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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AK/LSC/2012/0485
Premises:	13B Arthur Road, London N9 9AF
Applicant:	G & O Estates Limited
Respondents:	Mr Andrew and Mrs Eileen Angela Clifford
Date of hearing:	4 October 2012
Appearance for Applicant:	Mr J Davies (Counsel)
Appearance for Respondents:	Mr Clifford (in person)
Leasehold Valuation Tribunal:	Robert Latham Neil Maloney FRICS FIRPM WEWI
Date of decision:	31 October 2012

Decisions of the Tribunal

(1) The Tribunal determine that the sums demanded in respect of insurance premiums for the years 2003/4 to 2011/2 are reasonable. The sums claimed are: 2003/4: £388.8; 2004/5: £402.70; 2005/6: £419.65; 2006/7: £456.37; 2007/8: £480.07; 2008/9: £497.51; 2009/10: £525.83; 2010/11: £525.83 and 2011/12: £548.12.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The Tribunal determines that the Respondents shall pay the Applicant £350 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") of the Respondent's liability to pay service charges in respect of building insurance premiums for the years 2003/4 to 2011/12. The issue is whether the premiums were reasonable.

2. Directions were given on 25 July 2012. Pursuant to those directions, the Applicant has provided:

   (i) The Policy Terms and Conditions (at p.27-56 of the Bundle);

   (ii) The premium receipts for each year (at p.57-67);

   (iii) Confirmation that there have been no insurance claims during the relevant period (see p.24);

   (iv) Confirmation that the Applicants have received a commission each year equivalent to 20% of the net premium (p.24);

   (v) the Building Reinstatement Cost Assessment prepared by Keegans dated September 2009 (at p.159-169). The "Day One Cost" adjusted for regional variation was estimated to be £257,064.12. This was revised upwards to £300, 965.02 on 17 December 2009 (see p.199)

3. The Respondent has set out his grounds for objecting to the premiums in a witness statement, dated, 2 September 2012, which is at p.68-83 of the Bundle. The Applicant has filed a full statement in response, dated 24 September, at p.182.

4. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

5. The Applicant was represented by Mr Davies, Counsel. He adduced evidence from Christopher O'Dell, a director of the Applicant. His statement is at p.82. Mr Clifford appeared in person and gave evidence, His statement is at p.18.

The Background

6. 13 Arthur Road is a mid-terrace property constructed c.1900. It has been converted into two flats. Each tenant pays 50% of any service charge. The Respondent occupies the upper flat.

7. The Respondents derive their title under a lease dated 7 August 1987 which is at p.86. The lease is for a term of 99 years from 24 June 1987. By Clause

2(14), the tenant agrees to pay by way of additional and further rent 50% of the total premium for the landlords insurance of the Building which is to be paid within 14 days of the landlord's written demand. The lease makes no provision for the landlord to charge a management fee.

8. The Respondents acquired their interest on 18 November 2002. On 19 January 2003, their solicitor informed the landlord that they would be leasing out the premises and living abroad. The Respondents have resided in Hong Kong. Mr Clifford was unaware of his landlord's obligation to insure the building and arranged his own insurance, in addition to that put in place by the landlord. Despite become aware of his obligation on 16 February 2004, he has paid nothing to his landlord. There have been a number of administration fees and solicitor's costs for which the Applicant has sought to make the Respondents liable. These were removed before this application was issued and are not a matter for this Tribunal.

9. Matters started to come to a head in February 2007, when Mr Clifford complained that he had still not received any for the ground rent or insurance. Apparently, the Applicant required a fee of £100 + VAT it were to send a letter to Hong Kong. Mr Clifford complained that premium claimed of £450 was more than 100% over the going rate (see p.104). The Respondents arranged for correspondence to be sent to a London address from where it was forwarded to Hong Kong. In May 2008, the Applicant informed the Respondents of their right to apply to a Leasehold Valuation Tribunal if they considered the insurance premiums to be unreasonable (see p.106).

