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

Case Reference	:	**LON/00BC/LSC/2013/0354**
Property	:	**23 Gordon Road, Ilford, Essex IG1 1SP**
Applicant	:	**Harshilla Patel**
Representative	:	**In person**
Respondent	:	**Denetower Limited**
Representative	:	**Estates & Management Limited**
Type of application	:	**Liability to pay service charges and variation of lease**
Date heard	:	**2 October 2013**
Appearances	:	**Charles Bettinson, Head of Insurance, and Eileen Fingleton, Estates & Management Limited for the landlord No appearance for the tenant**
Tribunal	:	**Margaret Wilson Philip Tobin FRICS**
Date of decision	:	**2 October 2013**

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DECISION

Introduction

1. Ms Patel ("the tenant") has made two applications to the tribunal. One is under Part IV of the Landlord and Tenant Act 1987 ("the 1987 Act") for the variation of the provisions in her lease relating to insurance and the other is under section 27A of and paragraph 8 of the Schedule to the Landlord and Tenant Act 1985 ("the 1985 Act") for the determination of her liability to pay service charges for insurance.

2. The applications were the subject of pre-trial review on 13 June 2013 which was attended by the respondent landlord's representatives but not by the tenant. The directions required the tenant to send a statement of her case to the landlord and the landlord to respond. The tenant did not provide a statement of case within the time directed and the landlord wrote to the Tribunal to explain that it could not respond because the tenant had not complied with the directions. On 6 August a Tribunal directed that the parties should make written representations as to whether the applications should be struck out under rule 9(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"). Thereafter the tenant served her statement of case, together with a medical certificate. In a letter dated 14 August the landlord, by its agent Estates & Management Limited ("E & M"), asked that the applications should be struck out on the basis that the tenant had behaved unreasonably throughout in not attending the pre-trial review and giving very late notice that she would not do so, because the same application for the variation of the provisions in her lease relating to insurance had already been disposed of by a previous decision of the tribunal, because she had refused to attend mediation to settle mater amicably, and because she had failed to comply with the Tribunal's directions. On 6 September a Tribunal, having considered the file, including the medical certificate supplied by the tenant, directed that the question whether the applications should be struck out and the substantive applications should be heard consecutively on 2 October and directed the landlord to lodge hearing bundles, which it has done.

3. The hearing on 2 October was attended by Charles Bettinson, E & M's head of Insurance and Eileen Fingleton, also of E & M. The tenant did not attend.

Background

4. The tenant's lease, which was granted in 1975, includes, at clause (xi), a covenant by her:

> *Forthwith to insure and at all times during the ... term to keep insured by means of one policy only the demised premises and all buildings erections and fixtures of an insurable nature ... against fire and special perils normally incorporated in a householders comprehensive*

policy in such insurance company and through such agency as may be nominated by the lessor from time to time in a sum equal to the full value thereof in the joint names of the lessor and the lessee ... and shall pay all premiums necessary for that purpose within seven days after the same shall become due ... And in case default shall be made on effecting or keeping on foot such insurance ... it shall be lawful for the lessor ... to insure the ... building against loss or damage by fire and the lessee will forthwith repay all sums expended in effecting or keeping on foot such insurance ...

5. In 2010 the tenant made an application to the tribunal to vary the clause relating to insurance. By a decision dated 14 February 2011 a tribunal determined that clause (xi) while *old-fashioned..., makes satisfactory provision for the insurance of the building* and that section 35(2)(b) of the 1987 Act, which enables the party to a lease to apply to a Tribunal to vary the lease if *the lease fails to make satisfactory provision with respect to ... (b) the insurance of the building ...*, was not engaged, and dismissed the application.

The issues

The application under the 1987 Act

6. The landlord's representatives invited us to strike out the application on the basis that the question at issue had already been decided. That is right. Exactly the same point has already been decided by a Tribunal in its decision dated 14 February 2011. By rule 9(3) of the Rules the Tribunal *may strike out the whole or part of the proceedings if (c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings* [sic] *or case which has been decided by the Tribunal.* The application to vary the lease clearly falls within rule 9(3)(c) and we thus may, in the exercise of our discretion, strike out the application and we do so. Even if the identical point had not been previously decided by a Tribunal we would not have been persuaded that clause (xi) failed to make satisfactory provision for insurance and we would have dismissed the application if we had not struck it out, save that we might, if asked, have said that the default provision in clause (xi) is inadequate in that it does not require the landlord to insure against any risk except fire.

