BIR/00CS/LSC/2006/0010

THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S27A OF THE LANDLORD AND TENANT ACT 1985

Premises: **18, 20 & 24 Solly Grove, Tipton, West Midlands DY4 0HS**

Applicants: Mr & Mrs G A Steel, Mrs D Scott & Mr G Smikle (tenants)

Respondent: Freehold Securities Limited via their agents Leasehold Property Management Limited (landlord)

Date of hearing: 15 August 2006

Appearances:

The Applicants all appeared.

The Respondent did not appear nor were they represented.

Members of the tribunal:

Mr A P Bell MA LLB
Mr I Humphries FRICS
Miss B Granger

Date of the tribunal's decision:

11 September 2006

Background

1. This is an application by the tenants, Mr & Mrs G A Steel, Mrs D Scott & Mr G Smikle, under 27A of the Landlord and Tenant Act 1985 to determine their liability to pay service charges for the years June 2004/2005, 2005/2006 and 2006/2007. Each of the tenants holds a flat in a two storey purpose-built block of eight flats under a lease for a term of 99 years from 1January 1994. Clause 1 of the leases provides that the only service which the tenants are required to pay to the landlord is the premium for keeping the flat insured. Clause 4 (d) of the leases provides that the landlord is obliged:

"To keep the demised premises and other Flats on the Estate insured for their full reinstatement value as at the date of completion under an inflation index-linked policy against loss or damage by fire and such other risks as it thinks fit in some insurance office of repute..."

Representations

2. Mr Steel on behalf of the tenants stated that each of the three tenants had paid £228.34 per annum in respect of the cost of insurance of their flats for the years 2004/2005 and 2005/2006 and £243.73 for the year 2006/2007. This compared with the amount payable by the remaining five tenants in the block of a sum of somewhere between £100 - £120 per annum in respect of insurance cover. Mr Steele referred to a letter of 6 July 2006 from their landlord offering to reduce the cost to £183.60 per annum from 1 June 2006 to 31 May 2007.

3. Mr Steel produced two quotations, the one from insurance brokers dated 26 June 2006 on the basis of buildings insurance being provided for a block comprising three flats at a cost of £175 to each of the tenants and the other from Big 4 Insurance also dated 26 June 2006 offering cover of £80,000 for a single flat at a cost of £92.08 per annum. He also referred to a letter dated 27 June 2006 from NatWest who stated that they were "unable to offer buildings cover for three flats in a block of five".

Decision

4. A service charge is defined in section 18 of the Landlord and Tenant Act 1985 as:

"an amount payable by a tenant of a dwelling as part of or in addition to the rent – (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord's costs of management, and (b) the whole or part of which varies or may vary according to the relevant costs".

The costs incurred by the landlord of insuring the tenants' flats are recoverable as a service charge which the tenants are obliged to pay as referred to in paragraph 1 above. However, by virtue of section 19 of the Landlord and Tenant Act 1985 such costs are only recoverable to the extent that they are "reasonably incurred". The requirement that costs must be reasonably incurred does not mean that the cost of the insurance must be the cheapest available for the cover required in accordance with the terms of a lease.

5. In Forcelux Ltd v Sweetman [2001] 2 EGLR 173 two tenants challenged the annual insurance premiums of £373 and £403.58 respectively which the Leasehold Valuation tribunal reduced to £300. On appeal the Lands Tribunal held that the relevant question under 19 of the Landlord and Tenant Act 1985 concerning the insurance premiums was not whether they were "reasonable" but whether they were "reasonably incurred" so that a premium which was well beyond the market norm would undoubtedly fail the latter test. In the circumstances of that case the Lands Tribunal were satisfied that the insurance premiums under the landlord's policy were reasonably incurred and should not have been reduced by the Leasehold Valuation Tribunal, despite the fact that the tenants were able to demonstrate that cover could have been obtained for the block at a lower cost than had been obtained by the landlord. In short this decision is authority for the proposition that the fact that the services (in this case the insurance premiums) could have been provided at a lower cost does not mean the costs were not reasonably incurred with the consequence that the landlord is not bound to shop around and then accept the cheapest quotation.

6. Neither of the two quotations produced by Mr Steel for a block policy clearly and conclusively demonstrates that the brokers or insurers who gave the quotations to Mr Steele were aware of the fact that insurance cover was being sought for part only of the flats in the block. Moreover the NatWest, as referred to in paragraph 3 above, picked up on this point and said that they were unable to provide cover in this situation.

7. Residents Insurance Service in their letter of 6 June 2006 to the landlords stated that the insurance rates quoted "will be higher than if the whole block was insured as there is greater potential for discord should a claim affecting both insurers arise"

8. The Tribunal find that the tenants have failed to demonstrate that the cost of the cover arranged by the landlord was well beyond the market norm by providing evidence that comparable cover to that provided by the landlord's policy with AXA could have been obtained for part only of the block of flats at Solly Grove at a very substantially lower figure. In consequence the Tribunal determines that the premiums recovered by the landlord from the tenants under its policy with AXA are not far beyond the market norm, applying the ruling in Forcelux Ltd v Sweetman referred to in paragraph 5 above, and are reasonably incurred, especially as the services of brokers, Residents Insurance Services were used by the landlords.

9 It should, however, be noted that, in respect of the current year the landlord by letter dated 29 June 2006 asked the tenants whether they would like to take the cover provided by Second City Homes as the freeholders of the other five flats in the block. In addition an offer was made by the landlord to the tenants by letter dated 6 July 2006 to reduce the current premium to £183.60 "in an attempt to bring this matter to a conclusion". It is not clear whether this offer to the tenants is still on the table and open to acceptance by the tenants, but, even if it is not, it does seem likely that the tenants, by contacting Second City Homes as suggested by the landlord, can arrange insurance cover under a block policy for the whole of the block as compared with the current block policy on part only of the block, and it seems highly probable that if this step were taken the cost of the premiums to the tenants would be reduced for the remainder of the current year and also future years.

10. Nevertheless and by way of summary for the reasons explained in paragraphs 3 to 8 inclusive above the Tribunal determines that the premiums claimed from the tenants by the landlord for the years 2004/2005, 2005/2006 and 2006/2007 are reasonably incurred and accordingly the tenants are liable to pay these.

CHAIRMAN .....A P Bell.....

A P Bell

DATE 12 September 2006