

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



S.27A & S.20C Landlord & Tenant Act 1985

DECISION

Case Number: CHI/21UF/LSC/2008/0022

Property: 4C Clinton Place
Seaford
East Sussex
BN25 1NL

Applicant: Mr J Penfold (appearing in person)

Respondent: Enduring Properties (Jersey) LLP (not represented)

Date of Application: 24 February 2008

Date of Hearing: 17 September 2008

Date of Decision: 18 September 2008

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Ms H Clarke (Barrister)
Mr R Athow FRICS MIRPM (Valuer)

DECISION & ORDER

1. At the Hearing on 17 September 2008, the Tribunal announced the Decision in this case which was confirmed in writing on 18 September 2008. The Decision is as follows:
2. The amounts demanded by the debit note dated 21 December 2007 for the insurance premium for the period 25 December 2006 to 24 December 2007 in the amount of £680.17, and the debit note dated 21 November 2007 for insurance for the period 25 December 2007 to 24 December 2008 in the amount of £714.18, are not payable.
3. The demands do not comply with S.47 Landlord & Tenant Act 1987 as the information required by that Section to be contained within the demands was not present and also the demands do not comply with S.21B Landlord & Tenant Act 1985 as they were not accompanied by a summary of the rights and obligations of tenants as required by that Section.

11. Section 10 provides that

4. In addition:

THE TRIBUNAL ORDERS that to such extent as they may otherwise be recoverable, the Respondent's costs, if any, in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant or other tenant of a flat forming part of the property.

REASONS

5. This is an application by Mr J Penfold, the lessee of flat 4C, for a determination whether or not the amounts of apportioned insurance premiums demanded were payable as service charges in respect of this flat. The application is in respect of the year service charge from 25 December 2007 to 24 December 2008 and the previous accounting year ended 24 December 2007.
6. Mr Penfold also made an application under S.20C that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs for the purpose of calculating service charges.
7. The sums challenged are for the period to December 2007 - £680.17, and for the year to 24 December 2008 - £714.18.

THE LAW

8. The statutory provisions primarily relevant to this application are to be found in S.s 18, 19, 20C and 27A of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out a sufficient extract or summary from each to assist the parties in reading this Decision.
9. Section 18 provides that the expression "service charge" for these purposes 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, improvements or insurance or the landlord's costs of management, and
 - b. the whole or part of which varies or may vary according to relevant costs."
10. "Relevant costs" are the costs or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.
11. Section 19 provides that:

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.

12. Subsections (1) and (2) of section 27A of the Act provide that:

(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 to whom it is payable
- b. the person by 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.

Subsection (1) applies whether or not any payment has been made.

There are certain exceptions that limit the Tribunal's jurisdiction under section 27A but none of those exceptions has been in issue in any way in this case.

13. In addition, it became apparent during the course of the hearing that the recent amendment to the Act introducing S.21B would be relevant. This states at sub section (1) a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges, and at (3) a tenant may withhold payment of a service charge which has been demanded from him if sub section (1) is not complied with in relation to the demand.

14. The Tribunal also had regard to S.47 of the Landlord & Tenant Act 1987 (the 1987 Act) which requires the landlord's name and address to be contained in demands for rents, etc. In particular at sub section (1) where any written demand is given to a tenant " ... the demand must contain the following information, namely:

- (a) The name and address of the landlord and
- (b) ... paragraph (2) where – (a) a tenant of such premises is given such a demand, but (b) it does not contain any information required to be contained in it by virtue of sub section (1), then ... "the relevant amount" shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant ...".

THE LEASE

15. The Tribunal was provided with a copy of the lease of 4C Clinton Place and at Clause 2.1.2 the tenant covenants to pay as rent "the sums the landlord spends each year during the term to insure the property as required by this lease ("insurance rent ...")".
16. At 2.2 the landlord or his agent or the surveyor (in each case acting reasonably) is to decide which part of the premium paid to insure the building is attributable to the property. At 3.2 the tenant covenants further to pay the insurance rent on receipt of written demand.
17. For the purpose of these proceedings, the insurance rent is to be treated as a service charge in accordance with the definition under S.18 of the Act.

BACKGROUND

18. A pre-trial review hearing was held on 20 May 2008 at which the Respondent was not represented but sent a written submission.
19. Detailed Directions were given for the Respondent to provide a statement and further documents which were provided in letter form on 29 May 2008. In addition the Tribunal had the written representations of the Respondent made to the pre-trial review hearing dated 15 May. Both these statements were made by Mulberry Insurance Services Ltd which has no legal status in respect of the building, but is given authority by the landlord to recover the insurance premiums "from such sources as may be relevant".
20. The Applicant, as requested, submitted a formal statement with supporting documentation.
21. All documents submitted to the Tribunal were made available to the other party.
22. Following the hearing the Tribunal wrote to both parties identifying matters on which the Tribunal invited comments on its provisional findings. The Tribunal advised both parties that if the amounts were properly demanded, it intended to determine that the insurance premium payable in each year in question for flat 4C Clinton Place should be limited to £525.
23. Neither the Respondent nor Mulberry Insurance Services Ltd chose to comment. The Applicant made comments confirming and emphasising matters that had been previously identified at the hearing.

