CHI-21UD-LIS-2006-0026

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

REAR GARDEN FLAT, 165 LONDON ROAD, ST LEONARDS ON SEA, TN37 6LS

Applicant:	Mr N Cooper (leaseholder)
Respondent:	Mr T Wallace (freeholder)
Date of determination:	30 January 2007
Date of inspection:	30 January 2007

Members of the Leasehold Valuation Tribunal:

Mr MA Loveday BA(Hons) MCIArb
Mr BHR Simms FRICS MCIArb
Mr NI Robinson FRICS

1. This is a determination of an application under sections 27A and 20C of the Landlord and Tenant Act 1985 in respect of service charges for a flat in East Sussex. The applicant is the leasehold owner of the rear Garden Flat at 165 London Road, St Leonards on Sea. The respondent is the freehold owner. The application is dated 5 October 2006. On 13 October 2006, the Tribunal gave directions that the application was to be dealt with without a hearing on the basis of written representations only.

2. The applicant's lease is dated 28 July 1989. By clause 1(2) it requires the lessee to pay an insurance rent equal to 3/20 of the landlord's cost of insuring the building. The applicant's insurance rent in issue is as follows:

	s/c year	*applicant's apportionment*	*equivalent premium*
(a)	2003	£335	£2,233.82
(b)	2004	£479.68	£3,197.92
(c)	2005	£306.65	£2,044.32
(d)	2006	£306.65	£2,044.32

There is no suggestion these costs are irrecoverable under the terms of the lease or that the landlord has not laid out insurance moneys. The sole question is whether the relevant costs of the insurance premiums were reasonably incurred under s.19 of the Landlord and Tenant Act 1985.

3. The Tribunal inspected the subject premises before the determination. The premises are located on a busy main road and form one third of a larger block – no.169 being a similar albeit a slightly larger property. No 169 comprises a block of flats c.1900 on four storeys (plus basement) constructed of brick under a pitched tile roof. It includes 6 flats, several of which are retained by the respondent and let out. The site slopes sharply down away from the main road and there is a large garden behind – the applicant's flat having its principal access from the garden. The condition of the block is poor.

4. The applicant's statement of case was dated 2 November 2006. He stated that after the respondent took over management of the building, costs escalated. An insurance schedule from Green Insurance Brokers for 169 London Road dated 23 October 2006 was produced. This gave a premium of £1,311.12 and it was relied upon as evidence that the premium for no.165 was excessive.

5. The respondent's statement of case was dated 9 November 2006. He said that originally the property had been insured with Zurich Insurance but thereafter the insurer had been changed to U-Sure. The premium had been increased as result of claims on the insurance.

6. The bundles submitted to the Tribunal included the following documents:
   (a) an insurance certificate from Zurich Insurers for the year to 6 July 2002 stating a rebuild value of £582,134.
   (b) an insurance folio and certificate from Zurich Insurers for the year to 6 July 2005 breaking down the premium of £3,197.92 into its component parts and stating a rebuild value of £590,610. This was supported with service charge invoices referring to the premium of £3,197.92.
   (c) a copy of an insurance schedule certificate from U-Sure for the period to 4 September 2006 which gave a premium of £2,044.32 and stating a rebuilding cost of £472,488. This was supported with service charge invoices referring to the premium of £2,044.32.
   (d) a renewal schedule for the subject premises written by U-Sure on 5 September 2006 which gave a rebuilding cost of £491,387.

7. In <u>*Forcelux v Sweetman*</u> [2001] 2 EGLR 173 and <u>*Veena SA v Cheong*</u> [2003] 1 EGLR 175, a two stage process for determining s.19 issues was developed. Whether a cost is "*reasonably incurred*" primarily involves consideration of the landlord's decision making process. However, if that process is considered to be a reasonable one, the Tribunal must then

consider whether the costs are so out of line with the market norm so as not to be reasonable.

8. In this case, the landlord has provided some details to suggest that the insurance was placed with reputable insurers and that he did in fact reconsider and change insurers in response to rising premiums. The respondent had an incentive to do this since he was spending his own money on the premiums for the other flats in the block. The burden therefore passes to the applicant to show the costs were not reasonably incurred. In fact, the applicant has produced only one piece of evidence to suggest the insurance rent was excessive – namely the premium paid for no.169 London Road. The difficulty with this evidence is that it does not explain the cover provided, give any rebuilding cost or indeed specify the premises insured (the schedule describes the policy as "*flatowners' protection*" – which does not suggest it is a building policy comparable to the cover provided for no.165). The Tribunal therefore attaches no weight to this evidence. At first glance, it may be that a rate of approximately £4 per £1,000 of cover is expensive for this area, but there is no convincing evidence to support such a contention.

9. The Tribunal is satisfied that the landlord has discharged the burden to show a *prima facie* case that the costs were reasonably incurred, and that the applicant has not discharged the burden of showing that they were not reasonably incurred.

10. As far as s.20C is concerned, it is not clear that the landlord has incurred any costs before the Tribunal. However, having regard to the guidance given by the Lands Tribunal in *Tenants of Langford Court v Doren* LRX/37/2000 the Tribunal does not consider it just and equitable to make any order under s.20C of the 1985 Act. The respondent has succeeded in relation to the issue of the insurance premiums and the landlord had to meet the allegations made by the applicant. There is nothing about the respondent's conduct during the course of the application which makes it just and equitable to make a s.20C order.

11. The Tribunal therefore finds under s.27A of the Landlord and Tenant Act 1985 that the sums set out in paragraph 2 above are payable. No order is made under s.20C of the 1985 Act.

Mark Loveday BA(Hons) MCI Arb
Chairman
Dated: 2 February 2007