

LEASEHOLD VALUATION TRIBUNAL

CAM/26UG/LSC/2004/0028

Address of Property: 25 Central Drive, St Albans, Hertfordshire, AL4 0UX

Applicant (Tenant): Mr PS Morgan

Respondent (Landlord): R Dewan, 31 West Drive, Harrow Weald, Middlesex HA3 6TX

Application: An application pursuant to Section 27A Landlord and Tenant Act 1985 by a tenant for determination of the liability to pay service charges including the reasonableness of service charge

An application by tenants for the limitation of service charge arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985)

Tribunal: Mr JR Morris
Mr J Dinwiddy FRICS
Mr P Tunley

Date of Application: 14th June 2004

Date of Hearing: 10th September 2004

The Application

1. On the 16th June 2004 the Applicant applied to this Tribunal under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to whether costs incurred by way of service charge during the period 2002 to 2004 were reasonable.
2. The costs relate to the insurance premiums for the years stated.
3. The parties agreed to the application being dealt with under the Fast Track Procedure by written representations only

The Law

4. S27A of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

maintenance improvements insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-

- (a) the person by whom it would be payable,
- (b) the person to whom, it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

Description of the Property

5. The property was described in the application and the Applicant's representations as:

A 2 bedroom maisonette with ground floor entrance to floors 1 and 2 above a parade of shops. The property is part of a block of 5 maisonettes constructed circa 1960 of brick under a tile roof above a parade of 5 shops. It is situated in a residential area. The floor area of the Applicant's maisonette is 1,000 square feet and the shop below is 500 square feet.

The Lease

6. The freeholder is the Respondent who is also the immediate lessor/landlord. The Applicant is the lessee/tenant. The Applicant provided a copy of the Lease (the "Lease") for the property dated 26th November 1958, which grants a term of ninety-nine years from the 25th March 1958. By virtue of Clause 3 the Lessor covenants:
- (1) To insure and keep insured the building of which the demised premises form a part during the term hereby granted against loss or damage by fire and aircraft in the Phoenix Insurance Company Limited to the full value thereof and to make all payments necessary for the above purposes within the seven days after the same shall respectively become payable and to produce to the tenant on demand the policy and policies of such insurance and the receipt for every such payment
 - (2) As often as the demised premises or ground floor premises or adjoining or adjacent maisonettes or any part of them shall be destroyed or damaged as aforesaid to rebuild and reinstate the same and it is hereby agreed that the moneys received in respect of such insurance shall be applied so far as the same shall extend to the rebuilding or reinstating the maisonettes
7. The Lessee covenants to pay a yearly insurance rent equal in amount to the sum the Lessor shall from time to time pay by way of premium for keeping the demised premises insured against loss or damage by fire or aircraft in accordance with the covenant on the Lessor's behalf hereinafter contained such last mentioned rent to be paid with the half yearly payment of ground rent immediately following the outlay by the Lessor

Documentation

8. The documents provided by the parties as being of particular relevance for the determination of the Tribunal included the following:
- a) A copy of the lease.
 - b) A copy of the current insurance policy
 - c) A copy of the Applicant's representations
 - d) A copy of an alternative insurance quotation obtained by the Applicant
 - e) A copy of the Respondent's representations
 - f) A copy of a statement by the Respondent's Insurance Broker

Matters in Dispute

9. The Applicant disputes the costs incurred in respect of the insurance premium for the year 2001, 2002, 2003 and 2004 as being unreasonable. as follows:
- | | |
|---------------|---------|
| December 2001 | £358.22 |
| December 2002 | £512.44 |
| December 2003 | £450.32 |

The Applicant's Case

10. The Applicant stated in written representations that he had obtained quotations from two local brokers stating the amount the Applicant might expect to pay for buildings insurance that gave normal cover for fire and perils. The quotations were for the Applicant's maisonette only as part of a block of 5 maisonettes above 5 shops with the construction and floor areas as described in paragraph 5.
- a) The premium quoted by Insurance broker Jackman Smith of St Albans was £219.00 per annum including re-instatement and accidental damage cover (a copy of the quotation was supplied).
 - b) The premium quoted by Insurance Brokers Bromwall Ltd of Old Hatfield was £195.00 per annum for fire and perils cover. The formula used was based on the cost of rebuilding the maisonette at £65.00 per square foot equalling £65,000. The premium was being calculated as being 0.3 pence of every pound of rebuild cost amounting to £195.00.
11. The Applicant submitted that the insurance premiums he was being charged referred to in paragraph 9 were excessive.

The Respondent's Case

12. The Respondent stated that although the Lease requires the property to be insured on a Phoenix insurance policy this insurance company is no longer offering the relevant insurance and therefor this is not viable.
13. The Respondent stated that although the Applicant had stated the current insurance policy was not in accordance with the Lease the insurance for which the Applicant had obtained quotations was also not in accordance with the lease as it was too broad.