INSPECTION

24. The Tribunal members inspected the property prior to the hearing on 17 September 2008.
25. The property comprises one of three residential properties, constructed on the first and second floors above retail banking premises in the centre of Seaford. The flat is approached only by way of a rear pedestrian alleyway and an external metal staircase leading to a door at first floor level.

26. The building forms part of the terrace of buildings in the town centre and was probably constructed about a hundred years ago with brick and cement rendered elevations under a pitched, slated roof. The front façade is marble panelled at ground floor level. The ground floor accommodation are utilised as commercial premises. The pedestrian access to the flats which are located over the commercial units is from the rear and the approach is of poor quality, narrow and badly lit. Once on site however the subject property was accessed through its own small garden and up an external metal circular staircase. Internally the flat has spacious accommodation. With well proportioned rooms.

EVIDENCE

27. Mr Penfold explained that until the change of ownership the insurance matters had been satisfactorily dealt with from his point of view but it was only when Mulberry Insurance Services became involved that the premiums increased. Mr Penfold moved into the property in June 2003.
28. He had been advised that the landlord did not have to obtain the cheapest quote available.
29. Mr Penfold had obtained a quotation from Heritage Group Insurance Brokers Ltd at £2,126.25, the share for 4C being £375.71. The Mulberry Insurance Services premium was about £3,850 (neither the Tribunal nor Mr Penfold were provided with the actual amount), the 4C share being £680.17.
30. The Tribunal questioned Mr Penfold regarding the process by which he received demands for the insurance premiums. These had come directly from Mulberry Insurance Services Ltd and in support of that approach a letter of authority was produced. This letter is on Enduring Partnerships 1 GP1 Ltd letterheading and is written to Neil Holloway at the Mulberry Insurance Services Ltd address but not addressed to that company. The letter is signed by Steve Marsden, director, of the landlord company and states "... I hereby confirm that your instructions are to proceed to recover the insurance premiums from such sources as may be relevant".
31. Mr Penfold explained to the Tribunal that there had been no formal demands made, although some insurance premium documentation had been provided. No other documents were supplied to him in support of the demands made.
32. At the pre-trial review, Mr Holloway of Mulberry Insurance Services provided a written statement. Mr Holloway is a risk manager and writes on behalf of Mulberry Insurance Services Ltd. The statement explains the insurance of the property and that the sum insured of £987,000 was calculated by a reputable independent third party valuer. The figure is enhanced by a 30% inflation factor.
33. Mr Holloway indicates that he believes the landlord and their agents have acted in accordance with the lease in making the insurance rent demand but no copies of any demand made by the landlord or their agent is provided.

34. The managing agents, Jones Lang LaSalle, provided floor areas on which an apportionment of the insurance premium was undertaken.
35. Mr Holloway outlines the terms of the insurance, and states that "The Royal Bank of Scotland Plc is noted as joint insured and first loss payee. This is further enhanced to include a Non-Vitiation clause, together with a mortgage non-invalidity and a no lapse agreement, as required by our client's mortgagees."..."All items covered by the insurance policy are either standard, for the benefit of the tenants, and/or are specific requirements of the mortgagees. We therefore consider that the landlord is acting reasonably."
36. Mr Holloway then goes on to make specific comments about two alternative quotes provided by Direct Line and Legal & General. He also reminds the Tribunal of the test that should be applied from *Havenridge v Boston Dyres Ltd* and also *Berrycroft Management Co. Ltd v Sinclair Gardens Investments Ltd*.
37. The further letter from Mulberry Insurance Services dated 29 May 2008 written following the pre-trial review hearing and directions simply provides a floor plan and further copies of correspondence. That letter is signed by Jan Walker identifying herself as risk manager.

