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

**S.27A & S.20C Landlord & Tenant Act 1985(as amended)("the Act")**

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| Case Number: | CHI/21UD/LIS/2010/0005 |
| Property: | 281 London Road<br>St Leonard's<br>East Sussex<br>TN37 6NB |
| Applicants : | Ms. R. Akorita<br>Miss. K. Painter<br>Mrs. S. Swaine |
| Respondent: | Mr. T. Wallace |
| Appearances for the Applicants : | Ms Rita Akorita (the lead applicant) |
| Appearances for the Respondent: | Mr. Dhuna and Mr. Moynihan of Labyrinth Properties limited |
| Date of Inspection /Hearing | 9th July 2010 |
| Tribunal: | Mr. R T A Wilson LLB (Lawyer Chairman)<br>Mr R Wilkey FRICS (Valuer Member)<br>Mr. T Sennett (Professional Member) |
| Date of the Tribunal's Decision: | 20th July 2010 |

## THE APPLICATION

The applications made in this matter are as follows;

1. For a determination pursuant to section 27A of the Act of the Applicants liability to pay service charge in respect of insurance premiums for the years 2002 and 2004 to 2008 inclusive, and the 2007 reserve of £900.

2. Pursuant to section 20C of the Act that the Respondent's costs in these proceedings are not relevant costs to be included in the service charge for the building in future years.

3. The Tribunal is also required to consider, pursuant to regulation 9 of the Leasehold Valuation Tribunal (England) Regulations 2003 whether the Respondent should be required to reimburse the fees incurred by the Applicants in these proceedings.

## DECISION IN SUMMARY

4. The Tribunal determines, for the reasons set out below, that the amounts charged by the Respondent for insurance in each of the years 2002/3, 2005/6, 2006/7 and 2008 were reasonably incurred and are payable in full. The amount charged in the year 2003/2004 of £812.02 was excessive and is reduced to £695.50 and the amount charged in 2004/2005 of £1,162.48 is also excessive and is reduced similarly to £695.50.

5. An order is made under section 20C of the Act precluding the Respondent from recovering its costs of these proceedings from future service charges.

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

## JURISDICTION

Section 27A of the 1985 Act

7. 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.

8. 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

9. The Tribunal had a copy of the lease relating to one of the flats in the subject property. The lease is dated 27th March 1986 and is for a term of 99 years from 25th December 1985. The initial annual rental is £25 rising to £50 after the first 33 years of the term.

10. Pursuant to clause 3(2) of the lease the landlord covenants that it will at all times during the said term insure and keep insured the building against loss or damage by fire lightning explosion earthquake landslip subsidence riot civil commotion aircraft aerial devices storm and flood impact by vehicles bursting and overflowing of water tanks and similar apparatus and damage by malicious persons and vandals and such other risks as the lessor thinks fit in some insurance office of repute in the full reinstatement value thereof and whenever required produce to the lessee the policy or policies of such insurance and the receipt for the last premium and will in the event of the building being damaged or destroyed by fire as soon as reasonably practicable layout the insurance money in the repair rebuilding or reinstatement of the building.

11. Pursuant to clause 1 of the lease, the lessee covenants to pay by way of further rent one third of the amount which the lessor may expend in effecting or maintaining the insurance of the building against loss or damage by fire and the other risks as the lessor thinks fit to be paid as provided for.

## INSPECTION

12. The Tribunal inspected the property before the hearing in the presence of the parties and their representatives. The subject property is a mid-terraced Victorian house arranged on basement, ground and first floors in the Silverhill district of St. Leonard's-on-Sea. The house fronts the London Road and has been converted into three self-contained flats. The property has cement rendering and painted elevations and a pitched roof covered with composition slates. The front elevation terminated into a parapet with a splayed effect bay. At the rear there is a three storey addition. The Tribunal noted that the front of the property had been recently redecorated and the rear of the property is in the course of redecoration with scaffolding in place. The Tribunal inspected the interiors of the first and basement floor flats and the commonways and was shown water staining to some of the walls in the first-floor flat. The cupboard under the stairs in the basement was damp and in need of repair.

## PRELIMINARIES / ISSUES IN DISPUTE.

13. The Tribunal had held a pre-trial review of the case on the 26th March 2010 when it was established that the issues in dispute were the amount of insurance premiums charged by the Respondent in each of the years 2002/3, 2004 to 2008 inclusive. The 2007 reserve fund of £900 was also in dispute.

14. Directions were given for the Applicants to file with the Tribunal and serve on the Respondent a statement of case setting out their challenge and their reasons for doing so. The directions further provided for the Respondent to file with the Tribunal and serve his statement of reply on the Applicants with copies of all documents upon which he intended to rely.

15. In accordance with the directions the Respondent had prepared a hearing bundle which contained both the Applicants' statement and the Respondent's reply together with copies of all the documents that the parties wished to rely on in support of the respective cases.

16. The Tribunal noted that the Applicants' statement of case addressed not only the issues provided for in the directions but also sought to raise other issues namely the standard and cost of management and also the issue of historic neglect.