The application under the 1985 Act

7. 23 Gordon Road is a building converted into two flats, one, the tenant's flat, on the ground floor and the other on the first floor. When the present landlord acquired the freehold in or about 2006 it informed the two tenants that they were required by their leases to insure with an insurer which it nominated. The tenant was unwilling to accept that her lease required her to insure her flat through an insurer and agent chosen by the landlord and the landlord accordingly insured the building for the years 2006, 2007, 2008 and

2010 and, it appears, the tenant did not reimburse the premiums until 13 July 2010.

8. Paragraph 8 of the Schedule to the 1985 Act applies where a tenancy of a dwelling requires the tenant to insure the dwelling with an insurer nominated or approved by the landlord. Paragraph 8(2) provides that the tenant or landlord may apply to the tribunal for a determination whether *(a) the insurance which is available from the nominated or approved insurer for insuring the tenant's dwelling is unsatisfactory in any respect, or (b) the premiums payable in respect of any such insurance are excessive.*

9. Mr Bettinson and Ms Fingleton did not invite us to strike out the application but agreed that we should consider it on the merits on the basis of the evidence before us. In those circumstances we put the tenant's case, as it emerged from the documents, to the landlord's representatives for their comments.

10. The tenants' complaints about insurance are that terrorism cover is unnecessary and its cost is therefore unreasonable, that she should be able to pay the premiums monthly, and that the premiums are too high.

11. Mr Bettinson said that terrorism cover was reasonable and necessary and the great majority of well-advised landlords obtained such cover. He said that at the time when the lease was granted terrorism cover would have been included in the standard cover and it only became a separate item in the early 1990s, when as a result of the IRA campaign, some insurers excluded it. We accept Mr Bettinson's evidence, which accords with our own experience of these cases. We regard terrorism cover as prudent and as part of normal comprehensive insurance and we have no evidence to suggest that the amount paid for terrorism cover is excessive.

12. In relation to the tenant's wish to pay the premiums monthly, Mr Bettinson said that the landlord was willing to agree to, and had offered the tenant, the facility to pay monthly but that the arrangement would require to be made through a finance company and would incur interest and an administration fee which would have to be paid by the tenant who, if she failed to pay the instalments on time, would have to make the whole annual payment immediately. It was, he said, still open to the tenant to accept such an arrangement, but it could be made only with her consent. We accept that, and do not in the circumstances regard the landlord's failure to charge monthly as in any way unreasonable.

13. So far as the amount of the premiums is concerned. Mr Bettinson said that the insurance of the building was placed with Zurich through the agency of Tysers, a well established broker. He said that Tysers were instructed to review the value of the insurance annually and that the building was revalued for insurance purposes every three to five years, which was good practice. He said that the premium for the period 1 April 2013/31 March 2014 was £399.87 for each flat, including tax and commission. He said that the broker received commission of 4% and E & M received commission of 11%. He said that such commission was in the lower quartile in the industry and was well justified by

the work done in connection with insurance by the broker and by E & M. The tenant had produced an undated letter signed by Richard Parchment who said that he had insured one house in Gordon Road comprising two flats with UK General Insurance Group in October 2012 for a total premium of £371.25. She also produced a quotation from RIAS, a broker, offering insurance for a ground floor flat in a converted building for £161.68, including tax, or for £178.25 if paid by monthly instalments. Asked about this evidence, Mr Bettinson said that the documents did not state the amount of cover, did not appear to include terrorism cover and expressly excluded accidental damage. He confirmed that the claims history in respect of the property in question was good and would not adversely affect the premiums.

14. We are satisfied on the evidence before us that the cost of insurance is not excessive and that the extent and the quality of cover is not unsatisfactory in any respect and, save that it includes cover against risks other than fire, of which the tenant, rightly, did not complain, complies with the requirements of the lease. We are satisfied that the commission paid is not excessive and we are not persuaded that the alternative quotations which the tenant has provided are truly like-for-like with the premiums actually paid.

Costs

15. Mr Bettinson and Ms Fingleton said that the landlord did not propose to place any costs incurred in connection with the applications on any service charge or to seek any costs from the tenant, and we accept their assurance.

Judge: Margaret Wilson