

2011



Residential
Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985 (the Act)
Sections 20C and 27A**

Ref: LON/00BH/LSC/2005/0364

Property: 129 Colchester Road, London E10 6HD

Applicants: (1) Kedar Jayant Gadgil
(2) Mohammed Sadeeq

Represented by: In Person

Respondent: Landtest Limited

Represented by: NRB Chartered Surveyors

Date of Hearing: 24 February 2006

Date of Decision: 27 February 2006

Tribunal: Mr John Hewitt Chairman
Mr Luis Jarero BSc FRICS
Dr Alan Fox BSc PhD MCI Arb

Decision of the Tribunal

Decision

1. The Respondent's claim for £439.13 from the First Applicant and the claim for £438.96 from the Second Applicant in respect of insurance for the year commencing 15 November 2005 are unreasonable in amount.

2. A reasonable amount for the cost of insurance for the year commencing 15 November 2005 would not exceed £225 for each Applicant.
3. The demands sent by the Respondent to each Applicant dated 27 October 2005 and the demands sent to the First Applicant dated 16 December 2005 and 14 February 2006 demanding payment of the insurance contributions do not comply with s47 of the Landlord and Tenant Act 1987 with the effect that the sums demanded are to be treated for all purposes as not being due from the tenant to the landlord until such time(s) as a compliant demand is given.
4. The Respondent shall forthwith reimburse the Second Applicant the sum of £438.96 paid by him pursuant to the demand dated 27 October 2005.
5. Upon receipt of written demands for the cost of insurance, in a sum not exceeding £225 which do comply with s47 of the Landlord and Tenant Act 1987 each Applicant is forthwith liable to pay to the Respondent the sum claimed.
6. There shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by either of the Applicants any costs which the Respondent may have incurred in connection with these proceedings
7. The Respondent shall by 5pm Friday 17 March 2006 reimburse the Applicants the sum of £225 paid by them by way of fees in connection with these proceedings.

Background

8. On 22 December 2005 the Applicants made an application under s27A of the Act in respect service charges and a related application under s20C of the Act, in relation to the Respondent's costs (if any) of these proceedings.
9. In October 2005 the Respondent's managing agents NRB Chartered Surveyors (NRB) sent a demand to the First Applicant in the sum of £439.13 and to the Second Applicant a demand in the sum of £438.96 in respect of contributions to the cost of insuring the respective demised premises. The Applicants submit that the claims constitute service charges within the meaning of s18 of the Act and seek a declaration as the reasonableness of the sums claimed and whether they are payable by them.
10. The Property is a mid-terrace late Victorian house converted into two self-contained flats. Both flats are let on long leases for terms of 99 years from 29 September 1984 at modest ground rents. The lease of the first floor was vested in the First Applicant about one year ago and the lease of the ground floor was vested in the Second Applicant about two years ago.
11. The Tribunal was provided with a copy of the lease of the first floor flat. We were told that both leases are in common form.
12. Extracts from the lease, material to these proceedings are as follows:

Tenant's Covenants

Clause 2(11)

'To pay on demand a yearly sum equal to the sum or sums which the Lessors shall from time to time pay by way of premium (including any increased premium payable by act or omission of the Lessee) for keeping the demised premises insured against loss or damage by fire under the covenant by the Lessors in that behalf hereinafter contained'

Landlord's Covenants

Clause 4(a)

'To insure and keep insured in the joint names of the Lessors and the Lessees and any other parties interested in the demised premises for the time being the building comprising of the upper and lower maisonettes and any building erected in connection therewith during the term hereby granted against loss or damage by fire and aircraft and such other risks normally covered under a householder's comprehensive insurance policy ...in an Insurance Office of repute in the full value thereof and to make all payments necessary for the above purpose within seven days after the same shall ... become payable ...'

