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HM COURTS & TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Section 27A and 20C Landlord and Tenant Act 1985

DIRECTIONS

Case Number: CHI/29UN/LSC/2011/0074

In the matter of Flats 2 & 3, the Prospect, The Parade, Broadstairs, Kent, CT101NB

Between:

Applicant: James P Cornish

Respondent: Maurice Chiappini represented by Mr Dillon, c/o Mackenzie Dillon

Date of Hearing: 10th October and 19th December 2011
Date of Decision: 16th January 2011

Tribunal: **Mr S. Lal LLM, Barrister**
Mr R. Athow FRICS

Preliminary

1. This matter was listed for hearing 10th October 2011. The Tribunal inspected the subject premises on the morning of the hearing. It consisted of a coffee shop with flats above and to the rear of the commercial premises but joined to it.

2. The Applicant represented himself at the hearing, assisted by Mrs Ellis, his daughter. Mr Dillon's, Solicitor represented the Respondent.

3. The matter had been the subject of Directions on 23rd May 2011 and 17th June 2011 and then again on 10th October 2011. Unfortunately the Respondent, who was required to serve documents first, has not complied with the initial Directions.

4. At the hearing on 11th October 2011, the Respondent tried to introduce a large bundle of documents on the morning of the hearing. These had not been served on the Applicant in advance. He opposed the Tribunal receiving such documentation but did not want the matter adjourned.

5. In reply, Mr Dillon informed the Tribunal that his client no longer requested monies in respect of any other service charge matters but for the question of insurance premiums and in fact that section of the Bundle that related to the insurance issue was not particularly large.

6. The Applicant said that if that was the case he could deal with the insurance issue and the Tribunal adjourned the matter for a period of time on the day so that the Tribunal as well as the Applicant could familiarise themselves with those parts of the Bundle that dealt with the insurance issue.

7. During the course of the Respondent's submissions, it became apparent to the Tribunal that Mr Dillon was referring to other documents which were not even part of the above Bundle and indeed the Tribunal itself raised issues of clarification that were outwith the late admitted Bundle.

8. It became clear to the Tribunal that because of the nature of the issues being canvassed, the late production of documents and the very real risk that an injustice could be caused to the Applicant, it would be in the interests of justice to adjourn the matter with the following Directions.

The Directions made on 11th October 2011

9. The Tribunal directed that the Respondent file and serve by 31st October 2011 a written Statement of Case that must set the totality of the Respondent's case and must have within it any documents that the Respondent seeks to rely upon including any relevant leases and any insurance policies for any years in dispute that relate to the subject premises. This must contain a revised Financial Statement in respect of what the Respondent says that the Applicant owes minus any reference to the cost of rendering and bay window repairs which the Tribunal specifically records as no longer being in dispute. If the Applicant had paid any monies in respect of these latter two items than this must be recorded.

The Hearing of 19th December 2011

10. The Applicant represented himself but was assisted by his son; Mr Dillon, Solicitor, represented the Respondent. The Tribunal considered all the documents before and the respective submissions are summarised below.

The Respondent's Statement of Case

11. Following the above set of Directions the Tribunal has received from the Respondent an amended Statement of Case, which confirms that the only issue being pursued is that of insurance premiums. The Tribunal has had regard to the Statement of Case in which the Respondent says that the Applicant has withheld paying insurance since 2006. The Respondent notes that the leases provide for a 1/20th contribution in respect of Flat 2 and 1/10th contribution in respect of Flat 3.

12. The Respondent states that he believes that the insurance premiums are reasonable and part of his landlords' obligation. The coffee shop, which the Respondent has as his business, pays 30% of the insurance contribution. Essential to the Respondent's case is that he has a separate policy with Baseline insurance for the coffee shop and that there is no element of building insurance involved which is covered with Zurich. The Respondent maintains that no duplication exists in the instant case and that notwithstanding any other disputes over rendering repairs; this does not allow the Applicant to withhold paying the insurance premiums.

13. Mr Dillon accepted that if a possible degree of overlap existed that this was nothing sinister and that the tenants were not being asked to contribute anything towards the coffee shop. In response to a question from the Tribunal he stated that there had been a claim for loss of earnings and loss of stock following a power cut but that this had been pursued with Baseline and had had no impact on the Zurich policy.

