

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Case No. CHI/29UE/LSC/2010/0055

Property: 9B Templar Street
Dover
Kent
CT17 0BW

Applicant: G & O Rents Limited

Respondent: Mrs. M.K.V. Scott

Date of Hearing: 19th July 2010

Members of the Tribunal: Mr. R. Norman
Mr. R. Athow FRICS MIRPM
Mr. P.A. Gammon MBE BA

Date Decision Issued: 5/8/10

9B TEMPLAR STREET, DOVER, KENT CT17 0BW

Decision

1. Mrs. M.K.V. Scott ("the Respondent") is liable to pay the following:

	£
(a) Insurance in respect of the year 2006/2007:	246.57
(b) Insurance in respect of the year 2007/2008:	<u>258.25</u>
Total:	504.82

2. Credit is to be given to the Respondent for the £200 which she has paid leaving £304.82 to be paid within 28 days of the date of issue of this decision.

3. The Respondent is also liable to pay insurance in respect of the year 2008/2009 in the sum of £268.92 but that sum is not payable until she receives from G & O Rents ("the Applicant") a proper demand.

4. If the Applicant wishes to claim any interest from the Respondent then the Applicant must recalculate such interest having regard to the reduced amounts for which the Respondent is liable and the fact that any liability for interest cannot arise until a proper demand is made. Any recalculation of interest must be set out clearly so that the Respondent is able to understand how the calculation is made and can see whether or not she is liable to pay it.

Background

5. The Respondent is the current lessee of 9B Templar Street, Dover, Kent, CT17 0BW (“the subject property”). The Applicant is the freeholder of 9 Templar Street.

6. The Applicant commenced proceedings in the County Court (Case No. 9BF02964 claiming from the Respondent a total of £1,061.70 plus interest and costs.

7. By an order dated 11th March 2010 the proceedings were transferred to the Leasehold Valuation Tribunal for assessment.

Inspection

8. On 19th July 2010 the Tribunal inspected the exterior of 9 Templar Street, Dover and, in the presence of the Respondent, the interior of the subject property.

9. 9 Templar Street is a terraced house on four floors converted into flats. The subject property is the ground floor flat. Flat 9A is on the first and second floors and Flat 9C is the basement flat. Flat 9A and the subject property have a shared entrance and Flat 9C has its own entrance.

The Hearing

10. The hearing was attended by Mr. O’Dell on behalf of the Applicant and by the Respondent. Also present was the mother of the Respondent.

11. By a letter dated 12th July 2010, the Applicant had provided evidence and we asked Mr. O’Dell why that evidence had been provided so late in the day and just a few working days before the hearing. He apologised for the late submission and explained that the reason was that he had been away from the office. As directions had been issued for the Applicant to send to the Respondent and to the Tribunal a formal statement of case by 14th May 2010 this was not a satisfactory explanation for the late submission of evidence. Some evidence had been supplied by the Applicant before the directions were made and Mr. O’Dell considered that the late papers did not add anything but just made the position clearer. He accepted that the Respondent should not be prejudiced by the late submission of papers and that the Tribunal would be justified in ignoring the letter dated 12th July 2010 and its enclosures.

12. We asked Mr. O’Dell to explain how the sum claimed of £1,061.70 was calculated especially as different figures appeared elsewhere in the papers.

13. He confirmed that:

(a) There was no ground rent outstanding and that since the Respondent had obtained a lease extension no more ground rent was payable.

(b) An invoice dated 21st December 2009 included administration fees which either had been credited back to the Respondent or should be credited back to her and that interest of £7.13 should not be claimed as it was included in the figure for interest of £72.61.

(c) The Applicant would be claiming from the Respondent sums for insurance in respect periods beyond the year 2008/2009 but he accepted that they were outside the scope of the claim which had been made in the County Court and transferred to the Leasehold Valuation Tribunal and could not be dealt with.

