SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24U/LSC/2005/46

BETWEEN:

Miss J Miller

Applicant/Tenant

- and -

Lakeside Developments Ltd

Respondent/Landlord

Property: **59A Southampton Road, Lymington, Hampshire**

DECISION AND REASONS

1. The Application

1.1 On 17th May 2005 the Applicant made an application to the Tribunal under Section 27A of the Landlord and Tenant Act 1985 for a determination as to the reasonableness of service and administration charges in respect of 59A Southampton Road Lymington Hampshire (the property) for the service charge years 2004 and 2005 and in respect of an interim sum for a budgeted figure for insurance for the year to December 2006.

1.2 By provisional direction given on 26th May 2005 it was ordered that unless by 9th June 2005 either party objected, the application would be dealt with on paper without an inspection or hearing. Neither party did object.

2. The issues

2.1 The following matters were in dispute.

For the service charge year to December 2004:-

(a) the buildings insurance premium of £1551.56 for the whole building (£581.83 for the property)

For the service charge year to December 2005

(a) the buildings insurance premium of £1639.45 for the whole building (£614.79 for the property)

(b) Administration charges of:-
£65.80 for "Arrears recovery charge – Land Registry Search"
£164.50 for "Arrears recovery fee – County Court summons"

For the sum sought on account of buildings insurance premium for year to December 2006 £1877.30 for the whole building (£704.02 for the property)

3. The Applicant's case

3.1 The Applicant contended that the insurance premium costs were too high for a flat in Lymington, Hampshire with a value of about £200,000.

3.2 The Applicant's father, a commercial property solicitor with experience of acquiring central London sites for development and then dealing with the subsequent flat sales submitted a witness statement to the effect that flats with a higher value than that of the property in London would have a typical premium of about £200. He had sought quotations from two insurance brokers for the building of which his daughter's flat formed part. The premiums quoted ranged from £183.49 to £324.51 (£489.30 to £914.20 for the whole building). He thought that a figure for insurance

premium to that obtained from MMA Insurance PLC (£840 for the building, £315 for his daughter's contribution) would be an appropriate figure. Alternatively, the Norwich Union's quotation of £855.79 for the building (£332.93 for the property) would be acceptable.

As for the 2006 premium the Applicant asked for the Tribunal to determine that at least three quotations be obtained from different insurers on a non-block policy and one of them (or a premium quotation obtained by the Tenants) be used as the basis of this charge).

Finally, the Applicant pointed out that there had been no consultation with the tenants over the insurance premium and that neither emergency assistance cover nor terrorism cover are specified risks against which the policy should cover.

3.3 As for administration charges, the Applicant claimed that a fee of £65.80 for "Arrears Recovery Charge – Land Registry Search" and a fee of £164.50 for "Arrears Recovery Fee – County Court Summons" both appearing on the Tenant's statement dated 13th April 2005 were a) excessive and b) not recoverable under the lease. It was said that the Land Registry Search fee on line is only £2 or £4 by post.

4. The Respondent's case

4.1 As far as insurance premiums were concerned the Respondent's case as set out by its Managing Agents, BLR Property Management, was as follows:-

(a) It is the landlord's obligation alone under the lease to arrange the insurance for the Property.

(b) The Respondent produced a letter from the insurance brokers tasked with placing the insurance for the landlord on a block policy. The letter is dated 13th June 2005. It firstly sets out certain criteria that the landlord requires to be met by the insurers and their policies before it would consider placing the insurance with that company. The letter went on to comment on the various quotations obtained by the tenant.

Fortress Insurance was not known to these brokers and they were unable to check their financial status.

The cover contained "onerous terms" in their view and the landlord's criteria were not met.

Allianz Cornhill was one of their approved companies but the information supplied was not sufficient to allow the brokers to comment further.

Rent Guard did not "address any of the brokers' concerns over adequacy of cover". There is no terrorism cover and there is no cover during a period when the property is left unfurnished.

Norwich Union was an approved supplier. The quotation refers to "conditions precedent and/or any endorsements applicable" which was insufficiently detailed to allow comment. Again, no terrorism cover was included.

These brokers did confirm that they had obtained a reduced renewal premium of a total of £1240.72 for the building (£465.27 for the Property) for 2006.

