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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference: : CHI/43UJ/LIS/2014/0039

Property: : 131 Frimley Road, Camberley, Surrey GU15 2PS

Applicant: : Miss Beryl Cook

Representative: :

Respondents: : Hyde Lane Properties Limited

Representatives: : Rayners

Type of application: : Liability to pay service charges

Tribunal member: : Mr D Banfield FRICS

Date of hearing: : On the papers on 13 November 2014

Date of Decision: : 13 November 2014

DECISION

Decision

That the sums claimed for insurance for service charge years 2008 to 2014 are payable in full

Background

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. The challenged years are 2008 to 2014 and the challenge relates solely to the amount of service charges demanded for buildings insurance.
2. The amounts in question are;

2008	£325.00
2009	£334.50
2010	£341.00
2011	£343.00
2012	£359.87
2013	£370.67
2014	£381.78
3. Directions were made on 1 August 2014 indicating that the matter would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days.
4. A timetable for the exchange and submission of documents was also set out in order to assist the Tribunal in the proper determination of the dispute.
5. No request for a hearing was received and the matter is therefore determined on the papers submitted.

Evidence

6. In her letter of 18 August 2014 (page 38 of the bundle) the Applicant challenges both the amount of the premiums but also how it is apportioned.
7. In her written statement (page 43) the Applicant said that the cost of buildings insurance is too high and submitted alternative quotations obtained in 2011 and 2013. Whilst accepting that section 17 of Schedule 6 of the lease required her to pay half the cost of insurance she submitted that this cost was increased due to the upstairs flat being let and the split was therefore unfair. She considered that a letter from Weald Insurance Brokers Ltd of 14 October 2011 (page 42) in which reference is made to one of the flats being rented confirms that this has increased the premium.
8. The alternative quotations obtained comprise:

- a. Quotation dated 14 April 2011 on behalf of Nationwide for a Buildings sum insured of £205,000 at a premium of £273.73. A separate quotation for contents cover of £23,400 was quoted at £60.75 (page 44)
 - b. Quotation undated but with a policy start date of 26/7/13 obtained via Property Quote Direct from Towergate Underwriting for a Building sum insured of £215,250, Landlords contents of £22,500 and Property owner's liability of £2,000,000 at a premium of £355.98. (pages 45-47)
9. In their reply (page 48) the Respondent's agent says that the property comprises 2 flats and they are obliged to obtain cover for the building in which they are situated including the reserved property described in the second schedule of the lease. They say that there is no restriction in the lease preventing lettings and that they are obliged to obtain cover "as are included in a comprehensive policy" which includes lettings as standard.
 10. They submit that the Lessor is not required to select the lowest quote and point out that a firm of Brokers called Weald are instructed to manage the freeholder's insurance obligations.
 11. They refer to an email dated 22 September 2014 from Weald (page 50) which referred to an alternative quote obtained in 2012 from LV at a premium of £727.35 against the then insurer's premium of £719.74. Weald also say that there is no premium loading for individual flats being let out. Commenting on the quotes obtained by the Applicant Weald say that as no summary of cover has been supplied to them they are unable to confirm that the cover provided is like for like.
 12. They say that the 2011 quote obtained by the Applicant is for £205,000 rather than £500,000, that the quote of 26 July 2013 gives insufficient information to make any meaningful comparison and that both quotes appear to be for a single residential dwelling with no disclosure as to the nature of the building.
 13. In a response the Applicant refers to Weald's schedule of 14/3/2014 indicating a sum insured of £244,208 rather than the £500,000 referred to by Rayners and confirms that Weald's schedule was provided to those insurers she obtained quotes from.

Decision

14. Section 1 of the Seventh Schedule to the lease obliges the Lessor *to insure and keep insured all buildings for the time being on the property in the joint names of all persons having an interest therein against loss or damage by fire or storm impact or aircraft and such other risks as are included in a comprehensive policy with some insurance company of repute.* The Applicant suggests that the cost of insurance is increased due to the letting of the first floor flat and the Respondent says that this is immaterial as long as lettings are not prohibited by the terms of the lease.

