RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/00LC/LSC/2009/0074**
Property:	**477 Canterbury Street Gillingham Kent ME7 5LJ**
Applicants:	**Mr. P. Munns and Mr. S. Samuel**
Respondent:	**Longmint Limited**
Date of Consideration:	**2nd September 2009**
Members of the Tribunal:	**Mr. R. Norman Mr. R. Athow FRICS MIRPM**
Date decision issued:	

RE: 477 CANTERBURY STREET, GILLINGHAM, KENT, ME7 5JL

Decision

1. The Tribunal made the following decision:

(a) The sum of £650 in respect of insurance for the year 1st March 2009 to 1st March 2010 is payable by the Applicants (£325 each).

(b) An order be made under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") that all or any of the costs incurred or to be incurred by the Respondent in connection with these 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 Applicants.

Background

2. No. 477 Canterbury Street ("the subject property") is divided into two flats. Mr. P. Munns and Mr. S. Samuel ("the Applicants") are the lessees of Flats 2 and 1 respectively and have made an application under Section 27A of the 1985 Act for a determination of liability to pay the insurance element of the service charges demanded by the landlord Longmint Limited ("the Respondent ") in respect of the year 1st March 2009 to 1st March 2010.

3. The Applicants have also made an application for an order under Section 20C of the 1985 Act that all or any of the costs incurred or to be incurred by the Respondent in connection with these 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 Applicants.

4. On 14th May 2009 directions were issued and with those directions the Tribunal gave notice to the parties under Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004, that the Tribunal intended to proceed to determine the matter on the basis only of written representations and without an oral hearing. The parties were given the opportunity to object to that procedure by writing to the Tribunal no later than 28 days from the 14th May 2009. No written objection has been received and the matter is being deal with on the basis only of written representations and without an oral hearing.

Inspection

5. On 2nd September 2009 the Tribunal inspected the exterior of the subject property which is a terraced house on two floors with brick walls under a concrete tiled roof. We also saw that there is a common entrance hall and that there are small gardens at the rear.

Evidence

6. We received written representations from the Applicants and from Solicitors representing the Respondent and those representations were considered by us.

7. The Applicants' case is set out fully in their statement of case but in summary is that they believe that the sum demanded for insurance is far too high for the type of property. In support of their application the Applicants have obtained quotes for insurance which are much lower than the sum demanded by the Respondent. Those quotes are as follows:

(a) GSI Group Commercial Services LLP Insurance Brokers have obtained a quote from Zurich Insurance Company for a Power Place policy with a premium originally in the sum of £430.08 but by a letter dated 24th June 2009 revised to £482.58.
(b) Property Select Insurance have quoted a premium of £383.75 for a policy underwritten by NIG.

8. The Respondent's case is fully set out in a statement of case but in summary is that:

(a) The premium charged for the year commencing 1st March 2009 is £882.40 including terrorism insurance and insurance premium tax. The policy is with AXA PLC.

(b) The Respondent instructs brokers Cadogan Keelan Westall to go to the market each year to obtain quotes in respect of insurance policies for the Respondent's properties.

(c) Cadogan Keelan Westall took into account the interests of all parties in obtaining an appropriate insurance policy.

(d) The policy in place is very comprehensive and includes cover for loss of rental income should the property become uninhabitable.

(e) The alternative quotes provided by the Applicants are not on a like for like basis. There is only £10,000 cover for contents whereas the Respondent's policy provides £20,000 cover.

(f) The Applicants' quotes do not provide for employer's liability whereas the Respondent's policy does. The Power Place policy does not have terrorism cover.

(g) The Applicants' quote provides numerous exclusions if all risks cover is taken. The exclusions include among others:-
(i) Wind, hail, sleet, snow, flood damage;
(ii) Corrosion, wet or dry rot;
(iii) Faulty or defective workmanship;
(iv) Collapse or cracking of Buildings.

The Respondent's policy does not exclude those risks and the Respondent considers that it is both desirable and necessary to insure against those risks

(h) Both the Applicants' quotes are limited in cover in comparison to the Respondent's policy.

(i) As a general rule it is more expensive for a freeholder to insure a property than it is for a lessee in occupation.

(j) The Respondent has obtained a like for like quote from MORE TH>N Insurance where the premium is quoted at £861.20 including terrorism insurance and insurance premium tax.

(k) The Respondent submits that any landlord is not obliged to accept cheaper quotations as in *Berrycroft Management Co. Ltd v Sinclair Gardens Investments* [1977] 1 EGLR 47, CA. In that case the leases of a block of flats imposed a requirement on the management

company to insure the building for such sums and through such companies as the landlord may direct. The lessees covenanted to pay a proportionate amount of the insurance premium. It was held that there was no implied covenant that the sum charged by the insurers should be reasonable or that a tenant should not be required to pay a substantially higher sum than the tenant could arrange.

(l) Similarly in *Havenridge Ltd. v Boston Dyers Ltd.* [1994] EGCS 53, CA the lease obliged tenants to pay sums that the landlord shall *'properly expend or pay to any insurance company in respect of ... insuring ... the demised premises'*. It was held that it was neither necessary nor clearly intended that there should be an implication of reasonableness. Provided the insurance was effected in accordance with the terms of the lease then the landlord was not obliged to seek cheaper alternative quotes.

(m) The property is insured with an insurer of good repute and the Respondent avers that the cost of the insurance policies is within a reasonable range of prices for the cover provided.

(n) As to the Section 20C application the Respondent submits that it has acted reasonably in dealing with these applications and that there is no proper basis for an order to be made under Section 20C of the 1985 Act.

