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REF LON 00BE/LSC/2009/0644

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985
SECTION 27A

**AND IN THE MATTER OF 360/360A Lordship Lane London SE 22
8LZ**

Applicants

Ms Z Cowling

Respondent

Mr and Mrs S Jamani

The Tribunal

Mr P Leighton LLB (Hons)

Mr C White FRICS

Mr L Packer

Date of Decision

2nd February 2010

Introduction

- 1 By an application dated 26th September 2009 the Applicant applied to the Tribunal for a determination in relation to service charges relating to the insurance of the property known as 360A Lordship Lane East Dulwich London SE22 8LG ("the property") under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Reform Act 2002
- 2 The application related only to the year 2010 but by further correspondence it appears that the Applicant wishes to challenge the insurance payments for the years from 2004, when the Respondents purchased the freehold of the property, until the present time, which the Tribunal accepted and indicated to the Respondents.
- 3 The Applicant holds the property under the terms of a lease dated 4th May 2006 for a term of 169 years from that date. The lease was granted following the surrender of an earlier lease granted in 1986
- 4 The Applicant's property is a maisonette on two floors above a shop on the ground floor
- 5 Under the terms of the original lease clause 5(2), the landlord is under an obligation to insure the maisonette but the clause makes no provision as to the extent of the contribution payable .
- 6 The lease provides for payment of *"...a yearly sum equal to the sum or sums which the landlord shall from time to time pay by way of premium.... for keeping the said maisonette insured against loss or damage by fire and other risks....."*
- 7 After the Applicant first acquired the lease in December 1994 she was apparently charged one third of the total premium for the combined insurance of the building including the business on the ground floor This continued until 1998, at which point the Applicant arranged her own insurance solely for the maisonette.

- 8 This continued until June 2004 when the Respondent acquired the freehold. At that point they reverted to the position whereby they insured the building as a whole including the business on the ground floor and charged the Applicant £296, which the applicant believed to be 50%, although a table produced by the landlord suggests that the total premium was £664 per annum, making the leaseholder's contribution 45%.
- 9 It is agreed by both parties that there was no insurance in force in 2006/07, which was a breach of the landlord's covenant under the lease. The insurance was resumed in 2007/8 when the premium was £466.31, of which the leaseholder was charged £210, being also 45%
- 10 In 2008/9 the landlord states that the premium was £445.33 of which the tenant contributed £176.99, being 39.7%. In 2009/10 the landlord states the premium to be £380.95 of which the Applicant's share is £156, being 41%
- 11 Notwithstanding the figures produced, the Respondent contends that the Applicant ought to contribute 50% of the insurance because she occupies two floors, which figure she arrived at on the basis of advice which she had received as being an appropriate rule of thumb. The Respondent believed this to have been agreed by the leaseholder, but she was content for the Tribunal to make a fair assessment of the proportion payable

The Tribunal's Decision

- 12 The Tribunal considers that a fair proportion to be paid by the Applicant should be 40% of the total premium. The reasons for this assessment are that, notwithstanding that the leaseholder occupies a greater area than the business, there are greater inherent risks associated with any business premises.
- 13 The matters covered by the policy include: the landlord's fixtures and fittings, loss of retail rent, loss of business, loss of book debts, employee liability, customer goods, product liability, breakage of frontage, lighting

signage and display glass, all of which appear to be predominantly business related.

- 14 The leaseholder states that the present use of the ground floor is of a café business and the Tribunal considers that this may well give rise to an additional fire risk which may in due course give rise to an additional premium.
- 15 In this event it might be appropriate for the parties to reconsider the appropriate proportions of future insurance contributions.
- 16 Alternatively it might be possible for the insurance policy to split the premium so as to identify the element relating to the maisonette. But the Tribunal has no power to order that this should occur. Neither can the Tribunal permit the Applicant to take out her own insurance (except by agreement) because the lease makes specific provision for the landlord to insure.
- 17 As a result of this determination some adjustments should be made to the earlier years' contributions requested by the Applicant. The assessments should be based on the table submitted by the landlords showing the actual payments made.
- 18 The adjustments are: 2005/06 - reduction of £30.40; 2006/7 - no insurance was in place so no adjustment is necessary; 2007/8 - reduction of £23.48; 2008/09 - increase of £1.44; 2009/10 - reduction of £3.62.

Chairman

Peter Leighton



Date

2nd February 2010