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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BA/LSC/2015/0237**
Property	:	**Flat D, 6 South Park Road, Wimbledon SW19 8ST**
Applicant	:	**Miss Yue Zhen Ho**
Representative	:	**Mr Lee Cheong Ho**
Respondent	:	**Kervan Bros. Limited**
Representative	:	**None**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charge under s27A Landlord and Tenant Act 1985 (the "Act") and costs of proceedings before the Tribunal under s20C of the Act**
Tribunal Members	:	**Judge Pittaway** **Mrs S Redmond MRICS**
		Determination without an oral hearing in accordance with Regulation 31 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
Date and venue of Determination	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**21 July 2015**

DECISION

Decisions of the tribunal

1. The tribunal determines, in the absence of sufficient evidence to the contrary, that the premium payable in respect of the insurance from the nominated insurer for insuring the tenant's dwelling, is not excessive.

2. The tribunal makes no order under s20C of the Act in relation to costs.

The application

1. By an (unsigned) application dated 2 June 2015 the Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") that the sum of £472.37 payable by way of insurance premium for insuring her flat for the period 24 February 2015 to 23 February 2016 was excessive.

2. The Applicant did not initially apply under s20C of the Act for an order for the limitation of the landlord's costs in the proceedings before the Tribunal, but did so in her statement of case of 30 June 2015.

3. The Tribunal issued directions on 8 June 2015 in which it directed that each party provide a statement of case. The Tribunal further indicated that they considered the matter suitable for determination on paper; that is without an oral hearing or inspection, unless any party requested an oral hearing. No oral hearing was requested.

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

The evidence

1. The tribunal has had regard to the statement of case of the Respondent dated 17 June 2015, that of the Applicant dated 30 June 2015, the responses of the Respondent and the Applicant, dated 6 July 2015 and 13 July 2015 respectively, and the Respondent's representation in relation to costs under section 20C Landlord and Tenant Act 1985 dated 9 July 2015 in reaching their decision.

2. The applicant is the tenant of the Property under a lease dated 16 January 1963, as varied by deeds of variation dated 14 June 1991 and 19 March 2010. The current term is 147 years from 25 December 1961.

3. The lease, as varied, provides at clause 4(13) for the tenant to insure the demised premises (as more particularly defined in the lease) "*in the full*

reinstatement value thereof against loss or damage by firestorm tempest and flood and the bursting and/or overflowing of water pipes and apparatus and such other risks and special perils normally insured against under a householder's comprehensive policy as the Landlord acting reasonably thinks fit, such policy to be in the joint names of the landlord and the Tenant through the Guildford Branch of the Norwich Union Plc or such other reputable insurance company or broker stipulated or approved by the Landlord from time to time." The clause further provides that if the tenant fails to so insure the landlord may, but is not obliged to do so and the premium is recoverable from the tenant as rent in arrears.

4. From the evidence before the tribunal it is clear that each of the six tenants in the block are responsible for insuring their own premises through Aviva (as successor to Norwich Union Plc) and that the Landlord insures the common parts, recovering the cost of such insurance by way of service charge. The cost to the Applicant of her contribution to the insurance of the common parts is not the subject of the application before the tribunal, which is limited to the premium payable for insuring the demised premises.

5. It is the Applicant's submission that a premium for the flat of £472.37 for the year to 23 February 2016 is excessive.

6. In the Respondent's statement of case they submitted that *"many insurers will refuse to quote on a single flat in a block where the flat is leased due to the risk to other tenants."* It is for this reason that they require the insurance to be effected through Aviva. They also stated that it was the Respondent who had paid the insurance premium for the demised premises for the insurance year in question, the Applicant having not done so, to ensure that cover remained in place. Attached to the Respondent's statement was a copy of the renewal invitation from Aviva which set out that the risk insured was for *"buildings with accidental damage"* excluding subsidence, and that the buildings sum insured was £132,214.00

7. The Applicant in her response to the Respondent's statement dated 30 June 2015 attached 19 insurance quotes MoneySuperMarket.com (apparently dated 7/12/2015 (sic)) showing premium from £77.38 payable for buildings insurance of £1,000,000.00. She also attached a quotation dated 01 June 2015 from Lansdowne Insurance Brokers for insuring flats A-F for buildings in the sum of £1,069,200 with Allianz and other risks for a premium of £1,272.15 or £1,209.54 depending upon the general excess selected. This policy covers risks not contemplated by the current Aviva policy (eg subsidence).