The Applicant's Statement of Case

14. The Applicant has put a written response to the Tribunal, which the Tribunal has considered in full. In summary the Applicant states, and perhaps the critical document is the one prepared by the Applicant dated 10th April 2009 in which he lists those contingencies that he says benefit Mr Chiapinni and specifically his business. He highlighted in oral submission what he says are provisions that protect for example the staff that work in the coffee shop or that leakage of beer. He said that the policy itself was pretty poor. He did not produce alternative examples of policies and accepted that the landlord has a liability under the lease to insure the premises and further he did not dispute the apportionment.

The Tribunal's Decision

(a) Legal Liability

15. The starting point for the Tribunal's analysis must be the lease itself. The lease is in law a contract between parties and where possible that contract must be given due regard and respect subject to the jurisdiction given to the Tribunal by the legislation.

16. The Tribunal notes that Clause 5 of the leases contains an obligation on the part of the Landlord/Respondent to insure the building.

17. The Tribunal is satisfied that the Landlord/Respondent has an absolute discretion as to what is deemed necessary for the Building subject to the usual jurisdiction of the Tribunal. The Tribunal is further satisfied that the apportionment is in respect of Flat 2, 1/20th part of the insurance premium and that for Flat 3, 1/10th of the insurance premium.

18. The Tribunal finds as a matter of fact that the Applicant has not paid the insurance premium since 2006. This is significant to the extent that the insurance premium has been both substantively challenged (this application) as well as "becoming hostage" to other historical service charge disputes.

(b) Reasonableness

19. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in Plough Investments Ltds v Manchester City Council [1989] 1 EGLR 244 that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease.

20. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair or in this case insurance, if he had to bear the costs himself. Ultimately it is for the court or tribunal to do decide on the basis of the evidence before it and exercising its own expertise. In that regard the LVT is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it.

21. The Tribunal has considered with care the arguments placed before it. It is satisfied that the buildings insurance with Zurich is a reasonable and fair policy in respect of the building. It is satisfied that the coffee shop has its own separate policy in respect of what may happen inside that premises. The Applicant has never been asked to contribute towards this. The Tribunal notes that the one claim that has been made in respect of the coffee shop was the policy other than Zurich one. The suggestion by the Applicant that, for example, if a waitress were to break a leg, why should the tenants be liable is one that the Tribunal are unable to accept. The reality is that if a claim were made under the Zurich policy for such an eventuality the loss adjuster would quite properly decline such a claim, as it is unconnected with the building and could not properly be described as relating to the building.

22. In the circumstances the Respondent has properly and sensibly taken out two policies, one for the building and one for what might happen in the commercial premises. The Tribunal is not satisfied that the Zurich policy affords the commercial premises specific additional protection in that regard. In the Tribunal's assessment it is a fairly standard policy for mixed use premises and one would expect to find some references to matters that could not strictly be placed in a pure residential premises. That does not make the policy prima facie unreasonable. The Applicant has provided no evidence of what a reasonable figure would be and the insurance policy is consistent with the valuation the Tribunal has been provided.

23. In the circumstances the Tribunal finds the following insurance sums to be reasonable and the Respondent succeeds in their submission. The following sums are calculated from the Cockett Henderson figures in their letter of 15th December 2011 as opposed to the Statement of Case itself. The Tribunal preferred the evidence-based amount in the Cockett Henderson letter because it was more current and confirmed the sums paid from their current account to the insurer.

24. The figures are as follows:

Paid	Amount	5%	10%
30/10/2006	£2,456.21	£122.81	£245.62
13/11/2007	£2,436.62	£121.83	£243.66
06/11/2008	£2,594.45	£129.72	£259.45
26/11/2009	£2,445.35	£122.27	£244.54
27/10/2010	£2,306.36	£115.32	£230.64

25. The Respondent has succeeded in respect of the only substantive matter before the Tribunal and the Tribunal makes no further order under the Act to reflect its substantive decision.

Dated 16/1/ 2012.

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