



**Residential
Property**
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
Landlord and Tenant Act 1985 – Section 27A
LON/00AN/LSC/2008/0133**

Address : **1-3a Astrop Terrace, London W6 7HQ**

Applicants : **Florence McDermott Flat 1**
Christopher Bruce Flat 1a
Laila Mercier Flat 2
Diana Blease/
Julia Hodgkins Flat 2a
Lorraine Ainscow Flat 3
Angus Maclean Flat 3a Tenants

Represented by : **Mr C Bruce & Ms L Ainscow**

Respondent : **Triplerose Limited Landlord**

Represented by : **Mr J Gurvits on behalf of Avon Estates
(London) Limited, Managing Agents**

Date of Application: **31 March 2008**

Date of Hearings : **8 September and 5 November 2008**

Date of Decision : **21 November 2008**

Tribunal : **Mr John Hewitt Chairman**
Mr Christopher Kane FRICS
Mr Alan Ring

Decision

1. The decision of the Tribunal is that:
 - 1.1 The amount payable by each of the Applicants to the Respondent by way of insurance rent is:
Year 2007 £600
Year 2008 £625;
 - 1.2 The Respondent shall reimburse the Applicants the sum of £250 paid by them in fees to the Tribunal in respect of this application;
 - 1.3 The cash accounts as between each of the Applicants and the Respondent as at 5 November 2008 (having taken into account adjustments consequent upon our Decisions in paragraphs 1.1 and 1.2 above are as follows:

Flat 1	£1,274.31	Debit
Flat 1a	£ 551.76	Debit
Flat 2	£ 720.21	Debit
Flat 2a	£ 383.73	Credit
Flat 3	£1,323.12	Debit
Flat 3a	£1,025.78	Debit;
 - 1.4 The debit sums set out in paragraph 1.3 above are payable by the respective Applicants to the Respondent forthwith;
 - 1.5 The credit sum set out in paragraph 1.3 above is payable by the Respondent to the lessees of Flat 2a forthwith

Background

2. The Applicants are the current lessees of a terrace of three properties which comprise six self-contained maisonettes. The Respondent is now the landlord, by assignment.
3. The leases are broadly in common form although they are not identical in all material respects.
4. Clause 2(1)(a) of the lease is a covenant by the tenant to pay by way of additional rent one half of the total amount which in each year the landlord shall expend by way of premium in effecting and maintaining

the insurance referred to in clause 4(1) of the lease, such additional rent to be paid forthwith on demand. Clause 2 (13) and (14) contain covenants by the tenant with regard to alienation. Assigning and under letting part only of the demised premises is prohibited, but there is no restriction at all on assigning, or under letting the whole of the demised premises; but the tenant is to give to the landlord notice of any such disposition within 21 days and to pay a registration fee.

5. Clause 4(1) of the lease is a covenant on the part of the landlord to insure the building against loss or damage by fire, storm, tempest and aircraft and such other risks as the landlord may deem expedient.
6. Evidently the structure of the leases is that each of the three buildings would be insured and lessees of the two maisonettes in the building would each pay one half of the insurance premium. What has happened in practice is that the landlord has insured each maisonette separately and seeks to recover from each lessee the whole of the premium paid. We were told that in all material respects the six maisonettes are identical. The amount of the insurance premium for each maisonette is exactly the same. No issue was taken that the landlord did not follow strictly the regime set out in the leases or that the cost of insurance was increased by this practice of the landlord.
7. In 2006 the Applicants made an application to the Leasehold Valuation Tribunal (Ref:LON/00AN/LSC/2006/0345) in respect of insurance rent payable for the years 1996 to 2006 inclusive and in relation to expenses said to have been incurred by the landlord in arranging the insurance. A decision was issued on 14 December 2006.
8. The landlord sought to increase the buildings sum insured for the year 2006 and to recover the increased premium thereby incurred from the Applicants. This and other accounting issues brought the parties into dispute over what sums were payable to whom. Hence the current application was issued.

9. The application was listed for hearing on 8 September 2008. On that occasion we were able to determine the issue that a Tribunal having determined the insurance rent payable for 2006, it was not open to the landlord to seek a higher sum, even if, late in the insurance year it chose to increase the sum insured. On 8 September 2008 it was apparent that the parties were not prepared to present their cases on the insurance rent payable for 2007 and 2008. There was also an issue between them arising from the fact that the Applicants had themselves effected a policy of insurance for 2008. The landlord claimed that in so doing the Applicants were in breach of their leases and wished to make an application under s168 Commonhold and Leasehold Reform Act 2002 (the CLRA 2002) for a determination to this effect. In consequence further directions were given and the matter came on for hearing again on 5 November 2008.

