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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AD/LSC/2012/0455

Premises: 7A MARACHEL NEIL PARADE MAIN ROAD
SIDCUP KENT

Applicant(s): Ms T Keyse

Representative: N/A

Respondent(s): Baritone Properties Limited

Representative: Alonville Limited

**Leasehold Valuation
Tribunal:** Dr Helen Carr

Date of decision: 3rd October 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of **£560.85** is payable by the Respondent in respect of the insurance premium for the service charge year ending 24th December 2012.
- (2) The Tribunal makes the determination as set out under the various headings in this Decision
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985. Costs not exceeding £200 may be added to the service charge account.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the insurance premium demanded in 2012.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Tribunal determined at the Pre-Trial Review of the application that the case was suitable for a paper determination. As no subsequent request for an oral determination has been received the application is being determined on the basis of the documents provided by the parties.
4. Before the Tribunal was a bundle of documents prepared by the Applicant together with a letter from the Respondent dated 2nd August 2012 which set out its response to the Tribunal's directions.

The background

5. The property which is the subject of this application is a two bedroom maisonette on the first and second floor of a building the ground floor of which is commercial premises.
6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. The Tribunal at the Pre Trial Review identified that the sole issue to be determined is the reasonableness of the amount of the insurance premium payable by the Applicant in respect of the service charge year 2012.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Insurance premium of £560.85

9. The Applicant argues the insurance charges are excessive. She produced a policy she entered into with Payment shield Home and Contents Insurance for an annual premium of £227.10 p on March 22nd 2012 which she states she organised pending settlement of the dispute. She also produced a quotation from Morethan for a total annual premium of £241.93p.
10. The policy the Applicant entered into is for a two bedroom flat. There was minimal information about the Morethan quotation.
11. The Respondent argues that the insurance required is set out in the lease. The lease provides (at clause 10.1(b) that the Tenant will pay as additional rent 2/3 of the costs that the Landlord incurs in insuring the Building. The building includes the commercial premises on the ground floor.
12. The Respondent informed the Tribunal in its letter dated 2nd August that no commission is received on the insurance, that it uses Reich Insurance as brokers, and that Reich Insurance market tests the insurance market continually.
13. The Respondent enclosed a letter from Reich Insurance which stated that there were considerable pressures to raise premiums in the insurance market but that because of the Respondent's relationship with its current insurers the renewal of the insurance was at the expiring rates. The broker further confirmed that the rate has been unaltered since March 2012 and that the increase in premium since that date is only due to the index linking of the building sum insured.
14. The broker also argued that the insurance arranged for the Respondent is wider and more comprehensive than that provided under a standard household policy and that the premium is more expensive as the whole building is insured under one policy and it is not possible to arrange separate policies in respect of the commercial and residential elements.

15. It indicated that it would be carrying out a full marketing exercise in March 2013 to ensure that the insurance remained the most competitive insurer in the market.

The Tribunal's decision

16. The Tribunal determines that the amount payable in respect of insurance for the service charge year ending 24th December 2012 is £560.85

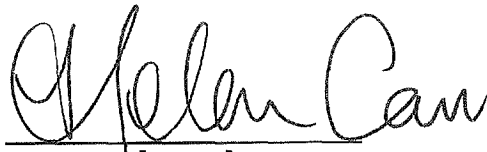
Reasons for the Tribunal's decision

17. The Respondent has used an insurance broker who has provided evidence of market testing. The Respondent is entitled to use an insurer of its own choosing provided that they are reputable. No commission is payable to the Respondent.
18. The evidence provided by the Applicant is not on a like for like basis and does not meet the requirements of the lease.
19. The Tribunal knows that the Applicant will be disappointed by the decision. However the Tribunal can only decide that a service charge demand is unreasonable on the basis of the evidence provided to it. The evidence provided by the Applicant is not sufficient to demonstrate that the insurance charge is unreasonable. Moreover the Applicant is bound by the terms of the lease in connection with the insurance premiums.

Application under s.20C

20. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines not to make an order under section 20C of the 1985 Act.
21. As this matter has been determined entirely on a paper basis the Tribunal considers that the reasonable costs of the Respondent do not exceed £200.

Chairman:


[name]

Date:

3rd October 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" 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 the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) 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 provisions 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.
- (2) 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.

Section 27A

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

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.

- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.