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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UD/LSC/2017/0060**
Property	:	**9 Consort Close,** **Warley,** **Brentwood,** **CM14 5XE**
Applicant	:	**Jayne Knight**
Respondent **Represented by**	:	**Regisport Ltd. and Pier Management** **Edmund Walters of counsel (direct access)**
Date of Application	:	**12th June 2017**
Type of Application	:	**To determine reasonableness and payability of service charges (Ss. 19 and 27A Landlord and Tenant Act 1985 ("the Act"))**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Stephen Moll FRICS** **Lorraine Hart**
Date of and venue of hearing	:	**11th October 2017 at Basildon Magistrates' Court, Great Oaks, Basildon SS14 1EH**

DECISION

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1. The Tribunal finds that the insurance premium claimed by the Respondent from the Applicant in the sum of £338.00 for 2016 is unreasonable and that a reasonable premium is £288.00.

2. The Tribunal further finds that the insurance premium claimed by the Respondent from the Applicant in the sum of £368.41 for 2017 is unreasonable and that a reasonable premium is £318.41.

3. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the landlord from recovering its costs of representation in these proceedings as part of any future service charge and it also makes an order pursuant to paragraph 5A of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** preventing the landlord from recovering such costs as an administration charge.

Reasons

Introduction

4. In her application, the Applicant says that she is supported by 21 leaseholders in this development of 88 leasehold properties on an estate built in 1985. There are also freehold properties. The application simply asks the Tribunal to consider the reasonableness of insurance premiums claimed of £338.00 in 2016 and £368.41 in 2017.

5. The Applicant goes on to say that the excesses are £500 for water damage and £350 for all other claims. She says that these are too high. She then says "*If the insurance keeps on increasing at the rate it is, we will in some cases be paying more than our mortgages. Our properties are completely self contained with no communal areas to be maintained. The insurance documents I have received are in fact for commercial properties and not residential*".

6. The Tribunal directed the Respondent to file and serve a statement of reply to the application setting out "(a) the claims record for this building (b) the methods by which the landlord achieves a competitive premium for insurance and (c) full details of any commission or repayment out of the insurance premium to the landlord, the landlord's agent or any associated individual or company...**in the event that the Respondent fails to provide the information ordered in (c) above, the Tribunal may make an inference that a substantial commission has been paid**".

7. The Respondents have included a statement from a David Bland LLB (Hons.) MIRPM AssocRICS in the bundle wherein he says that the Respondents are not specialists in insurance and rely of their insurance broker. Of relevance to the question raised by the Tribunal, he says "*We can confirm that the Landlord does not derive commission from this property in isolation. The Regis Group owns a large portfolio of over 30,000 units and it is the ability to 'bulk buy' that enables them to benefit from commissions on the portfolio as a whole*". There is no further mention of what commissions may be recovered and no evidence from the insurance broker as to their methods for obtaining competitive quotes or anything else.

8. The Applicant was then directed to file two up to date written quotations covering the amount and risks in respect of which the Respondent currently insures. In the bundle for the Tribunal is a quote from Landsdown Insurance Brokers dated 1st August 2017 for 88 maisonettes with 3 alternative premiums, the highest of

which is £8,491.83 giving a premium per property of £96.50 per annum with a general excess of £100. The second quotation is from Royal & Sun Alliance showing a premium of £19,173.44 or £217.88 per flat from 31st August 2017. The policy excess is £250 save for subsidence.

The Inspection

9. The Tribunal members inspected the estate and then looked into the subject property in the presence of the Applicant. It is a ground floor flat of brick faced construction under a pitched interlocking concrete tiled roof. Each flat has a garage but any other parking on the estate is limited.

10. As far as the flat is concerned, you walk into a reception room and there is a kitchen, a bedroom, a bathroom/WC and the Applicant has created a small 'room' where the gas boiler is for the central heating system. There is a reasonable garden to the rear with a side entrance.

11. The grounds are laid to grass with various paths. Warley is a village close to Brentwood in Essex.

The Lease

12. The Tribunal was provided with a copy of the lease dated 26th July 1985 which is for a term of 199 years from 1st January 1984 with an increasing ground rent. By clause 3(3) and the 3rd Schedule, the tenant is required to pay a proportionate part of the insurance premium paid by the landlord.

