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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	LON/00AH/LSC/2013/0308
Property:	48b Northcote Road, Croydon, Surrey CR0 2HU
Applicant:	Maxime Bittoun
Representative:	In person
Respondents:	Pauline Miller Kelly Davies
Representative:	Bird & Lovibond, solicitors
Type of application:	Section 27A, Landlord and Tenant Act 1985
Tribunal members:	Margaret Wilson W Richard Shaw FRICS
Date of determination:	1 July 2013 (no oral hearing)

DECISION

1. This an application made by a leaseholder, Mr Maxime Bittoun ("the tenant") under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine his liability to pay the costs of insuring the relevant parts of 48 Northcote Road Croydon. He holds a long lease of Flat B on the ground floor of a converted house built between 1920 and 1945. Flat A, on the first floor, is owned by the freeholders, who are the respondents to the application.

2. This application is determined on the papers alone and without an oral hearing in accordance with the provisions of regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. Directions for the determination were made on 9 May 2013 and the parties have complied with them. The respondent landlords have additionally supplied a statement in response to the tenant's reply in which they include a complaint that the tenant has not supplied them with copies of bank statements which he had supplied to the tribunal. However the bank statements are not included in the bundle of documents before us and we have not taken them into account and we are therefore satisfied that the landlords are not prejudiced by their being unable to see the bank statements.

3. By clause 2(ix) of the original lease, which is dated 12 October 1982, the tenant covenants to insure the demised premises as defined in clause 1. The lease was subsequently varied by a deed apparently dated 28 July 2006 (the copy in the bundle is undated). By clause 4 of the deed of variation a new clause was added to the lease which provided that the landlord would insure the whole building, including the demised premises, and would produce to the tenant on demand, and on payment of a proper fee, the insurance policy and the receipt for the last premium. By clause 3 of the deed the tenant was required to pay within seven days of demand half the insurance premium plus interest at 5% per annum if payment was not made.

4. In his application the tenant seeks a determination in respect of insurance for the years 2007 to 2013 inclusive, and he says that the questions he wishes the tribunal to consider (quoting his application) are:

i. *I would like to see the insurance documents*
ii. *I would like to be able to talk to the insurance company*
iii. *I would like to know if the building is correctly insured*
iv. *I would like to know if I pay half of the insurance as described in our lease*
v. *I would like to manage the building insurance myself.*

5. In response to the tribunal's directions the landlords have produced a copy of the current insurance policy placed through RIAS, a broker, with AXA. The schedule showing details of the current policy, which is at page 40 and 41 of the bundle, shows the property insured as 48B (the tenant's flat), and names the insured as Miss [sic] Miller, one of the landlords. It shows the amount payable as 11 instalments of £20.34 and one of £20.39 or £217.70 as one lump sum. The tenant is currently paying, direct to RIAS, monthly instalments of £20.34 according to his own payment summary.

6. In their statement in answer to the application (pages 34 -37 of the bundle) the landlords, through their solicitors, say that following the deed of variation they sought to obtain insurance for the whole building but were advised by various insurance companies that they would not issue one policy for the building as it comprised only two flats. The said that they therefore agreed with the tenant that insurance for each flat would be obtained separately and the tenant agreed and undertook to pay for the insurance of his flat directly. They said that the flat had for whole period covered by the application been insured through RIAS, underwritten by AXA. They said that the schedules of insurance were each year sent to the landlords, that Mrs Miller had each year personally handed the policy schedule to the tenant and that the landlords had on several occasions given the tenant authority to speak to RIAS directly. They said that on 21 May 2013 Katie Morgan of RIAS had told Mrs Miller that she had spoken directly to the tenant and had provided the information he had requested. They said that they had not retained copies of all the relevant insurance schedules but that they had produced those they had retained.