Reasons for the Tribunal's Decision

9. From the evidence provided, the following was noted:

(a) The Respondent's bundle sent under cover of the letter from Juliet Bellis & Co dated 22nd May 2009, included the AXA Insurance policy which is currently in place. It covers the period 1st March 2009 to 1st March 2010. The sum insured is £290,901 and the declared value is noted as £215,482. This policy includes terrorism cover with a gross premium of £882.40 including IPT.

(b) It is also noted that, within that bundle, the two copies of the service charge demands included a demand of £447.82 for the insurance premium, together with an additional £9.16 for terrorism cover. This gives a total demand for the insurance premium of £456.98. When this figure is added together for both flats, the total is £913.96, whereas the premium stated on the policy was £882.40. Therefore, there appears to be an anomaly in this instance.

(c) In the Applicant's bundle which was sent under cover of a letter dated 11th June 2009, two quotes obtained by the lessees were included.

(d) The quote from GSI Group was for a Power Place policy, underwritten by Zurich Insurance Company, and the buildings sum insured was £215,482. This sum is the same figure as the declared value on the AXA policy. The insurance premium that was originally stated in the covering letter from GSI of 2nd June is substituted by a subsequent letter of 24th June with a total premium of £482.58 including terrorism and

IPT. From the information provided to us, we are uncertain that this is a suitable 'blocks of flats' insurance policy. The terms are substantially different to the wording of normal blocks of flats policies. This was commented on in the Respondent's final submissions. Because of this, we are not convinced that this is a true comparable policy, especially taking into account the much lower buildings sum insured: £215,482 as opposed to £290,901.

(e) The second quote obtained through PSI is for a policy underwritten by NIG and this is a property owners' insurance policy. The sum insured is £324,000 with buildings declared value of £216,000. Again, there are several variances under the items covered which are missing in this policy when compared with the normal blocks of flats policy, especially when compared with the AXA policy. The premium on this is £383.75 when the terrorism cover and IPT are included. We have considered this policy and do not feel that this is a comparable policy.

(f) In the Respondent's final submissions, a quote was obtained from MORE TH>N. The premium for this is £861.20 including terrorism and IPT for a sum insured cover of £334,536 with a declared value of £290,901.

(g) In this instance, it would appear that this policy closely matches the AXA policy and complies with the terms of the lease but, once again, the sum insured does not tie in with the AXA policy. When the MORE TH>N quote is analysed, this gives a rate of 24.52p per £100 insured and if this is then re-computed against the £290.901 sum covered under the AXA policy it would give a premium of £713.53 + 5% IPT = £749.20.

(h) From the evidence provided and our comments above, it shows that there is a lack of consistency in all of the evidence provided. There is a large variance in the sum insured, that figure being the sum required under Clause 3(3) of the lease which, when paraphrased, imposes an obligation on the landlord to insure 'in the full reinstatement value' and not the declared value. The range in evidence varies between £215,482 and £334,536. This range is not considered to be of assistance to us in trying to assess the reasonableness of the sum covered. It is unfortunate that we are not offered by either party the benefit of a formal insurance appraisal. The Royal Institution of Chartered Surveyors Service Charge Residential Management Code recommends that regular valuations are carried out and should be undertaken by qualified valuers with appropriate skill and experience in the types of property being assessed. Had we received such a valuation within the evidence provided, this would have been an extremely useful document, from which we could have carried out a much more accurate assessment of the subject before us.

10. The Tribunal was therefore placed in a position where it needed to use its own experience and judgement on rebuilding costs. Whilst no measurements were taken or any scale plan available, we reached a conclusion that £215,482 was too low a figure, whilst £334,536 was considerably in excess of the re-building cost.

11. We reached a conclusion that it would be useful to both parties if we gave an approximate opinion on re-building costs and we feel that this should be in the region of £250,000. Using this figure as the base and utilising the analysis of the MORE TH>N quote, which as mentioned above computes to a rate of 24.52p per £100 insured, results in a premium of £613.00 + 5% IPT = £643.65 which we have rounded to £650.

12. We considered the decisions in the cases referred to us, in particular *Berrycroft Management Co. Ltd v Sinclair Gardens Investments*. Just because an insurance quote is obtained which is cheaper than the quote obtained by the landlord it does not mean that the landlord has to accept that lower quote or that any sum in excess of that lower quote cannot be demanded of the lessees. However, the decision does not provide that the landlord is entitled to demand from the lessees more than the landlord has paid for insurance or that the landlord is entitled to demand from the lessees the additional cost of insurance brought about by arranging insurance in excess of that required by the lease.

13. As we have stated above, we have found that the insurance quotes obtained by the Applicants are not comparable. However, on the basis of the evidence produced by the Respondent we can only come to the conclusion that more was demanded from the Applicants than the cost to the Respondent of effecting insurance and that insurance was obtained on the basis of an excessive estimate of the rebuilding costs.

14. Taking the foregoing into account, it is the decision of the Tribunal that the service charge demand raised by the landlord of £456.98 per flat is excessive and that, on the assumption, which we have had to make in the absence of reliable evidence from the parties, of our guide of £250,000 being the correct sum insured, the appropriate premium considered to be reasonable under these circumstances is £650.00, i.e. £325.00 per flat. As stated above, that figure is based on the quote from MORE TH>N provided and relied upon as evidence by the Respondent in support of the Respondent's case.

15. It was stated in the application that the Applicants had tried to resolve with the Respondent the problems as to the insurance premiums but had not been successful. The Applicants were therefore justified in making their application. The evidence before us indicates that the Respondent was charging the Applicants more than the Respondent was paying for the insurance and the charge was also increased by the Respondent arranging insurance in excess of that required by the lease. We therefore found that it would not be just and equitable for the Respondent to be able to charge to the Applicants the costs incurred by the Respondent in dealing with this application and therefore we considered it just and equitable in the circumstances to make an order under Section 20C of the 1985 Act.

R. Norman
Chairman