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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
EASTERN RENT ASSESSMENT PANEL**

LEASEHOLD VALUATION TRIBUNAL

Property : 143-152 Stonecross Road, Hatfield
Applicant : Dickens Court Management Company Limited
Respondent : Sinclair Gardens Investment (Kensington) Ltd
Represented by : P Chevalier & Co
Case number : CAM/26UL/LSC/2010/0120
Type of Application : To determine reasonableness of service charge –
section 27A Landlord and Tenant Act 1985 (“the Act”)
Decision Date : 15th November 2010
Tribunal Members : D S Brown FRICS MCI Arb (Chair)
B M Edgington

DECISION

The application is dismissed.

STATEMENT OF REASONS

The Application

1. The Applicant is a party to the lease of each unit comprising the Property as “the Company”.
2. In Part 4 of the Schedule to the lease, the Company covenants, amongst other things, to “insure and keep insured the Properties in the names of the Lessor and the Lessee.....and the Company against the usual comprehensive risks with some insurance Company of repute nominated by the Lessor and through the agency of the Lessor including loss or damage by fire and loss or damage or liability to any persons arising from ownership or occupation or user of the Properties and all other risks usually prescribed as property owners liability and such other risks (if any) as the Lessor or its agents may think fit in the full replacement value thereof (inclusive of architects and surveyors fees and at least two years’ loss of rent)...”.

3. The Lessee covenants to "*contribute and pay on demand the proportionate part.....of the costs charges and expenses from time to time incurred by the Company in performing and carrying out the obligations and each of them set out in Part 4 of the Schedule hereto.*"
4. Part 4 also provides for the Company to recover the costs incurred under Part 4 from the Lessee.
5. On 24th August 2010, the Company made an application under section 27A of the Act, seeking a determination of "*the reasonableness of the freeholder's buildings insurance*".
6. Directions were issued on 29th September 2010, in which the parties were informed that the case was considered suitable for determination without a hearing and notice was given to the parties that such determination would be made after 11th November. It was pointed out that either party could request a hearing before that date in which case one would be arranged. No such request has been received.
7. The Respondent, in accordance with Directions, submitted its Statement of Case on 11 October but in doing so questioned the basis on which the landlord could be Respondent under a section 27A application, given that the insurance premium was not payable by the Company to the landlord but direct to an insurer nominated by the landlord, with the tenants paying service charge to the Company. The Respondent pointed out that a tenant has the right to challenge the choice of insurers in these circumstances under paragraph 8 of the Schedule to the Landlord and Tenant Act 1985.
8. The Tribunal chair informed the respondent that an application under section 27A does not have to be made by a landlord or a tenant. In this case, the landlord will clearly have an interest in any decision as to reasonableness and he considered that the landlord should be a respondent in case it wants to contribute to the proceedings, although he acknowledged that the tribunal's decision would not be binding on the landlord. He went on to concur that a tenant could challenge the landlord's choice of insurer under paragraph 8 of the Schedule to the 1985 Act and said that if one or more tenants made such an application before the current application was determined the tribunal would consider that application at the same time as the current application in order to save costs. This was copied to the Applicant.
9. The Directions required the Applicant by 29th October to serve on the respondent a statement in response to any matters contained in the respondent's statement of reply to the application. It has failed to do so.
10. The Applicant was also required to submit to the Tribunal office by 10th November 4 copies of a case bundle containing specified documents. It has failed to do so.
11. No application has been made under paragraph 8 of the Schedule to the Landlord and Tenant Act 1985. The Respondent wrote to the Applicant on 21st October asking if such an application was to be made but has received no response.
12. On 12th November, the Tribunal chair caused a letter to be written to the Applicant stating that in view of its failure to comply with Directions, the

Tribunal would proceed to determine the case on the basis of the application papers and the Respondent's statement of case.

The Law

13. The statutory provisions relevant to this case are –

14. S19 Limitation of service charges: reasonableness.

- (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—*
 - (a) *only to the extent that they are reasonably incurred, and*
 - (b) *where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;*
- (2) *and the amount payable shall be limited accordingly.*
- (3) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant*
- (4) *costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

15. S27A Liability to pay service charges: jurisdiction

- (1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable.*
- (2) *Subsection (1) applies whether or not any payment has been made.*

16. Paragraph 8 of The Schedule to the Act provides –

- (1) *This paragraph applies where a tenancy of a dwelling requires the tenant to insure the dwelling with an insurer nominated or approved by the landlord.*
- (2) *The tenant or landlord may apply to a county court or leasehold valuation tribunal for a determination whether –*
 - (a) *the insurance which is available from the nominated or approved insurer for insuring the tenant's dwelling is unsatisfactory in any respect, or*
 - (b) *the premiums payable in respect of any such insurance are excessive.*

The Applicant's case

17. The Application describes the Property on the application form as a modern purpose built block of flats.

18. It states that the insurance premium for the year to 31st March 2009 is £4169 and gives the question it wishes the tribunal to decide as, "The reasonableness of the freeholders buildings insurance".

19. No evidence or other facts are provided.

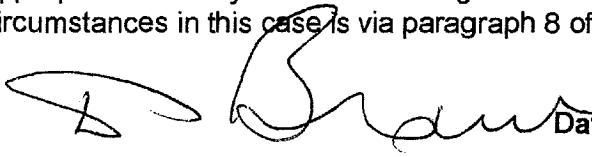
The Respondent's case

20. The Respondent refers to the Burden of Proof and cites *Yorkbrook Investments v Batten* [1985] 2EGLR 100 in which it was held that a tenant pleading that the costs in a maintenance contribution are unreasonable will need to specify the item complained of and the general nature but not the evidence of the case and that if the Tenant gives evidence establishing a prima facie case it will be for the Landlord to meet those allegations. The Respondent contends that no such prima facie case has been established.
21. The Respondent also submits evidence relating to the choice of insurer and level of the premium but in view of the Tribunal's decision, below, these matters were not considered further.

Decision

22. The Tribunal accepts the "prima facie" argument put forward by the Respondent. It is incumbent upon a tenant who wishes to challenge the reasonableness of a service charge to present sufficient evidence to support his case and to shift the burden of evidence production to the Respondent. The Applicant has failed to do so and for that reason we dismiss the application.
23. In any event, we consider that this application is misguided. Even if the Tribunal were to determine that the level of premium was unreasonable, that would not prevent the Respondent from continuing to nominate the same insurer but would prevent the Applicant from recovering from the tenants the full amount of the premium paid. As already indicated to the Applicant, the appropriate route by which to challenge the insurance premium under the circumstances in this case is via paragraph 8 of the Schedule to the Act.

Signed:



D S Brown FRICS MCI Arb (Chair)

Date: 15th November 2010