7. In his reply (pages 119 - 123 of the bundle), the tenant said that he doubted the truth of the landlords' assertion that various insurance companies had refused to issue one policy for the building. He said that on 7 June 2013 he had telephoned RIAS and Aviva and had been offered such a policy at a much better cost and that he had been advised that his interest ought to be noted on any policy so that he could speak to the insurer direct. He said he had never agreed to pay separately for the insurance of his flat, and that when he had telephoned RIAS he had been told that the landlords were not insured with them any more and that they were not allowed to talk to him. He said that the landlords had always refused to provide information relating to the insurance, and he produced copies of a number of letters and emails in which he and/or solicitors instructed by him had asked for such information. He agreed that on 21 May 2013 he had telephoned RIAS and spoken to a customer service adviser who had told him that there was a note on the file which said that the landlords had not given permission for him to speak to RIAS. He produced an email (at page 146 of the bundle) dated 7 June 2013 from Christopher Sills, Senior Customer Service Manager, which confirmed that that was so. The email included "as you are currently not noted as an authorised person on this policy, we are unable to discuss the details".

8. He said that the landlords had never produced to him schedules of insurance which proved that the whole building was insured, and that although he had always paid the insurance premiums demanded of him he did not know what he was paying for - whether it was for insuring his flat or the first floor flat or whole building or what proportion of the premium for the whole building he was paying. He said that the insurance schedules had never been handed to him by either of the landlords or sent to him by RIAS, and that the landlords had made no effort to provide the documents which he needed in order to be satisfied that his flat and the building were properly insured and that he was paying the correct amount. He produced an alternative quotation from RIAS and Aviva which appeared to relate to a semi-detached house rather than to a property divided into two flats.

9. To a further statement from the landlords, not directed by the tribunal but which we have read in the interests of justice, there was attached an email from Karen Sloan, Customer Service Team Manager for RIAS dated 19 June 2013 which included "I can

confirm that in 2007 when the buildings cover was arranged with AXA, the insurer requested for the two flats to be insured separately under two policies".

The statutory framework

10. By section 27A of the Act an application may be made to the tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A "service charge" is defined by section 18(1) of the Act as *"an amount payable by the 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*". Relevant costs are defined by section 18(2) and (3). By 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 provision 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"*. By section 19(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 of subsequent charges or otherwise"*.

Decision

11. We are satisfied from the documents that the tenant's flat has been insured throughout although, on the basis of the documents, we cannot be satisfied that the upper flat was insured after 25 August 2008. It appears that the upper flat has not been insured through RIAS since that date and we have not been told who insures it, which is unsatisfactory. The lease, as varied by deed, requires the landlords to insure the whole building and recover half the premium from the tenant, and that covenant, on the face of it, ought to be performed unless there is a clear agreement between the parties that a different arrangement should apply. We can understand the tenant's

concern that he does not know precisely what he has been paying for. In the absence of clear evidence that there is no alternative but to insure the flats separately, we consider that the building should be insured as a whole, the tenant paying half the premium in accordance with the varied lease. In any event his interest should be noted on the policy and we regard it as unacceptable that the current schedule, and all the other schedules of which the landlords have provided copies, show only one or both of the landlord as the insured and make no reference to the tenant's interest. We accept that an effect of the failure to note the tenant's interest has been that he has been unable to communicate properly with RIAS.

12. On balance, we are not persuaded that the cost of insurance which the tenant has been asked to pay is excessive. In our experience it would appear to be within a reasonable range and the alternative quotations which the tenant has produced are for one semi-detached house rather than for a house divided into two flats and are therefore not comparable.

13. We therefore determine that the tenant was liable to pay the premiums he has in fact paid direct to RIAS, but in future we would expect that he should be named as a policy holder of either the flat alone or, jointly, of the whole house, and that he will be provided by the landlords with sufficient information to enable him to be satisfied that the whole building is properly covered by insurance. Our powers do not extend to ordering the landlords to do so, but, if they do not, it may be that in future the charges demanded of the tenant for insurance might be held not to have been reasonably incurred.

14. We find it difficult to accept that a reputable insurer cannot be found who, at a reasonable premium, will insure the whole building under one policy and which is prepared to note the tenant's interest or, preferably, name him as a joint policy holder.

15. In the circumstances we accept that this application was necessary and that it is appropriate to order the landlords to reimburse to the tenant the application fee of £100 which he has paid.

16. The lease does not appear to us to enable the landlords to recover from the tenant any of the costs they have incurred in connection with these proceedings, but in any event we are satisfied that it is just and equitable in the circumstances to make an order that any such costs incurred by the landlords shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

CHAIRMAN.....