

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL**

Property: 72A Weekley Glebe Road, Kettering NN16 9PR

Applicant: Kettering Borough Council

Applicant's Representative: Connect Law, Municipal Offices, Bowling Green Road, Kettering, Northamptonshire NN15 7QX

Respondent: Mrs Dinah M Bulley, PO Box No 7205, Kettering, NN16 6DS

Case number: CAM/34UE/LSC/2006/0049

Application: Application for a determination of the liability to pay the service charge relating to an insurance premium including the reasonableness of the service charge (Section 27A Landlord and Tenant Act 1985) for the financial years ending 31st March 2004, 2005 and 2006

Tribunal: Mr JR Morris (Chairman)
Mr J Dinwiddy FRICS
Mrs J de M Ambrose

Date of Application: 12th September 2006

Hearing Date: 2nd February 2007

Attending Hearing:
Applicants: Mr GC Hollands, Solicitor
Mrs Holt, Kettering Borough Council Insurance Officer

STATEMENT OF REASONS

The Application

1. The Applicant applied to the Tribunal on the 12th September 2006 under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to whether the costs of the insurance premium incurred by way of service charge in respect of Service Charges for the years 1st January 2004 to 31st December 2004 and 1st January 2005 to 31st December 2005 are reasonable and payable.

Service of Documents

2. Following the Service of the Application on the Respondent a letter dated 22nd September 2006 was received by the Tribunal from the Respondent stating that the documents sent did not apply to her and that a County Court Judge had already ruled in her favour in the matter. She then gave a brief outline, stated below, of why she considered the insurance premium unreasonable.
3. Directions for the Application dated 10th October 2006 together with a covering letter explaining the nature of the application and seeking to persuade the Respondent to engage with the proceedings were issued on the 13th October 2006. The Respondent returned all the Documents on the 30th October 2006 with a brief statement of her case written on the envelope.
4. The Tribunal sent Further Directions dated 15th November 2006 by recorded delivery to the Respondent together with a covering letter pointing out that if it were found that the service charge was reasonable and she still refused to pay she could be in breach of her lease, which could have serious repercussions. Therefore the letter requested the Respondent to reply to the Application. The Directions informed the Parties that following information received from both parties since the first Directions the Tribunal had formed the opinion that in the interests of justice an Inspection should be made and Hearing held to enable the Tribunal to make a full assessment of the relative cases and give the Parties every opportunity of presenting and testing one another's evidence.
5. A reply was received on the 23rd November 2006 again giving a similar brief outline of the Respondent's case as had been received earlier and requesting the further documents should not be sent to her.
6. The Respondent was informed of the date and time of the inspection and Hearing by letter dated 5th December 2006 sent by recorded delivery.
7. The Tribunal inspected the Property on 2nd February 2007 and a Hearing was held later the same day. The Respondent did not attend either the inspection or the Hearing and there was no answer when the Tribunal visited the Property on the day of the inspection.

The Law

8. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 18

- (1) In the following provisions of this Act "service charge" means 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, improvement 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

- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
- (3) for this purpose
 - (a) costs includes overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred; and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.

Description and Inspection of the Block and Property

9. The Property is a purpose built first floor flat in a two-storey block of four flats built of brick with pebbledash under a pitched tile roof probably constructed in the 1960s. Each flat has a separate entrance. First floor flats have a balcony.

10. The Tribunal made an external inspection of the Property only. It was noted that the front door which had been the subject of an unsuccessful insurance claim was wooden and opened inwards. There were indications that a repair had been carried out to the closing side of the frame at some time in the past.
11. No inspection was made of the interior of the Property, as this was not necessary for a determination of the Application issues.
12. The Respondent's written representations referred to a garage however this is the subject of a separate lease from that of the Property. No part of the Service Charge levied pursuant to the Lease on the Property relates to the garage lease. Therefore no inspection was made of the garage block as this was not necessary for a determination of the Application issues.

