11620

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AD/LSC/2016/0140**
Property	:	**99 Woolwich Road, Bexleyheath DA7 4LP**
Applicant	:	**Mr Geoffrey Lander**
Representative	:	**In person**
Respondent	:	**Peppercorn Property Investments Ltd (1)** **Flats Insurance Consultants (2)**
Representative	:	**None**
Type of application	:	**For the determination of the reasonableness of and the liability to pay insurance premiums**
Tribunal members	:	**Judge O'Sullivan** **Mr M Cartwright FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**14 November 2016**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

(2) The tribunal declines to make any order pursuant to Rule 13.

Background

1. The property which is the subject of this application is a ground floor maisonette. The Applicant purchased a long lease of the property in 2010. It is common ground between the parties that pursuant to a Deed of Variation dated 18 December 2007 the tenant covenants to insure the demised premises through an insurance company nominated by the landlord and through its nominated agent and that the landlord may insure the property in the case of default by the tenant.

2. By an application received on 29 May 2016 the Applicant seeks a determination of his liability to contribute to buildings insurance and the reasonableness of the premium. Directions were issued dated 5 April 2016 which provided for steps to be taken by the parties and these were varied on 19 May 2016. A hearing took place on 8 June 2016 further to which the tribunal issued a decision in relation to jurisdiction and made further directions for the matter to be considered on paper in the week commencing 22 August 2016. This matter was further considered on 22 August 2016. Further directions were made on that date for the provision of further documentation and the matter was considered on the papers on 14 November 2016.

3. Mr Lander seeks to challenge the premiums for the years 2012 and 2016. He considered that the premiums had been too high for each of the years 2010-2016 but felt he did not have sufficient documentation to challenge those other years. However the tribunal is willing to allow Mr Lander to ask the tribunal to consider those other years in its adjourned consideration.

4. The insurance premiums in issue are as follows;

2010-11	£264.04
2011-12	£285.86
2012-13	£298.44
2013-14	£319.30

2014-15	£325.70
2015-16	£322.66

5. Details of the sum insured and policy excesses were also provided.

Submissions

6. The tribunal does not intend to repeat all of the parties' submissions but sets out below only the most relevant.

7. The Applicant set out its case in a statement dated 17 October 2016 but also relied on his previous statement of case and bundle which was before the tribunal. The Applicant made detailed points in relation to various matters but in this decision the tribunal deals only with those which are relevant to the issues before it.

8. The Applicant appears to complain that the amounts of the premium have not been disclosed. The First Respondent has now produced a schedule of premiums (as set out above) and in the absence of any further comment by the Applicant (given that the Applicant has been asked to pay the premiums and so must be aware of the amount) the tribunal assumes those figures are correct. In any event it is those figures which are relevant for the purposes of the tribunal's determination as those are the sums which the Applicant is being asked to pay. The Applicant also says that the property is underinsured and this that the cover is unsatisfactory.

9. The First Respondent set out its position in an amended statement dated 23 September 2016. It directs the tribunal to the provision that the policy must be in joint names and submits that the comparable quotations have failed to satisfy this requirement. The Respondent says it believes that the premium is fair and reasonable having regard to the market and the policy terms and excesses.

10. The Second Respondent has taken no part in the proceedings.

The tribunal's decision

11. By the Deed of Variation the Applicant covenants to insure the premises *"with such insurance office of repute as the Lessor may from time to time specify and through such Agency as the Lessor may from time to time nominate"*.

12. The tribunal's jurisdiction in this matter is found in the Landlord and Tenant Act 1987 (the "1987 Act"). The Schedule to the Landlord and Tenant Act 1987 provides as follows;

Right to challenge landlord's choice of insurers

8(1)This paragraph applies where a tenancy of a dwelling requires the tenant to insure the dwelling with an insurer nominated by the landlord.
(2)The tenant or landlord may apply to a county court or leasehold valuation tribunal for a determination whether—

(a)the insurance which is available from the nominated or approved insurer for insuring the tenant's dwelling is unsatisfactory in any respect, or

(b)the premiums payable in respect of any such insurance are excessive.

(3)No such application may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant,

(b)under an arbitration agreement to which the tenant is a party is to be referred to arbitration, or

(c)has been the subject of determination by a court or arbitral tribunal.

(4)On an application under this paragraph the court or tribunal may make—

(a)an order requiring the landlord to nominate or approve such other insurer as is specified in the order, or

(b)an order requiring him to nominate or approve another insurer who satisfies such requirements in relation to the insurance of the dwelling as are specified in the order.

