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**Residential
Property**
TRIBUNAL SERVICE

Ref: LON/00AJ/LSC/2009/0827

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

**DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD
AND TENANT ACT 1985 (AS AMENDED)**

Property: 3A Horn Lane, London W3 9NJ
Applicant: Dr T Young
First Respondent: Mr P Badwoski (current landlord)
Second Respondent: Newray (London) Ltd (previous landlord)
together ("**the Respondents**")

Hearing Date: 18th March 2010

Appearances: Dr T Young (the Applicant)

The First Respondent and the Second Respondent were not present
and were not represented

Members of Tribunal

Mr P Korn (chairman)
Mrs H Bowers MRICS
Mrs J Clark JP

INTRODUCTION

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) (“**the 1985 Act**”) for a determination of liability to pay insurance premiums, originally for the service charge years 1999/2000 through to 2009/2010.
2. According to the Applicant, the Property forms part of two adjacent sections within a terrace, and the First Respondent is the current freehold owner of both sections. One section comprises 1 and 1A Horn Lane, and the other section comprises 3 and 3A Horn Lane. Beneath both sections is a basement area that comprises one single basement flat (effectively it is a double unit as it is not sub-divided as between the two sections). The Applicant is the leaseholder of the three upper floors of one section, and this section also includes a ground floor shop. The other section is effectively a mirror image; there are three residential upper floors - which have been sublet – and a shop unit (plus the other half of the basement flat).
3. The Applicant is the current leaseholder of the Property under a lease (“**the Lease**”) dated 28th March 1980 between The Esseff Furnishing Company Limited (1) and JK Fernando and GSA Fernando (2). The First Respondent is the Applicant’s current landlord and the Second Respondent is the previous landlord.
4. Directions were issued on 5th January 2010 but there was no Pre-Trial Review. The Directions were not properly complied with by the Applicant nor seemingly were they complied with at all by the Respondents. The Applicant was required to send a full statement of case to the Respondents by 27th January 2010 (the full statement to contain certain specified minimum details) but he instead sent them a much more limited set of paperwork. There was no evidence of the Respondents having responded, and no observations had been received by the Tribunal from the Respondents as at the date of the hearing.
5. The Respondents were neither present nor represented at the hearing. However, despite the absence of the Respondents and their apparent failure to respond at all to the application, the Tribunal was shown evidence that the First Respondent had signed to confirm receipt of details of the Applicant’s case and that the Applicant had also written to the Second Respondent’s managing agents.
6. The Applicant sought to present some fresh documentary evidence at the hearing. As the Respondents had seemingly not seen this evidence, let alone had an opportunity to consider it and provide a response, and as the Respondents were neither present nor represented at the hearing, the Tribunal

felt that it had no choice but to exclude this evidence in accordance with its general discretion to do so in appropriate circumstances.

7. Subsequent to the hearing, the Applicant **withdrew his application insofar as it related to the Second Respondent** and he confirmed in writing that therefore he was now only challenging the insurance premium for the year 2009/2010. Therefore, this decision will only deal with that year.

APPLICANT'S CASE

8. The Applicant said that he had been charged £564.63 by way of insurance premium for the 2009/2010 year, and the bundle included a copy of a demand for this amount dated 8th January 2010 from the First Respondent.
9. The Applicant had obtained an alternative quotation from Castle Cover for £202.65 and another from Greenbee for £200.77 and argued that therefore his insurance was too high. He also questioned whether the First Respondent had calculated the proportion payable by him in a fair way.
10. The Tribunal raised various questions regarding the alternative quotations, and these questions will be summarised later on.

NO INSPECTION

11. The Tribunal members did not inspect the Property. Neither party had requested an inspection and the Tribunal's view was that an inspection was not necessary in order for it to make a determination in the circumstances of the particular issues in dispute.

THE LAW

12. Section 19(1) of the 1985 Act provides:

“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 shall be limited accordingly.”

13. Section 19(2) of the 1985 Act provides:

“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."

14. "Relevant costs" are defined in Section 18(2) of the 1985 Act as *"the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable"*.

"Service charge" is defined in Section 18(1) of the 1985 Act as *"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 cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs"*.

15. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) *"whether a service charge is payable and, if it is, as to...the amount which is payable..."*.