The Lease

13. The Applicant is the freeholder and landlord of the Property and the Respondent is the Tenant. A copy of the Lease was provided. The Lease dated 7th November 1988 is for a term of one hundred and twenty five years from the date of the Lease.
14. Clause 5(2)(a) the "Landlord covenants to insure ...against loss or damage by the insured risks in such sum as the Landlord shall consider to be the full reinstatement value and whenever required produce to the Tenant the policy ...of such insurance and the last premium receipt"
15. Clause (11) states "the Insured Risks shall mean loss or damage by or in consequence of fire explosion aircraft riot and civil commotion malicious damage earthquake storm flood burst pipes and impact and such other risks as the Landlord insures against from time to time"
16. The Services shall mean the Services provided by the Landlord set put in Part I of the Schedule hereto and shall include (a) insuring against the Insured Risks"
17. Schedule Part I Para A the services to be provided by the Landlord and for which the Tenant is to contribute: Insurance: The cost to the Landlord of insuring the Demised Premises against the Insured Risks
18. By way of further rent a sum equal to the cost of the Landlord of insuring the demised Premises against loss or damage by any of the Insured Risks (which said sum for insurance shall be collected with and in the same manner as the Service Charges)

Documentation

19. The documents provided by the parties as being of particular relevance for the determination of the Tribunal included the following:
 - Copy of the Applicant's Lease
 - Copy of the application form
 - Copies of Service Charge Accounts for the years 1st April 2003 to 31st March 2004, 1st April 2004 to 31st March 2005 and 1st April 2005 to 31st March 2006

- Copies of invoices sent by the Applicant to the Respondent for service charges for the years in issue
- Copy of the Insurance Policy
- Correspondence between the Applicant and the Respondent.

Hearing

20. The Hearing took place on the 2nd February 2007 and was attended by the Applicants. The Respondent did not attend but had submitted brief written representations.

Evidence

Applicant's Representations

21. The Applicant's Representative stated that the matter relating to the insurance had not been dealt with by the County Court and therefore the Tribunal had jurisdiction over the issue. An Application had been made to the County Court by the Applicant in order to recover the unpaid contributions to the insurance premium in the Service Charge. However the Applicant withdrew the matter as it was thought unlikely that the County Court would give judgment until the Leasehold Valuation Tribunal had made a determination as to whether the charge was reasonable. The present Application was then made.
22. The Applicant's Representative stated in written representations that in accordance with the Lease terms the Landlord had insured the Property with Zurich Municipal Insurance and provided a statement of Policy cover.
23. The Applicant's Representative also stated that in its view a reasonable service charge had been levied in accordance with the Lease terms, which included an amount for the cost of the insurance premium relating to the Property.
24. The Applicant provided copies of Service Charge statements and invoices, which showed that the Respondent had not paid the amount of the Charge attributable to the insurance premium. The amounts outstanding are as follows:
- | | |
|-----------------------------|---------|
| Year ending: | |
| 31 st March 2004 | £86.05 |
| 31 st March 2005 | £93.87 |
| 31 st March 2006 | £101.69 |
25. There have been no claims by the Applicant on the Building since it was first insured under this policy in April 1988 although the Respondent submits that she has made claims on the insurer in that period but the Applicant has no details other than those provided by her. She stated that she had made two claims as follows:
1. Damage to an entrance door alleged to be caused by high wind
 2. Liability claim against the Applicant in 2002 dealt with by the insurers under a general third party liability policy when her car was damaged by fire in a neighbouring garage let by the Applicant under a separate tenancy.