(d) Within the scope of these proceedings the following sums were claimed:

	£
Insurance 2006/2007:	328.83
Insurance 2007/2008:	344.40
Interest:	72.61
Insurance 2008/2009:	358.63
Land Registry fee:	10.00
Interest:	41.07

(e) Mr. O'Dell had not produced in advance of the hearing and did not have with him copies of demands made, even though directions made on 28th April 2010 required the Applicant by 14th May 2010 to send with the statement of case various documents including copies of demands in support of the Applicant's case. He stated that the demands would have been made on the dates stated on the invoice. The information was on a computer and he was not sure that the demands could be recreated. The demands would have been sent out with a copy of the insurance schedule and would have itemised the earlier balances due then. He believes the insurance is called service charges but the Applicant does not manage the subject property. Urbanpoint Property Management Limited ("Urbanpoint") send out the account statements and that company does have copies of the summary of tenants' rights but he had no evidence that they had been sent out with the demands as has been required since 1st October 2007.

14. The Respondent produced a demand for July 2009. It did not have the summary of tenants' rights and she stated that the demand plus the insurance details was all that she had received.

15. The Respondent accepts that the Applicant has a duty to insure 9 Templar Street and that she has a duty to reimburse her share of reasonable premiums paid.

16. The lease provides that the lessor has to insure the property (9 Templar Street Dover) and that the lessee has to refund to the lessor all premiums payable by the lessor in "...insuring and keeping insured the demised premises in accordance with the covenants by the Lessor...". The lease defines "the demised premises" as the ground floor flat (the subject property).

17. Mr. O'Dell explained that the insurance premium had been apportioned to the three flats at one third each. He was not aware that Flat A was on two floors. He was happy to have an insurance valuation carried out and at same time if the surveyor suggested different apportionments of the insurance premiums then that would be carried out. He realised there was a problem caused by the way in which the lease was worded and could see the logic in the Respondent being required to pay only one quarter of the premiums. There was nothing in the insurance documents to show how

much was attributable to each flat. The insurance was arranged for the whole building.

18. Mr. O'Dell had produced a summary of the policy for 2006/2007 with the letter dated 12th July 2010 and had not previously provided this document.

19. The Respondent had produced a quote for insurance for 2008 of £500.99 but realised that this was a quote for a different property and accepted that should be ignored. She had however produced a quote dated 10th November 2009 with a premium of £434.45 and a quote dated 26 April 2008 with a premium of £486.74.

20. Mr. O'Dell had read through the initial disclosure document in respect of the April 2008 quote and did not know what had been disclosed. Material disclosures to insurance companies are relevant. He also drew attention to the conditions which applied to the quote dated 15th November 2007. He considered that the landlord must always retain control over the occupancy of the properties and as freeholders the Applicant cannot keep control. The Applicant did not know who was in the subject property and if there were material matters which should be disclosed. For example it may be that the tenant in a flat, whose name was unknown, may have had a record of making bogus insurance claims. The Applicant in the past had requested information about tenants and it had not been supplied. It was not possible to guarantee that a tenant was always employed and had no convictions. Mr. O'Dell was not aware of any material claims on this property in recent times. One of the conditions of a quote obtained by the Respondent was that there should be no portable oil or gas heating in the premises but this was impossible to enforce. He did not know the terms and conditions and exceptions in relation to the policy. He had not had a copy. The AXA Insurance cover which the Applicant had obtained was very wide. Mr. O'Dell stated that the insurers accept that the Applicant does not know who is in occupation or whether the tenant has criminal convictions and would not withdraw cover to the detriment of the Applicant or the leaseholder on account of that. Mr. O'Dell did not have a full policy document with him but he had a letter from the brokers. The market is tested each year. In recent years AXA had consistently quoted the lowest premium for the type of insurance required. The Applicant tried to obtain the information in the questionnaire sent to the Respondent to comply with the requirement to disclose anything material.

21. The Respondent pointed out that if, for example, she as a resident lessee had convictions for arson the Applicant would be unaware of that and would not have sent her a questionnaire to complete.

22. Mr. O'Dell stated that it was envisaged that questionnaires would soon be sent to all leaseholders but that had not been done yet. The insurers know it has not been done but think it is a good idea.

23. Mr. O'Dell was of the opinion that the cover in the quotes obtained by the Respondent was not as wide as the Applicant's policy with AXA. He understands that often leases do not provide landlords with control of who is in occupation.

24. The Respondent pointed out that one of her quotes was from AXA.

25. Mr. O'Dell explained that AXA do not expect the Applicant to notify the insurer each time a flat becomes unoccupied. In fact the Applicant rarely knows but if the Applicant is told then the brokers are notified.

