

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Landlord & Tenant Act 1985 (Section 19 (2B))

Case No: CHI/18/UG/NSP/2003/0015

Re: 55A FORE STREET, TOTNES, DEVON TQ9 5RP

(“the Premises”)

Between:

Mr S Takado

(“the Applicant”)

and

Mr & Mrs M C Dupenois

(“the Respondents”)

DECISION OF THE TRIBUNAL

Tribunal Members: Mr T E Dickisnon BSc, FRICS (Chair)
Mr P J R Michelmores FRICS
Miss C Gorna

1. Background

The application dated 24 September 2003, initially related to the reasonableness of Service Charge. By way of a letter dated 5 November 2003 the Applicant’s daughter asked the Tribunal also to consider the matter of insurance.

- 1.1 Both parties had sent written representations to the Tribunal and both expanded on these at the pre trial review hearing at Plymouth on 11 December 2003.
- 1.2 The Applicant wished both matters to be heard in future by full Leasehold Valuation Tribunal.
- 1.3 The Respondent’s case was essentially that the LVT did not have jurisdiction with regard to the expenditure relating to repairs and related professional fees. The agreed, however, that insurance was a valid matter for an LVT if necessary at a future date.
- 1.4 After the hearing, the LVT carefully considered the matter and made the following directions order:
 - a) That, having regard to the definition of service charges in Section 18 of the Landlord And Tenant Act 1985 etc., the provisions of the lease of the property and the nature of the relevant expenditure, the LVT did not have jurisdiction to address these matters.
They took the view that the relevant expenditure and Surveyor’s fees relating to a Schedule of Dilapidations dated 12 April 2002 etc., was not a service charge as such but expenditure in relation to the tenant’s repairing liability in clause 3(3)(a)

of the lease dated 20 august 1991. The Landlord Respondents stated this Schedule had been served under clause 3(13)(b) of the lease.

b) With regard to insurance the Tribunal hereby direct:

b.1 By 31 January 2004 each party to provide to the Tribunal, four copies of a written statement of their case together with four copies of any supporting quotations, invoices, correspondence etc. Each party also to send a copy to the other by the same date.

b.2 The target date for the Tribunal to inspect the property and conduct a Hearing is **17 February 2004**. Each party to notify the Tribunal with their written submission as to whether or not this proposed date is convenient to them.

2. Inspection

The Committee carried out an inspection of the premises on the morning of 18 February 2004 in the presence of the Applicants daughter and her representative, Mr Glassfield.

3. Hearing

3.1 A hearing was held in the Council Chamber at Newton Abbot Town Council on the afternoon of 18 February 2004.

3.2 Mr Glassfield, representing the Applicant, stated that the Applicant's contribution towards the annual buildings insurance premium had risen for £199.22 in 2002 to £316.29 in 2003 representing an increase of 58%.

3.3 Mr Glassfield stated that he was not convinced that such an increase was justified and would like to hear how this had been calculated. With regard to the inclusion of terrorism cover, Mr Glassfield stated that he had not noticed any such activity in the Totnes area of late.

3.4 Mr Glassfield stated that he was disappointed that the Tribunal did not have jurisdiction to deal with outstanding service charge matters and that originally they did not apply to challenge the annual insurance premium. The Applicants had tried to obtain alternative competitive quotes but did not produce any quotes at the hearing.

3.5 Mr Glassfield continued to question whether or not insurance premiums had risen by 58% over the twelve month period in question. He did accept, however, that there were fluctuations in the insurance market generally.

3.6 Mr Dupenois stated that the Respondents were claiming insurance rent to the amount of £316.29 for the period 28 September 2003 to 28 September 2004. The amount is requested under Clause 2B on a copy of a lease dated 20 August 1991.

3.7 The lease states under clause 2B "by way of additional rent (hereinafter called 'the insurance rent') annually in advance within 21 days of demand the yearly sum or sums equal to two thirds of the amount which the lessor shall expend in effecting or maintaining the insurance of the building in the full reinstatement value thereof against fire floods, storm, earthquake and all other risks as are from time to time normally included in a comprehensive buildings policy and such other risks as the lessor may reasonably deem to be desirable or expedient. Such further rent to be recoverable by distress in the same way as rent in arrear."

3.8 Mr Dupenois stated that he had obtained other quotations from Parkers Insurance Brokers from both Norwich Union and NIG. Mr Dupenois further stated that only about five insurers would be prepared to provide insurance for this Grade II listed building which was partly of period timber framework construction.

3.9 Mr Dupenois confirmed that the Respondents did have Terrorism cover included in the insurance policies for all of their properties. Mr Dupenois also emphasised that he and his wife do spend a considerable amount of time trying to find the most appropriate buildings insurance policy and emphasize that they did need to have all risks covered.

3.10 In response to the Applicants questioning for the need for terrorism cover, Mr Dupenois confirmed that terrorism had always been a part of basic insurance cover and had always been included in policies as a normal insured risk. Since the events of 9/11 however,

insurance companies had seen terrorism related events as a greater risk. As a result the insurance companies now charge separately for this cover and the amount they charge is now identifiable. Mr Dupenois further emphasized that this is not new cover, as suggested by the Applicant, as it has always been part of the policy in the past.

- 3.11 In the Respondents Statement of Case a definition of terrorism is included and in the Respondents opinion this would be a very broad definition indeed and open to a wide ranging interpretation covering all aspects of civil disorder.
- 3.12 Finally, in response to questioning Mr Dupenois stated that he was not charging the full amount for loss of rent cover, this had been appropriately apportioned.

4. Finding of Fact

- 4.1 The amount of insurance contribution payable by the Applicant in September 1997 was £302.11, not far below the Respondents claim for the amount of £316.29 for the period September 2003 – September 2004.
- 4.2 The property concerned is a Grade II listed building of part period timber framework construction and this Tribunal accepts as a matter of fact that few insurance companies would be prepared to cover this type of property.
- 4.3 The Respondents were not charging the Applicants the full amount for loss of rent cover.
- 4.4 ‘Terrorism’ has always been a part of basic insurance cover and prior to the events of 9/11 had always been included in Buildings Insurance Policies as a normal insured risk.
- 4.5 This Tribunal finds as a matter of fact that Clause 2B of the lease is quite specific with regard to the lessors ability to levy insurance rent for all risks.

5. Decision

- 5.1 This Tribunal accepts that the Respondents have no control over insurance premiums and the Applicants have admitted through cross examination that there are general fluctuations in the market for insurance cover.
- 5.2 The Tribunal finds that the Respondents have made every effort to obtain a competitive insurance rent for the 2003/2004 year n the apportioned amount of £316.29.
- 5.3 The definition of terrorism is now open to all sorts of interpretation but is, nevertheless, considered by this Tribunal to be risk that a lessor may reasonably deem to be desirable or expedient.
- 5.4 This Tribunal therefore concludes that the apportioned amount of insurance rent the Respondents are claiming for the period 28 September 2003 to 28 September 2004 is not unreasonable.

...(Signed).....
T E Dickinson BSc, FRICS
Chairman

Dated 1 March 2004

A Member of the Southern Rent Assessment Panel
and Leasehold Valuation Tribunal appointed by the Lord Chancellor