

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00LC/LSC/2010/0076

Property: 477 Canterbury Street
Gillingham
Kent
ME7 5LJ

Applicants: Mr. P. Munns and Mr. S. Samuel

Respondent: Longmint Limited

**Date of
Consideration:** 6th September 2010

**Members of the
Tribunal:** Mr. R. Norman
Mr. R. Athow FRICS MIRPM

Date decision issued: 10th September 2010

RE: 477 CANTERBURY STREET, GILLINGHAM, KENT, ME7 5JL

Decision

1. The Tribunal made the following decision:
 - (a) The sum of £650 in respect of insurance for the year 1st March 2010 to 1st March 2011 is payable by Mr. P. Munns and Mr. S. Samuel ("the Applicants"): £325 each.
 - (b) An order be made under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") that all or any of the costs incurred or to be incurred by Longmint Limited ("the Respondent") in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Background

2. No. 477 Canterbury Street (“the subject property”) is divided into two flats. The Applicants Mr. P. Munns and Mr. S. Samuel are the lessees of Flats 2 and 1 respectively and have made an application under Section 27A of the 1985 Act for a determination of liability to pay the insurance charge demanded by the Respondent in respect of the year 1st March 2010 to 1st March 2011.

3. The Applicants have also made an application for an order under Section 20C of the 1985 Act that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

4. In response to directions which were issued, the parties provided statements of case and other documents which were considered by the Tribunal.

Inspection

5. On 6th September 2010, in the presence of Mr. Munns, the Tribunal inspected the subject property which is a terraced house on two floors with brick walls under a concrete tiled roof. We saw that there is a small forecourt, a small common entrance hall and that there are small gardens at the rear.

Hearing

6. On 6th September 2010 the hearing was attended by Mr. Munns, who stated that he was representing himself and Mr. Samuel, and by Ms Thompson, Solicitor, of Juliet Bellis & Co. representing the Respondent.

Evidence

7. The Applicants’ case is set out in their statement of case but in summary is that they believe that the sum demanded for insurance is far too high for the type of property. In support of their application the Applicants have obtained quotes for insurance which are much lower than the sum demanded by the Respondent. Those quotes are as follows:

(a) GSI Group Commercial Services LLP Insurance Brokers have obtained a quote from Zurich Insurance Company for a Power Place policy with a premium in the sum of £424.42 plus a terrorism premium of £52.50 making a total of £476.92.

(b) Property Select Insurance have quoted for a policy underwritten by NIG with a premium of £407.06 with a general excess of £100 or £372.56 with a general excess of £200 plus a terrorism premium of £52.50 making a total of £459.56 or £425.06 depending on the chosen excess.

(c) Alan Boswell Insurance Brokers Ltd have quoted for an MMA Insurance policy with a premium of £339.61 plus a terrorism premium of £52.50 making a total of £392.11.

8. The Respondent's case is set out in a statement of case but in summary is that:

(a) The premium charged for the year commencing 1st March 2010 is £882.40 plus a terrorism premium of £23.89 making a total of £906.29. The policy is with Aviva and details of the policy were provided.

(b) The Respondent instructs brokers Cadogan Keelan Westall to go to the market each year to obtain quotes in respect of insurance policies for the Respondent's properties.

(c) Cadogan Keelan Westall took into account the interests of all parties in obtaining an appropriate insurance policy.

(d) The policy in place is very comprehensive.

(e) The Respondent is aware that the broker may receive a modest commission in respect of the insurance premium although the Respondent does not know how much commission the broker receives. The commission is an administration charge for the services the broker provides. The Respondent does not pay the broker for any of the services it offers. The broker carries out extensive market research each year as to the most competitive insurance available with the benefit of both parties in mind. The broker also provides a continuing service in handling and dealing with all insurance claims, providing historical information and liaising with both Lessees and the Respondent's managing agent. If the broker received no commission an administration charge would be levied for the service provided and billed to the service charge account.

(f) The subject property has no claims history.

(g) The alternative quotes provided by the Applicants are not on a like for like basis.

(h) The Applicants' quotes do not provide for employer's liability whereas the Respondent's policy does. The Power Place policy does not provide for Employer's Liability cover.

(i) Most noticeably the Applicants' quote provides numerous exclusions if all risks cover is taken (the quote is based on all risks cover). The exclusions include among others:-

- (i) Wind, hail, sleet, snow, flood damage;
- (ii) Corrosion, wet or dry rot;
- (iii) Faulty or defective workmanship;
- (iv) Collapse or cracking of Buildings;
- (v) Maintenance, redecoration or repair costs.