26. Asked why terrorism cover was included and necessary, Mr. O'Dell stated that one regularly reads in the newspapers about terrorist attacks. It was not suggested that there would be a terrorist attack in Kent but it is a matter of what does terrorism mean. It could mean lads in a car outside with a bomb that goes off or in the next flat people are making a bomb and it goes off.

27. It was pointed out to the Respondent that terrorism cover was about £20 per year for the whole property and that therefore her contribution would be small.

28. The Respondent explained that some of the Applicant's properties are in higher risk areas and the Applicant has a block policy so the premium is general and not specifically for this property. The premium is influenced by the portfolio.

29. Mr. O'Dell explained that the cover the Applicant has negotiated would be even wider than the terms and conditions of the quotes obtained by the Respondent.

30. The Respondent asked Mr. O'Dell about the letter from Urbanpoint dated 10th December 2009 in which it is stated that Urbanpoint do not receive any insurance commission. She had asked specifically if the Applicant or Urbanpoint received commission from insurers. In another case which came before another Leasehold Valuation Tribunal in which Urbanpoint was involved, insurance premiums were reduced by 50%. In another case involving the Applicant and Urbanpoint, the Applicant accepted that G & O Investments Limited took 20% commission. The Urbanpoint web site states that Urbanpoint adheres to the codes of conduct. The RICS code requires managing agents and freeholders to inform lessees of commission received. The Respondent asked a specific question and did not get an answer. As to reasonableness, there was no definition of reasonableness. It depended on the facts. Because something is contemplated in a lease does not mean that to carry it out is reasonable; for example the employment of a full or a part time porter. The fact that it is reasonable to have a service does not mean the cost is reasonably incurred. The Respondent quoted from the Leasehold Disputes Book at page 80 and referred to the decision of another Leasehold Valuation Tribunal (Case No. CAM/33UE/LSC/2004/0029 where at paragraph 7 it was stated that "The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs: 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." There is a footnote that relevant costs includes the costs of insurance. The Respondent also referred to paragraphs 17 and 18 of that decision in relation to block policies and the claims history of some properties in higher risk areas having an effect on properties in lower risk areas. Premiums could be high due to high claims of the management company's properties. As commission is paid and because lessees are named on the policy they have a right to know under FSA legislation if commission is paid. The poor track record of the freeholder and the manager could have an effect. She had been a lessee of Urbanpoint since 2001 and the premiums had always been excessive. The Respondent had included a copy of her previous Leasehold Valuation Tribunal case

where premiums had been reduced by 40%. At that time she had written and asked about commission. They did not used to respond to her correspondence but Mr. O'Dell in his letter dated 12th July 2010 admits that the Applicant takes commission. The Respondent submitted that commission is a profit and can be challenged under Section 27A of the Landlord and Tenant Act 1985.

31. The Respondent accepted that the book from which she was quoting gives direction. It is not necessarily a statement of the law. In the book it is stated how things have been interpreted previously and simplifies.

32. The Respondent referred to Case No. LON/00AN/LSC/2005/0305 in which it was stated that the lessees have to distinguish between their being the insured and G & O Investments being the insured. "G & O Investments insure the property as a commercial enterprise. This means that the premium is calculated differently from that which would be obtained by the Applicants if they sought their own cover. It also means that the policy includes elements of insurance of the business of managing the property which the Applicants had seen in the policy booklet and thought were unnecessary." The Respondent queried whether this meant that the policy varied from the standard policy. Did it depend on the property? If in the portfolio there was a commercial property where fireworks were manufactured would there be a higher premium. In which case residential properties were subsidising commercial properties. The tone of the portfolio sets the premium.

33. Mr. O'Dell stated that if any individual properties had a poor record insurers would look at those and reassess those individual properties. The portfolio covers the whole of the UK with properties dotted here and there. As freeholders the Applicant receives commission of 20%. Urbanpoint would not necessarily have known that. It is not passed on to the people who pay - the lessees. It covers the Applicant's administration work as landlords. There are no other service charges here. The Applicant has been making a loss out of this building since 2006. Bank charges and agents demands have to be paid and insurance has not been reimbursed by the Respondent. The Applicant has to pay agents who are part of the group. It is reasonable to receive 20% commission. It is fair. The insurance is not necessarily the cheapest but the Applicant's priority is the quality of cover. There is the need for wide insurance cover. On a block policy the Applicant gets commission but the lessees get wider cover than if the lessees went to an insurance company on their own. The quotes obtained by lessees contain qualifications. The Applicant cannot give those undertakings to its insurers and the insurers accept that. As to the question of being commercial, AXA regard the Applicant as a commercial property owner even though the property is residential. It does not make a difference.