26. The Applicant's Representative stated that the Respondent's second claim did not relate to the insurance policy under the Lease. The Respondent rented a garage under a separate arrangement not related to the Lease on the Property. It was noted from the Respondent's written representations that the Respondent had said that her car had been damaged by a fire, which had started in and spread from one of the other garages. She had claimed for this loss under a general third party liability policy held by the Applicant. The Respondent did not contribute to the premium for this policy under any Service Charge. The Applicant stated that any dispute relating to this claim was not a part of the proceedings currently before the Tribunal and were not within the Tribunal's jurisdiction.
27. In answer to the Tribunal the Applicant's Representative confirmed that there had been substantial correspondence between the Applicant and the Respondent and the Applicant had explained that the Respondent was not entitled to withhold payment of the Service Charge on the basis that the Insurance Company had rejected the Respondent's claim under this third party liability policy as it was not a cost within the Service Charge.
28. The Applicant's Representative went on to state that the Respondent's first claim did appear to have been made under the policy, the premium for which the Respondent contributed to through the Service Charge.
29. This policy covered all its properties let on a long lease providing economies of scale. The insurer is a well known and respected and undertakes Local Authority business in connection with housing and right to buy properties. The insurance contract is entered into in accordance with the Applicant's standard policies and procedures for achieving 'Best Value'. The Applicant stated that in oral evidence that as a Local Authority it had a limited pool of insurers.
30. The Applicant receives no commission from the insurance company but it does receive a 25% discount on the insurance premium in respect of the cost of providing administrative services.
31. The Applicant's Representative submitted that the premium was reasonable and payable. The apparent refusal by the Insurance Company of the Respondent's claim did not make the premium unreasonable. There were a number of reasons why the claim may have been refused and there was no evidence adduced by the Respondent about the alleged claim other than the most basic information.
32. The Tribunal questioned Mrs Holt, the Kettering Borough Council Insurance officer. Mrs Holt said that she had only joined the Council in the last 12 months but was able to confirm that Zurich would have been selected from a pool of insurers that provide insurance for Municipal and Social Housing. She also confirmed that the Borough Council complied with the requirements of Local Government Legislation including that relating to 'Best Value' by requesting tenders for insurance. The best value would have been selected based upon the level of cover and premium for all the Council's 3,000 dwellings. The policy would have been for an initial period of one year and then compared with the premiums of other insurers but had been renewed due to the discounts given by the current insurer making the insurance competitive.

33. In answer to the Tribunal's questions Mrs Holt stated the block was valued in March 2005 and the premium would have been apportioned based upon that valuation. The size and number of bedrooms is taken into account when dividing the premium attributed to the block between the flats. In the present case all the flats in the block are the same size and so the premium for the block would have been divided equally. The premium is index linked in accordance with RICS guidelines and so would have increased annually since March 2005 on that basis.
34. In response to the Tribunal's questions Mrs Holt stated that each Tenant is annually given a copy of the Insurer's brochure which sets out the level of cover and states how a claim can be made. Claims may be made through the Council or direct to the insurer via its claims line. A claim form may be obtained from the Council, which the tenant may submit, to the insurer. It was agreed that the Council could for recording purposes make a note of those who request a claim form but this would not be a reliable record of claims as some may not pursue the claim and others may apply direct to the insurer. If a claim is made direct to the insurer the Council will not know about the claim. The purpose of the direct claim procedure is to make the claims procedure easier for tenants.
35. With reference to the Respondent's specific claim for damage to the front door as a result of a storm Mrs Holt noted that the Applicant had said that the claim had been refused because the Meteorological Office had only recorded wind speeds of 30 miles per hour for the day in question and that claims are only accepted for storm damage when winds of 55 miles per hour are recorded. She said that although she did not know the specific details of the Applicant's claim Mrs Holt stated that in her experience generally, and with Eagle Star Insurance Company in particular, this is a common provision and would expect Zurich to have a similar policy.

Respondent's Representations

36. In written representations the Respondent claimed that Mr Burgess the Applicant's Garages' Manager had let a garage to a person who had an uninsured and untaxed vehicle, which she kept in the garage. The car caught fire and due to high winds the fire spread.
37. The Respondent had stated that the garages had been refurbished in Autumn 2000 by the fitting of new doors and roofs. The doors were higher than the existing doors and therefore the roofs were set higher resulting in a gap between the walls and the roof. This caused the fire to spread from one garage to another. This work meant the garages were in breach of the 1991 Building Regulations. The Respondent said that she had claimed under the Applicant's Third Party Liability Insurance but the Insurance Company rejected the claim.
38. In addition the Respondent said that the exterior front door to her flat was damaged due to high winds but the claim was rejected.
39. As a result of the rejection of these two claims by the Borough Council's Insurance Company the Respondent considered the cost of the insurance in the Service Charge to be unreasonable. She therefore obtained her own insurance cover and refused to pay her contribution to the insurance premium in the Service Charge.