(c) The landlord's agent explained the reason why the landlord insured all its properties on a block policy and cited the authorities *of Berrycroft Management Ltd v Sinclair Gardens Investments Ltd* [1997] 22 EG 141 and *Forcelux Limited v AV Sweetman and C Parker* [2001] 2 EGLR 173 for the proportion that it is reasonable for a landlord to insure a property portfolio by way of a block policy even though this may produce a higher premium on an individual property that may be obtained by a lessee.

(d) The landlord engaged the services of a broker to find the best, not necessarily the cheapest, insurance for the property and claimed that the premiums charged were reasonable.

(e) Although Emergency Assistance Cover and Terrorism are not specified perils in the lease, the lease did permit the landlord to insure against "such other risks against which the Landlords shall from time to time reasonably deem it prudent to insure. (Para 6 (c) (ii) of the Sixth Schedule to the lease.

(f) The lease placed no obligation on the landlord to consult with the tenants.

(g) The Applicant had produced no evidence as to comparable premiums for 2004 and that it was not appropriate to try to extrapolate from one year to another.

4.2 As for administration charges, the Respondent's agent contended that the Arrears Recovery Charge of £65.80 for the Land Registry Searches and £164.50 for County Court Summons were incurred incidentally to the preparation and service of a Section 146 notice on the basis that since the Commonhold and Leasehold Reform Act 2002 it is a requirement to have a determination from a court or leasehold valuation tribunal before such a notice can be served. These charges were therefore properly incidental to the service of a Section 146 notice and claimable under the lease (Clause 2(7)). As for the amount of these charges the Respondent's Managing Agent explained that they included covering the cost of the staff and infrastructure involved in collecting the arrears. The charges made were based on their assessment of their overheads and expenses. They had warned the tenant by letter before action that these charges would be incurred if payment were not received.

5. The Lease

5.1 Clause 1 of the Lease of 11th March reserves the service charge as rent. The service charge is payable in accordance with the Fourth Schedule. "Expenditure on services" is stated as being "expenditure by the landlords in complying with their obligations set out in the Sixth Schedule ...". The Sixth Schedule sets out those obligations which include the requirement "6 (a) at all times to keep the house insured to the full cost of re-instatement under a policy complying with the terms of this paragraph". By paragraph 6(c) of the Sixth Schedule it is stated that:
"An insurance policy complies with the terms of this paragraph if:-
(i) it is effected in the name of the landlords ...
(ii) it provides cover against loss or damage by any of the following risks to the extent that such cover is for the time being available for buildings of the type insured viz fire lightning explosion earthquake landslip subsidence leave (sic) riot civil commotion aircraft aerial devises (sic) storm flood impact by vehicles and damage by malicious persons and vandals together with such other risks against which the landlords shall from time to time reasonably deem it prudent to insure ..."
By paragraph 7 of the Sixth Schedule it is a landlord's obligation "to perform such functions as the Landlords in their absolute discretion consider appropriate to the management of the house and in that connection to employ or retain the services of any employee agent consultant contractor engineer and professional adviser that the landlords may reasonably require".

6. The Law

6.1 Under Section 27A of the Landlord and Tenant Act 1985 the Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

(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
(e) the manner in which it is payable.

6.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

6.3 By Paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tenant may apply to a Leasehold Valuation Tribunal for the determination as to whether an administration charge is payable. By Paragraph 2 of Schedule 11 of the said Act an administration charge is payable only to the extent that it is reasonable. By Paragraph 1 of Schedule 11 to the Act an administration charge is defined as being "an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable either directly or indirectly ... (c) in respect of a failure by the tenant to make a payment by the due date to the landlord ..."

7. Decision

7.1 Insurance premiums for 2004 and 2005

The Tribunal agreed with the Respondent's Managing Agent that it is the landlord's obligation under the lease to insure the building and that there is no requirement for consultation with the tenant. Indeed, where a landlord has a large portfolio of properties, such requirement would be unreasonable. Further, the Tribunal decided that it was not unreasonable for the landlord to insure its portfolio by means of one block policy. This has certain advantages to the landlord from an administrative point of view and can help to keep administration costs down. The Lands Tribunal

decision in *Forcelux Ltd v AV Sweetman and C Parker* is authority that provided a landlord's block policy is competitively obtained is it not unreasonable for a commercial landlord to insure by block policy even though this may lead to a higher premium being paid. Provided that the premiums paid were "market rates" the landlord was not obliged to arrange the cheapest insurance cover (*Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd*).

