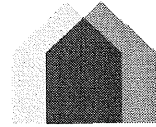


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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER [SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985] [&
SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]**

Case Reference: LON/00AD/LSC/2012/0596

Premises: 16 Amberley Court, Sidcup, Kent DA14 6JT

Applicant: Ms Stephanie Glover

Representative: Mr Roger Smith

Respondent: Peppercorn Property Investments Ltd

Representative: Not applicable

Date of hearing: 4.2.13

Appearance for Applicant: Ms Stephanie Glover
Mr Roger Smith

Appearance for Respondent: None

Leasehold Valuation Tribunal: Ms Naomi Hawkes
Mr Robin Potter FRICS

Date of decision: 4.2.13

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £200 is payable by the Applicant in respect of buildings insurance for the service charge year 2011/2012.
- (2) The Tribunal determines that the sum of £250 is payable by the Applicant in respect of buildings insurance for the service charge year 2012/2013.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

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 payable by the Applicant in respect of buildings insurance for the service charge years 2011/2012 and 2012/2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person and was assisted by Mr Roger Smith at the hearing. The Respondent did not attend the hearing.

The background

4. The property which is the subject of this application is a two bedroom maisonette in a block containing four maisonettes.
5. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicant holds a long lease of the property which requires the Applicant to make payments in respect of buildings insurance. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. At the hearing, the Applicant identified the relevant issues for determination as follows:

- (i) The reasonableness of sum claimed by the Respondent in respect of buildings insurance for the service charge years 2011/2012 and 2012/2013.
 - (ii) The Applicant's application pursuant to section 20C of the 1985 Act.
8. During the course of the hearing, the Applicant withdrew an application dated 20.12.12 to vary the provisions of the lease. The Tribunal notes that the Applicant had received some independent legal advice from the Leasehold Advisory Service prior to the hearing.
9. Having heard evidence and submissions from the Applicant and having considered all of the documents referred to, the Tribunal has made determinations on the various issues as follows.

The insurance premiums

10. By a Deed of Variation dated 20th November 1998, the Applicant's lease was varied to provide:
- 3. The Lessee hereby covenants with the Lessor forthwith to insure the demised premises and all buildings erections and fixtures of an insurable nature which are now or may at any time during the term as hereby varied by erected or placed upon or affixed to the demised premises against comprehensive property risks with such insurance office of repute as the Lessor may from time to time specify and through such Agency as the Lessor may from time to time nominate such insurance to be in a sum equal to the full replacement value thereof to be determined in default of agreement by the Surveyor of the Lessor or the Insurer. The policy of insurance is to be taken in the joint names of the Lessee and the Lessor and the Lessee covenants to pay all premiums necessary for that purpose within 7 days of the same falling due and whenever required by the Lessor so to do will provide a copy of the policy and the last premium receipt ... AND IN CASE OF DEFAULT it shall be lawful for the Lessor to insure the said premises against such risks (but without prejudice to any right of re-entry under the Lease) and the Lessee will forthwith repay to the Lessor on demand all sums expended in maintaining or effecting such insurance which shall be recoverable as rent in arrears and attract interest at 4% above the Base Rate of Barclays Bank plc from time to time in force from the date of inception or renewal of the insurance cover until payment thereof...
11. The Applicant challenges the reasonableness of the sum of £383.29 claimed by the Respondent in respect of buildings insurance obtained by the Respondent pursuant to this clause for the year 2011/2012 and the sum of

£400.15 claimed by the Respondent in respect of buildings insurance obtained by the Respondent pursuant to this clause for the year 2012/2013.

12. On 31.10.12, the Tribunal gave directions in this matter and Paragraph 5 of the Tribunal's directions provides:

"By 14th November 2012 the Respondent (the landlord) shall send to the Applicant (the tenant) copy of the insurance policy and information about the level of commission applied to the premium."

13. These directions were headed, in bold, "**IMPORTANT NOTE: These directions are formal orders and must be complied with They are intended to help the parties ... If you fail to comply with them your case may be prejudiced**".

The Tribunal's decision

14. Notwithstanding the clear wording of the directions and the explanatory note, the Respondent failed to comply with Paragraph 5 of the directions by 14th November 2012 and the Respondent had still not produced the necessary documentation by the date of the hearing.
15. In the absence of copies of the insurance policies, it is difficult for either the Applicant or the Tribunal to be satisfied that the sums claimed by the Respondent in respect of the insurance premiums are reasonable because it is unclear what the terms of the policies are. It is also difficult for the Applicant to obtain like for like quotations.
16. Upon the Tribunal:
- (i) having considered the alternative quotations obtained by the Applicant (excluding contents insurance and insurance for accidental damage which do not fall within the provisions of the deed of variation set out above);
 - (ii) having questioned the Applicant and Mr Smith with reference to the Tribunal's own knowledge and experience of the level of insurance premiums;
 - (iii) having heard oral submissions in response from the Applicant and Mr Smith;
 - (iv) having considered the documentary evidence referred to; and

- (v) necessarily taking a broad and pragmatic approach in the absence of copies of the policy documents in respect of the insurance obtained by the Respondent and information regarding the level of commission applied to the premium;

The Tribunal determines that a reasonable charge in respect of buildings insurance for the year 2011/2012 would be £200 and that a reasonable charge in respect of buildings insurance for the service charge year 2012/2013 would be £250.

Application under s.20C of the Landlord and Tenant Act 1985

17. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the Applicant and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: Naomi Hawkes

Date: 4.2.13

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 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.