13. Clause 4(4) records the landlord's covenant to:-

> *"... keep insured the Building and/or other premises of which the demised premises form part against loss or damage by fire aircraft explosion storm tempest (so far as insurable) act of war or accident or by any other peril within the usual comprehensive policy of a reputable insurance office at the full reinstatement value thereof..."*

The Law

14. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent which is payable for, amongst other things, insurance, and which varies 'according to the relevant costs'. Clearly, this claim comes within that definition.

15. Section 19 states that relevant costs are payable 'only to the extent that they are reasonably incurred'. A tenant may apply to this Tribunal pursuant to Section 27A of the 1985 Act, for a determination as to whether a service charge is payable and, if it is, as to the amount which is payable.

The Hearing

16. The hearing was attended by the Applicant and counsel for the Respondents. There were also 2 observers. Surprisingly, the Respondents produced no witnesses.

17. It was agreed that counsel for the Respondents would explain their case. He made a number of assertions, the most relevant of which can be summarised as follows:

    - The insurance premiums have been paid i.e. they were admitted or agreed at that time and section 27A of the 1985 Act means that this application should not have been made. The Applicant responded by saying that she did complain verbally about the 2016 premium at the time and she lodged this application before paying the 2017 premium. The Tribunal accepted the Applicant's evidence and accordingly there was no agreement or admission and this application has been properly made.
    - The alternative quotes produced by the Applicant did not have terrorism cover. This was accepted by the Applicant.
    - When obtaining the alternative quotes, the Applicant had limited the possible occupiers. The landlord could not do that and a higher premium is therefore reasonable. The Applicant agreed that she had asked all the residents on the estate and because of the answers they gave had excluded students, holiday makers etc. as possible occupants. She said that this was simply because she had not fully appreciated the need to cover all possible occupiers.
    - The landlord's policy was a block policy obtained in the normal course of business with a company of repute which meant that the case law referred to in the bundle (and below) required the Tribunal to confirm the premiums as being reasonable.

18. Mr. Walters then asked the Applicant some questions by way of cross examination. She explained that she had great difficulty in getting any quotations and assumed this to be because she would not actually be able to give instructions to proceed with the insurance. The Tribunal has heard similar accounts in other cases involving challenges to landlord's insurance.

19. Generally, the Tribunal was impressed by the Applicant and concluded that she had given honest, sensible and reasonable replies to all points put to her, albeit she accepted that she was somewhat naive about the whole process.

Discussion

20. The question of insurance premiums claimed by landlords under long leases has vexed the Leasehold Valuation Tribunal and this Tribunal as its successor for some time. This is a fairly typical application where a tenant is charged an insurance premium and, when asking for alternative quotations from other insurers, he or she finds that the alternative quotation is much lower.

21. Most commercial landlords insure under a block policy or portfolio policy with one insurer. It is always claimed that this has benefits for both parties in cutting down administration and ensuring that the insurance is actually renewed. With individual policies for each property, there is perceived to be a greater chance of renewal being overlooked. Unless the subject property or other properties covered have bad claims records or are otherwise bad risks, one would normally expect economies of scale.

22. Regrettably, in this Tribunal's experience, this very rarely happens and tenants are not happy when the premium claimed is so much more than quotes they can obtain. The issue has been before the court on a number of occasions. In the case of **Berrycroft Management Co. Ltd. and others v Sinclair Gardens Investments (Kensington) Ltd. [1997] 22 EG 141**, a management company acting for tenants thought that premiums were excessive and applied to the county court for, amongst other things, a declaration that there was an implied term in the lease that such premiums would be reasonable.

23. The county court and the Court of Appeal found no difficulty in deciding that, on a true construction of the lease, this could not be implied. In this case, the insurance provisions are entirely in the discretion of the landlord and this Tribunal has no doubt that a similar application to the court in this case would produce the same result. In **Berrycroft** the court said that provided the insurance was arranged in the normal course of business with an insurance company of repute, the landlord was entitled, under the strict terms of the lease, to insist on insurance through its nominated company.

24. Unlike the county court, this Tribunal does, of course, have the benefit of sections 18-27A of the Act which give it the jurisdiction to determine the reasonableness of an insurance premium.