7.2 The Respondent accepted that notwithstanding what has been decided in paragraph 7.1 above, the insurance premiums sought must still be reasonable. Here the landlord had gone to brokers to find the most appropriate insurance for the building. There was no evidence as to what the brokers did to test the market each year but similarly there was no evidence of comparable quotations supplied by the tenant for the 2004 year.

The quotations being obtained in 2005 by the Tenants were still lower than that obtained by the landlord's broker but the Tribunal was not convinced that the comparables were "like for like" with the premium figure obtained by the landlord's broker. Furthermore the landlord's broker had provided an explanation for this. It was said that insurance premiums had risen sharply for 2004 and 2005 in the wake of the terrorist attack on the Twin Towers in New York but that for 2006 there was a great del of competition for business and this had driven premiums back down. There was no evidence to contradict this from the Applicant. On balance, therefore, the Tribunal decided that the insurance premiums charged for the years 2004 and 2005 were reasonable.

7.3 As for 2006, the new quotation obtained by the broker (£1240.72 for the building, £465 for the property) is considerably less than the £1877.39 (£704 for the Property) originally sought. The Tribunal decided that the

lower figure of £465 would be a reasonable sum to seek from the tenant on account of the insurance premium for 2006 and not the £704.02 claimed.

7.4 Administration charges

By Clause 7 of the Sixth Schedule to the lease the landlord undertakes to "perform such functions as the landlords in their absolute discretion consider appropriate to the management of the house and in that connection to employ or retain the services of any employee, agent, consultant, contractor, engineer and professional adviser that the landlords may reasonably require." The Tribunal considered that this entitled them to employ managing agents to collect arrears of payments for which the tenant is liable under the lease. The administration charges are therefore payable by the tenant under the provisions of Clause 7 of the Sixth Schedule to the lease. The Tribunal did not consider that they were payable as incidental to the preparation of a Section 146 notice because the action that was taken was not necessarily preparatory to a Section 146 notice. The service charge is reserved as additional rent and a Section 146 notice should not be necessary to recover rent.

This still leaves the question of the reasonableness of the administration expenses. The Tribunal considered that a charge of £65.80 for applying for a Land Registry Search was excessive. The Respondent had not produced any information as to how the cost of this administration had been worked out. It should not have taken any significant length of time to carry out the search. The claim form would have taken longer to complete but even so the charge seemed high at £164.50. The Tribunal considered that a charge of £20 for the search and £85 for the claim form would be reasonable charges to make.

8. Conclusion

8.1 The insurance premiums demanded from the Applicant for 2004 and 2005 in the sums of £581.83 and £614.89 respectively were reasonably incurred and of a reasonable amount and are therefore payable by the Applicant.

8.2 The insurance premium demanded from the Applicant for 2006 would be reduced from £704 to £465 the latter being a reasonable figure to be paid on account.

8.3 Reasonable administration charges for recovery of arrears from the Applicant would be £20 (plus VAT if appropriate) for the search fee and £85 (plus VAT if appropriate) for the preparation of the claim form.

9. The Section 20 (c) Landlord and Tenant Act 1987 application

The Applicant made an application on her claim form for a determination that the landlord's costs of the proceedings before the Tribunal should not be added to a future service charge account. Although it can be said that the Applicant has succeeded in part in having the arrears recovery charges reduced and it may be that these proceedings have assisted the landlord's broker in negotiating a lower renewal premium for 2006, the landlord has successfully defended the most substantial part of the application, namely the challenge to the basis and amount of the insurance premiums for 2004 and 2005 in particular. The Tribunal therefore decided that it would not make an order under Section 20 (c) of the 1987 Act. The Landlord is therefore at liberty to add its costs of the proceedings before the Tribunal to a future service charge account. This will be subject to the test of reasonableness and if the amount cannot be

agreed by the parties then a future Leasehold Valuation Tribunal will have to determine the matter.

Signed: .....

D. Agnew LLB, LLM
(Legal Chairman appointed by the Lord Chancellor)

Dated this 1st day of August 2005