13. Thus in this case where a landlord nominates the insurer a tenant may apply to the tribunal for a determination as to whether the cover is satisfactory and whether the premiums are excessive. The tribunal then has the power to make an order requiring the landlord to nominate a named insurer or requiring the landlord to nominate an insurer who satisfies requirements contained within the tribunal's order.

14. The tribunal first considered the terms of the insurance in place to satisfy itself whether the cover was satisfactory. The Applicant suggests the cover isn't appropriate as it underinsured. We have no evidence that the property is underinsured. However in any event generally the

value insured would always be less than the market value as this value reflects the rebuild cost and does not include the value of the land. The tribunal is satisfied on the evidence before it that the cover itself is satisfactory, such cover being placed with Aviva, an insurer of repute, and the amount insured appears sufficient to us having regard to our experience and expertise.

15. The tribunal went on to consider whether the premiums were excessive and would make the following comments on the comparables provided by the landlord;

- We had some concerns in relation to the comparable evidence produced by the Applicant. First he had failed to provide the tribunal with the relevant terms and conditions applicable to each quotation. Such terms and conditions may not include terms which a landlord is likely to require, such as a limitation on the type of occupier and the inclusion or other of such terms would likely impact on the premium

- The comparables were not in joint names as required by the deed of variation and this is a factor which would also impact on the premium.

- In addition the comparables were not in the correct amount insured as per the policies for each year.

- We had no documentary evidence of what information was given to the insurers.

16. We therefore concluded that we could place little reliance on the comparables obtained by the Applicant. In any event we considered that the premiums fell within what would be a reasonable range for this type of policy albeit at the higher end of such a range. There is no obligation on the landlord to find the cheapest quotation but rather any premium must fall within a reasonable range.

17. We therefore declined to make any order requiring the landlord to nominate an alternative insurer. We would however suggest that on renewal the Applicant may wish to consider obtaining some comparable quotations and forwarding them to the agent.

Landlord's application for costs

18. The landlord made an application for its costs pursuant to Rule 13 of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 (the "Procedure Rules").

19. It does not specify what its costs are but makes reference to over 20 hours director's time in responding to the claim.

The tribunal's decision

20. The tribunal declines to make any order pursuant to Rule 13(1) of the Procedure Rules.

Reasons for the tribunal's decision

21. The tribunal's power to award costs is contained in Rule 13 (1)(b)(ii) of the Procedure Rules which states that;

"The Tribunal may make an order in respect of costs only-

(b) If a person has acted unreasonably in bringing, defending or conducting proceedings in-

(I) a residential property case ..."

22. The power to award costs pursuant to Rule 13 is discretionary and the wording of the provision makes it clear that the tribunal may only make such an order if a person's conduct of the proceedings is unreasonable rather than his behaviour generally.

23. In considering an application for costs under Rule 13(1)(b) it is helpful to have regard to the analysis of Sir Thomas Bingham MR (as he was then) in *Ridehalgh v Horsefield* [1994] 3 All ER 848 as to the meaning of unreasonable. In the context of a wasted costs order he said:

"Unreasonable" also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and no improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment but it is not unreasonable.

24. The power to award costs pursuant to Rule 13 should only be made where a party has clearly acted unreasonably in bringing, defending or conducting the proceedings. This is because the tribunal is essentially a costs free jurisdiction where parties should not be deterred from bringing or defending proceedings for fear of having to pay substantial costs if unsuccessful. In addition there should be no expectation that a party will recover its costs if successful. The award of costs should therefore in our view be made where on an objective assessment a party

has behaved so unreasonably that it is fair that the other party is compensated to some extent by having some or all of their legal costs paid.

25. The application was brought by the Applicant. The background to this matter was complicated and the tribunal itself clearly grappled with the issue of jurisdiction during the course of the case management before this case reached determination. Although the Respondent suggests that the Applicant could have taken steps to obtain the information it appears to the tribunal that these are documents which the landlord should have had within its possession. Having considered the facts of this case overall we are satisfied it would not be fair or just to make a costs order.

26. The Applicant has also alluded to making a costs application although none is presently before the tribunal. The Applicant may make an application under Rule 13 of the Procedure Rules. Given the findings of the tribunal it may be that he will wish to reconsider his position. However if he is minded to make such an application he should be aware of the deadlines which apply to such an application.

Name: S O'Sullivan **Date:** 14 November 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).