3382

LON/00AZ/LIS/2007/0040 & LSC/2007/0143

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE ON AN APPLICATION UNDER SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985, AS AMENDED

Applicants:	Longmint Limited
Represented by:	Mr. Sarwar, solicitor, Juliet Bellis & Co
Respondent:	Mr. L. Watts
Represented by:	In person
Premises:	Flat 1, 27 Elsinore Road, London, SE23 2SH
Hearing date;	21 August 2007
Tribunal:	Ms. E. Samupfonda LLB (Hons) Mr. C. White FRICS Mr. D. Wills (ACIB)

In the Leasehold Valuation Tribunal

Ref:	LON/OOAZ/LIS/2007/0040 & LSC2007/0143
Applicant	Longmint Limited
Represented by	Mr Sarwar, solicitor, Juliet Bellis & Co
Respondent	Mr L. Watts
Premises	Flat 1, 27 Elsinmore Road, London SE23 2 SH

Tribunal
Ms E Samupfonda LLB (Hons)
Mr C White (FRICS)
Mr D Wills (ACIB)

1. The Tribunal received an application from the applicant landlord dated 20th April 2007 and an application from the respondent lessee dated 23rd April 2007. Both applications sought a determination under section 27A Landlord and Tenant Act 1985 (the Act) as to the reasonableness and liability to pay service charges including insurance premiums. No dispute has been raised concerning the identity of the person by whom such a service charge would be payable, the person to whom it is payable or when or in what manner it is payable. The Applicant is the freehold owner of the above named premises, a house converted into two flats. An application by the respondent has also been made under section 20C of the Act for an order preventing the landlord from recovering the cost of these proceedings through the service charge account.

2. An oral pre-trial review was held on 15th May 2007. The Tribunal identified and the parties agreed that the service charge years in dispute were 25th March 1999 to 24 March 2008; that the matters in dispute were the insurance premiums payable throughout those years together with service charges not yet identified.

3. The hearing of this application took place on 21st August 2007. Mr Sarwar, solicitor represented the Applicant. Mr Watts attended in person. Mr Sarwar explained that this application pertained to Mr Watts only despite the fact that the landlord's application also named the lessee of the ground floor flat. Mr Watts added that the two lessees have made a separate application for enfranchisement.
At the start of the hearing Mr Watts, the respondent complained that the directions had not been followed as he had not been served with the applicants bundle. Mr Sarwar explained that the bundle had been sent on 16th August but returned by Royal Mail. He then attempted to deliver it by hand on the day before the hearing. It had been left with a neighbour but not passed on to the respondent. A bundle was given to Mr Watts and an adjournment allowed him to read the papers. He confirmed that he had had sufficient time to consider the bundle and agreed to proceed.
It was agreed by both parties that an inspection of the property by the tribunal was not necessary

4. Mr Sarwar explained that the Applicant is seeking to recover the sum of £3,316.55. The items and amounts in dispute were:
26 September 2002-opening excess balance £258.31,
28 February 2002- excess service charge £296.72,
1 March 2002 -28 February 2003 -service charge £209.69,
1 March 2003-28 February 2004- insurance premium £610.25
1 March 2004-28 February 2005-insurance premium £621.95
1 March 2005-28 February 2006-insurance premium £643.72
1 March 2006-28February 2007-insurance premium £675.91.

He was not able to clarify or offer any explanation as to how the costs were incurred in respect of the afore mentioned items other than the insurance. Mr Watts explained that the basis for his challenging the insurance premium was threefold;
(i) was there insurance in place?
(ii) if so, how much was paid by the landlord to the insurer and
(iii) was that amount reasonable?

He added that he challenged the outstanding items as he did not know to what they related.

5. Set out below is the relevant law, our findings of relevant facts, and determination.

6. **The Law**

The Tribunal's jurisdiction to determine the reasonableness and liability to pay service charge is set out under section 27A of the Act.

Section 27A (1) provides -
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
(e) the manner in which it is payable

Section 18 of the Act defines the meaning of "service charge" and "relevant cost." 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 cost."

The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or superior landlord, in connection with matters for which the service charge is payable.

Costs are only recoverable to the extent that they have been reasonably incurred. See S19 of the Act.

