

# LON/00AN/LSC/2005/0080

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTIONS 27A OF  
THE LANDLORD AND TENANT ACT 1985, AS AMENDED.

Address

Ground Floor Flat, 12 Sterne Street, London W12

Applicants

Mr J Shaw  
Mrs K Shaw

Respondents

Mr J Rothbart

The Tribunal

Mrs E Samupfonda LLB (Hons)  
Mr P Roberts Dip Arch RIBA  
Mr T Sennett MA FCIEH

Hearing:

9<sup>th</sup> September 2005

Date of Decision

7th October 2005

In the Leasehold Valuation Tribunal

Ref: LON/00AN/LSC/2005/0080

Property: 12 Sterne Street London W12

Applicants Mr Jeff Shaw  
Mrs Katherine Shaw

Respondent Mr J Rothbart

Tribunal

Mrs E Samupfonda LLB (Hons)  
Mr P Roberts Dip Arch RIBA  
Mr T Sennett

**Introduction.**

1. This was an application under Landlord and Tenant Act 1985 (the Act), section 27A by the leaseholders of the ground floor flat 12 Sterne Street for a determination of whether the cost of insurance claimed by the landlord for the service charge years 29 March 2004 – 28 March 2005 and 29 March 2005 – 28 March 2006 was reasonably incurred, is reasonable in amount and is payable by the applicants. The landlord sought to recover £793.42 in respect of each year from the applicants.
2. An oral pre trial review was conducted on 20<sup>th</sup> July 2005. Mr Shaw represented the applicants and Mr Spitzer of Marcus King and Co, Chartered Surveyors, represented the respondent. The Tribunal identified the issues in question as set out above and issued directions accordingly. The Respondent failed to fully comply. The Tribunal also determined that an inspection of the subject premises was not necessary.

**3. Hearing**

- 3.1 The applicants were represented by Mr Shaw. The landlord was not present or represented. Mr Shaw made detailed submissions. In summary, he said that he considered the insurance premium of £1,586.84 for the whole building for each year in question was excessive. He explained that he is liable to contribute one half of the costs incurred in accordance with the terms of his lease. (The house has been converted into two flats.) The landlord issued an invoice dated 1/4/05 claiming "Building Insurance from 29/3/05-28/3/06, £793.42 and "Building Insurance from 29/3/04 -28/03/05 £793.42." The ground rent mentioned therein is not in dispute. Following receipt of this, he made several enquiries with the landlord for an explanation as to how he had arrived at these identical figures for each year. By his letter dated 23/5/05 he set out a number of questions seeking

clarification as to how the amounts were made up and asked for the receipts for both expenses relating to both invoices and receipts for the insurance premiums. He said that the landlord failed to respond to this letter and the letters set out in pages 43 to 47 of the bundle.

- 3.2 Mr Spitzer informed him that the costs set out in the invoice included other charges such as his fees for handling the subsidence insurance claim made by his neighbour sometime in 2003. He then ascertained from Mr Spitzer's invoices to Mr Rothbart dated 27/2/04 and 23/2/05 that his fees amounted to £616.88 and £793.12 including VAT respectively. He highlighted that, these figures, when included with the amounts invoiced do not explain the amounts sought. He queried why the Building Insurance invoice had not referred to other charges and why he had not been informed when the additional expenses had been incurred.
- 3.3 Mr Spitzer provided him with documentation which indicated that the whole building was insured for a declared value of £400,000 for the period 2004/5 and £416,000 for the period 2005/6 which he considered to be significantly greater than the actual reinstatement value. He added that Mr Spitzer had previously informed him that the premium for the whole building was £882.00 for 2004/5 and £917.28 for 2005/6, figures substantially less than the £1,586.84 sought by the landlord.
- 3.4 He confirmed that he agreed with the reinstatement value of £266,000 as assessed by Taylor Harvey Chartered Surveyors in their letter to the respondent dated 19<sup>th</sup> July 2005 and produced by Mr Spitzer at the pre trial review.
- 3.5 In support of his case that the building could be insured for substantially less, he attempted to obtain alternative quotes from insurers but found it difficult without full details of the claims history and subsidence claim. Furthermore, as a lessee he was unable to give precise details to the insurance companies about the building. Enquiries with the on line insurance services elicited quotes of £556.01 with First Direct and £649.74 with More Than based on the building being a single house.
- 3.6 By a letter dated 1 August 2005 Mr Spitzer stated that Norwich Union had revised the insurance cost for 2005/6 to £586.54 for the whole building based upon the reinstatement value of £266,000. It was explained that it was not possible to provide a revised fee for the previous year because of the outstanding insurance claim.
- 3.7 Mr Shaw stated that he considered £586.54 to be reasonable and would pay his half contribution in accordance with the terms of the lease. As the landlord had failed to obtain alternative quotes for the previous year, he invited the Tribunal to apply the same figures.
- 3.8 Mr Shaw asked the Tribunal to order that the application and hearing fees be reimbursed by the landlord. He relied on the fact that the matter has been on going for 18 months and that he issued proceedings as a result of

the landlord's failure to respond to his letters and provide a clear explanation as to how he had arrived at the amounts sought. He added that the landlord had not complied with the directions and had failed to provide him with the necessary details in order for him to obtain alternative quotes.

**4. The Law**

The Tribunal's jurisdiction to determine the application is set out in Section 27A of the Act. This provides that:

"An application maybe made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable
- (b) the person to 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.

Subsection (1) applies whether or not any payment has been made."

The contribution to the cost of insurance is a service charge within the definition of section 18 of the Act.

**5. The lease**

By clause 4 (D) (i) the landlord covenants that it will

"insure and keep insured the building with an Insurance Office of repute against loss or damage by fire explosion storm tempest.....to the full reinstatement value"

By clause 3 (2) (b) the lessee's covenants "to pay to the lessor on demand by way of further rent one half of all expenditure incurred by the lessor in complying with the lessor's covenants contained in clause 4 hereof...."

**6. Decision**

In determining the issues the Tribunal had regard to the relevant law, the terms of the lease and the evidence.

It decided that for the purposes of securing insurance for the whole building in accordance with its obligations under the lease, the landlord had overvalued the building in both the service charge years in question. Given the reinstatement value as assessed by Taylor Harvey to be £266,000, the landlord's figures of £400,000 and £416,000 are excessive and therefore unreasonable.

The Tribunal noted the landlord's explanation for his failure to provide revised figures for 2004/5. It also noted that the landlord had failed to comply with directions, had not provided a statement of case and had failed to attend the hearing. In the absence of any other information, the Tribunal consider that it is reasonable to apply the same reinstatement value (£266,000 and revised insurance figure £586.54) to both the service charge years.

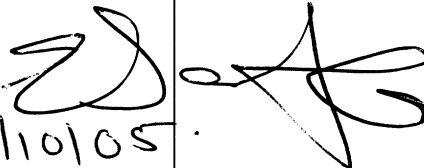
It is accepted that that the applicants are liable to contribute to one half of the costs and as such the Tribunal determines that the applicants must contribute £293.27 for each year in question. The said sums must be payable by the applicant upon receipt of the revised invoices for the building insurance.

The Tribunal was aware that the subject property is a house converted into 2 flats and that it was only dealing with the applicants and that the insurance related to the whole building.

The Tribunal orders that the respondents reimburse the applicants the hearing fee of £150 and application fees of £100; due to the efforts made by the applicant to settle the matter and the respondents' general unhelpfulness.

Chairman

Dated.

  
7/10/05