17. The Tribunal observed that the issue of management fees had not been raised in the application form and had also not been dealt with in the Respondent's reply. The Tribunal asked if the Respondent was in a position to address these issues and at the request of Mr. Dhuna the hearing was adjourned to allow him the opportunity to ring his office to see if the information in relation to the management fees could be supplied in order for them to respond to the points raised by the Applicants. When the Tribunal reconvened it was told that the relevant information was not to hand and in the circumstances the Respondent was not in a position to deal with the allegations that the management had been poor and that the management fees were excessive. The Tribunal considered that it would not be fair for the Respondent to have to address these issues at the hearing as his representatives had been caught by surprise. Accordingly the Tribunal declined to hear evidence in relation to management fees leaving the Applicants free to raise this issue by way of a further application to the Tribunal if so advised.

18. The Tribunal also noted that the Applicants' statement of case had raised the issue of historic neglect and sought to obtain an equitable set off on account of the alleged failure of the Respondent to repair the property on a timely basis. Once again the Respondent's representatives objected to this issue being determined as they would be caught by surprise not having dealt with the issue in their statement of case.

19. The Tribunal considered that it was not in a position to make a determination on the alleged historic neglect. There was no provision in the directions for this issue to be determined and in the opinion of the Tribunal there was insufficient evidence in the trial bundle for it to be able to form a view. It was also mindful that the Respondent had not come prepared to deal with this issue. For these reasons the Tribunal declined to hear evidence in relation to this matter and suggested that it could be more conveniently and properly dealt with by the County Court. Accordingly the Tribunal records that it makes no findings in relation to the alleged historic neglect and the Applicants are free to pursue this issue in the County Court if so advised.

20. Having regard to the above the Tribunal was left with two issues to determine, firstly the level of insurance premiums in the contested years and secondly the 'on account' payment of £900. At the hearing both parties expanded upon their cases in respect of these disputed items which are dealt with below.

**THE HEARING**

21. Ms Akorita opened the Applicants case by informing the Tribunal that their primary concern consisted of the insurance premiums for the contested years. She asserted in effect that this was a simple case of over charging by the Respondent. She did not challenge the Respondent's right to insure with the ability to recover the reasonable premiums from the Applicants. Neither did she challenge the choice of insurers, which in the years in question were either Zurich or NIG. It was simply the level of the premiums which she considered were excessive and thus irrecoverable.

22. In support of this contention, she pointed to the fact that the applicants, through the RTM company, had been able to obtain substantially cheaper like-for-like insurance when they had taken over the responsibility of insuring the building in 2008. The premium that they

had obtained for the year ending 4th November 2009 was £262.50 based on cover of £182,450. This sum insured was the same amount as taken out by the Respondent in 2007. She asserted that their cover was on a like-for-like basis and this demonstrated that the Respondent had failed to secure reasonable premiums in earlier years. The premiums obtained by the Respondent ranged from £673 in 2002 to as much as £1,162 in 2004 and Ms Akorita stated that this premium was over 260% higher than the quotation obtained by the RTM company several years later. She contended that there had been no change in features of the property since 2002 and therefore there was no valid reason why the premiums had been so high in the earlier years.

23. Secondly she pointed to the fact that the Respondent had failed to insure his own personal property with Abbey brokers who had been used to obtain insurance for the subject property. She contended that this was proof that the brokers were unable to obtain value for money. In other words if Abbey were able to obtain competitive premiums then the Respondent would have surely used them for his own insurance.

24. Thirdly she pointed to the fact that in an earlier Tribunal case relating to the same property, the Tribunal had stated that a reasonable figure for insurance in 2000 and 2001 was £652.37. She considered that these sums, approximately £325 per year should be the benchmark and that future premiums should be assessed by reference to these figures. Given this decision she asserted that the higher premiums in subsequent years must be unreasonable.

25. In cross-examination she accepted that she had not produced any evidence from a broker commenting on the premiums for the years in question. However she stated that she had spoken with a broker who had confirmed to her that the premiums were far too high.

26. Ms Akorita also accepted that the sum insured had been based on the landlords figure for 2007 and had not been subject to a professional assessment.

## THE RESPONDENT'S CASE

27. Mr. Dhuna opened the Respondent's case by asserting that in order to satisfy the Tribunal that the buildings insurance premiums were unreasonable, the applicants must be able to produce like-for-like quotes for the service charge years in question. By way of example, if the Applicants contended that the premium charged in 2007 was unreasonable, they must produce evidence of the unreasonableness by producing like-for-like quotes in respect of the 2007 service charge year. They could not use a quotation from a different year because insurers would often vary premiums from year to year to reflect their aggregate view of the ever-changing factors relating to risk. Mr. Dhuna asserted that the Applicants had failed to do this. The only quote they had referred the Tribunal to was one obtained by them in 2008. Even this quotation could not be regarded as comparable as information was missing including the property address, the risk covered and the sum insured. (These details, however, were provided at the hearing).

28. Secondly, the Applicants must be able to establish that the insurance taken out by the Respondent was at a price that was completely outside the normal range of premiums available in the market at that time. Again they had failed to adduce any evidence which demonstrated that the premiums obtained by the Respondent were not commercial rates.

