

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property**
TRIBUNAL SERVICE

**S.27A & S20C of Landlord & Tenant Act 1985 (as amended)
("the Act")**

DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/OOML/LSC/2006/0126
Date of Application:	24 th November 2006
Property:	41/42 London Road Brighton East Sussex BN1 4LL
Applicant/Lessee	Miss G Chapman
Respondent/Lessor	New Liberty Property Holdings Limited
Date of Hearing:	21st March 2007
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman) Mr R A Wilkey FRICS FICPD (Valuer Member) Ms J K Morris (Lay Member)
Date of Decision:	10 th April 2007

Application

This is an application under Section 27A of the Act for a determination as to the liability of the Applicant to contribute towards insurance for the building from June 2005 onwards.

Preliminaries

1. On the 24th November 2006 the Applicant applied to the Leasehold Valuation Tribunal under Section 27A of the Act for a determination in respect of her share of the insurance on the building. On the 19th December 2006 the Tribunal gave directions that it intended to determine the matter on the basis of written representations only and without an oral hearing. The directions provided for the Applicant to file her statement of case and for the Respondent to file a reply in each case together with appropriate documentation and evidence in support. Both parties complied with these directions and set out their positions in writing and submitted a bundle of evidence. The Tribunal inspected the property both internally and externally before coming to their decision.

Decision in Summary

2. The insurance cover obtained by Mulberry Insurance Services costing £6,142.48 per annum plus an additional £212.57 for terrorism cover has been reasonably incurred and is recoverable in full as service charge.
3. The Section 20C application is granted.

The Applicant's Case

4. The Applicant maintains that the cost of insuring commercial premises is considerably more expensive than that of residential premises. She considers that the higher costs of insuring the commercial aspect of the property should be taken into account when deciding how the premium should be apportioned, so that the residential element of the development does not make a disproportional contribution to the cost of the insurance. Secondly she seeks an explanation as to the breakdown of the cost of insurance or an explanation as to how the Respondent has calculated her percentage of 12.17%. Thirdly she questions whether the lease covenants are wide enough to enable the landlord to insure against all the risk covered by the policy and recover all the costs from the lessees. Fourthly she maintains that she has produced comparable quotations firstly from Norwich Union showing a premium of £2,797 and secondly from London Company Market and / or Lloyds (A Rated) of £3,202.50. In the first case her quotation is nearly 55% cheaper than that arranged by the Respondent and in the second case 48% cheaper. Whilst

she accepts that the Respondent is not bound to accept the cheapest insurance she submits that the Respondent is in considerable difficulty in justifying acceptance of an insurance quote which is nearly twice as much as the ones she has found.

5. In the circumstances she submits that the cost of insurance is unreasonable and she asks the Tribunal to adjust her contributions for the year 2005 to 2006 and 2006 to 2007 accordingly. In her statement of case she raises a number of other issues in reference to the amount of insurance at £1.5 million and she raises questions relating to the loss of rent cover. She also questions whether the Respondent has entered into a long term contract with their agents to provide insurance or if the policy can be moved. The Tribunal accepts that these questions may be relevant but it is not within the Tribunal's remit to provide answers nor is it within the Tribunal's remit to require that the Respondent provide answers. These are matters that should be discussed between the parties outside of the auspices of the Tribunal.

The Respondent's Case

6. The Respondent's reply is in the form of a written statement by Ann Walker on behalf of Mulberry Insurance Service Limited. The Respondent's statement of case confirms insurance cover for the building at £1.5 million, this being the cost of reinstatement, as assessed by an independent third party Valuer and as verified by the freeholder's mortgagee.
7. The freeholder's previous managing agents had produced a schedule of floor areas and it had been decided that the insurance premium would be divided and recovered by the occupiers based on an apportionment of the floor area which they maintained was standard practice for commercial premises with upper parts. This resulted in the subject property being responsible for 12.1% of the total cost. Ann Walker maintained that this was a considerable reduction because the lease enabled the freeholder to recover up to 25% of the insurance premium from the subject property.
8. Ann Walker contended that the terms of the lease were wide enough to enable the landlord to insure both against the basic risks and, "such other risks which the landlord from time to time reasonably considered should be covered". In her view this clause authorized the current cover and enabled her client, the landlord, to recover the full premium collectively from the lessees.
9. The statement of reply challenged the alternative quotations produced by the Applicant and contended that these quotations were not comparable. The quotations had been prepared on the basis that the properties were owner occupied and therefore did not include the interest of either the freeholder or the freeholders mortgagees. In one case it was unclear whether accidental damage had been included and in another case the cover referred to the business category as property owner and business description as Nat West Bank neither of which was accurate.

Furthermore in one case subsidence cover was not included and neither was damage caused by theft. Furthermore there was very limited glass cover namely £5000.

10. In view of the above issues Ann Walker concluded that the alternative quotations were not comparable and therefore could not be relied upon. Ann Walker contended that the principle to be adopted in this case was as determined in *Havenridge v Boston Dyres Limited* 1994. The test adopted in this case was whether the landlord had secured insurance in the normal course of business. If it had, it did not matter that a lower premium could have been obtained elsewhere. It was not incumbent on the landlord to shop around. A similar approach had been taken in *Berrycroft Management Company Limited v Sinclair Gardens Investments Limited* and this was the correct approach.