(j) The Respondent's policy does not exclude those risks and the Respondent considers that it is both desirable and necessary to insure against those risks

- (k) The Applicants' quotes are limited in cover in comparison to the Respondent's policy.
- (l) The Respondent's policy is extremely comprehensive and includes fire, lightning, explosion, riot and civil commotion and will also extend to works being carried out at the subject property.
- (m) The Respondent's policy also covers any capital additions to the building whereas the Applicants' quotes do not. The Respondent's policy also covers items such as the removal of fly tipping and wasps' nests.
- (n) As a general rule it is more expensive for a freeholder to insure a property than it is for a lessee in occupation.
- (o) The Respondent submits that any landlord is not obliged to accept cheaper quotations as in *Berrycroft Management Co. Ltd v Sinclair Gardens Investments* [1977] 1 EGLR 47, CA. In that case the leases of a block of flats imposed a requirement on the management company to insure the building for such sums and through such companies as the landlord may direct. The lessees covenanted to pay a proportionate amount of the insurance premium. It was held that there was no implied covenant that the sum charged by the insurers should be reasonable or that a tenant should not be required to pay a substantially higher sum than the tenant could arrange.
- (p) Similarly in *Havenridge Ltd. v Boston Dyers Ltd.* [1994] EGCS 53, CA the lease obliged tenants to pay sums that the landlord shall '*properly expend or pay to any insurance company in respect of ...insuring...the demised premises*'. It was held that it was neither necessary nor clearly intended that there should be an implication of reasonableness. Provided the insurance was effected in accordance with the terms of the lease then the landlord was not obliged to seek cheaper alternative quotes.
- (q) The property is insured with an insurer of good repute and the Respondent avers that the cost of the insurance policies is within a reasonable range of prices for the cover provided.

9. At the hearing further submissions were made by Mr. Munns and Ms Thompson and they were questioned by the Tribunal in order to clarify their cases.

10. Along with the Applicants' statement of case Mr. Munns had produced a demand for insurance dated 18th March 2010 received from South East Property Services Ltd. ("SEPS") the Respondent's current managing agents, which included a sum in respect of arrears. It appeared that the demand did not take account of the decision of the Leasehold Valuation Tribunal in respect of insurance for the year 2009/2010 and possibly also decisions of the Leasehold Valuation Tribunal in respect of the years 2007/2008 and 2008/2009 and some payments which had been made. Mr. Munns had written a letter

about this and had telephoned the managing agents and had been told they were looking into it.

11. Ms Thompson explained that on 1st August 2009 the present managing agents SEPS had taken over from Residential Group Management Ltd., with whom SEPS had no connection, and that there had been a lack of co-operation by Residential Group Management Ltd. in providing information to SEPS. Ms Thompson said she would look into the matter and that an adjustment would be made. She stated that the Applicants were not being chased for payment. Ms Thompson telephoned SEPS and obtained some information from them. Some figures were agreed by Mr. Munns but there was a lack of evidence, particularly in respect of payments which had been made and the parties will try to reach agreement on the sums due in respect of previous years. Mr. Munns stated that there was nothing included with the demand about tenant's rights to apply to a Leasehold Valuation Tribunal but Ms Thompson said that it is standard practice to attach the summary of tenant's rights to all demands.

12. As to the present application, Mr. Munns considered that the insurance premium was too high for the type of property. The premium was more for a mansion not a small terraced property. Other quotes were 50% less than Aviva and some of the matters covered are covered by other insurers for half the amount charged by Aviva. The quotes which the Applicants had obtained covered most of what was on the Respondent's policy but sometimes they were worded differently. They were relevant to the subject property. Mr. Munns was concerned that according to the Aviva policy the contents of common parts were included within the building sum assured and it was not clear whereas in the NIG policy the contents of common parts were insured for £10,000.

13. Mr. Munns pointed out that although at paragraph 4 of the Respondent's statement of case it was said that employer's liability was not included in the Applicants' quotes, this was not correct. It could be included in the Power Place policy, presumably at an extra cost, but it was included in the quotes from NIG and MMA.

14. As to paragraph 5 of the Respondent's statement of case setting out exclusions to the cover provided in the Applicants' quotes, some of the same exclusions applied to the Respondent's policy and in other cases it was just not quite the same wording and the Respondent was nitpicking but the quotes obtained by the Applicants covered this type of property. Not everything in the Respondent's policy was required in the case of the subject property.

15. Ms Thompson submitted that the Respondent was not nitpicking. The wording of the policy showed whether or not something was included. The key facts pages of the NIG quote showed that there were a number of exclusions, a lot of which were covered under the Respondent's policy. However, she accepted that employer's liability was covered in both the NIG quote and the MMA quote; that the reference to page 34 in paragraph 5 of the statement of case was an error and that some of the exclusions listed in paragraph 5 were also excluded from the Respondent's policy.

16. Ms Thompson maintained that in the Applicant's quotes the buildings sum insured was incorrect, that there was a lower loss of rent recoverable, although with a low ground rent that would not attract much of a premium, and she imagined that there were various other exclusions. She submitted that there were significant exclusions in respect of contents but did not specify them. She did not have full details of the Power Place policy so could not make further observations about it.

17. Ms Thompson was aware that in the decision of the Leasehold Valuation Tribunal in respect of the insurance for the year 2009/2010 it had been mentioned that had there been an insurance valuation it would have been extremely useful. No such valuation had been undertaken but SEPS were organising a surveyor to revalue the Respondent's portfolio.