15. This is not however the test that I must apply. The seventh schedule to the lease sets out the cover that the Respondent is obliged to obtain and to which the Applicant is obliged to contribute. The test therefore is whether the cover exceeds that required by the lease as if it does then any excess cost may not be recoverable from the Applicant. Although lettings are not specifically referred to in the cover required I am satisfied that a "comprehensive" policy may well include such cover particularly in the light of the preponderance of "buy to let" tenancies now in existence.
16. By section 17 to the lease the Applicant is liable to pay one half of all costs incurred by the Lessor in carrying out its obligations set out in the Seventh Schedule. There is nothing in the lease to allow any adjustment to this proportion and as such I find the Applicant is liable to contribute half the cost incurred by the Lessor for insurance.
17. I now turn to the level of premium paid by the Lessor to which the Applicant must contribute half.
18. Whilst the bundle contains invoices from Weald for each of the years in question details of cover are only provided for policies issued on 14/3/2013 (page 55) and 14/3/2014 (page 59) at premiums of £741.33 and £763.57 respectively. Both policies seem to offer similar cover save for a slight uplift in the building sum insured from £215,250 in 2013 to £221,708 in 2014. Contents is the same at £22,500 as are Employers' liability at £10,000,000, Property owners' Public and Products Liability at £5,000,000 each and loss of rent at 20% of the building sum insured. There are excesses applied of £100 to various perils except for subsidence at £1,000 and Property damage at £250.
19. I then compared these policies with the alternatives provided by both parties. That from LV dated 21 /3/2012 (page 51) seems to offer a similar level of cover to the "Weald" cover for 2013 save that details of the perils covered was not provided.
20. The Applicant advises that those insurers she approached were provided with a copy of Weald's insurance schedule and that the cover offered is therefore the same. It is not however possible to confirm this on the documents in the bundle. I am also concerned that both quotes refer solely to 131 Frimley Road whereas the LV quote and the policies entered into all refer to 129a/131 Frimley Road. Neither party has referred to this difference and I am unable to determine whether it has any significance or not. All that can be said is that there is some uncertainty as to the extent of the property covered albeit not the sums involved.
21. Doing the best I can with the information provided I am able to see that the cover offered in 2011 by Nationwide when adjusted for the difference in years is broadly similar in terms of building sum, contents and excesses applied but is silent on the other risks referred to in paragraph 18 above.

22. The quote obtained in 2013 provides more detail and it appears that building and contents cover are for identical sums to the Lessor's 2013 policy but that Property owner's liability is £2,000,000 rather than £5,000,000 and there appears to be no cover for Employer's liability. Legal expenses and rent guarantee cover can be obtained for a further £87 per year giving a total premium of £442.98. Once again there are no details provided as to perils covered or any excesses applied.
23. The Applicant does not challenge the sums insured only that those relating to the letting of the first floor should be discounted. In considering the level of cover envisaged under the lease I am satisfied that "comprehensive" includes the use of the flats for any purpose not prohibited by the terms of the lease. This includes letting and I am satisfied therefore that any costs relating to such cover are recoverable.
24. The Respondent's representative in referring to buildings cover of £500,000 (paragraph 13) is clearly incorrect and I place no weight upon this assertion.
25. Turning now to whether the Respondent is obliged to shop around and find the cheapest quote I am assisted by recent case law.
26. In *Avon Estates (London) Limited v Sinclair Gardens Investments (Kensington) Limited* [2013] UKUT 0264 (LC) the Upper Tribunal considered the question of whether an insurance premium had been reasonably incurred.
27. *Avon Estates was the leasehold owner of a flat within a Victorian terrace house that had been converted into three flats. Sinclair Gardens was the freehold owner of the property. Avon Estates' lease required it to contribute a third of the service charge expenses which included, amongst other things, the cost of insuring of the property. Sinclair Gardens applied to the LVT for a determination that the service charge in respect of the three flats was payable.*
28. *Sinclair Gardens used its own insurance agency and a broker to obtain the premium. The overall cost was £4,154.25 to insure the property.*
29. *Avon Estates contended that the insurance premium was not reasonably incurred within the meaning of s.19, Landlord and Tenant Act 1985. It relied on a quote it had obtained which would have insured the property for a quarter of the price.*
30. *The LVT decided that, while cheaper insurance may have been obtained, Sinclair Gardens was not obliged to "shop around" to obtain the cheapest premiums; it was merely required to prove that the rate was representative of the market rate or that the contract had been negotiated at arm's length and in the market-place (Havenridge Ltd. v Boston Dyers Ltd. [1994] 2 EGLR 73, CA).*

31. *The Upper Tribunal dismissed Avon Estates' appeal. There was no evidence before the LVT that the insurance premium had not been arranged otherwise than in the normal course of business and Avon Estates had failed to adduce any evidence to the contrary. The LVT was entitled to reach a view that the contract had been negotiated at arm's length and in the market place.*

32. Whilst it is clear that cheaper insurance may well be obtained it is likewise clear that the landlord is not obliged to take it as long as he has obtained the cover in the normal course of business and at rates available in the market.

33. As such I must allow the sums claimed as set out in paragraph 2 above in full.

THE COST OF THE CURRENT PROCEEDINGS

34. Although the Applicant indicated on the application form that she wished to make a section 20C application neither party have made any submissions on this matter. On the evidence before me however and on the basis that the Respondent is entirely successful I decline to make the order requested.