

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



**S.27A Landlord & Tenant Act 1985 (as amended) ("the Act")**

<b>Case Number:</b>	<b>CHI/45UG/LIS/2009/0036</b>
<b>Property:</b>	<b>132a South Road Haywards Heath West Sussex RH16 4LT</b>
<b>Applicant:</b>	<b>Adele Davies</b>
<b>Respondent:</b>	<b>Shinpack Limited</b>
<b>Date of Inspection /Hearing</b>	<b>12<sup>th</sup> August 2009</b>
<b>Tribunal:</b>	<b>Mr R T A Wilson LLB (Lawyer Chairman) Mr R Wilkey FRICS (Valuer Member)</b>
<b>Date of the Tribunal's Decision:</b>	<b>25<sup>th</sup> August 2009</b>

**THE APPLICATION**

The applications made in this matter are as follows;

1. For a determination pursuant to section 27A of the Act of the Applicant's liability to pay service charge in respect of insurance premiums for the years 2008-2009 inclusive, and
2. for the Tribunal to consider, pursuant to regulations 9 of the Leasehold Valuation Tribunal (England) Regulations Act 2003 whether the Respondent should be required to reimburse the fees incurred by the Applicant in these proceedings.

**DECISION IN SUMMARY**

3. The Tribunal determines that subject to paragraph 40 below the amounts charged by the Respondent for insurance in each of the years 2008-2009 inclusive were reasonably incurred and are payable in full.

4. No order is made in relation to the repayment of Tribunal fees incurred by the Applicant in these proceedings.

### **JURISDICTION**

#### **Section 27A of the 1985 Act**

5. The Tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when service charge is payable.
6. By section 19 of the Act, service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

### **THE LEASE**

7. The Tribunal had a copy of the lease relating to the subject property. The lease is dated the 27<sup>th</sup> May 2005 and is for a term of 125 years from 25<sup>th</sup> March 2005.
8. By virtue of the Seventh Schedule of the lease the landlord is obliged to insure the building against all risks as it shall deem necessary. By virtue of the Eighth Schedule, the lessee covenants to pay the Building Charge, which is stated to be a two third part of the categories of expenditure specified in the Seventh Schedule to the lease which includes the insurance premiums incurred by the landlord.

### **INSPECTION**

9. The Tribunal inspected the property before the determination. The property is a self-contained two-storey maisonette above a shop in a parade towards the western end of the main shopping thoroughfare of Hayward's Heath. The shop is currently a shoe shop. Access to the maisonette is by way of a public car park to the rear of the building. The property was probably built circa 1930 and has a flat roof with brick and rendered elevations. It appears to be broadly traditional construction and the Tribunal saw no features or use which in its opinion would give rise to an increased premium or excess loading.

### **PRELIMINARIES / ISSUES IN DISPUTE.**

10. The Tribunal issued directions for the case on the 30<sup>th</sup> April 2009 when it was identified that the only issue in dispute was the amount of insurance premiums charged by the Respondent for 2008 and 2009.
11. Directions were given for the Applicant to file with the Tribunal and serve on the Respondent a statement of case setting out her challenge and the reasons for doing so.

12. The directions further provided for the Respondent to file with the Tribunal and serve its statement of reply on the Applicant with copies of all documents upon which it intended to rely. Both parties complied with these directions.
13. The directions further provided that the case would be determined on the papers filed and without an oral hearing unless any party objected. Neither party had objected.

### **THE APPLICANT'S EVIDENCE**

14. The Applicant's papers reveal that she has a number of concerns relating to buildings insurance. Firstly she considers that the Respondent is acting unreasonably in declining to accept payment of the insurance premium by monthly installments. Secondly, she contends that the cost of the buildings insurance is too high. Her proportion of the premium for the year ending 2008 amounted to £380.74; however, in January 2009 she had received a demand from the Respondent for £525. Following receipt of this demand she wrote to the Respondent requesting an explanation as to the increase. She received a reply saying that another policy had been taken out with a different insurance company and the premium was now reduced to £426.19. Following this letter it was suggested that she obtain alternative quotations to gain an idea of what she should be paying.
15. She had obtained a number of alternative building insurance quotations on the Internet and the quotations for her property ranged from £115.50 to £211.05 which was far less than she was having to pay now.
16. In her statement of case, the Applicant also questioned why she was paying two thirds of the insurance in respect of a policy which covered the shop below as well as other dwellings. The Applicant asked the question that if a cheaper quotation could have been found why was this not taken up in the first place? She contends that it is the Respondent's obligation to get quotations from a variety of providers in order to achieve the best price and save money.

### **THE RESPONDENT'S CASE**

17. The case for the Respondent is that acting in good faith, and in compliance with the terms of the lease, they approached a reputable independent broker and instructed them to arrange suitable insurance. They contend that the broker has arranged insurance with a reputable insurance Company in compliance with the terms of the lease.
18. The Respondent further contends that the movements in the insurance markets are not within their control. Nor is the Respondent under an obligation to subsidise the Applicant by accepting monthly installments of the insurance premium.
19. The Respondent also challenges the alternative quotations put forward by the Applicant on the basis that they are not comparable. It is not clear what the terms of the policies sourced by the Applicant are and whether they are suitable for the development of which the subject property forms part.
20. The Respondent contends that it is under a duty to insure the whole of the building which contains both commercial and residential units and has engaged the services of an

experienced insurance broker to ascertain the appropriate type of policy and cover to discharge its legal obligations under the lease. The Respondent asserts that the insurance policies in both years challenged comply with the insurance covenants contained in lease and that the premiums obtained are reasonable. Also that the proportion demanded from the Applicant, namely two thirds, is in accordance with the terms of her lease.

