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LON/00AQ/LIS/2004/0105

IN THE MATTER OF

4, BEAUMONT COURT,
27, SIDNEY ROAD,
HARROW
HA2 6QE

APPLICATIONS UNDER SECTIONS 27A AND 20C OF THE
LANDLORD & TENANT ACT 1985.

Applicant:- MRS KATHLEEN ASHBY

Respondent:- DRILLROSE LIMITED

Members of the Leasehold Valuation Tribunal

MR A.J.ENGEL (Chairman)

MR. R. HUMPHRYS

MR. T. SENNETT

Appearances

Mr W.Cordingly and Miss V Hancocks of the College of Law,
Free Representation Unit, for the Applicant.

No-one appeared for the Respondent.

DECISIONS AND REASONS

Background

1. By a Lease (the Head Lease), dated 10th September 1976, 4, Beaumont Court, 27, Sidney Road, Harrow HA2 6QE (the Property) was demised. At all times material to this case, the Lessee under the Head Lease was the Shared Ownership Housing Association (the Association).
2. By a Sub-Lease (the Sub-Lease), dated 15th June 1987, the Property was demised by the Association to Mrs Kathleen Ashby (the Applicant).

3. The Property is one of a block of four maisonettes (the Block).

4. It appears:-

- (i) that the Freeholder and Landlord under the Head Lease is Drillrose Limited (Drillrose);
- (ii) that Drillrose acquired the Head Leases of the four maisonettes in the Block on 19th March 2002.

Applications

5. By written applications, on the same form, dated 14th December 2004, the Applicant applied to the Tribunal for:-

- (i) determination of the reasonableness of sums representing insurance premiums, demanded by Drillrose, during the period 2002 to 2005 - Section 27A Landlord & Tenant Act 1985 (the Act);
- (ii) an Order that Drillrose's costs in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant - Section 20C of the Act.

Pre Trial Review

6. Drillrose was informed of the Applications by the Tribunal and a Pre Trial Review (PTR) was arranged for 11th January 2005.

7. On 10th January 2005, the Tribunal received a (faxed) letter from Eyre & Johnson (Specialist Legal Services) stating that it was acting for Drillrose but would not be attending the PTR. The letter set out various items in respect of which payment was sought by Drillrose from the Applicant.

8. The PTR was held before Lady Wilson (Chairman) sitting alone on 11th January 2005 when the Applicant attended; no-one attended on behalf of Drillrose.

Directions

9. On 13th January 2005, Lady Wilson issued detailed Directions (the Directions), including a Direction that the full hearing would take place on 3rd May 2005.

Hearing

10. The full hearing took place on 3rd May 2005, when the Applicant appeared with two Legal Representatives. No-one appeared on behalf of Drillrose.

Inspection

11. On 3rd May 2005, after the hearing, the Tribunal inspected the exterior of the block.

We saw a purpose built block of 4 maisonettes in a 2 storey building (built circa 1930) of cavity wall brick construction with peppledash panels under single tiled roof. The building is typical of its age and presents with no apparent problems associated with settlement, disrepair or proximity of trees. There is a grassed area at the front of the block and 4 discrete patches of garden - one for each maisonnette - at the rear.

We observed 2 lightweight inspection chamber covers to the side of maisonettes Nos. 3 & 4. The chamber covers to the side on Nos 1 & 2 were cast iron.

Jurisdiction

12. The Sub-Lease provides (at 4(2)(b)) that the Applicant shall pay any sums due by way of service charge under the Head Lease and the Tribunal is satisfied that it has jurisdiction to determine the reasonableness of the disputed items.

Insurance premiums

13. The Tribunal is satisfied that the Head Lease provides for the

recovery by Drillrose of buildings insurance premiums paid by Drillrose in respect of the Property (i.e. a quarter of the premiums paid in respect of the Block).