APPLICATION OF LAW TO FACTS

16. It is perfectly legitimate for a leaseholder to try to show that an insurance premium is too high by obtaining alternative, cheaper quotations. However, it is established law that the landlord is under no obligation to select the cheapest insurance; the issue is whether the charge has been reasonably incurred. In looking at this question in the context of alternative quotations, an important question to consider is whether the alternative insurance is on broadly the same terms as the actual insurance and therefore is truly comparable.
17. In this case, there is reason to doubt that the alternative quotations are on the basis of comparable terms. There was very little detail in the alternative quotations provided by the Applicant and (although this is not the Applicant's fault) the Tribunal has seen only very brief details of the actual policy taken out by the First Respondent. Also, the Castle Cover quotation describes the Property as a mid-terraced house, whereas by the Applicant's own admission it is a mid-terraced flat above a shop. The buildings sum insured is significantly less under the Castle Cover quotation and the Greenbee quotation seems to be silent on this point (and on many other points). Also, it could be that the Applicant has been quoted a lower figure in return for the promise of new business, and the alternative quotations may be based on an assumption that the Applicant will accept certain onerous conditions.
18. In short, the Applicant has not demonstrated that the alternative quotations are on comparable terms and the Tribunal does not feel that it has nearly enough information to be able to rely on them.

19. It appears from the limited information seen by the Tribunal that the total building insurance premium for 1, 1a, 3 and 3a Horn Lane (i.e. the two sections referred to in paragraph 2 above combined) for the 2009/2010 year is £1,368.81. In the absence of better quality evidence, the Tribunal does not feel able to conclude that this is a manifestly unreasonable amount for this type of building.
20. Turning now to the **proportion** payable by the Applicant, clause 3(4) of the Lease contains a tenant's covenant to "*contribute and pay on demand the cost of insuring the demised premises [i.e. the Property] ...*". It does not specify what proportion of the insurance premium for the whole building is attributable to the Property but the proportion nevertheless needs to be a reasonable one.
21. The letter from the First Respondent to the Applicant dated 8th January 2010 appears to treat the vertical section of the building in which the Property is situated ("**the First Section**") as one unit for the purposes of insurance and effectively states that the Applicant occupies three out of four floors and therefore should pay three quarters of the insurance premium. However, based on the admittedly small amount of evidence in front of the Tribunal it appears that there are five floors as there is also a basement. In addition, the First Respondent has calculated the First Section's share of the insurance premium as £752.84 whereas the total premium for the two sections appears to be £1,368.81. Based on the Applicant's evidence, which has not been contradicted by the First Respondent, the two sections are practically identical and therefore, in the absence of any evidence to the contrary, it would seem that each section should bear 50% of the premium.
22. Based on the limited information available to the Tribunal it appears that the two sections together comprise ten units (counting the double basement unit as two units). Whilst it is possible that an argument could be advanced that, for example, the basement should bear less of the cost, no such argument has been advanced, and in any event it could equally be argued (for example) that the residential units which are not owner-occupied represent a higher insurance risk and therefore should attract a higher premium than the Applicant's units.
23. The First Respondent's method of apportionment, based on the evidence before the Tribunal, seems self-evidently unreasonable. As the quality of the evidence before the Tribunal is poor, it seems fairest simply to allocate one tenth of the cost to each of the ten units. As the total premium is £1,368.81 and the Applicant is the leaseholder in respect of three out of ten units, the Tribunal considers that it would be reasonable for the Applicant to pay three-tenths of the premium, i.e. £410.64, which (as this is not a scientific exercise given the lack of detailed evidence) can be rounded to £410.

DETERMINATION

24. The insurance premium for the year 2009/2010 is reduced from £564.63 to **£410**.
25. The Applicant applied for an order under Section 20C of the 1985 Act that the First Respondent shall not be entitled to include any costs incurred by it in connection with these proceedings under the service charge. Whilst it seems unlikely that the First Respondent has incurred any such costs, nevertheless as the application has been successful the Tribunal is happy to make – and **hereby does make – a Section 20C order** that none of the First Respondent's costs in connection with these proceedings shall be recovered through the service charge.
26. The Applicant also applied for an order that the First Respondent reimburse his application and hearing fees under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. As the Tribunal has found in the Applicant's favour and the First Respondent has seemingly made no effort to provide a defence or comply with directions or communicated whether he would be attending the hearing the Tribunal does consider it appropriate to order – and does so order – **that the First Respondent shall reimburse the Applicant's application fee (£200) and hearing fee (£150) in full, representing a total refund of fees of £350.**

CHAIRMAN.....
Mr P Korn

1st April 2010