13. It will be noted that the landlord is obliged to insure against a range of risks or perils but the tenant's obligation is only to repay the cost incurred to insure against the peril of fire. However no point was taken before us as to this apparent anomaly.
14. Directions were given on 23 December 2005 and the parties were notified that the hearing was listed for 24 February 2006. The parties complied with the directions and exchanged statements of case. By letter dated 20 February 2006 NRB made an application for an adjournment on the basis that their client had had to leave the country and they were without instructions. The application was refused.
15. The matter came on before us on 24 February 2006. The Applicants were present and represented themselves. The Respondent was neither present nor represented.

The Applicant's Case

16. The Applicants produced an insurance quote from Churchill Insurance Company dated 22 November 2005 in the sum of £216.60. Mr Gadgil told us that it applied to the whole building and that it covered both flats. The buildings sum insured was £250,000. The excess was £100 per claim save as regards subsidence where the excess was £1000 per claim. Mr Gadgil confirmed to us that he had disclosed a previous fire damage claim to flat 129b settled in 2004 in the sum of £10,310. He had not disclosed a further claim made by Mr Sadeeq following the collapse of a ceiling in October 2005 and he had not disclosed a subsidence claim said by NRB to have been made by a previous lessee against a previous insurer but which was never, in fact, pursued because he was unaware of that alleged claim and had no information about it. In any event the claim was not pursued.

17. Mr Gadgil produced an up to date quote from Churchill which he had obtained online on 22 February 2006 which evidently related only to his flat and the premium quoted was £186.90. Again the building sum insured was £250,000. Mr Gadgil told that in obtaining this quote he was not asked to give any claims history information.
18. Mr Gadgil submitted that the Churchill cover was more extensive than that provided by the current insurer, Norwich Union, as set out in certificate and documents provided by NRB, and he took us through the differences. It was not immediately clear whether the Property Owners Liability cover of £5m in the Norwich Union cover was replicated in the Churchill proposed cover.
19. Mr Sadeeq told the Tribunal that in October 2005 he was abroad. His son reported to him that a ceiling in his flat had collapsed. He requested his son to contact NRB to obtain an insurance claim form. Evidently NRB refused to supply a form until the insurance contribution claimed in the sum of £438.96 was paid. Mr Sadeeq said that he was anxious to proceed with the insurance claim and therefore requested his son to pay the demand, on the basis that he would sort things out on his return to London. He Sadeeq said that he had paid the demand under duress and only in order to be able to obtain a claim form. He said he was certain that he had not agreed or admitted his liability for the sum claimed.

The Respondent's Case

20. The Respondent was neither present nor represented before us. We did however consider carefully the Respondent's statement of case submitted under cover of NRB's letter dated 23 January 2006 and NRB's letter to the Tribunal dated 23 February 2006 and the respective enclosures thereto.
21. We noted that the insurance premiums for the previous year were £273. There was no evidence before us that we felt we could rely upon to explain the sharp increase to £439 for the current year. Whilst NRB refer to the brokers Mulberry Insurance saying that they could not better the renewal quotes provided by Alexander Forbes, we were not provided with any evidence from Mulberry to this effect.
22. We also note from NRB's letter dated 23 January 2006 that they receive a 20% commission from Alexander Forbes calculated on the net premium exclusive of IPT. No evidence was given to us as the contractual arrangements as between NRB and the Respondent. In the absence of evidence to the contrary we assume that NRB as an agent accounts to the Respondent as principal for the commission received. This may be of relevance since what the lease allows the landlord to recover from the tenants is the '*...the sum ...which the Lessors shall from time to time pay by way of premium...*' This sum may well be the net sum, after credit is given for commissions received or receivable.

