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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AC/LSC/2016/0023

Property : Flats 1-50 Vernon Court, Hendon Way, London NW2 2PD

Applicant : Brentcastle Management (Vernon Court) Ltd

Representative : Moreland Estate Management

Respondents : Pledream Properties Ltd

Representative : N/A

Type of Application : For the determination of the reasonableness of and the liability to pay a service charge

Tribunal Members : (1) Judge Amran Vance
(2) Mr J F Barlow, FRICS

Date of Decision : 21 March 2016

DECISION

Decisions of the tribunal

1. The tribunal determines that the buildings insurance premium for the period 14 January 2016 to 13 January 2017 in the sum of £27,322.79 is payable by the Applicant in full.

The application

2. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (the "1985 Act") as to whether or not the costs of a buildings insurance premium incurred in the 2016 service charge year in the sum of £27,322.79 has been reasonably incurred and whether or not that sum is payable by the Applicant to the Respondent. The insurance premium relates to Flats 1-50 Vernon Court, Hendon Way, London NW2 2PD ("the Estate"). The premium in question was taken out by the Respondent landlord with AXA.
3. The relevant legal provisions are set out in the Appendix to this decision.
4. Directions were issued by the tribunal on 20 January 2016 which provided for the application to be determined without a hearing unless either party requested a hearing. No such request was received and the application has therefore been decided on the papers.

The Applicant's Case

5. The Applicant has provided a sample lease, namely that of Flat 1 Vermont Court ("the Lease") and has confirmed that all other relevant leases are in the same or similar form and contain identical service charge and insurance provisions.
6. The applicant accepts that under clause 5 of the Lease it is the Respondent's obligation to secure buildings insurance for the Estate and that the terms of the Lease entitle the Respondent to recover the costs of doing so by way of service charge.
7. Its position is that the cost of the premium is unreasonable in light of two alternative quotes that it has obtained. One quote, from Allianz PLC and T&S was in the sum of £24,398.86 and the second was secured from Allianz alone in the sum of £25,841.57.
8. Its case was that these quotes provided like for like cover with, as was the case with AXA, an AAA rated insurer. It considered the Respondent's refusal to reconsider its requests to place insurance with

Allianz instead of AXA to be unreasonable given the cheaper premiums on offer.

The Respondent's Case

9. The Respondent relies on previous case law including the decision in ***Forcelux v Sweetman*** [2001] 2 EGLR 173 in support of its submission that the relevant test under s.19(1)(A) is whether a cost has been *reasonably incurred* and that it is sufficient for it to have selected a policy that provided an appropriate level of cover as required by the lease at a price that is within a range of possible reasonable options. It need not, says the Respondent, be the cheapest available alternative.
10. The Respondent considered the AXA policy was comprehensive enough to satisfy its obligations under the Lease and that the premium was within a reasonable range of the prevailing market rate for such cover.
11. It also submitted that the policy was negotiated at arms length through experienced insurance brokers and relied on the decisions in ***Havenridge v Boston Dyers Ltd*** [1994] 2 EGLR 73 and ***Avon Estates (London) Limited v Sinclair Gardens Investments (Kensington) Ltd*** [2013] UKUT 0264(LC) in support of its contention that the cost of the premium had been reasonably incurred.
12. The Respondent disputed that the quotes obtained were, in fact, "like for like" cover and relied upon a witness statement from Paul Robertson of Midway Insurance Services Limited, the Respondent's insurance broker to support that contention.
13. The Respondent also argued that ongoing disrepair to Vernon Court which it attributed to the failure of the Applicant to perform its obligations in respect of maintenance and repair had impacted on its choice of insurer as AXA was fully aware of the disrepair present.

The tribunal's decision and reasons

14. The tribunal determines that the cost of the 2016 premium is payable by the Applicant to the Respondent and that these costs have been reasonably incurred.
15. The tribunal fully agrees with the Respondent's submissions that the legal authorities on which it relies support its contention that whilst the costs of services provided by a landlord (including the securing of buildings insurance) must be reasonable the fact that they could have been obtained at a lesser cost does not necessarily mean that the actual cost is unreasonable.

16. Further, as stated in *Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd* a landlord is not obliged to shop around to find the cheapest insurance. So long as the insurance was obtained in the market and at arm's length, the premium was reasonably incurred. The Respondent has contended that this was the case and the Applicant has not suggested anything to the contrary.
17. We are satisfied that the premium in question was within a range of possible reasonable options and that the cost has been reasonably incurred. The fact that the Applicant may, arguably, have secured like for a like insurance quote that was cheaper by is irrelevant.

Name: Amran Vance

Date: 21 March 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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.