25. On the question of the discrepancy between premiums claimed and alternative quotations obtained by tenants, a well established line of cases has developed a rule which successive Tribunals have found themselves obliged to follow. As Evans LJ said in **Havenridge Ltd. v Boston Dyers Ltd [1994] 49 EG 111**:-

> *"....the fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insurers might have charged. Nor is it necessary for the landlord to approach more than one insurer, or to 'shop around'. If he approaches only one insurer, being one insurer 'of repute', and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of that kind then, in my judgment, the landlord is entitled to succeed"*

26. In recent years, the problem seems to have worsened with some premiums claimed seeming to be much higher than normal market rates. This has become such a common circumstance that one is almost driven to conclude that either (a) the landlords are not negotiating strongly enough in the market place because they are not ultimately responsible for the cost or (b) that there are properties in the portfolio which are a very high risk which is placing an unfair burden in increased premiums on the low risk tenants or (c) that the premiums claimed are so burdened with commissions that they are simply too high.

27. As far as terrorism risks are concerned, the Upper Tribunal in the case of **Qdime Ltd. v Bath Building (Swindon) Management Ltd** [2014] UKUT 261 (LC) determined that as the Council of Mortgage Lenders ("CML") requires cover against 'explosion', the ordinary meaning of that word would include terrorism. This means, in effect, that if insurance is in the landlord's discretion, then it would be reasonable to insure against risks required by the CML.

28. The Tribunal accepts the plain fact that landlords who insure properties in a portfolio or a block policy are at a disadvantage because they can never dictate who is going to occupy a property. This is why some quotations obtained by long leaseholders, based on owner occupation, are likely to be lower. This is why the courts have protected professional landlords in the past.

29. However, many years have passed since the lead cases and with an ever more competitive insurance market and ever more sophisticated computer software, the need for block/portfolio policies reduces because a professional landlord, particularly one with an insurance broker handling the insurance, is highly unlikely to 'forget' to insure. This must mean that it is now possible to insure sections of a portfolio individually to spread the risk.

30. The end result of this would be that the high risk properties would pay appropriate premiums and low risk ones would do the same. With appropriate assessment of insurance markets this would almost be a definition of 'reasonable' in so far as premiums are concerned.

Conclusions

31. The Tribunal's conclusion is that the premiums claimed for 2016 and 2017 are too high and are unreasonable. It is clear that the quotations for premiums obtained by the Applicant are too low because there would have to be terrorism cover and cover for any occupier. However, in the Tribunal's experience over many years, the difference would not be as great as the difference between the premiums demanded and the alternative quotes obtained.

32. Despite counsel's attempt to dissect the alternative quotes, the Tribunal was satisfied that the alternative insurers had been given all the correct available information about the properties and claims records. Apart from the 2 matters mentioned above, the quotes would be considered 'like for like' quotes by the insurance industry.

33. The various factors which draw them to this conclusion, in no particular order, are:-

- Mr. Bland clearly has a conflict of interest in ensuring that he gets the highest possible premium to increase his company's commission and his evidence is both tainted because of this and the fact that he is not an 'expert' in the legal sense of the word for the purpose of giving evidence.
- The Respondents or their insurance agents clearly know (a) how they achieve competitive quotes and (b) how much is received by way of commissions on the premiums paid. The Respondents were ordered to provide that information and they clearly refused to do so and provided no apology or reason for such refusal. They also refused to send anyone to the Tribunal hearing to be questioned either by the Applicant or the Tribunal.
- The Tribunal's knowledge and experience is a useful but not overriding factor.
- In **Akorita v Marine Heights (St. Leonards) Ltd.** [2011] UKUT 255 (LC), the Upper Tribunal said, albeit on an *obiter* basis, that an insurance commission paid for anything other than a service such as handling claims, was not payable by a tenant because that cost was incurred not in insuring the building but in paying the commission.

34. The Tribunal does infer that the landlord or an agent or associated company receives a substantial commission on the premiums paid. The insurance brokers are also likely receive commission but this is probably to cover claims handling. The Respondents decided to disobey orders. They also took the view that just criticising the Applicant and failing to help the Tribunal by giving evidence, for example, as to the difference in premiums with terrorism cover or with no limitation on 'class' of occupiers would be the best way of proceeding.

35. Doing the best it can from the evidence and using its knowledge and experience, the Tribunal considers that reasonable premiums for the increased cover i.e. for terrorism and any occupant would be the amount claimed less £50 for each year.

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Bruce Edgington
Regional Judge
12th October 2017

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.