the amount included for buildings insurance.
4. The amounts in question are;

2010	£137.65
2011	£299.77
2012	£307.25
2013	£312.59
2014	£318.24
5. Directions were made on 19 September 2014 indicating that the matter would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days.
6. A timetable for the exchange and submission of documents was also set out in order to assist the Tribunal in the proper determination of the dispute.
7. No request for a hearing was received and the matter is therefore determined on the papers submitted.

Evidence

8. The Applicant contends that the insurance charges are “outrageous” and that for the period from 29 September 2010 to 31 July 2012 payment was made to the Management Company also known as Pinnacle.
9. In the Applicant’s bundle (pages 35&36) are Income and Expenditure Accounts from Ragstone Place (Bearsted) Management Company for years ending 31st December 2010 and 2011 both of which have in respect of plots 27 and 28(now Nos 2 & 22) items entitled “ Insurance – BUILDINGS (FOG

ONLY) with the sums of £118 indicated as both Actual and Budget for both years.

10. Also enclosed at page 38 & 39 are insurance documents between Jeff Group plc and the Management Company shown as Pinnacle Property Management Ltd for the period 1 August 2008 to 31 July 2009 the insured premises being 2 and 22 Edelin Road with a sum insured of £290,000 and a premium of £483.53.
11. At page 48 is an alternative quotation from RIAS quoting a premium of £151.46 for the insurance of a "first floor purpose built flat, built 2000+, 2 bedrooms"
12. In his letter of 24 December 2014 the Applicant acknowledges that it is the freeholder's obligation to insure but points out that he has no control over the relationship between the freeholder and their appointed intermediary to whom he paid a sum for insurance. He also points out the difficulty of obtaining alternative quotations and refers to a newspaper article suggesting excessive commission is paid. He says that he has telephone confirmation from RIAS that their quote covered building costs of £1m with £50 excess and home protection. In comparing Nos 2 and 22 he says that No 22 is larger being on 2 floors but concedes that a 50:50 split should remain.
13. The Respondent refers to the well known decided cases of *Berrycroft Management Co Ltd v Sinclair Gardens (Kensington) Investments Ltd* [1997] 1 EGLR 47; *Forcelux v Sweetman* [2001] 2 EGLR 173; *Havenridge v Boston Dyers Ltd* [1994] 2 EGLR 73 from which it is inferred that as long as an insurance office of repute is used in the normal course of business they are not obliged to seek out the cheapest quote.
14. The Respondent says that they have a block policy covering a large portfolio and that the policy is arranged through an insurance intermediary Newby Associates Ltd who liaised with the brokers D Barnett Brokers up to 24 March 2011 and Residents Insurance Services thereafter. Every year the brokers test the market to obtain better value insurance if available. They say that in some cases single properties are simpler to insure and may attract a lower premium than with a block policy.
15. The Respondent concedes that the Applicant may have paid money to Pinnacle believing it to be for insurance but points out that under the lease it is the freeholder who insures and that the only insurance certificate produced is for 1 August 2008 to 31 July 2009. They suggest that any question of reimbursement should be a matter between the Applicant and the Management Company (Pinnacle).
16. They further say that the Applicant's alternative quotation gives no details of sum insured, scope of cover, excesses etc. and that the equal division of the premium between numbers 2 and 22 is fair as whilst the properties are completely different the areas of the properties and therefore their rebuilding costs are the same.

17. Copies of invoices from E&J Estates for the sums referred to in paragraph 2 above together with summaries of insurance cover are at pages 21 to 32 of the bundle. At page 38 of the bundle is the insurance Schedule for 2008/9 at a premium of £483.53 for a sum insured of £290,000 and which was incurred before the Respondents purchased the property and before the period under consideration. For 2010/11 the sum insured increased to £333,739 and £137.65 billed to the Applicant although the total premium is not shown. For 2011/12 a premium of £599.53 was charged for a sum insured of £350,425; for 2012/13 the premium was £614.50 and the sum insured £359,185; for 2013/14 the premium was £594.17 and the sum insured £366,368; for 2014/15 the premium was £606.05 and the sum insured £373,695.