Inspection

10. The Tribunal did not find it necessary to inspect the subject premises.

Matters in Dispute

11. In the event and evidently having taken further advice the Applicants cancelled the insurance policy which they took out. The landlord decided not to pursue an application under s168 of the CLRA 2002.
12. In these circumstances the only matters in dispute for the Tribunal to determine are the sums payable by way of insurance rent for each of the years 2007 and 2008 and the consequent settling of the cash accounts between the individual Applicants and the Respondent.

Matters Agreed

13. Mr Gurvits confirmed that the net cost of insurance premium for each maisonette claimed by the Respondent was as follows:

Year 2007	£1,039.06
Year 2008	£1,101.40

14. The parties stated that the cash accounts of each of the Applicants with the Respondent as at 5 November 2008 were agreed as follows:

Flat 1	£2,353.81	Debit
Flat 1a	£1,631.26	Debit
Flat 2	£1,799.71	Debit
Flat 2a	£ 695.77	Debit
Flat 3	£2,402.62	Debit
Flat 3a	£2,105.28	Debit

The Tribunal was told that the agreed balances were inclusive of the cost of insurance claimed as set out in paragraph 13 above.

The Tribunal was requested to make adjustments to these balances in the event it were to decide that a lesser sum was payable for insurance in one or other or both of the years in question. Further adjustment might also be required if the Tribunal decided to require the Respondent to reimburse all or part of the fees paid to the Tribunal in respect of this application.

15. That there was no adverse claims record attached to any of the subject premises and both parties proceeded on the basis of a sum insured of £172,500 for each maisonette.

Evidence

16. Mr Gurvits presented the case on behalf of the Respondent. Mr Gurvits submitted that the insurance cover had been placed by reputable brokers who place block insurance over the Respondent's substantial property portfolio.

17. The further directions issued on 8 September 2008 included:

*'The Respondent shall by **5pm Wednesday 24 September 2008** serve on the Applicants' representative a statement of case setting out its case that the premiums have been expended, were*

reasonably incurred, are reasonable in amount and are payable by the Applicants. There shall be attached to the statement of case:

- 13.1 the claims record for the buildings in question over the past five years;*
- 13.2 the methods by which the Respondent achieves a competitive premium for insurance;*
- 13.3 evidence that the premiums sought to be recovered from the Applicants have been paid to the insurer;*
- 13.4 full details of any commission or repayment or other benefit paid by or on behalf of the insurer to the landlord, the landlord's agent or any associated individual or company; and*
- 13.5 all and any other documents or witness statements which the Respondent wishes to rely upon at the hearing.*

The Respondent shall ensure that the originals of the above mentioned documents shall be available at the next hearing.'

Mr Gurvits did not provide any evidence in response to direction 13.2 but instead wished to rely solely upon a letter dated 18 July 2008 from the brokers, Reich Insurance, which said:

'We confirm that you have contacted us to obtain a more competitive quotation and, as a result, we have approached a number of major insurers such as Zurich and Royal and Sun Alliance. They have advised that they would not insure this property in isolation due to the requirement that the policy covers any type of tenants, including Housing Association and/or DSS.

You are, however, fortunate in that you have a block policy with AXA. The AXA, who would also not arrange cover in isolation, have covered the property due to your bulk purchasing power at the current level of premium.'

It is not clear to us as to whom this letter was sent because it bears no addressee and the recipient's 'Your Ref:' has been left blank.

Mr Gurvits submitted that this letter complies with direction 13.2 even though it does not explain the steps taken by the brokers to achieve competitive premiums before the renewals were effected in February 2007 and February 2008.

18. Mr Gurvits submitted a letter from AXA dated 15 September 2008 in which it confirmed that the premiums have been paid as follows:

2007 £6,234.38 inclusive of IPT

2008 £6,608.44 inclusive of IPT

The Tribunal accepted this letter as sufficient evidence of proof of payment.

19. Mr Gurvits had no documentary evidence to rely upon but claimed that no commissions had been paid to the Respondent or to any associated company other than those already taken into account to reduce the net premiums claimed as set out in paragraph 9 above.