18. Ms Thompson confirmed that the Respondent's policy was a block or group policy and that this had advantages for the Applicants. For example, if there is a claim the cost is spread so the claim has less effect on premiums in the future, but she accepted there were also disadvantages. She accepted that there were some parts of the Respondent's policy, such as that relating to exhibitions, which were not appropriate to the subject property.

19. The Respondent's policy was very comprehensive. The broker is instructed every year and the portfolio is reassessed each year. It is more expensive for a landlord than for a lessee in occupation to obtain insurance. While the landlord has to have a reasonable price for insurance he does not have to accept the cheapest.

20. As to the application for an order under Section 20C of the 1985 Act, Ms Thompson accepted that under the terms of the leases the Respondent had no opportunity to recover the costs of this application.

Reasons for the Tribunal's Decision

21. The quote from GSI Group was for a Power Place policy, underwritten by Zurich Insurance Company, and the buildings sum insured was £269,352.50. This sum is lower than the figure of £323,223, the buildings sum insured on the Aviva policy. However, in both, the buildings declared value is £215,482. From the information provided to us, we are uncertain that this is a suitable 'blocks of flats' insurance policy. The terms are substantially different to the wording of normal blocks of flats policies. Because of this, we are not convinced that this is a true comparable policy, especially taking into account the much lower buildings sum insured.

22. The quote obtained through PSI is for a policy underwritten by NIG and this is a property owners' insurance policy. The building sum insured and the buildings declared value are the same as in the Aviva policy.

23. The quote from MMA is based on a rebuild cost of £250,000.

24. The Tribunal takes account of the fact that in the Respondent's statement of case when the quotes obtained by the Applicants were being compared with the Respondent's policy, errors were made and that not all the differences said to exist did in fact exist. However, there are several items which are missing from the Applicants' quotes when compared with the normal blocks of flats policy, especially when compared with the Aviva policy.

25. In September 2009 the Tribunal, comprised of the same members, made a decision about the insurance for the year 2009/2010 in respect of the subject property and found that there was a lack of consistency in all of the evidence provided. There was a large variance in the sum insured; that figure being the sum required under Clause 3(3) of the lease which, when paraphrased, imposes an obligation on the landlord to insure 'in the full reinstatement value' and not the declared value. The range in evidence varied between £215,482 and £334,536. That range was not considered to be of assistance in trying to assess the reasonableness of the sum covered. It was noted that it was unfortunate that the Tribunal had not been offered by either party the benefit of a formal insurance appraisal. The Royal Institution of Chartered Surveyors Service Charge Residential Management Code recommends that regular valuations are carried out and should be undertaken by qualified valuers with appropriate skill and experience in the types of property being assessed. Had there been such a valuation within the evidence provided, this would have been an extremely useful document, from which the Tribunal could have carried out a much more accurate assessment.

26. In September 2009, the Tribunal was therefore placed in a position where it needed to use its own experience and judgement on rebuilding costs and reached a conclusion that this should be in the region of £250,000. Using this figure as the base and utilising the analysis of a quote from MORE TH>N included in the evidence before that Tribunal, which computed to a rate of 24.52p per £100 insured, resulted in a premium of £613.00 + 5% IPT = £643.65 which was rounded to £650.

27. Now in September 2010 we find we are in a similar position and have again to use our own experience and judgement on rebuilding costs.

28. We considered the decisions in the cases referred to us, in particular *Berrycroft Management Co. Ltd v Sinclair Gardens Investments*. Just because an insurance quote is obtained which is cheaper than the quote obtained by the landlord it does not mean that the landlord has to accept that lower quote or that any sum in excess of that lower quote cannot be demanded of the lessees. However, the decision does not provide that the landlord is entitled to demand from the lessees more than the landlord has paid for insurance or that the landlord is entitled to demand from the lessees the additional cost of insurance brought about by arranging insurance in excess of that required by the lease.

29. As we have stated above, we have found that the insurance quotes obtained by the Applicants are not comparable. However, on the basis of the evidence produced we have come to the conclusion that the Respondent obtained insurance on the basis of an excessive estimate of the rebuilding costs and that as a result more was demanded from

the Applicants than was required to cover the cost of effecting insurance that was required by the lease.

30. The demand raised by the landlord of £906.29 for the subject property is excessive. We have come to the conclusion that in the period from March 2009 to September 2010 there has been little or no change in rebuilding costs or in the cost of insurance. On the assumption, which we have had to make in the absence of reliable evidence from the parties, of our guide of £250,000 being the correct sum insured, the appropriate premium considered to be reasonable under these circumstances is £650.00, i.e. £325.00 per flat.

31. It was stated in the application that the Applicants had tried to resolve with the Respondent the problems as to the insurance premiums but had not been successful. The Applicants were therefore justified in making their application. The evidence before us indicates that the charge was increased by the Respondent arranging insurance in excess of that required by the lease. We therefore found that it would not be just and equitable for the Respondent to be able to charge to the Applicants the costs incurred by the Respondent in dealing with this application. At the hearing it was accepted on behalf of the Respondent that under the terms of the leases the Respondent is not able to charge the Applicants for the cost of these proceedings but for the avoidance of doubt we considered it just and equitable to make an order under Section 20C of the 1985 Act.

Signed

R. Norman

Chairman