7. **Insurance**

In summary, Mr Sarwar submitted that the landlord is entitled to recover the insurance premiums for all the years in question because the property was insured and the costs incurred were reasonable. He referred the Tribunal to copies of the summary of cover for the years 2003 -2006 and schedule of cover and summary of insurance for the year 2006-07. He also produced evidence of the demands for payments in respect of each year. He relied on the witness statement of Mr Darren Coldspring an employee of Cadogan Keelan Westall who are responsible for arranging the building insurance for the subject property. Mr Coldspring confirmed that the insurance premium was paid in the relevant years and the property fully insured for those years.

In summary, Mr Watts said that he doubted whether the property was insured for the years 2004 -2005, 2005 -2006, 2006-2007 because he either did not receive a copy of the insurance policy or certificate, or the information that he received for the latter years only confirmed that insurance was in place but did not identify for which year and there was no other evidence of insurance other than the request for payment. He added that if there was an insurance policy in place, the cost was unreasonably high. He referred to the correspondence with the landlord in which he sought information regarding the insurance and in particular the amount that the landlord had paid to the insurer Axa. He said that the landlord failed to satisfactorily respond to his enquiries. He produced copies of the alternative significantly lower quotes that he obtained from the internet on 13.03.06 and February 2007 which ranged between £400 and £455.

Relying on the witness statement of Mr Coldspring and the insurance documents produced we are satisfied that the premises were insured throughout the period in question. We are aware that various factors including subsidence, claims history and terrorism are taken into consideration in assessing the cost and level of cover. In general terms and taking into account the size of the accommodation and age of the property, we considered that the cost of insurance in each respective year was indeed on the high side. However, we were not given sufficient evidence for us to safely conclude that the insurance was unreasonably high. The alternative quotations obtained by Mr Watts were not sufficient as they do not appear to have been obtained on a like for like basis. Furthermore, his enquiries and main concern appeared to be the amount that the landlord paid to the insurer. The applicant did not dispute that the amount paid to the insurer was less than that charged to the lessees to take account of the broker's commission which was not disclosed. The test to be applied in the circumstances is as set out in judicial guidelines in particular **Berrycroft Management Company v Sinclair Gardens Investment (Kensington) Limited [1977] 22 EG 141**, where the Court of Appeal held that the right of a landlord to nominate the insurance company was unqualified and the landlord was not required to give reasons for the insurance chosen. The Lands Tribunal in **Forcelux v Sweetman [2001] 2EGLR 173** held that the landlord did not have licence to charge a figure out of line with the market norm and that in determining whether the insurance premium is reasonable the question to be answered is not whether the expenditure was necessarily the cheapest available but whether the charge that was made was reasonably incurred. In this case there was no evidence to

show that the landlord, who has the obligation to insure, acted unreasonably and charged a premium that is way out of line with the market norm. The property was insured with a reputable insurance firm. We are bound to follow the judicial guidelines and in the circumstances conclude that the cost incurred in respect of the insurance premium throughout the period in question were reasonably incurred and are therefore payable.

8. With regards to the claim for excess service charges and service charges, Mr Sarwar was not able to explain the basis of the claim, how it arose and how the costs were incurred. In the circumstances the Tribunal disallowed the landlord's claim as there was no evidence produced in support of it.

9 **Section 20C**

Mr Sarwar invited the Tribunal to add the cost of these proceedings onto the service charge. He agreed that there was no provision in the lease that permits such recovery. Mr Watts objected to that application.

Section 20C provides "a tribunal may make such order on the application as it considers just and equitable in the circumstances." In exercising our discretion we must therefore have regard to what is just and equitable in the circumstances. We consider that the circumstances that can be taken into consideration include the conduct of the parties. Having heard Mr Watts and considered the voluminous correspondence, it is apparent that he had concerns about the insurance and that those concerns were not fully or adequately addressed by the landlord. It is possible that had his concerns been adequately addressed this application may not have been brought. It is our view that in order to recover the cost of these proceedings through the service charge, the lease must contain a clear and unambiguous provision permitting recovery of legal costs. Mr Sarwar conceded that the lease contained no such provision and in the circumstance we concluded that the landlord would not be entitled to recover the costs of these proceedings through the service charge.

Chairman

Dated 3.9.07