Reasons for Decisions

23. It is not in dispute that the insurance contributions payable by the Applicants to the Respondent under their respective leases are service charges within the meaning of s18 of the Act.
24. We find that the Applicants were honest and open with us doing their best to assist us. We accept that the Applicants did their best to provide a comparable alternative insurance quote that we could give some reliance to.
25. We were disappointed that the Respondent felt unable to arrange for NRB to attend the hearing to assist us and give us information about the insurance arrangements it had made on behalf of the Respondent. There was no satisfactory explanation given to us as to the very substantial increase in insurance premium demanded by Norwich Union from 2004/5 & 2005/6. The increase was pretty well 100%.
26. We found the Churchill quote helpful and it tended to confirm the general experience and expertise of the Tribunal as to the level of premiums for this the subject Property. Some increase year on year is to be expected, but not, in our experience 100% or anything like it.
27. We accept that a landlord is not obliged to effect insurance cover at the cheapest cost. The landlord must however act reasonably when effecting insurance cover and can, where appropriate, act on professional advice. In this case the Respondent chose not to attend or be represented at the hearing to explain to us how it had acted reasonably.
28. In these circumstances, given the evidence before us and our experience in these matters, we find that a reasonable range for the cost of appropriate buildings insurance cover of the type required by the leases is £200 to £225 per flat. We thus find that any sum greater than £225 would not be reasonably incurred. Accordingly by reason of s19 of the Act the amount payable is restricted to that reasonably incurred.
29. S47 of the Landlord and Tenant Act 1987 (the 1987 Act) imposes requirements as to information to be contained in demands given by landlords to residential tenants for the payment of rent and/or service charges. Those requirements are that the demand must contain the name and address of the landlord. Where the address given is not an address in England and Wales, there must also be given an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant. S47(2) of the 1987 Act provides that where a demand does not contain the prescribed information the amount demanded shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.
30. We have examined carefully the several demands issued by NRB to the Applicants in which demands for the insurance premiums are made. They are in similar format. The name and address of the landlord is not given in any of them. All that is given is:

'Landlord and tenant Act 1987

Please note that the address for serving any notice on your landlord is care of NRB Chartered Surveyors, Crawford House, 1a Willow Street, North Chingford, London E4 7EG E. & O.E.'

31. We find that the demand does not comply with of the 1987 Act because the name and address of the Respondent landlord is not given is not given. At best all that is given is an address at which notices on the landlord may be served, and even this is only a 'care of' address. Accordingly by reason of s47(2) of the 1987 Act no sum is payable to the Respondent in respect of insurance unless and until a s47 compliant demand is given.
32. In the light of the foregoing the Second Applicant has made payment to the Respondent of £438.96 which is not legally due and payable and it seems to us that it should be returned to him forthwith.
33. The Applicants have also made an application under s20C of the Act. The leases do not appear to entitle the landlord to recover as a service charge any sums incurred in connection with proceedings before courts and tribunals and thus we would not expect the Respondent to seek to make any such charge. However, for the avoidance of doubt we make an order under s20C of the Act that there shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by either of the Applicants any costs which the Respondent may have incurred in connection with these proceedings.
34. Finally we turn to the Applicants application to be reimbursed fees of £225 incurred by them on these proceedings. We have found that the Applicants have established their case. The Respondent has failed to show that it acted reasonably on the question of the cost of insurance. The premiums were very substantial and we have found them to be excessive, way above the range of what might be reasonable. The Respondent has not given any meaningful account of the steps taken to show that it acted reasonably. For these reasons we have no hesitation finding it just and equitable that the Respondent should reimburse the Applicants all of the fees paid by them, and that it should do so by 5pm Friday 17 March 2006.
35. During the course of the hearing Mr Gadgil told us that a letter sent to him by NRB dated 14 February 2006 led him to believe that the Property was not presently insured, or if it was, the Respondent might cancel the policy so that the Property was uninsured. We would hope that Mr Gadgil's fears are unfounded and that the Respondent would not take the course threatened by NRB. We note that the lease obliges the landlord to insure the demised premises and that such obligation is not conditional on the prior payment of the premium by the tenant. Further as set out above we have found that the Respondent has not yet made a demand for the premium which contains information prescribed by statute. In these circumstances we invite the Respondent to put the Applicants' minds at rest by confirming to them that the insurance policies are in place

in accordance with the certificates issued by Norwich Union and dated 3 October 2005.

A handwritten signature in black ink, appearing to read "John Hewitt". The signature is written in a cursive style with a large initial 'J'.

John Hewitt
Chairman
27 February 2006