10. The Applicant has sought to invoice the Respondents for the following sums, his share being 50% of the total premium: 2003/4: £388.85 (p.7); 2004/5: £402.70 (p.8); 2005/6: £419.65; p.9); 2006/7: £456.37 (p.10); 2007/8: £480.07 (p.11); 2008/9: £497.51 (p.12); 2009/10: £525.83 (p.13); 2010/11: £525.83 (p.14); and 2011/12: £548.12 (p.15). This Tribunal is required to determine whether these sums are reasonable.

Determination of the Tribunal

11. Having heard evidence and submissions from the parties and considered all of the documents provided, The Tribunal has made determinations on the various issues as follows.

12. The first issue for the Tribunal to consider is whether the landlord is entitled to recover insurance premiums pursuant to the terms of the lease. We are satisfied that it is (see paragraph 7 above).

13. The next issue is whether the premiums charged are reasonable. The Respondents suggest that value of the property is unreasonable high, and that cheaper cover could have been arranged.

14. Mr O'Dell explained how the Applicant secure economies through a block policy. They insure some 150 buildings, the total premiums being some £250 - £270k. Any adverse claims record for other properties will not impact upon the premium charged for this building. The broker checks the market every year.

15. The block policy underwritten by AXA Insurance has a number of special provisions (see p.174), including:

(i) the insurance allows for the property to be sublet at any time, whether or not, the freeholder has knowledge of this.

(ii) the insurers give an undertaking not to cancel or restrict in any way the cover under the policy irrespective of the nature of any sub-letting and the insurance will not be invalidated by any increase in risk due to acts of the leaseholders or any tenants;

(iii) the insurance will not be invalidated or restricted or cancelled in the event of any part of the property becoming unoccupied for any period of time whether or not the insurers are aware of such unoccupancy or of the premises being used for trade purposes.

These provide important safeguards for a landlord.

16. In January 2009, the Applicant proposed that a surveyor be appointed to value the property. Mr Clifford was not willing to contribute to the cost (see p.195). On 22 January, he suggested that the Applicant should seek quotes on the internet. On 12 February (at p.109), the Applicant contended that it was not appropriate to do this. The Applicant described how the sum insured for the building had been increased each year in accordance with the Insurance Company indexation recommendations. It pointed out that the market value of the building was quite different from the reinstatement insurance value.

17. The Applicant's agent, Urban Point, instructed Keegans to carry out a Building Reinstatement Cost Assessment. This was done in September 2009 and is at p.159-69. The Day One Cost adjusted for Regional Variations was £257,064 (see p.169). On 13 October 2009, the Applicant put this figure to Genavco Insurance Limited (Genavco) their brokers. On 10 December (at p.174), Genavco challenged a number of assumptions upon which this assessment had been made: no allowance had been made for fixtures and fittings; neither had any allowance been made for the age of the property and the additional cost of complying with local authority and statutory requirements. On 14 December (at p.197), the Applicant's put these points to Keegans. On 17 December (at p.198-9), Keegans revised their figure to £300,965. This compared with the current building declared value of £312,336 (see p.61). This was only marginally higher, and is within the reasonable range of expert opinion.

18. The invoice for the insurance premium for 2012/3 is at p.58. The building declared value is £337,165. This is comparable having regard to BCIS indexation for inflation.

19. Mr Clifford argued that this valuation is unreasonably high. He referred to an extensive demolition and rebuild project which he had undertaken in St Albans. He questioned the demolition costs of £40,000 and the professional fees of £17,784. He suggested that Keegans had made a fundamental error by charging VAT.

20. We do not consider that the St Alban's property is comparable. We are dealing with a mid-terrace property where the demolition costs are likely to be higher. The professional fees are in an acceptable range. The BCIS Guide for Cost Reinstatement Assessments advises that VAT should be included. The prospect of total demolition, the situation in which no VAT would be payable, is insignificant. The Tribunal therefore concludes that the current building declared value of £312,336 is not unreasonably high.