14. The Respondent stated that it was always possible for a Tenant to obtain cheaper insurance. However it was for the Respondent Landlord to obtain not the cheapest insurance but reasonable insurance cover taking into account the differing risks involved and the covers required. The Respondent had employed independent insurance brokers, Heath Lambert.
15. The Applicant had failed to factor in all the necessary costs and cover which the Landlord under current market practice is entitled to have, in particular:
Landlord's liability cover
Cover for loss of rent
Administration costs
16. The Applicant did not calculate the insurance from the position of a Landlord with a property portfolio. The Respondent as a Landlord with large property portfolio insures all its properties on a block policy and the risk is carried out on the portfolio as a whole and not on an individual tenant, which is in accordance with market practice. It is accepted that such policies lead to situations where some individuals receive more favourable premiums whilst others receive higher premiums.
17. The Respondent submitted a letter from its brokers which stated that the Respondent's policy provided cover for several hundred properties on a block basis whereby similar types of property are banded together and an overall rate applied to all. No insurer would wish to be involved in the administration required to individually rate each property. The rating of the properties is also affected by the policy claims experience over a number of years, usually five, and the insurance market's view of the portfolio as a whole.
18. It was commented that the Applicant's quotations were not a direct comparison and that the Respondent's insurers were Norwich Union, which is considered to be a 'blue chip' company. In addition it was stated that the policy provided far wider cover than that available to individuals making their own arrangements.

Determination of Application under Section 27A of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002

19. In respect of the Lease requiring the property to be insured on a Phoenix insurance policy it was accepted that insurance companies amalgamate and change their area of business. If, as is stated by the Respondent, the Phoenix Insurance Company no longer offer the relevant insurance then in applying the strict terms of the Lease the Respondent as Landlord is not able to insure and charge the premium in accordance with the Lease. The Tribunal considered that this is to neither the Applicant or Respondent's advantage and therefore the Tribunal interpreted the part of the clause specifying an insurance company to require the Landlord to insure with a company of repute.

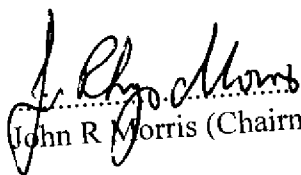
20. The Tribunal noted that neither party provided evidence as to how the Applicant's share was calculated. No evidence was provided for apportionment of the block policy insurance premiums between blocks or between individual units of the block in question. Any apportionment should show how the block policy is apportioned to this block of five shops and flats, how it is apportioned between the ten premises within the block and how the risks are apportioned between those covered under the lease terms and those not covered. However the Applicant did not state this matter to be in issue and therefore the Tribunal took the apportionment to be agreed.
21. The Tribunal noted that the Tenant provided one quotation and details of a second, which appeared to be a household type building insurance although the insurers were made aware of the commercial element to the building and the Tribunal did not consider these figures to be unrealistic.
22. In relation to the Respondent's evidence the Tribunal accepted that the insurance policy had been obtained at arms' length in the market place in accordance with *Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* (1996) 29 HLR 444 CA. In that case it was held that a landlord is not obliged to obtain the lowest premium but must agree the premium at the market rate or negotiate the insurance contract at arms' length in the market place.
22. The Tribunal referred to *Forcelux Ltd v Sweetman and another* [2001] 2 EGLR 173 (LT) where it was held that a direct comparison cannot be drawn between a commercial landlord and an individual leaseholder. Commercial landlords have access to a limited pool of insurers prepared to provide commercial cover for individual properties. The Tribunal also noted that the courts accepted the practice of commercial landlords with a portfolio of properties insuring a block of properties as a single entity.
23. Also in *Forcelux Ltd v Sweetman and another* it was stated that the question the Tribunal is "to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred." In doing so it has to be considered upon looking at the evidence "whether the landlord's actions were appropriate, properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act".
24. In determining whether or not the premium was properly incurred the Tribunal found that the insurance was "appropriate" in accordance with the cases referred to but questioned whether it was "properly effected in accordance with the requirements of the lease".
24. The Tribunal noted the terms of the Lease required the Respondent Landlord to insure against loss or damage by fire and aircraft. The lease is abundantly clear and unambiguous in this regard and, that being so, must be given its true and literal meaning. The Applicant is obliged only to refund the amount that the Respondent Landlord pays by way of premium for insurance against loss

or damage by fire and aircraft. The Applicant has no liability to pay any part of a premium paid by the Respondent Landlord, which relates to other cover.

25. The cover relating to Property Owners' and Occupiers' liability, Automatic cover of new premises, and Omissions, Title insurance, Employers' Liability, Business Premises and Data Protection is inappropriate as extension to the risks insured.
26. The Tribunal therefore found that the insurance was not "properly effected in accordance with the requirements of the lease" and therefore was not reasonably incurred so far as the cover exceeded fire and aircraft risks and only the premium relating to those risks was payable by the Applicant to the Respondent. The Tribunal has no way of reliably calculating what the level of premium would be for the specified "fire and aircraft" cover. Therefore given the Tribunal's finding that the insurance was reasonably obtained, the Respondent is to seek from the insurers an apportionment of that part of the premium that is attributable to the "fire and aircraft" risks.
27. The parties may consider the provisions regarding insurance to be unsatisfactory in which case they may wish to apply to vary the Lease.

Determination of Application under Section 20(c) of the Landlord and Tenant Act 1985

28. The Applicant applied for an order under Section 20(c) of the Landlord and Tenant Act 1985 that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant of the property.
29. Neither party made representations in respect of this Application. However the Tribunal found the Application to be justified in that the amount of the service charge in respect of the insurance premiums should be limited to fire and aircraft risks. The Tribunal therefore order under Section 20(c) that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant of the property.


John R Morris (Chairman)

Caution: For the purpose of reaching a decision the Committee inspected the subject property. Such inspection is not a structural survey and only takes a few minutes. Any comments about the condition of the property in this Statement of Reasons are made as a result of casual observation rather than a detailed inspection. Please do not rely upon such comments as a guide to the structural condition of the property.