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Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Section 27(A) Landlord and Tenant Act 1985

193 Graham Road, London E8 1PE

Ref: LON/00AM/LSC/2010/0049

Mr S Hardeman, Mr D Emmerson, E Godden & G Murphy

Applicants

Cyril Freedman Limited

Respondent

Tribunal: Mr M Martynski (Solicitor)
Mr P Tobin FRICS MCI Arb
Mrs L West JP MBA

DECISION

Summary of Decision

1. The Tribunal finds that the insurance premium of £2,514.34 for the year 2009/10 is unreasonable. Of that sum, only £800.00 is payable.
2. The Tribunal makes an order under section 20C Landlord and Tenant Act 1985 that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
3. The Respondent must reimburse the Applicants in the sum of £100.00 in respect of the fees that they have paid to the Tribunal.

Background

4. The subject property is a mid terraced mid-Victorian House converted into three flats. The Applicants constitute all the leaseholders in the property.

5. The property is insured via the Respondent's block policy with AXA insurance company. The premium for that insurance (which is the only issue in this application) is £2,514.34 for the year 2009/10.

The parties' respective cases and evidence

6. The Applicants stated that they had raised the issue of insurance premiums with the Respondent over many years and had not received a response. They added that they were unable to obtain an alternative quote for the property as they did not have sufficient information from the Respondents.

7. The Applicants relied on the premiums payable for numbers 191 (£696.01 – 08/09 – summary of policy provided) and 195 (£682.50 – 08 - based on demand for service charge only) Graham Road being, according to the Applicants, similar properties.

8. In response to the application, the Respondent filed a letter from their brokers, Towergate dated 17 March 2010. That letter seeks to justify the premium by reference to specific structural problems associated with the property. Attached to that letter is a report from S.James, a Structural Engineer dated 16 July 2008, the relevant parts of which state:-

.....it seems that a significant and unacceptable amount of movement has taken place within the foundations.....There does seem to be evidence of recent structural movement..... we can see cause of immediate concern.....The property in our opinion, would appear to offer unsatisfactory and inadequate security for mortgage and insurance purposes under normal terms and conditions.

9. It should be noted that the engineer's report is addressed to one of the Applicants, Mr Emmerson and contains the usual disclaimer that the report is solely for the benefit of its intended recipient.

10. Also attached to the letter from Towergate is a copy of an email dated 15 July 2009 from Towergate to the Respondent's managing agents, the relevant parts of which state:-

.....this property is included, for insurance purposes, within a portfolio and the rates may reflect the historical loss experience which may or may not be higher than quotes obtained in the open market.....In addition, the specific wording agreed with AXA is wider and more flexible than alternatives to meet the needs of a portfolio of businesses. The policy has been tailored to our client's needs.....in this instance, we are quite to revert back (sic) to the insurers to see whether they are prepared to offer cheaper terms. To enable us to do this, I would be grateful if you could obtain the following information.

11. The letter from Towergate stated that no information had been supplied following the above request.

12. In response to this, the Applicants produced a letter from a Mr Gavin, a loss adjuster for AXA, dated 23 June 2009. The relevant parts of that letter state:-

.....I refer to our previous Technical Report dated 6 September 2008 preceded by the report from Matthew James & Company and Infront Innovations both of which hypothesised potential subsidence movements as the cause of damage to the building.

As discussed, I am in agreement with my colleague Mr Anstey that the property has or is not suffering subsidence related movement.

Although I note that you will be disappointed that Insurers are unable to make a contribution in this instance I hope you take some satisfaction that the property is not suffering subsidence damage.

13. The Tribunal were not sent the Technical Report or the report from Infront Innovations referred to above.

14. The Respondent, in seeking to justify the premium (which appears to the Tribunal in its opinion to be very high and to require justification), relies on evidence that is plainly inadequate. The engineer's report relied upon ought not to be relied upon by the Respondent without obtaining its own expert evidence.

15. The Respondent's argument appears to be that the premium is based on the fact that the property has structural movement problems whereas its own insurers appear to say that there is no such issue.

16. There is the further suggestion from the Respondent (in the email referred to above) that the characteristics of the subject property are not relevant given that it is insured under a block policy. This clearly contradicts its main argument set out above.

17. It is further clear that no attempt has been made by the Respondent to investigate whether or not a cheaper quote can be obtained given that it failed to provide the necessary information to its brokers.

18. The Tribunal also takes into account the Applicants' point that the engineer's report relied on by the Respondent did not appear to affect the premium from its previous level in any event.

19. The Tribunal also takes into account the fact (as a matter of settled law) that the Respondent is entitled to effect a block policy of insurance for all of its properties and that this policy, in terms and in premium (within reason) can take into account the particular characteristics of that portfolio.

20. As to the evidence of premiums submitted by the Applicants, these have to be treated with caution. Only one premium is supported by a summary schedule of risk covered. No alternative quote has been obtained for the subject property. The other premiums relied on may be based on different types of cover, different claim histories and different property factors. Nonetheless, those quotes are evidence of typical levels of premium for similar properties.

21. The Applicants arrived at their alternative figure of £800 based on the other premiums relied on by them and by then adding a further amount by way of a concession and to take account of the problems set out in paragraph 19 above.

22. The Tribunal concludes that it has no evidence on which it can rely from the Respondent to justify or support the premium charged. It does not have sufficient knowledge itself on which to base an alternative figure. It must then take the evidence of the Applicants, imperfect as it may be, and rely on that. The Tribunal accepts the concession made by the Applicants and accordingly their figure of £800.00.

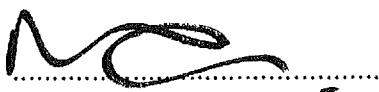
Costs of the proceedings and fees

Fees

23. The Applicants have been successful in challenging the insurance charge and it follows that it would be fair and just for the Respondent to reimburse to the Applicants the fees that they have paid to the Tribunal amounting to £100.00

Costs

24. The Applicants have clearly been successful in their application. Accordingly it is right and fair to prevent the Respondent from adding the costs of these proceedings to the service charge (assuming it had such a power in the lease, upon which no decision is made).

A handwritten signature in black ink, appearing to read 'Mark Martynski', is written over a horizontal dotted line.

Mark Martynski
Tribunal Chairman
29 March 2010