20. Mr Gurvits submitted that as the landlord had no control over any occupation or subletting of any of the maisonettes it was reasonable for the landlord to effect wide cover which included any lettings to Housing Associations/DSS/Asylum seekers, which, he submitted, inevitably led to higher premiums when compared with policies which contained restrictions on occupancy or subletting.

21. Mr Gurvits was also highly critical of the comparable quotations relied upon by the Applicants and made a number of detailed submissions to us in respect of them.

22. Mr Bruce presented the case on behalf of the Applicants.

23. Mr Bruce explained to us that in January 2008 the Applicants had effected a policy of insurance on the subject premises for the period 1 February 2008 to 31 January 2009 in the belief, held at that time, that the Applicants had the right to insure the premises. The policy was

placed with Norwich Union at a cost of £500 per maisonette. (Subsequently the Applicants came to appreciate that they did not have the right to effect insurance and the policy has now been cancelled.) Mr Bruce submitted that this policy is very strong evidence of the reasonable cost of insurance, available in the market for 2008. Mr Bruce claimed that the policy was like for like to that issued by AXA to the Respondent. He relied upon an email from the broker dated 13 August 2008, the material part of which read;

'The insurance policy taken out by the residents of Astrop Terrace includes cover for Housing Association and DSS tenants. However as is standard in all cases, the insurer reserves the right to review cover and premium in the light of any changes to occupancy as advised at the time the policy was taken out.'

Mr Gurvits drew our attention to an annotation on the Norwich Union Certificate of Insurance '*Residential – Let to Working People*' There was no evidence produced to us from Norwich Union itself as to their position on occupancy, subletting and premium levels.

24. Mr Bruce also wished to rely upon three further quotations and he took us through the supporting documents in some detail:

Towergate – Policy with Abacus – a Lloyds Syndicate

'DSS tenants £680.04

DSS tenants via Local authority £1160.86

Set out in an email dated 1 October 2008

The quotation was subject to a satisfactorily completed proposal form.

Groupama - Bollingtons Landlords Property Insurance

£2,274.31 + IPT = £2,388.02 = £398 per maisonette set out in an email dated 7 October 2008.

Again the quotation was subject to a number of factors.

Norwich Union

£2,599.21 + IPT = £2,729.17 = £454.86 per maisonette set out in an email dated 7 October 2008.

This quotation was based on the information contained *'in the attached Risk Presentation'* but Mr Bruce did not have this document to hand and it was not made available to us. There was however reference on a document to *'5 owner occupied 1 professional let'* in connection with this quotation.

The Law

25. The Relevant law is set out in the Schedule to this Decision.

Findings and Reasons

26. Ordinarily brokers can be relied upon to obtain competitive quotations for insurance cover. In this case the cost of insurance per maisonette was over £1,000 for both 2007 and 2008. In our experience this was an exceptionally high figure and in our view warranted a full explanation. – hence our direction 13.2 made on 8 September 2008. The Respondent has seen fit to ignore that direction. We reject Mr Gurvits' submission that the letter dated 18 July 2008 is compliant with that direction. It plainly does not comply. We have already commented that the letter is a little odd and bears no addressee or reference. We do not know how or by whom or in what circumstances the letter was procured. We find we must treat it with some caution.

27. In the circumstances of this case we find that the burden of proof rests with the landlord to satisfy us that the cost of insurance was reasonable in amount because the cost claimed was so much higher than our experience and expertise leads us to consider to be reasonable for the subject premises, which have a good claims history. The landlord has failed to discharge that burden and has not produced any evidence to support its contentions.

28. We find that we have to approach this case from an alternative standpoint. We are acutely aware of the difficulties often faced by lessees who seek to obtain historic evidence of premium levels. Sometimes an expert report from an established broker is available and helpful but such reports can be expensive to obtain. Often lessees will instead seek to rely upon quotations for new business.
29. Most brokers (and insurers) are keen to quote for future (potential) new business. We find that whilst such quotes can sometimes be a helpful guide we do have to treat them with some caution because they are not always for like with like, do not always adequately reflect claims history or sums insured. Moreover sometimes new business quotes are discounted to attract new business and such discounts are not always replicated at renewal.
30. In the present case we have the advantage that the Applicants actually effected a policy of insurance in January 2008 at a premium of £500 per maisonette. We find that this is real market evidence because the policy was sought and placed. It is therefore a helpful starting point but we do treat it with care for the reasons mentioned in paragraph 25.
31. Despite the efforts and hard work which the Applicants have undertaken to obtain comparable quotations we find that we cannot rely upon them with confidence. The issue turns on occupancy and sublettings. The leases are very widely drawn and mostly this will be to the benefit and advantage of the tenant. However on the insurance point we find that it not unreasonable for the landlord to insist that the insurance extends to all and any type of occupancy and subletting, including DSS and Housing Associations. We find that to do so is within the range of what a reasonable landlord holding this type of investment in Hammersmith might consider necessary and prudent.
32. It is therefore incumbent on the Applicants to show us plainly that the comparables which they rely upon are like for like and do indeed