Considerations

In arriving at its decision outlined above, the Tribunal had regard to the following matters:-

11. The lease contains an obligation on the part of the landlord to insure the building of which the property falls part and a corresponding obligation on the part of the lessees to pay their proportion of the cost of the insurance.
12. The lease enables the landlord, or his agent or surveyor, in each case acting reasonably, to decide what part of the premium paid to insure the building is attributable to the property.
13. The lease contains a covenant that the insurance policy must provide cover for the following risks, "fire, lightning, explosion, earth quake, riot, civil commotion, aircraft, aerial devises, storm, flood, impact by vehicles and damage by malicious persons and vandals **and other risks which the landlord from time to time reasonably considers should be covered.** The Landlord has arranged cover of £1.5 million at a cost of £6,142 plus £202 for terrorism cover. This works out at approximately £4.23 per £1000 of cover.
14. The policy currently in place covers all risk of physical loss or damage including subsidence and extended to include terrorism. The policy also includes alternative accommodation, the replacement of locks and keys and property owner's liability of £5 million. In addition the policy includes a non vitiation clause together with a mortgagee non invalidation and a no lapse agreement as required by the freeholders' mortgagees.
15. Although this cover is more comprehensive than we would normally expect to find, we consider the lease terms are sufficiently wide to enable the landlord to contract for this level of cover recovering the reasonable premium from the lessees.

16. The Tribunal has been told that the premium is apportioned between the various parts of the building by reference to floor area. On this basis the subject property is responsible for 12.1% of the total premium.
17. In our experience the above method of apportioning the premium is one of several methods generally used and we think it a reasonable basis of apportioning the premium between the various parts of the building.
18. While the tenant asserts that she has produced comparable quotations providing for considerably lower premiums, we do not find this to be the case. It is not clear to us that any of the quotations provide the specialist cover required by the freeholders mortgagees. Furthermore in one case the quotation is stated to be, "subject to the completion of a satisfactory proposal form and survey". Having regard to these unknown factors we are not satisfied the alternative quotations provided are indeed comparable. The lessee contends that the level of cover set out in her quotations is adequate for the purposes of fulfilling the freeholder's obligation to insure. Whilst the quotations might indeed be adequate we are of the view that the lease enables the landlord to dictate the level and type of cover whilst acting reasonably. In this particular case we do consider it is reasonable for the landlord to arrange specialist cover covering the freeholders' mortgagees. Moreover the lease contains a specific clause giving the discretion to the landlord to decide what part of the premium paid to insure the building is attributable to the property. The apportionment in this case is based on floor area and is standard practice for commercial premises with upper parts. This particular building is of a complex layout and user because of the part commercial nature and higher insurance costs than standard residential homes must be expected.
19. The cost of cover in this particular case is considered by the Tribunal to be high but in the absence of comparable alternative quotations the Tribunal is not minded to interfere and disallow any part of the insurance cost as a service charge item.

Section 20C

20. This section gives the Tribunal discretion to disallow in whole or in part the costs incurred by a landlord before it. The Tribunal has a wide discretion to make an order that is just and equitable in the circumstances.
21. Although in this case we have found in favour of the landlord, the arguments were very finely balanced. We consider that the cost of cover is high and we encourage the Respondent to keep the market under review to ensure that competitive premiums are obtained on an annual basis. Whilst we consider that the method of apportioning the premiums between the occupiers of the building in this case is lawful and reasonable, there are other methods of apportionment which would result in the commercial users alone paying that part of the increased premium resulting from commercial user.

22. As the arguments were finely balanced, we feel that both parties should be responsible for their own costs in this case. Accordingly the Tribunal makes an order under section 20C and for the same reasons it makes no order under regulation 9 of the Leasehold Valuation Tribunal (England) Regulation 2003.

Signed

R T A Wilson LLB

Chairman

Dated: 10th April 2007

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
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LEASEHOLD VALUATION TRIBUNAL



**APPLICATION FOR PERMISSION TO APPEAL
SECTION 175 of the COMMONHOLD AND LEASEHOLD REFORM ACT
2002 (“the Act”)**

Case Number: CHI/OOML/LSC/2006/0126

Property: 41/42 London Road
Brighton
East Sussex
BN1 4LL

Applicant: Miss G Chapman

Respondent: New Liberty Property Holdings Limited

DECISION AND REASONS

BACKGROUND

1. By a letter dated the 1st May 2007 the Applicant has applied to the Tribunal for permission to appeal to the Lands Tribunal on the decision of the Leasehold Valuation Tribunal for the decision dated 10th April 2007.

GROUNDS FOR APPEAL

2. In summary the grounds for the appeal appear to be as follows:-

- 2.1 The Respondent incorrectly calculated the floor areas for the subject property resulting in a higher percentage of the insurance premium being attributable to Flat B.
- 2.2 More time should be given to the Applicant to obtain comparable insurance quotations.

DECISION

3. Permission to appeal is refused.

REASONS

4. The Tribunal in reaching its decision made careful findings of fact and applied the law on the basis of the written evidence presented to it. It is not appropriate for the Tribunal to re-open the case on the basis of new evidence presented to it at a later stage.
5. The Applicant's appeal application alleges that the Respondent has applied incorrect floor measurement calculations when assessing the proportion of insurance due from the subject property. This submission was not raised by the Applicant in her original submissions and therefore it is not appropriate for the Tribunal to re-open the case on the basis of new evidence presented to it.
6. Having given careful consideration to the application, the Tribunal can find no reason to believe that a different body, armed with the information that was before it at the hearing, but not after, would have reached a different conclusion on the facts, and so cannot accept that the Applicant has established proper grounds for appeal. Her request is therefore refused.

Signed _____

R T A Wilson LLB Chairman

Dated 25th May 2007