



Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference LON/00AM/LSC/2010/0357

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER S27A AND S20C OF THE LANDLORD AND TENANT ACT 1985**

Applicant: Mr D Glass

Respondent: Mr P Cowasji (flat 82)
Mr D and Mr A Rayner (flat 83)
Ms S Wilkes (flat 85)
Mr N Brown (flat 86)
Ms R Phillips (flat 90)

Premises: 82-90 Edmeston Close London E9 5TL

Date of Application: transferred from county court on 20 May 2010

Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM
Mr K N Cartwright FRICS JP
Mr P Clabburn

Date of hearing : 16 September 2010

Applicant's Representative: Mr C Marelli, Insurance Broker
Respondent's Representative: Mr C Heather, Counsel

Decision

The Tribunal declares that the sums charged by the Applicant in relation to payments for insurance premiums for the years 2007-10 inclusive are not payable by the Respondents.

The Tribunal makes an order under s20C of the Landlord and Tenant Act 1985.

1 The Applicant (landlord) commenced actions in the Northampton County Court claiming arrears of service charge (specifically in relation to non-payment of insurance premiums) against the Respondents. Those actions were conjoined and transferred from the county court on 20 May 2010.

2 Directions were issued by the Tribunal on 16 June 2010.

3 At the hearing which took place on 16 September 2010 the Applicant was represented by Mr C Marelli and the Respondents by Mr C Heather of Counsel.

4 The Tribunal did not consider it necessary to inspect the property.

5 At the commencement of the hearing the Respondents, through their Counsel made an application for permission to adduce a small bundle of additional documents and a witness statement by Mr R Graham. The Applicant did not object to the additional documents contained in the bundle and the Tribunal therefore granted permission for these to form part of the evidence before the Tribunal. The Applicant did however object to Mr Graham's witness statement which he had received on the morning of the hearing. The Respondents declined to give a plausible reason for the late delivery of this statement. Having retired to consider the matter the Tribunal decided to refuse to admit the statement. The Respondents had been in possession of the Applicant's statement of case since about 5 July 2010, had been aware of the timetable imposed by the Directions issued by the Tribunal on 16 June 2010, had been in receipt of legal advice throughout and had failed to disclose any legitimate reason for the delay in preparation and service of the document. Additionally it was unfair to spring a lengthy witness statement on the Applicant on the morning of the hearing, thus depriving him of any opportunity to consider its contents or to take advice on them.

6 The only items in dispute between the parties were the insurance premiums for the years 2007-10 inclusive.

7 Under the terms of the lease the obligation to insure is placed upon the managing agents, or in default, the landlord. In the present case the

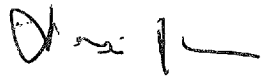
appeared to contain a number of exclusions which were not present in the Applicant's policies and would not therefore provide a like for like comparison .

13 The Respondents said that the Applicant would in any event be prevented from recovery of the insurance premiums by his failure to comply with s21B Landlord and Tenant Act 1985. The Applicant said that all their documentation did in fact contain the relevant statutory information printed on the reverse side of the invoices. No example of this had been included in the bundle. Because there was no evidence before the Tribunal of compliance with this section it reminds the Applicant that he would be unable to recover any service charge until he complied with the section.

14 A similar situation pertains in relation to the Applicant's demands to the Respondents where s 20B Landlord and Tenant Act 1985 effectively debars the Applicant from recovery of the insurance premiums for the years 2007 and 2008 because the demands were served outside the 18 month period specified by the statute.

15 The Respondents made an application under s20C Landlord and Tenant Act 1985. It was submitted on their behalf that if the landlord were to be debarred from recovering the insurance premiums from the Respondents, or if the premiums were held to be unreasonable, then equally he should be debarred from adding the legal costs of this action on to the service charge. The Applicant said that he felt the landlord had acted reasonably throughout and thus he objected to an order being made under the section.

16 Having retired to consider the matter the Tribunal concludes that it would be fair to make an order under s20C and does make that order. The landlord ought to have appreciated that the lease had serious defects before commencing his action against the Respondents. Other procedural defects, such as the apparent non-compliance with s21B and with s20B also mean that the tenants were obliged to spend time and money in defence of an action which was doomed to failure from the start.



Frances Silverman
Chairman
27 September 2010.