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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00AU/LSC/2010/0248

Premises: 36 Birnam Road
London N4 3LQ

Applicants: Miss L Briscall
Mr R Brooks

Respondent: Dobern Properties Ltd

Tribunal: Mr NK Nicol
Mr H Geddes JP RIBA MRTPI
Mrs L Walter

Date of Decision: 14/06/10

REASONS FOR DETERMINATION

1. The Applicants are the lessees respectively of two of the three flats at 36 Birnam Road, London N4 3LQ. They have applied for a determination as to the reasonableness and, therefore, payability under s.27A of the Landlord and Tenant Act 1985 of their service charge arising from the buildings insurance premium for the current year. The Respondent is the freehold owner.
2. On 14th April 2010 the Tribunal directed that, unless either party objected, the case would be determined on the papers. The parties each provided their representations in writing and the Tribunal proceeded without a hearing.
3. There is no dispute that the Respondent is obliged to insure the building and is entitled under the respective leases to levy a service charge arising from payment of the relevant premium. The premium for 2009/10, payable to Aviva, is £1,389.43. For previous years, it was:-

2002/3	£1,661.59	Zurich Commercial
2003/4	£1,993.75	Zurich
2004/5	£2,118.17	NIG
2005/6	£2,284.66	NIG
2006/7	£2,284.66	NIG
2007/8	£2,410.11	NIG
2008/9	Initially £2,552.04, reduced to £1,344.47	NIG

4. The 2008/9 premium was reduced after the Applicants sourced their own quotes of £500-800. This would indicate that previous years' premiums might have been unreasonably high but, for reasons which are not clear, the Applicants decided not to challenge previous years. Instead, they decided to try to ensure that the insurance for 2009/10 was competitively priced.
5. For the year 2009/10, the Respondent had their brokers conduct an exercise by which they approached four insurers for quotes. AXA and Liverpool Victoria declined to quote. Aviva's quote was cheaper than NIG and so the Respondent went with Aviva. Unfortunately, we have not been told what the brokerage fee was and so we do not know what part of the premium, if any, was paid by Aviva

back to the Respondent's brokers. We have no evidence that, if there was one, any such fee was beyond the market or in any way unreasonable.

6. The Applicants then sourced their own quotes again:-

£506.03 Motor and Home Direct Insurance Services Ltd

£873.60 Rentguard Insurance

7. The Applicants asserted that there was clearly a market below the price obtained by the Respondent and that the Respondent should investigate further, including putting to Aviva that they should cut their premium in the light of the alternative quotes.
8. There then followed lengthy e-mail correspondence in which the parties failed to establish the precise terms of the dispute. The Respondent's main contention was that they could not find out what were the precise terms of each proposal which led to each quote and they concluded that the difference in price arose from the Applicant's insurers being given inaccurate proposal terms. Further, the underwriters in one case were Groupama. The Respondent had experience with Groupama suddenly withdrawing cover and refused to consider them again. Indeed, they emphasised the reliability of Aviva and doubted that the Applicants' proposed insurers could match that.
9. The Applicants asserted that they had provided their insurers with all the information the Respondent had provided and that Groupama were respected insurers. They asserted that the Respondent should at least get Aviva to re-quote.
10. The duty of a lessor in these circumstances is not to find and go with the cheapest quote they can find. They are not even required to market test premiums each year. They must merely behave reasonably. The evidence of the substantial reduction in the premium over the last two years suggests by itself, let alone the evidence of the Respondent's own assertions, that the buildings insurance premium has been market tested. To establish that the resulting premium was not reasonably incurred, the lessee needs convincing evidence that it is outside the market or that there is some other flaw.
11. The Tribunal is not satisfied that the Applicants' evidence demonstrates any problem with the insurance premium paid by the Respondent. The Tribunal shares the Respondent's doubts that the Applicants' alternative quotes were

precisely like for like. Further than that, though, the quotes would appear to be for landlord's insurance such as each Applicant would obtain to insure their own individual properties. Their two quotes both refer to a "house" without any reference to the fact that there are three separate residential units within. In contrast, Aviva's property schedule specifically refers to "3 Residential Units".

12. In the circumstances, the Tribunal has determined that the insurance premium for 2009/10 of £1,389.43 was reasonably incurred and so the Applicants' service charges arising from it are payable.
13. The Applicants also applied for an order under s.20C of the Landlord and Tenant Act 1985 that the costs incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining their service charges. The Tribunal may make such an order if it considers it just and equitable in the circumstances. Given the above determination, the Tribunal sees no basis on which it could make such an order and the s.20C application is also refused.

Chairman.....

N.K. Neal

Date 14th June 2010