



LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985**

Case Reference: LON/00BB/LSC/2013/0301

Premises: 58a Boundary Road, London E13 9PR

Applicant (landlord): F.T.Z Limited

Respondent (tenant): Mr Nasar Ahmed

**Leasehold Valuation
Tribunal:** Ms F Dickie, Chairman
Ms M Krisko, FRICS

Date of Hearing: 12 June 2013

Summary of tribunal's determination

- A service charge for buildings insurance in the sum of £418.71 is payable for the period 22 January 2013 to 21 January 2014.
- the credit cost of £17.50 is not recoverable from the Respondent as a service charge.
- There is no order for reimbursement of the Applicant's application and hearing fee by the Respondent.

Preliminary

1. Pursuant to the application made under section 27A of the Landlord and Tenant Act 1985, the Applicant seeks a determination whether a service charge for insurance is reasonable and payable. The tribunal issued directions dated 26 April 2013.
2. The Applicant seeks a determination that a service charge of £436.21 for buildings insurance (being 50% of the total expenditure of £872.42) for the period 22 January 2013 to 21 January 2014 is payable. The premises are

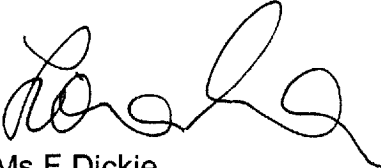
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understood to be a mid terrace Victorian house converted into 2 flats of unknown size.

3. The Applicant was represented at the hearing by Ms Carol Nelson of Circle Residential Management Ltd. The Respondent did not attend and has not responded to service of these proceedings or the tribunal's directions.
4. Clause 3.4 of the lease requires the tenant "To pay the Landlord the amount of the premium for the insurance policy referred to include 5.2 within fourteen days after the Landlord gives notice requiring payment."
5. The Landlord covenants in Clause 5.2 to "keep the Property insured against all risks normally insured under a Householder's Comprehensive Policy in a sum equal to the full insurable value thereof for the time being throughout the said term together with the Architects and Surveyors professional fee."
6. A copy of the Certificate of Insurance was produced showing a total annual premium for the building of £837.41. The sum insured is £320,007, whilst there was no evidence of any building valuation for insurance purposes, and this is something a prudent landlord should consider, however the matter had not been put in issue by the tenant. The additional expenditure claimed represented half of the cost of credit from Premium Credit Limited for a loan to pay the insurance. Ms Nelson relied on evidence from the broker Lockton of the market testing exercise carried out by them.
7. The demand for the contribution to buildings insurance, including credit cost, was dated 21 December 2012. A Pre Action payment request had been issued on 24 May 2013 (which was after the date on which this application was made).
8. The tenant having raised no challenge to the insurance premium, the tribunal is satisfied on the evidence that the expenditure of £418.71 is reasonable and payable as a service charge. The landlord's covenant is to insure. The lease does not require the tenant to reimburse the landlord for the cost of obtaining a loan to fund the insurance premium, and that cost does not form a part of that premium. Accordingly, the tribunal finds that the credit cost of £17.50 is not recoverable from the Respondent as a service charge.
9. Ms Nelson understood that a County Court claim for unpaid ground rent demanded within the same demand of 21 December 2012 had been issued and judgment obtained against the tenant, when payment had been finally made by the mortgagee. Ms Nelson could not explain why the buildings insurance premium had not been claimed within those proceedings. It seems therefore that the present proceedings could have been avoided by this simple step.

10. In any event, the tribunal considers that this application was eminently suitable for determination on the papers. Ms Nelson explained that her client, Mercia Investment Properties, an associated company of the landlord FTZ Ltd., with a director in common with Circle Residential Management, had instructed that agency to seek an oral hearing since an adverse decision on a paper case had previously been successfully appealed. The tribunal considers it was not necessary to seek an oral hearing of this straightforward case unless contested, and the Applicant's reasons for seeking a hearing were weak. The hearing fee of £150 was unreasonably incurred. Furthermore the tribunal notes these proceedings were issued before the "Pre Action Payment Request".
11. In all the circumstances, the decision to issue these proceedings and seek an oral hearing was inappropriate. This appears particularly pertinent to the landlord given that Ms Nelson was unable to direct the attention of the tribunal to any clause in the lease which entitles the landlord to recover the costs of these proceedings from the Respondent.
12. The tribunal declines to make an order for repayment by the tenant of the landlord's application and hearing fee paid to the tribunal.

Name:



Ms F Dickie

Date: 12 June 2013