CONSIDERATION

38. Questions of insurance are detailed matters and the Tribunal would have been assisted if there had been a representative from Mulberry Insurance Services Ltd present at the oral hearing.
39. Firstly, the Tribunal considered whether the amounts had been validly and legally demanded. This was in order to apply the general principles of S.27A of the Act.
40. The Tribunal was not presented with any evidence that a demand had been sent from the landlord of the property but there were documents identifying insurance premiums payable submitted by Mulberry Insurance Services Ltd. These did not contain the landlord's name and address as required by S.47 of the 1987 Act and did not include the Statement of Tenants' Rights required by S.21B of the Act. The consequence of those omissions is that the amounts are not payable until the relevant sections of the Act are complied with.
41. In order to assist the parties the Tribunal believes that it would be helpful to indicate the amount which would be payable if proper demands were made. On this basis the detailed letter was written to the parties setting out the Tribunal's initial views. This is a mixed commercial and residential property and as such the apportionment of the insurance premium will always be technically difficult. The floor area approach adopted by previous managing agents has been accepted by the Applicant in the past and we received no evidence on which to base a variation.
42. In the Tribunal's view the cost of insurance is very high, by comparison firstly to the alternative quotation obtained from Heritage Group Insurance

Brokers Ltd and by assessment using the Tribunal's own knowledge and experience. These detailed provisional findings were placed before both parties for comment in response the letter written to them following the hearing.

43. In its statement to the Tribunal, Mulberry Insurance Services Ltd emphasised the policy enhancements which include, amongst other things, a Non-Vitiation clause, a mortgage non-invalidity and no lapse agreement which are specific requirements of the mortgagees. This will no doubt increase the insurance premium.
44. In the Tribunal's view most of these "enhancements" are of benefit only to the freeholder and its mortgagees. They provide no additional benefit to the residential lessees and the insurance premium should be reduced to reflect this.
45. Having taken account of all the evidence before it and having requested further comments from both parties, the Tribunal determines that if demands are properly made, the amount paid in each of the relevant years for insurance for flat 4C Clinton Place should be limited to £525.

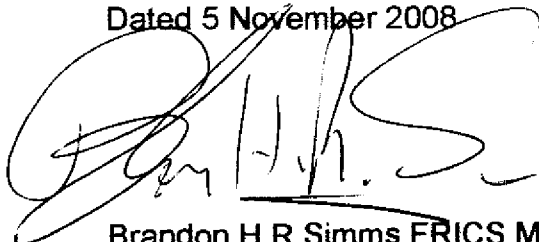
20C

46. Mr Penfold considered that it would be unreasonable for any costs incurred by the landlord or the insurance broker to be recovered by way of the service charge as he had had no alternative but to pursue the matter in view of the high cost of insurance. No representations were made on behalf of the Respondent.
47. In view of the circumstances of this case and the lack of interest from the Respondent, the Tribunal has no hesitation in making an Order that, to such extent as they may otherwise be recoverable, the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant or other tenant of the property.

ATTACHMENT

48. A copy of the letter sent to the Applicant dated 2 October 2008 is attached and the same letter was sent to the Respondent.

Dated 5 November 2008



Brandon H R Simms FRICS MCI Arb
Chairman

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

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Mr J R Penfold
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Your ref:
Our ref: CHI/21UF/LSC/2008/0022

Date: 02-Oct-2008

Dear Mr Penfold

RE: LANDLORD & TENANT ACT 1985 - SECTION 27A(1) & SECTION 20C

PREMISES: 4C CLINTON PLACE, SEAFORD, EAST SUSSEX, BN25 1NL

Following the decision of the Tribunal in this matter dated 18 September 2008, the Tribunal considered whether the amounts demanded for the apportioned insurance premium for Flat 4C were reasonably incurred. Having considered the issues in front of it, the Tribunal is minded to determine that the insurance premium payable in each year for Flat 4C Clinton Place should be limited to £525.00.

The insurance premium charged is considered to be unreasonable by comparison to the quotation from Heritage Group Insurance Brokers Limited at £2,126.25 (Flat 4C share £375.71); by comparison to the Mulberry Insurance Services premium of about £3,850 (Flat 4C share £680.17) (the actual amount of the premium payable by the freeholder was not provided); and by comparison to the Tribunal's own estimate of a likely premium calculated at 27p per £100.00 cover at £2664 (Flat 4C share £470.73)

The Tribunal have in particular to consider the terms of the policy:

1. The high amount of the loss of rent provision in the policy, which relates mainly to the commercial part, and the effect this would have on the premium charged for the whole building.
2. The 30% inflation provision in the sum assured.
3. The Mortgage No-Validation and No Lapse Agreement and presumably a Non Vitiating clause which would usually attract a premium loading but is of benefit only to the freeholder and not to the residential lessees.
4. Whether there is any adverse claims history.
5. Whether there is any further premium loading for the property's location.

The Respondent was not represented at the hearing and the Tribunal is not seeking to extend the case to become a hearing by way of written representations. The Tribunal, however, invites comments from both parties limited to the issues set out herein and the Tribunal's provisional views on the figures before finalising its

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determination. The Tribunal requests those comments to be received to be received at this office within 14 days of the date of this letter.

Any comments submitted should be in writing to the office address as noted above and five copies provided. A copy will be sent to the other party but no further comments from the parties will be entertained.

Following receipt of these final comments from the parties, the Tribunal will make its determination and publish its Final Decision in full.

Yours sincerely



Michael Quinn
Case Officer