29. Mr. Dhuna confirmed that each year Abbey were instructed to go out to tender to ensure that the insurance cover remained competitive. Mr. Dhuna contended that the insurance premiums paid both to Zurich and NIG were competitive and he confirmed that the Respondent did not receive any commission. In these circumstances he believed that the insurance was competitively obtained and therefore should be recoverable in full.

30. The Respondent had employed professional agents and independent brokers at all times and had therefore discharged his duty and acted prudently and properly in relation to procuring the insurance. He contended that the Respondent's choice of insurers, Zurich and NIG, were both insurers of repute and that the premiums negotiated with them were market rates. In these circumstances the fact that the Applicants had been able to obtain a cheaper premium for a subsequent year was irrelevant.

31. For all of these reasons he contended that the alternative quotation put forward by the Applicants was not sufficient to deny the Respondent's right to be reimbursed in respect of the premiums paid.

## RESERVE OF £900

32. Ms Akorita contended that there had been an accounting error made by the Respondent as a result of which the stated reserve of £900, which showed in the annual service charge accounts in the year-end 2006, was not carried forward to the next year. In addition the accounts for the next year failed to take into account the fact that she had paid an insurance demand in this year and had not received credit for this payment.

33. Mr. Dhuna sought to provide an explanation of the accounts and contended that Ms Akorita had received the full benefit of her share of the reserve.

## ANALYSIS AND DETERMINATION

34. There is no dispute between the parties as to the standing of the insurers preferred by the Respondent. Neither have the Applicants led any evidence questioning the way in which the premium is apportioned between each lessee in the property or the sum insured. The issue 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 Applicants argue 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 the insurers chosen by the Respondent were insurers of repute and that the premiums quoted were not other than market rates.

35. Whilst the Tribunal can understand the Applicants' surprise that the cost of cover obtained by them in 2008/9 is considerably less than the cost of cover obtained by the Respondent in earlier years, the higher cost is not in itself a valid reason for the Tribunal to deny the Respondent his right to recovery. With the exception of the service charge years ending 2004 and 2005 it is the opinion of the Tribunal that whilst the premiums obtained were at the very top of the range of commercial rates that the Tribunal would expect for a property of this kind they were not outside the range. The premiums charged as service charge over the contested years excluding 2004 and 2005 averaged £3.12 per £1000 of cover and the Tribunal would expect premiums for these years to range from £1.00 to £3.25 per £1000 of cover. However, applying the Tribunal's

collective knowledge, it considered that the premiums for 2004 and 2005 fell outside of the range of commercial rates for these years. In 2004 the cost of cover was approximately £3.80 per £1000 and in the subsequent year the figure rose to £5.40 per £1000 of cover. The Tribunal considers that the charges for these years were indeed excessive. Accordingly the figures for these two years are capped at £695.50 per year representing £3.25 per £1000 cover.

36. 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 obtain cover in the open market with an insurer of repute on reasonable commercial terms.

37. Based on our collective experience and knowledge of the market we broadly accept the general submissions of the Respondent in relation to how insurance premiums are quoted. It is our experience that the premiums quoted can and do fluctuate according to the market conditions prevailing at the time. There is no straight-line adjustment having regard solely to the premium agreed on a property in the previous year and the claims submitted during the course of the year. The Tribunal is aware of instances where insurers quote at below market rates simply to complete their insurance book for the year or perhaps to attract business. The existence of a competitive rate one year is thus no guarantee of a similarly competitive quote the next.

38. In this case we are satisfied that both Zurich and NIG are insurers of repute and we are also satisfied that the cost of cover obtained by the Respondent in each of the years under challenge with the exception of 2004 and 2005 was not other than at market rates. For these reasons the Tribunal is not minded to disturb the premiums charged by the Respondent other than for 2004 and 2005.

39. As to the position of the reserve, the Tribunal established that the Applicants were not challenging the cost of any particular service or the quality of work or services supplied by the Respondent. The issue was an accounting one. The Tribunal concluded that it did not have sufficient accounting information before it to understand either party's submissions in relation to this point. Moreover it became clear that Ms Akorita and Mr. Dhuna were prepared to meet each other after the hearing with a view to resolving this accounting issue. In the circumstances and for these reasons the Tribunal makes no finding on this point.

## SECTION 20C APPLICATION AND REIMBURSEMENT OF FEES

40. Both of these matters can be taken together as the Tribunal's considerations in relation to both are largely the same. The legislation gives the Tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it. The Tribunal has a very wide discretion to make an order that is, 'just and equitable' in all the circumstances.

41. The Tribunal first reminded itself that the Respondent had successfully defended the application which in the absence of any other reasons was a prime facie reason for the

Tribunal declining to make an order limiting the Respondent's costs from being recoverable as service charge.

42. However the Tribunal heard from Mr. Dhuna that it was not the intention of the Respondent to recover any of the costs incidental to this hearing as service charge. In the circumstances he had no objection to an order being made. Accordingly the Tribunal makes an order under section 20C of the Act. In effect this means that both parties will be responsible for their own costs.

43. 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.

Signed

R T A Wilson LLB

Chairman

Date - 20th July 2010