include cover for DSS and Housing Association sublettings. The comparables do not in express terms do so. There is no direct evidence from insurers themselves on this point. In one instance there is a comfort email from the broker but experience teaches us to be cautious about such claims made by brokers.

33. We find that the starting point is £500 for 2008 but that an upward adjustment is required to allow for the cost of cover to be extended to include a wider range of occupancy and sublettings. In the absence of any reliable evidence submitted by the parties we can but do our best drawing on the accumulated experience and expertise of the members of the Tribunal. In so doing we find that an uplift adjustment of 25% is appropriate to produce a figure of £625. We therefore find that a reasonable cost of insurance for 2008 should be no more than £625 per maisonette.
34. We now have to make a further adjustment to ascertain the figure for 2007. We note that the landlords insurance increased from £1,039.06 in 2007 to £1,101.40 in 2008, an increase of about 6%. We are not satisfied that 6% was a general increase across the market at that time and our experience leads us to believe that a downwards adjustment of 4% is more in line with the market. We apply a 4% adjustment to arrive at a figure of £600 for 2007.
35. Mr Bruce urged us to adopt figures of £389 and £454 respectively because these were his best comparables. We decline to do so. The landlord is not obliged to effect the cheapest insurance; he simply has to effect insurance within the reasonable range of cost. The Applicants themselves saw fit to effect insurance at £500 in 2008 and we have no doubt that they considered it reasonable to do so. We are reinforced in our conclusion that the right starting point for 2008 is £500 per maisonette.

The section 20C Application – limitation of landlord’s costs of the proceedings

36. An application has been made under s20C of the Act with regard to the landlord’s costs incurred or to be incurred in connection with these proceedings and an order is sought that those costs ought not be regarded as relevant costs in determining the amount of any service charge payable.
37. Mr Gurvits conceded that the lease does not enable the landlord to recover as service charges costs incurred in connection with proceedings such as the proceedings before us. The Respondent does not therefore seek to recover its costs as service charges. In these circumstances it is not necessary for us to make an order under s20C of the Act. However, had it been necessary for us to do we would have done so because it would have been just and equitable to do so.

Reimbursement of Fees

38. An application has been made for the reimbursement of fees of £250 paid in connection with these proceedings. In support of the application Mr Bruce ran over the history of relations with the Respondent, the previous LVT proceedings and the appalling accounts maintained by the Respondents managing agents and unwarranted demands. He said that the Applicants had no alternative but to come to the Tribunal to get a fair resolution.
39. Mr Gurvits opposed the application. He submitted that many of the issues had been resolved by negotiation and that the only substantive issue left was the cost of insurance for just 2 years. He submitted that if the landlord was held to have been reasonable on the insurance point it should not have to reimburse the fees.
40. We have found that the Respondent was not reasonable with regard to the cost of insurance. We accept that most of the accounting issues

have been resolved by negotiation but only after the hearing on 8 September 2008, at which hearing Mr Gurvits accepted that the cash accounts were overly complex and should be simplified and in respect of which we gave some clear guidance on how matters should be progressed. We bear in mind that the fees of £250 had been incurred prior to 8 September 2008.

40. Having regard to all of the circumstances explained to us we have no hesitation in requiring the Respondent to reimburse the Applicants the sum of £250 in respect of fees paid to the Tribunal because we consider it to be just and equitable that the Respondent should do so.

The Schedule

The relevant law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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) of the Act 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 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

Section 20C(1) 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 leasehold valuation tribunal 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.

Section 20C(3) of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

Section 27A of the Act provides 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

A handwritten signature in black ink, appearing to read "John Hewitt". The signature is fluid and cursive, with a large initial 'J' and 'H'. Below the signature is a horizontal dotted line.

John Hewitt

Chairman

21 November 2008