34. The Respondent suggested that the Applicant has a high proportion of Houses in Multiple Occupation in its portfolio. Mr. O'Dell was not aware of that. He knew there were some but not a high proportion. The Respondent said she had seen this in another case involving Urbanpoint or another subsidiary.

35. As to the claim for a £10 Land Registry fee, the Respondent said that the Applicant had the information in April 2008 as it had just been given in a notice by a solicitor and there had been no need to go to Land Registry.

36. Mr. O'Dell said it was the standard practice of Urbanpoint to make application to the Land Registry but in this case he was not sure that the lease provided for the making of such a charge, it was not appropriate and so the Applicant was not pursuing it.

Reasons

37. As Mr. O'Dell decided not to pursue the claim for a £10 Land Registry fee the only matters requiring a decision from the Tribunal are the following:

Insurance 2006/2007:	328.83
Insurance 2007/2008:	344.40
Interest:	72.61
Insurance 2008/2009:	358.63
Interest:	41.07

38. The Respondent has referred to decisions made by other Leasehold Valuation Tribunals. While these are helpful, each case must be decided on its own merits in the light of the evidence produced.

39. It is correct that a property with a good claims history will to some extent subsidise properties with a poor claims history within the block policy. It is a fact that if there is a good claims history, it may be possible to obtain insurance quotes in respect of a particular property which are cheaper than those obtained by a landlord insuring under a block policy. However, the landlord, the Applicant in this case, is not obliged to obtain the cheapest possible insurance. There may be other considerations such as the ease of dealing with claims under a block policy.

40. In respect of the year 2006/2007 the declared value of the building was £263,814. We consider it should be possible to obtain suitable insurance at 30p per £1,000 which would produce a premium of £791.44. The premium of £870.59 paid by the Applicant indicates a rate of about 33p per £1,000. We accept that a private landlord insuring a single property with a good claims record will often be able to find cheaper quotes than those obtained by a landlord with a large portfolio and we find that 33p per £1,000 is at the upper end of premiums which we would consider to be reasonable but it is still within the bounds of reasonableness. We also consider that it is reasonable to include terrorism insurance.

41. Similar considerations apply to years 2007/2008 and 2008/2009.

42. As to the proportion of the premium payable by the Respondent, the wording of the lease is imprecise and we had to reach a conclusion on the meaning of that wording. The Respondent is liable to refund to the lessor all premiums payable by the lessor in "...insuring and keeping insured the demised premises in accordance with the covenants by the Lessor...". The lease defines "the demised premises" as the ground floor flat (the subject property). As the subject property occupies only one floor of a four storey building we came to the conclusion that the Respondent should be liable to refund one quarter of the premium for the whole building and at the hearing Mr. O'Dell accepted the logic of that proposition.

43. This means that in respect of the year 2006/2007 the Respondent is liable to pay £246.57 and in respect of the year 2007/2008 £258.25. Credit is to be given to the Respondent for the £200 which she has paid leaving £304.82 to be paid within 28 days of the date of issue of this decision. As to the year 2008/2009 we find that £268.92 is a reasonable figure for the Respondent's proportion of the insurance but we are not satisfied on the evidence presented to us that that sum was properly demanded and therefore it is not payable until it is properly demanded.

44. As to the claim for interest of £72.61, if the Applicant wishes to claim any interest from the Respondent then the Applicant must recalculate such interest having regard to the reduced amounts for which the Respondent is liable and the fact that any liability for interest cannot arise until a proper demand is made. Any recalculation of interest must be set out clearly so that the Respondent is able to understand how the calculation is made and can see whether or not she is liable to pay it.

45. As to the claim for interest of £41.07 this is not payable as the payment to which it relates has not been properly demanded and no claim for interest can be made until the payment has been properly demanded.

46. There are insurance charges for subsequent years but they are not within the proceedings transferred to this Tribunal.



R. Norman
Chairman