RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/29UQ/LSC/2008/0055**
Property:	**Flat 4** **47 Mount Ephraim** **Tunbridge Wells** **Kent TN4 8AU**
Applicant:	**Mr. B. West**
Respondent:	**Aveling Properties Limited**
Date of Hearing:	**9th September 2008**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. R. Athow FRICS MIRPM**
Date decision issued:	

RE: FLAT 4, 47 MOUNT EPHRAIM, TUNBRIDGE WELLS, KENT, TN4 8AU

Background

1. The subject property is Flat 4, 47 Mount Ephraim, Tunbridge Wells, Kent, TN4 8AU. Mr. West ("the Applicant") is the lessee of the subject property and made an application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability to pay service charges in respect of buildings insurance. The Lessor is Aveling Properties Limited ("the Respondent").

2. The Applicant also made an application under Section 20C of the Act for limitation of service charges arising from the Landlord's costs of proceedings.

3. In advance of the hearing the Applicant provided copies of the following:
(a) Zurich Residential Policy Schedules in respect of the years 2007 - 2008 and 2008 - 2009.
(b) A lease of the subject property dated 1st August 2005 made between The Trustees of the Leonard Lifts Pension Fund (1989) (the landlord) and the Respondent (the tenant).

(c) A statement of case.
(d) Insurance quotations from Liverpool Victoria and Home Insurance.

4. In advance of the hearing Gordon Lutton Solicitors representing the Respondent provided copies of the following:
(a) A statement of case.
(b) A Zurich Residential Policy Schedule and other information concerning insurance in respect of 2008 - 2009.
(c) A letter from the Applicant dated 3rd August 2008 enclosing cheque for buildings insurance.
(d) The same lease of the subject property as that provided by the Applicant in paragraph 3 (b) above.

5. The Clerk to the Tribunal had been informed by Gordon Lutton Solicitors that neither they nor anyone else on behalf of the Respondent would be present at the inspection or the hearing. The Applicant was accompanied by Mr. Swain at the hearing.

Inspection

6. The Tribunal inspected the outside of the building of which the subject property forms part and, in the presence of the Applicant, the Tribunal inspected the interior of the subject property and the hall and stairs.

7. The subject property is the second floor flat in the building which comprises one two bedroom flat and three one bedroom flats. The building has four storeys and at the rear there is a two storey extension with a flat roof. The building is part of a terrace although there is a small space between part of the building and one of the adjoining properties.

8. The parties described the building as Victorian but we considered that it may be Georgian. We could see that the front of the building had detailed rendering and detailed eaves.

Determination

9. We found that the premiums paid by the Respondent and charged to the Applicant and the other lessees were reasonably incurred.

10. We did not make an order under Section 20 C of the Act.

11. Our reasons appear below.

Reasons

12. The application had been made because the Applicant considered that the insurance premiums were too high. In particular he was concerned that the sum insured was too high, that the cover in respect of loss of rental income did not apply to him, that the Respondent had not

informed the insurers that part of the building was unoccupied and that therefore the insurers would not entertain a claim and that the insurance was commercial rather than residential. He had obtained quotes for insurance of each of the four flats which in total came to much less than the premiums paid by the Respondent.

13. Gordon Lutton on behalf of the Respondent had contended that the Applicant was estopped from disputing the cost of insurance as he had paid his share of the sum demanded for insurance. However, Section 27A (5) of the Act inserted by Section 155(1) of the Commonhold and Leasehold Reform Act 2002 provides that the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

14. They also pointed out:

(a) The obligation on the lessor in clause 4 (8) of the lease to keep the building insured for the full reinstatement value of the building and loss of rent.

(b) That the building is in a conservation area and that in the event of destruction and demolition the cost of rebuilding it would be in excess of that required for a modern brick built building of similar size.

(c) That they had requested the Applicant to provide information as to the level of insurance cover required by the mortgagees of the Applicant and the other lessees of the flats in the building but that no such information had been received.

15. We were not provided by either of the parties with a copy of the lease, assignment or underlease by which the Applicant acquired the subject property but the Applicant and Gordon Lutton accepted that Aveling Properties Limited was the lessor and that the Applicant was the lessee of the subject property. We did not have evidence of the covenants which the Applicant had entered into on his purchase of the subject property but at our suggestion he telephoned his Solicitor and the Applicant told us that his Solicitor had confirmed that the lease which the Applicant purchased was in the same terms as the copy lease produced to us. We therefore proceeded on that basis.

16. We explained that the Respondent was obliged to insure the building so that if, for example, it were destroyed by fire then the sum insured would cover the cost of rebuilding. That sum would be in excess of the total of the sums which each lessee could expect to obtain on selling his or her flat. There was no evidence to contradict the statement by Gordon Lutton that the building is in a conservation area. That would mean that in the event that the building were destroyed it would have to be rebuilt in a similar style to its present style. It would be more expensive than rebuilding a modern building. More work would be involved. The replacement of the detailed render and the detailed eaves would involve more work than modern render and modern eaves and that would increase the cost of reinstatement. There is limited space on site to store materials and that too would add to the cost. As would the likelihood of having to support the adjoining properties while the work of reinstatement was proceeding.

17. We could see that the sum insured had been reduced from £810,000 in 2007 to £694,575 in 2008. We had no evidence as to why that had been done except that there had been a complaint about the building insured sum and as a result it had been reduced. The fact that the

new figure was a specific sum rather than just a round figure suggests that there was some calculation but how the reduced figure had been calculated we do not know. What is required is an insurance appraisal by an independent Chartered Surveyor so that the correct sum is determined.

18. We are not in a position to carry out a detailed appraisal of the building to calculate the sum for which it should be insured so that the sum is sufficient to cover the reinstatement of the building. The matter for our consideration is whether the premium was reasonably incurred. Neither the sum insured in 2007 nor that in 2008 was in our view excessive.

19. We explained that the loss of rent provision was usual in such insurance and was in fact of potential benefit to the lessees in that, for example, in the event of the building suffering a fire and becoming uninhabitable the insurance could cover the cost of the lessees renting alternative accommodation while the building is reinstated.

20. We do not have sufficient evidence as to whether or not the Respondent failed to notify the insurers that part of the building was empty or to determine whether or not the insurers were justified in refusing to pay a claim and in any event that is a matter which we were told was before the County Court. Even if the Respondent was at fault that would not affect our determination that the premium was reasonably incurred. It was reasonable for the Respondent to effect the insurance. How the Respondent deals with that insurance is a matter for the County Court.

21. The insurance obtained is a normal landlord's insurance. Although the property concerned is residential rather than commercial the management of the property by the landlord is a commercial enterprise. The basis of the insurance quotations obtained by the Applicant was not clear. If each lessee were to insure his or her own part of the building there would still be parts of the building which would not be covered because, assuming that the leases are in the form suggested to us, the main structure, roof, foundations and common parts such as the hall are retained by the Respondent and are not within any of the leases.

22. For these reasons we found that the premium was reasonably incurred and that the lessees are liable for their proportion of that premium.

23. As to the application under Section 20C of the Act, we considered all the evidence before us but could find no justification to make such an order.

R. Norman
Chairman