### **ANALYSIS AND DETERMINATION**

33. There is no dispute between the parties as to the standing of the insurers preferred by the Respondents. Neither has the Applicant led any credible evidence casting doubt as to the way that the premium is apportioned to the Applicant. The question for determination therefore is whether the insurance affected by the Respondent over the challenged years has involved the payment of premiums which have been unreasonably incurred. On the one hand the Applicant argues that this question should be answered in the affirmative because comparable cover is available at a significantly lower cost. On the other hand, the Respondent argues that no comparable quotations have been put forward, that its insurance arrangements are reasonable and that the premiums currently payable and payable in the past are and always have been reasonable. Its agent went out to the market in each year and sought and obtained competitive cover.
34. We accept the Respondents submissions that the insurance in the years challenge is in accordance with the terms of the lease. They are correct in saying the lease provides for the landlord to insure the building which includes both the shop below and the subject property above. The Tribunal accepts that the lease contains a fixed formula for spreading the cost of insurance between the various lessees in the building and that the Applicant's contractual obligation is to pay two thirds of the total premium. It is not within the jurisdiction of the Tribunal to vary the terms of the lease in order to change this apportionment.
35. We also accept the Respondent's assertion that their broker has properly tested the market in each year before placing cover. The Tribunal's papers include a letter from the Respondent's brokers dated 2nd December 2008 advising that the then insurers, Norwich Union had invited renewal at a cost of £1576.98. The broker indicated that they were not satisfied with these terms and had approached Allianz Insurance plc who offered provide comparable cover at a reduced premium of £1278.56. This represented a saving of nearly £300 whilst at the same time providing a lower excess. The Tribunal considers that this letter demonstrates that the Respondent took reasonable steps to obtain a competitive premium.
36. The Tribunal looked closely at the alternative quotations submitted with the Applicant's papers. All the quotations appeared to have been obtained from the Internet. There was a quotation from the AA, which the Tribunal regarded as unsatisfactory. It was not clear what the sum insured was and the quotation contained an inadequate property description. For these reasons the Tribunal found this quotation to be unhelpful. There was a second quotation from Tesco but again the quotation was inadequate because it failed to properly state the property address and failed to include other essential information. The Tribunal was not satisfied that this quotation could be regarded as comparable and it was rejected. There was a third quotation from Direct Line but again there was no property address and the Tribunal could not accept it as comparable to the cover obtained by the Respondent. Finally there was another quotation from LV, but

again this lacked essential information and the tribunal was unable to verify whether the cover quoted was comparable to the cover obtained by the Respondent.

37. As a result the Tribunal concluded that no comparable quotations had been provided by the Applicant and they were not persuaded that the premiums paid by the Respondent were unreasonable. Applying the Tribunal's collective knowledge and experience of the cost of insurance, the premiums under review at approximately £3.20 per £1000 of cover have been during the years in question, at the very top end of what might be a range of premiums to be expected. The Tribunal expects this rate to be reduced to a more acceptable level when the Applicant receives the benefit of the rebate referred to in paragraph 40 below.
38. In arriving at its decision, the Tribunal bore in mind a line of similar cases, starting with *Berry Croft Management Company Limited and others v Sinclair Gardens (Kensington) Investments Ltd. 1977 EGLR 47*. In this case and others after it, it was successfully argued that if a landlord negotiates insurance cover in the open market with insurers of repute, then the premiums obtained should not be held to be unreasonable solely because a more competitive premium could be obtained elsewhere. In short landlords are not obliged to obtain the cheapest quotation; their duty is to ensure that they obtain cover in the open market with an insurer of repute on reasonable commercial terms.
39. In this case we are satisfied that Allianz Insurance plc are insurers of repute and we are also satisfied that the cover obtained by the landlords in each of the years under challenge was obtained in the open market and on reasonable rates. The Applicant has not put forward quotations that can properly be regarded as comparable. For these reasons we determine that the insurance premiums for each of the years in question are recoverable provided they have been lawfully demanded and subject also to what is said in the next paragraph.
40. The letter from the Respondent's brokers dated 2 December 2008 describes the cover as including loss of Rental Sum Insured of £54,000 over 36 months in respect of the shoe shop at ground floor. The benefit of this cover flows entirely to the Respondent and the Tribunal considers that it would be unreasonable for the Applicant to have to contribute towards the cost of this cover. In the circumstances the Tribunal determines that the Applicant should receive a rebate equating to that part of the annual premium in both 2008, and 2009, which relates to the loss of rent for the ground floor shop.

#### **REIMBURSEMENT OF FEES**

41. The Tribunal makes no order in relation to the repayment of fees, as the outcome of this hearing does not merit a sanction of this kind.

Chairman



RTA Wilson LLB

Date

25<sup>th</sup> August 2009