8. The Respondent's response of 6 July noted that the Applicant's quotes incorrectly indicated that the insured of the whole block would be the

Applicant and that it would be a *"logistical nightmare"* if the tenants insured with different insurers in the event of a claim.

9. The Applicant's response of 13 July 2015 set out more details of three of the insurance quotes obtained from MoneySuperMarket.com, from privilege, Admiral, which did not cover accidental damage to buildings and one from Churchill which did. Only that from Churchill specified the sum insured in respect of which the quote had been obtained (£1,000,000). It gave an insured address of 4-10 South Park Road with a *"Property type: Flat-1st floor or above"*

10. By a statement of 9 July 2015 the Respondent made representations in relation to section 20C of the Act application, in which they stated that as the Applicant's case related to the determination of reasonableness of insurance premium and not service charge there were no legal charges to be passed back to the tenant under section 20C. In this statement the Respondents accepted that the Applicant had the right to challenge the insurance premium under paragraph 8 of the Schedule to the Act, not section 27A. There was no response from the Applicant to this statement before the tribunal.

Reasons for the tribunal's decision

1. The sum being challenged by the Applicant is not a service charge to which s27A applies. It is an insurance premium payable by the tenant in respect of insurance where the tenant is obliged to insure with an insurer nominated by the landlord, to which paragraph 8 of the Schedule to the Act applies. As this was acknowledged by the Respondent, and this acknowledgement not challenged by the Applicant the tribunal have determined that they have jurisdiction and may determine the application under paragraph 8.

2. Unfortunately the Applicant has not provided "like for like" insurance quotes from other insurers. There is no evidence before the tribunal that the quotes were obtained from insurers who knew that each of the individual tenants insures their own flat with the landlord insuring the communal areas, and several had discrepancies in the risks insured from the risks insured under the existing policy. There was no evidence before the tribunal that the quotes had been provided following completion of a proposal form by the Applicant, which would have disclosed further information to the proposed insured. From their own knowledge as an expert tribunal the tribunal consider that these facts are likely to alter the quotes obtained.

3. In the absence of any comparable evidence the tribunal are unable to determine that the premium charged by Aviva is excessive.

4. In relation to the application under s20C the present determination has been made without an oral hearing in accordance with Regulation 31 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 so that there are no proceedings in respect of which the Landlord could have claimed costs.

Name: Judge Pittaway **Date:** 21 July 2015

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 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 that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

The Schedule, paragraph 8

Right to challenge landlord's choice of insurers

8(1) This paragraph applies where a tenancy of a dwelling requires the tenant to insure the dwelling with an insurer nominated or approved by the landlord.

(2) The tenant or landlord may apply to a county court or leasehold valuation tribunal for a determination whether—

(a) the insurance which is available from the nominated or approved insurer for insuring the tenant's dwelling is unsatisfactory in any respect, or

(b) the premiums payable in respect of any such insurance are excessive.

(3) No such application may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) under an arbitration agreement to which the tenant is a party is to be referred to arbitration, or

(c) has been the subject of determination by a court or arbitral tribunal.

(4) On an application under this paragraph the court or tribunal may make—

(a) an order requiring the landlord to nominate or approve such other insurer as is specified in the order, or

(b) an order requiring him to nominate or approve another insurer who satisfies such requirements in relation to the insurance of the dwelling as are specified in the order.

(5).....

(6) An agreement by the tenant of a dwelling (other than an arbitration agreement) is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question which may be the subject of an application under this paragraph.