19th March 2002 to 24th March 2002

14. £11-39 is claimed by Drillrose in respect of buildings insurance of the Property from 19th March 2002 (when Drillrose took over the Head Lease) until 24th March 2002. The £11-39 is alleged to be the Applicant's quarter share of the premium.
15. The Directions required Drillrose to produce documents in its possession, including "the demands for insurance premiums made by the insurers since 19th March 2002" and "full details of the insurance cover provided". However, no such documents have been produced in respect of this item.
16. Further, as the Applicant's Legal Representatives have pointed out, the alleged premium (£11-39) when multiplied by 4 (for the Block) and then multiplied to give the annual rate, produces a figure of over £2,500 - which is manifestly excessive.
17. In addition, the Tribunal has seen (Page 70 Bundle), a copy of a certificate of insurance, covering the Block for one year commencing on 2nd June 2001. This certificate would have been in force when Drillrose took over the Head Lease on 19th March 2002 but we have been given no information as to what happened in respect of this insurance.
18. In these circumstances, the Tribunal is not satisfied, on the evidence before us, that £11-39 (or any other amount) was expended by Drillrose in respect of buildings insurance for the Property for the period 19th March 2002 to 24th March 2002.
19. In the alternative, the Tribunal determines that if such sum was expended by Drillrose, it was unreasonable.
20. It is submitted on behalf of Drillrose that Drillrose's insurance year ended on 24th March 2002 - but that is of no concern to the Applicant. The Tribunal is of the opinion that if the annual policy beginning on 2nd June 2001 (Page 70 Bundle) terminated when Drillrose acquired the Head Lease (19th March 2002) then the only reasonable course of action was for Drillrose to have effected an annual policy.

21. The premium in respect of the Property for such annual policy referable to the short time in question would be "de minimis".

22. The Tribunal determines that nothing is payable in respect of this item.

25th March 2002 to 24th March 2003

23. Drillrose claims £242-55 for this period. The insurance certificate (Page 69 Bundle) shows a premium of £924 for the Block. A quarter of £924 is £231; so, it is unclear how the figure £242-55 was calculated. The sum insured is £520,000.

25th March 2003 to 24th March 2004

24. Drillrose claims £254-67 for this period. The insurance certificate (Page 63 Bundle) shows a premium of £1,081-71 (a quarter = £254-67). The sum insured is £441,000.

25th March 2004 to 24th March 2005

25. Drillrose claims £265-50 for this period. The insurance certificate (Page 60 Bundle) shows a premium of £1,062 (a quarter = £265-50). The sum insured is £459,743

25th March 2002 to 24th March 2005

26. We have been given no reason why the sum insured was higher in 2002/3 than in the following 2 years, when one expects rebuilding costs to have risen rather than fallen over this period.

27. Drillrose has failed to provide us with any information to show how the sums insured were calculated.

28. The Head Lease requires Drillrose "to insure and keep insured the demised premises in a sum not less than the full re-instatement value thereof as determined by the lessor's surveyor." Drillrose has failed to provide us with any information concerning a surveyor. Indeed, the Applicant's evidence to the Tribunal (which we accept) was that no survey has taken place.

29. The Applicant's Legal Representatives submit that the sum insured (rebuilding cost) for the Block should be £235,786. This figure was calculated by the application of a formula provided by the R.I.C.S. Building Costs Information Service.
30. Eyre & Johnson have criticised the calculation as the formula relates to houses rather than maisonettes and the Tribunal accepts that there is force in this criticism. Also, we note that the certificate of insurance for 1997/8 (Page 71 of the Bundle) refers to rebuilding costs of £240,000.
31. Using our general knowledge and experience and based on our inspection, we consider the sum of £235,786 to be on the low side but we also consider the sums insured by Drillrose to be manifestly excessive.
32. The Applicant's Legal Representatives provided to us a number of quotations for annual premiums for buildings insurance of the Block based on a sum insured of £235,786. The quotations ranged from £381-74 to £548-10. The Applicant's Legal Representatives suggest £400 per annum as a reasonable premium for the period.
33. The paucity of information provided to us by Drillrose has made our task very difficult but doing the best we can on the basis of the information before us coupled with our general knowledge and experience and our inspection, we consider that an annual premium in excess of £500 for the buildings insurance of the Block, during this period, would be unreasonable.
34. The figure of £500 per annum is an average figure for the period, taking into account the increase in rebuilding costs and general inflation over the period.
35. Accordingly, the Tribunal determines that £125 is payable for each of the 3 years in respect of the property.

Terrorism Insurance

36. Drillrose claims £8-45 for terrorism insurance for the property during the period 29th September 2004 to 24th March 2005. The certificate of insurance for the Block (Page 59 Bundle) shows a premium of £33-79 (one quarter = £8-45). The Applicant's Legal Representatives accept