FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00EQ/LSC/2019/0001**
Property	**:**	**Tytherington Court, Tytherington Park Road, Macclesfield, SK10 2EJ**
Applicant	**:**	**John D'Arcy**
Respondent	**:**	**RG Securities (N0 2) Limited** **Represented by Pier Management Limited.**
Type of Application	**:**	**Landlord and Tenant Act 1985, Section 27A and Section 20C**
Tribunal Members	**:**	**Mr J R Rimmer** **Ms S D Latham**
Date of Decision	**:**	**7th May 2019**
Order	**:**	**The insurance premiums under consideration by the Tribunal are reasonably incurred.**

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Application and background

1 The Applicant is the leasehold owner of the flat at 10, Tytherington Court, Tytherington Park Road, Macclesfield and the Respondent is the management company having responsibility for providing the insurance cover to the development. This provided for in the leases of the flats, if Mr D'Arcy's lease is typical.

2 A copy of that lease is provided in pages 29 onwards of the Respondent's bundle of documents supplied in this case. The lessee covenants in Clause 1 to pay the appropriate proportion of the insurance premium incurred by the landlord in accordance with clause 3(1)(d) of the lease. (it may not be as clear as it could be, but that is the only sensible interpretation that can de put upon the numbering and lettering of the clauses.)

3 The Applicant disputes the reasonableness of the insurance premiums paid from 2013 onwards and bases this, firstly, upon a professional revaluation of the building carried out in 2018 on behalf of leaseholders. This appears to have been carried out with the consent of the landlord and thereafter acted upon, producing a 19.82% reduction in the insured value.

4 He has also sought a number of quotations for cover, using that valuation, from reputable insurance offices, via a specialist broker dealing with flats insurance. The extensive fruits of his labour are detailed in his submissions.

5 Mr D'Arcy also indicates that a cost has been incurred in this matter in the amount of £600.00 for the insurance revaluation and requests an order from the Tribunal for repayment of this amount.

6 The Respondent relies upon the established principle that the insurance premium is reasonable if it is obtained in the open market in the usual course of business and refers the Tribunal to case law to which the Tribunal will refer below.

7 One tangential issue appears to be the benefit that may accrue to the landlord by way of commission and the charges made by its agent in apportioning the insurance between properties and leaseholders. The Tribunal understands that the Applicant does not directly challenge any commission, or agents fee, but rather seeks to establish that in return for either, or both, the Respondent has a duty to seek to obtain the most appropriate premium.

Submissions and Evidence

8 As indicated above, the Applicant supports his case with significant documentary evidence in respect of both the 2018 valuation and subsequent premium quotations, together with the invoice for the revaluation. There has been considerable effort to ensure that so far as possible the quotations are on a like for like basis and comparable with the cover currently secured by the landlord.

9 Following directions provided by a Deputy Regional Judge of the Tribunal the Respondent provided a Statement of Case which set out its view of the position, principally established by reference to number of cases set out at length in the submission. They are listed in the Schedule, below.

10 The Respondent's view of the principles established is set out at pages 2-5. They suggest:
(1) If a premium is secured in the insurance market and at arms-length it is reasonable.
(2) Such a premium may not necessarily be the cheapest.
(3) It is commercially acceptable for a large landlord to place insurance so as to secure a block policy.
(4) It may not be commercially viable for a landlord to seek different policies for different properties within a portfolio.
(5) If the premium is considerably higher than might be obtained elsewhere the leaseholder is entitled to call on the landlord to show that there are no special features that took the transaction outside the normal course of business.

11 Thereafter the Applicant provided some further observations on his position, dealing with how the revaluation report was obtained from Wilkinson Cowan Partnership and reviewing the year on year increases in premiums from 2013. His concluding point is that so great is the disparity between previous premiums and what is now obtainable, either in fact in terms of the current amount, or from alternative quotations, that they become unreasonable. (It may be that Mr D'Arcy mis-states the test in his argument - it is the presence of some special factor that takes the premium outside the normal course of business that the Respondent needs to avoid).

The Law

12 The law relating to jurisdiction in relation to service charges falling within Section 18 Landlord and Tenant Act 1985 is found in Section 19 of the Act which provides:

(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 the are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard

13 Further section 27A landlord and Tenant Act 1985 provides:

(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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

Tribunal's conclusions and reasons

14 The Tribunal is very quickly drawn to conclusion that as a matter of general principle a premium obtained on the open insurance market will normally be considered reasonable, according to those authorities cited by the Respondent, notwithstanding that the premium may be higher than might be obtainable elsewhere. It is well established that any service charge cost may well be reasonable, even if a cheaper alternative is available and it is not the Tribunal's duty to replace a reasonable charge with what it might consider a more reasonable one.

15 There are however two issues that the Tribunal feels it must address:

(1) Has there been a persistent overcharge of leaseholders arising from the apparent overvaluation of the building (premiums having been based over the years on a total loss an rebuilding value of 150% of the declared building value).

(2) Is there evidence that the premiums, irrespective of any effect from a high valuation, are excessively or unreasonably higher than they should be?

16 It is clear from the valuation exercise that has taken place there has been overvaluation of the property. What is not clear is how, if at all this relates back to valuations forming the basis of earlier premiums.

17 The Tribunal is aware from its experience in dealing with these matters that year by year insurance valuations do change with a number of factors, for example build costs and changing location perspectives, affecting how they are reached. Whilst it is clear that the progression from 2013-2018 is indicative of a rough inflationary recalculation each year of roughly 5% there is insufficient clear evidence, to the Tribunal's mind, that all the declared values used are based simply upon there being a starting valuation that is approximately 20% too high.

18 The Tribunal cannot therefore find in favour of the Applicant upon this point now. It does leave open the possibility that there have been persistent over valuations year on year and that these consistently contributed to unnecessarily higher premiums. In the absence of evidence upon this the Tribunal is not satisfied as to the Applicant's case.

19 So far as the issue of generally excessive premiums is concerned, there is no clear evidence that the premiums negotiated are anything other than ones available in the insurance market. As such they still fall within the guidelines referred to in the cases to which reference has been made as to the reasonableness of the amounts and the way that they have been arrived at. The reduction in the premium for 2018, after allowing for the revaluation, is quite marked, but that is not necessarily evidence that it was unreasonable before, if looked at from the case law as to what might be regarded as appropriate tests as to reasonableness.

20 The Tribunal is also asked to consider the £600.00 paid for the revaluation report by leaseholders and order it to be paid by the landlord. The Tribunal's jurisdiction is in relation to service charge costs, which this is not. It has power, in some circumstances, for example, to take into account any right to set off money owed to a leaseholder where a greater sum is owed to the landlord when deciding the payability and amount of service charges. This, however, is a cost incurred by leaseholders in pursuit of clarity in respect of the premiums. It is not even a cost incurred in respect of these proceedings. Although it would appear that in obtaining the report the leaseholders have had the revaluation issues resolved in their favour, the Tribunal cannot order payment of the cost of it.

J R Rimmer

Chairman

Schedule

Havenridge Limited v Boston Dyers Limited [1994] 49 EG 111

Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited (1996) EWHC Admin 50

Forcelux Limited v Sweetmn and Another (2001) 2 EGLR 173

Avon Estates (London) Limited v Sinclair Gardens Investments (Kensington) Limited [2013] UKUT 0264 (LC)

Waaler v Hounslow LBC [2017] EWCA Civ 45

Cos Services Limited v Nicholson and Williams [2017] UKUT 382 (LC)