21. Secondly, Mr Clifford sought to persuade us that the premiums were unreasonably high, even given this valuation. He suggested that a more reasonable figure would be £300 to £500.

22. The premium for 2012/13 (at p.58) is £1,028.56 for a building with a declared value of £337,165. This is £305 per £100,000 insured. The issue for the Tribunal is whether this rate is outside the range of what might reasonably be considered to be reasonable.

23. Mr Clifford's current insurer is HSBC who charge some £300 per annum. He has been informed of a similar property at 3 Edinburgh Road were the premium is £327.66 for a two story property. His primary argument was that the premiums were unreasonably high having regard to a number of quotes which he has obtained on the internet (at p.118-128). The majority were below the premium charged by Genavco. However, two were more expensive; one more than double, namely £2,396.77 quoted by Zurich (at p.121). The Respondents have not adduced any evidence from a broker.

24. Mr Davies sought to persuade us that that the evidence adduced by the Respondent is not like-for-like. Mr Clifford was unable to provide a print-out of the information upon which his quotes were based. He stated that he had provided the information in the Genavco invoice at p.58.

25. Mr Davies made the following points, which seem to the Tribunal to be well founded:

(i) The Towergate quotation (at p.118) referred to a "standard construction property". It is unclear what this meant. Mr Clifford suggested that this related to a slate roof. The quotation is £460. However at p.119, Towergate had given a different quotation of £631.

(ii) The quotations at p.124 do not include accidental damage. There is no reference to subsidence. The quotation at p.125 from Direct Line specifically excludes subsidence.

(iii) Premiums depend upon the occupancy of the property. The Respondent conceded that he had not informed the insurers that the property had been divided into two flats. The Towergate quotation at p.118 refers to "professional/working tenants". The quotations at p.126-7 seem to differentiate between "working" and "DHSS" tenants.

(iv) All policies will have an unoccupancy clause. One quote at p.118 refers to 45 day unoccupancy period. Any policy will be based on the specific information provided. A landlord cannot check ahead. He cannot risk his policy being voided because a flat is unoccupied.

(v) The quotations at p.143 refers to a buildings value of £284,000. The Respondent explained how he had played about with different figures.

26. The Tribunal is not satisfied on the evidence before us that the premiums charged the Applicants are unreasonably high:

(i) AXA Insurance is one of the big five insurers which we would expect a landlord to use.

(ii) There are a number of special clauses in the cover which the Applicant has arranged (see p.174-5 of the Bundle). We are not satisfied that any of the quotes obtained by the Respondents are comparable.

(iii) Genavco, the Applicant's broker, has tested the market annually.

(iv) Benefits have been secured through a block policy.

27. Finally, we have had regard to the 20% commission of the net premium which is received by the Applicant. We have considered the decision in *Williams v Southwark LBC* (2001) 33 HLR 2000. We are satisfied that a commission in a range of 10-20% is market driven. It is justified provided that the landlord does something for the fee. No management fee is paid in respect of this property. The Applicant has to process claims under the current policy. This involves correspondence. Mr O'Dell outlined some of the claims that he has had to handle including water damage and malicious damage. Some of these claims have been substantial. Properties have been sublet and the landlord has not been informed. On one occasion, the tenant was an arsonist. However, Mr O'Dell assured us that these claims would have no impact on the premium payable in respect of this property. There was no question of overloading because of other claims.

Application under s.20C and refund of fees

28. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid, namely an application fee of £100 and a hearing fee of £150. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondents to refund the fees of £250 paid by the Applicant within 28 days of the date of this decision.

29. At the hearing, the Respondents applied for an order under section 20C of the 1985. Having regard to our decision on this application, the Tribunal does not consider to be just and equitable to make an order precluding the Applicant from passing on any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. It is for the Applicant to determine whether the terms of the lease permit it to do so.

Robert Latham

(Chairman)

Date: 31 October 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not 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.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).