Determination

40. The Tribunal found that Respondent's third party liability claim against the Applicant in 2002 when the Respondent's car was damaged by fire in a neighbouring garage let by the Applicant concerned:
- a) a separate tenancy agreement
 - b) a general third party liability policy to which the Respondent did not contribute to the premium under any Service Charge.
- It was therefore determined that the dispute relating to this claim could not be a part of the proceedings currently before the Tribunal and was not within the Tribunal's jurisdiction.
41. The Tribunal considered the reasonableness of the premium for the building insurance under the provisions of the Lease and paid for through the Service Charge in three stages. Firstly the Tribunal considered whether the insurance was properly incurred. Secondly whether there was an unjustified refusal of the Respondent's claim and thirdly whether such a refusal made the premium unreasonable for the years in question and consequently not payable.
42. In relation to the first stage the Tribunal accepted that the insurance policy had been obtained at arms' length in the market place in accordance with *Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* (1996) 29 HLR 444 CA. In that case it was held that a landlord is not obliged to obtain the lowest premium but must agree the premium at the market rate or negotiate the insurance contract at arms' length in the market place.
43. The Tribunal referred to *Forcelux Ltd v Sweetman and another* [2001] 2 EGLR 173 (LT) where it was held that a direct comparison cannot be drawn between a commercial landlord and an individual leaseholder. Commercial landlords have access to a limited pool of insurers prepared to provide commercial cover for individual properties. The Tribunal also noted that the courts accepted the practice of commercial landlords with a portfolio of properties insuring a block of properties as a single entity.
44. Also in *Forcelux Ltd v Sweetman and another* it was stated that the question the Tribunal is "to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred." In doing so it has to be considered upon looking at the evidence "whether the landlord's actions were appropriate, properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act".
45. In determining whether or not the premium was properly incurred the Tribunal found that the insurance was "appropriate" in accordance with the cases referred to but questioned whether it was "properly effected in accordance with the requirements of the lease".
46. The Tribunal determined that the insurance was properly incurred and that the premium was *prima facie* reasonable and payable.
47. In relation to the second stage, the Respondent did not adduce any evidence to indicate whether or not there was an unjustified refusal of the claim. She merely stated in her evidence that the door was damaged due to high winds

and the insurance company refused her claim. The damage appeared to have taken place in 2002 although this was not certain. The extent of the damage was also not clear. The apparent repair noted by the Tribunal on its inspection could have been for a variety of reasons. There was no evidence as to when the claim was made or whether the Respondent merely made preliminary enquires as to the likelihood of a claim being successful and on hearing that it would not, did not then pursue the matter. The Respondent was not available for questioning on the matter therefore there was insufficient evidence to determine whether the claim was unjustifiably refused.

48. The Tribunal found that the Respondent had not shown that the rejection of the claim was unjustified.
49. In respect of the third stage the Tribunal determined that on the evidence it had received the rejection of the Respondent's claim in this instance did not make the premium for the years in question unreasonable.
50. The Tribunal therefore determined that the premium was reasonable for the years ending 31st March 2004, 2005 and 2006 and payable by the Respondent to the Applicant in accordance with the invoices sent to the Respondent.

Application under Paragraph 9 Leasehold Valuation Tribunals (Fees) (England) Regulation 2003

51. The Applicant made an application for the Respondent to reimburse the Applicant's fees. The Applicant submitted that the Respondent had not complied with the Directions had made only a limited answer to the Application and had not taken the opportunity to answer the Application more fully by a personal appearance. As a public body responsible for public funds it was obliged to seek reimbursement of the fees as a matter of principle. Equally as a local authority in line with its other responsibilities it would take into account the Respondent's circumstances when pursuing the matter.
52. The Tribunal found that the Respondent had not complied with the Directions of the Tribunal. The Tribunal considered that every opportunity had been given to the Respondent to attend and present her case but that she had chosen not to do so. In the event the Tribunal found that there was insufficient evidence to justify the submissions put forward in her brief written representations. The Tribunal had therefore found predominantly in favour of the Applicant in its determination.
53. The Tribunal by virtue of paragraph 9 Leasehold Valuation Tribunals (Fees) (England) Regulation 2003 requires the Respondent to reimburse the Applicant's fees of £200.00.

JR Morris Chairman