

Background

- (a) The property, which is the subject of this application, is a two-bedroom property situated in former end terrace private house that has been converted into two flats.
- (b) The Respondents are the freehold owners and managing agents for the property.

Paper Determination

On 21 January 2008 the applicant applied to the tribunal for a determination of reasonableness and payability of service charges for 2007, and 2006.

On 18 February 2008 the Tribunal directed that unless either party objected, the matter could proceed, on the basis of a paper determination.

Matters in dispute

At the paper determination on considering the bundle of documents supplied to the Tribunal, the Tribunal decided that the following matters were in dispute

- (a) Whether the cost of insuring the building in 2006, and 2007 was reasonable.
- (b) Whether the inclusion of Terrorism cover in the insurance for those periods was reasonable incurred
- (c) Whether the cost of £100 for an Asbestos survey was reasonable incurred.
- (d) Whether the sum of £29.38 payable by the applicant for a reinstatement of value was reasonable incurred.

Matters agreed

In the Applicant's reply to the Respondent's statement of case dated 28th March 2008 at page 138 of the bundle, the Applicant accepts that the surveyor, came to the

property, the Applicant states that although she was present and the other occupier of the premises, the surveyor did not attempt to gain access.

Evidence

The Applicant in her statement of case at page 1 of the bundle stated that she had carried out her own research for the cost of insurance for the relevant period, by obtaining quotes over the internet. The Applicant stated that she had obtained quotes from Churchill insurance for £137.55, and that this was for a sum assured of £250,000, which was adequate for reinstatement of the premises.

The Respondent in its statement of case does not accept this, and they refer to the fact that the premium would be affected by a subsidence claim that is on going at the property. In their statement of case at page 23 of the bundle they provide reasons for the increasing cost of insurance. They state that on the advice of their broker they obtained additional cover for Terrorism, and they state that they instructed James Barron of Barron Asbestos surveys to undertake an asbestos survey, and at the same time in his professional capacity as a surveyor he was asked to undertake a reinstatement valuation.

In answer to direction 3, the Respondent stated that the commission paid was 45%, which was split 27.5% to the Insured Respondent, and 17.5% to the broker.

The Respondent state that the revised valuation (in the sum of £300,000); once submitted to the insurance broker meant that the premium increased for the year ending 1/6/08. This had the effect of increasing the insurance to £1,315.08.

The Respondent further submitted that the quotation obtained by the Applicant was not compatible to the one they had obtained, as it was not designed for leased property, the Tribunal were referred to the frequently asked questions guide to Churchill insurance at page 77 of the bundle.

In reply the Applicant referred the Tribunal to insurance for a neighbouring property, a copy of which was included in the bundle. The Insurance was provided by Royal Sun Alliance, and was for a monthly premium of £13.71. No information was

provided about the reinstatement value of the property insured and the Tribunal noted that the property referred to was a 1930's whilst the subject property was Victorian.

The Applicant also stated in her reply, that she had been informed that subsidence cover could be provided, but a structural engineer's report would need to be provided.

The Respondent also stated that the insurance obligation in the lease was set out in clause 2(21) (The Tenant's Obligation to pay) The Landlord's obligation to insure was set out in clause 3(1) and required the landlord to insure for the "*full value thereof*".

The Tribunal noted that two cover notes were provided for 2007/08 and asked the Respondent to provide further information that the two amounts in the sum of £789.82 and £403.29 were due for the period. This was provided under cover of a fax-dated 1.5.08

No evidence was before the Tribunal of efforts that the Respondent had made to obtain further quotes other than the insurance renewal report from the existing brokers Churchill Insurance Consultants Ltd. at pages 48-58 This report appears to be for the whole of Three Keys Properties portfolio, and as such it did not deal in any depth with the premises at issue.

The law

Section 18(1) of the Landlord and Tenant Act 1985 ("the Act") provides that, for the purposes of the relevant parts of the 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.

Section 19(1) provides that 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.

Section 19(2) of the Act provides that, 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) of the Act provides that that 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.

[Section 27A(3) of the Act provides that an application may be made to a leasehold valuation 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.]

The tribunal's decision on each matter in dispute

The tribunal on considering all of the evidence is satisfied that the following charges were reasonably incurred. The cost of the Asbestos Survey at page 59 of the bundle, in the sum of £100, and the cost of the reinsurance valuation in the sum of £29.38.

The Tribunal having considered the cost of the insurance premiums in 2006 and 2007 are not satisfied that the full cost of the insurance in 2007 was reasonable incurred. The Tribunal in considering this issue noted that although the Respondent gave reasons for the increase in the cost of the policy, the underlying cost of the policy was significantly higher than the neighbouring property. The Tribunal in considering all of the evidence before it noted that in the recommendations from the broker Churchill it stated:-

We have considered alternatives but the overall package offered by Norwich Union has proved competitive. This year we have been able to add an additional 5% commission which is paid in return for you agreeing to a three year Long Term Agreement...

The Tribunal were not satisfied that the underlying reason for the choice of the Insurance provider was that the full cost of insurance was reasonable incurred in accordance with section 19(1) a. On the evidence before the Tribunal, the Respondents obtain a significant amount of commission (of 27.5%) . The Tribunal consider that the cost of the insurance payable by the Applicant reflects this commission. The Tribunal determine that the amount payable for insurance by the Applicant for 2007 is limited to £500. The Tribunal find that the amount payable by the application for 2006 is limited to £350

Section 20C

Section 20C of the Act provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not

to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

The applicant has applied for such an order to be made in relation to the costs of the present application and the tribunal determines that such an order should be made.

CHAIRMAN.....*McAuley*.....

DATE.....*1st May 2005*.....