Decision

18. It was made clear in Directions that the decision would be made based upon the bundle submitted to the Tribunal and it is unfortunate that neither the lease nor the authorities referred to in the Respondent's reply are included. The Tribunal has a copy of the lease on its file and this has been referred to as it is considered that both parties must be aware of its contents and as such no prejudice will arise. Likewise the cases referred to by the Respondent are well known to the Tribunal and available as public record and are therefore not excluded from consideration.
19. This is a tripartite lease with the Management Company amongst other obligations being obliged at clause 6.7 to *provide public liability and employers' liability insurance in respect of the Managed Land*. The freeholder's obligations regarding insurance are, at clause 7.4 *To insure and keep insured the Building and all other structures at all times against the Insured Risks in the full reinstatement value and to provide public liability insurance in respect of the Managed Land*.
20. The lessee's obligations regarding service charges is at clause 4.13 and is *To pay the Lessee's Proportion of the Service Charge Costs at the times and in the manner herein provided without any deductions*. Clauses 5.34.1 and 5.34.2 set out how the insurance costs are to be paid; *in advance on the first day of October in every year throughout the term the Insurance Contribution of the amount estimated from time to time by the Lessor as the Insurance Costs for the forthcoming year.....Within twenty one days after the service by the Lessor on the Lessee of a notice from the Lessor of any balance payable in respect of the Insurance Costs the Lessee shall pay to the Lessor the balance.....*
21. It is not in dispute that the Lessor is responsible for insuring the building and it is clear from the extracts from the lease above that the lessee must reimburse those costs. It is not helpful that the insurance cover obtained relates to both Nos 2 and 22 and that there is no indication as to how the premium should be apportioned. I have conflicting statements regarding the respective sizes and therefore rebuilding costs of the respective properties but helpfully the Applicant concedes that a 50:50 split should continue.

22. I now turn to the reasonableness of the premium. There is evidence of premiums paid by the Respondent and whilst there has been an inference that excessive commission may have increased their amount no evidence has been put forward. Although the difficulties of obtaining alternative quotations is appreciated that provided by the Applicant lacks sufficient detail to offer a fair comparison. The premium paid for 2008/9 and obtained before the Respondents had acquired their interest was for £483.53 and whilst the subsequent premiums were greater that was partly explained by the increase in sum insured and is considered to be within an acceptable bracket.
23. The Respondent has referred to various cases in support of their contention that they are not obliged to shop around and find the cheapest quote and I am assisted by recent case law.
24. In *Avon Estates (London) Limited v Sinclair Gardens Investments (Kensington) Limited* [2013] UKUT 0264 (LC) the Upper Tribunal considered the question of whether an insurance premium had been reasonably incurred.
25. *Avon Estates was the leasehold owner of a flat within a Victorian terrace house that had been converted into three flats. Sinclair Gardens was the freehold owner of the property. Avon Estates' lease required it to contribute a third of the service charge expenses which included, amongst other things, the cost of insuring of the property. Sinclair Gardens applied to the LVT for a determination that the service charge in respect of the three flats was payable.*
26. *Sinclair Gardens used its own insurance agency and a broker to obtain the premium. The overall cost was £4,154.25 to insure the property.*
27. *Avon Estates contended that the insurance premium was not reasonably incurred within the meaning of s.19, Landlord and Tenant Act 1985. It relied on a quote it had obtained which would have insured the property for a quarter of the price.*
28. *The LVT decided that, while cheaper insurance may have been obtained, Sinclair Gardens was not obliged to "shop around" to obtain the cheapest premiums; it was merely required to prove that the rate was representative of the market rate or that the contract had been negotiated at arm's length and in the market-place (Havenridge Ltd. v Boston Dyers Ltd. [1994] 2 EGLR 73, CA).*
29. *The Upper Tribunal dismissed Avon Estates' appeal. There was no evidence before the LVT that the insurance premium had not been arranged otherwise than in the normal course of business and Avon Estates had failed to adduce any evidence to the contrary. The LVT was entitled to reach a view that the contract had been negotiated at arm's length and in the market place.*

30. Although not satisfactorily demonstrated in this case it may be that cheaper insurance may be obtained but it is clear from the above case that the landlord is not obliged to take it as long as it has obtained the cover in the normal course of business and at rates available in the market.

31. Turning now to the unchallenged payments of £118 made for 2010 and 2011 shown on the accounts at pages 35 and 36. Both budget and actuals are identical for both years and they bear no relation to the Insurance schedule at page 38 and 39. It is possible they are payments on account but I have no evidence other than that the sums have been paid. The Respondent says that it is for the Applicant to deal with the Management Company (Pinnacle) to obtain clarification but I disagree. As purchasers of the superior interest it was for E&J to make the necessary enquiries and to satisfy themselves that the Management Company were acting within their powers and it is for them to obtain redress from the Management Company if any is due.

32. In accordance with paragraph 20 above I determine that the following sum is due;

	Claimed	Gross premium	50% payable
2010	£137.65	not stated	£137.65
2011	£299.77	£599.53	£299.77
2012	£307.25	£614.50	£307.25
2013	£312.59	£594.17	£289.01
2014	£318.24	£606.05	£297.08
Total	£1375.50		<u>£1,330.76</u>

33. On the basis of the evidence available I consider it reasonable to treat the payments made to Pinnacle as "on account" and therefore deduct £288 from the above sum arriving at £1,042.76 being the sum payable for insurance for the period 29 September 2010 to 24 March 2015.

THE COST OF THE CURRENT PROCEEDINGS

34. Although the Applicant indicated on the application form that he wished to make a section 20C application neither party have made any submissions on this matter. On the evidence before me however and on the basis that the Respondent is largely successful I decline to make the order requested.

D Banfield FRICS
Chairman

14 January 2015