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

Case Reference : CHI/29UH/LSC/2013/0089

Property : Flat 14, The Cloisters, Ham Lane,
Lenham, Maidstone, Kent ME17 2PZ

Applicant : F.T.Z. Limited

Representative : Circle Residential Management Ltd

Respondent : Mr James Richard Russell

Representative : N/A

Type of Application : Sections 19 and 27A Landlord and Tenant
Act 1985

Tribunal Members : Judge S.Lal

**Date and venue of
Hearing** : 16th Octobe. 2013, Mr Lal's home

Date of Decision : 16th October 2013

DECISION

Application

1. On 29th July 2013 the Applicant applied to the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 (as amended) (the "Act") as to the Respondent's liability to pay service charge and the reasonableness of such service charge. The service charge to be considered by the Tribunal relates to the years 2013-2014 and the item in issue is the Respondent's proportion of the building insurance costs amounting to £230.72.

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2. Directions were issued on 2nd August 2013. The Directions made it clear that the Application is to be dealt with on the paper track on the basis of written representations without a formal hearing. Neither party has objected to this procedure.

3. In accordance with the Directions, on 21st August 2013, the Applicant sent to the Respondent and the Tribunal the Applicant's Statement of Case together, *inter alia*, with a copy of the lease of the Property and details of the insurance schedules, demands for payment and evidence from the insurance broker. The Respondent has not filed any Statement of Case or bundle of documents.

The Applicant's Case

4. The Property is held by the Respondent under a long lease dated 20th December 1993 (the "Lease"). Under clause 1 of the Lease, the Respondent is obliged to pay in advance the annual rents specified in the sixth schedule to the Lease together with one eighteenth of the premium for buildings insurance referred to in clause 3 of the Lease.

5. The matter which the Applicant asks the Tribunal to consider is the reasonableness or otherwise of the buildings insurance for the period 5th July 2013 to 4th July 2014. The Applicant submits that £3,991.31 is a reasonable premium for buildings insurance for that period.

6. The Applicant claims that the buildings insurance costs can be reasonable even if it is possible to obtain such services at a lesser cost, citing the decision in **Forcelux v Sweetman [2001] 2 EGLR 173.**

7. The Applicant further claims that if the Respondent is seeking to dispute such costs, he has a duty to identify those costs in dispute and to identify a range of reasonableness and how far outside this range the costs fall. The Respondent has not done this.

8. The Applicant submits that the quality of insurance cover is appropriate and the cost is reasonable. The Applicant has provided evidence of how the on risk sum for the building was derived and how the broker tests the market every three years to find an insurance policy which represents best value for money.

9. Accordingly, the Applicant claims that the insurance premium of £3,991.31 for the period 5th July 2013 to 4th July 2014 is reasonable and the Respondent is liable to pay his proportion of such costs amounting to £230.72.

The Respondent's Case

10. The Respondent has not submitted a Statement of Case or any other written response to the Applicant or the Tribunal.

The Law

11. Sub-sections (1) and (2) of section 27A of the Act provide that:

1) 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 to whom it is payable*
- b. the person by 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.*

12. Section 19 of the Act 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 reasonable standard*

and the amount payable shall be limited accordingly.”

The Tribunal’s Decision

13. The Tribunal, on the basis of the evidence before it, the written submission of the Applicant and exercising its own independent expertise has determined the following:

14. The Respondent is liable to pay one eighteenth of the premium for buildings insurance pursuant to clause 1 of the Lease. The Tribunal has considered whether the total premium for the period from 5th July 2013 to 4th July 2013 is reasonable. The Tribunal has noted the letters provided by the Applicant’s brokers showing that they have undertaken a marketing exercise in respect of insurance companies before deciding on the Aviva policy. The Tribunal has also noted the case law relating to this issue and, in particular, that there is no obligation on the Applicant to obtain the cheapest insurance for the building.

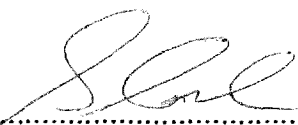
15. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in **Plough Investments Ltd. v Manchester City Council** [1989] 1 EGLR 244 that as a general rule where there may be more than one method of executing, in that case repairs, the choice of method rests with the party with the obligation under the terms of the lease.

16. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself. Ultimately it is for the court or tribunal to decide on the basis of the evidence before it and exercising its own expertise. In that regard the Tribunal is an expert body and is able to bring its own expertise and experience in assessing the evidence before it. The Tribunal has noted that the Respondent has not submitted any response to the Applicant's Statement of Case to identify what he would consider a reasonable premium in the circumstances. For these reasons, the Tribunal finds in favour of the Applicant and the Respondent is liable to pay his proportion of the insurance premium for the period in question, being £230.72.

17. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

18. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

19. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.


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16/10/13

Judge S.Lal, Chairman