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MAN/00EW/LIS/2009/0011

LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL

REASONED DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985
SECTION 27A (1)

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| Property: | 22 and 22A Abbot's Park, Chester CH1 4AN |
| Applicant: | Mrs.M.Crutchley |
| Respondents: | Mr.T.G.Brierley |
| Tribunal members: | Mrs.C.Wood (Chairman)<br>Mrs.E.Thornton-Firkin |
| Date of decision: | 25 March 2010 |

**DECISION**

The Tribunal determines as follows:

1. That the amounts incurred by the Respondent for the years 2003/04, 2004/05, 2005/06, 2006/07, 2007/08, 2008/09 and 2009/10 (" the Insurance Years") in respect of insurance premiums are reasonably incurred with the exception of the amounts shown in paragraph 3.

2. That the insurance cover effected for the Service Charge Years included cover in respect of contents of the communal parts which was not reasonably incurred.

3. That a deduction of £60 in respect of this element of "over-insurance"should be made from the insurance premium for each of the Insurance Years, of which £40 ( in accordance with the 2/3:1/3 apportionment of insurance premiums) is due as a refund to the Applicant for each of the Insurance Years in respect of which the Applicant has made payment and the cover in respect of the contents was included and as a reduction of the amount payable in respect of any Insurance Year for which payment is due.

## REASONS FOR DECISION

### Background

1. The Applicant, Mrs.M.Crutchley, is the leaseholder of 22A, Abbots Park, Chester CH1 4AN.

2. By an application to the Leasehold Valuation Tribunal dated 12 November 2009, the Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) in respect of the amount charged for the Insurance Years .

3. Directions were issued to the parties stating that the application would be determined as a paper determination unless either party requested a hearing by no later than 10 December 2009. Neither party made such a request. However, due to illness, the Respondent requested an extension to comply with the Directions which were extended to 1 February 2010 for the Respondent, and 15 February 2010 for the Applicant.

4. The Respondent responded to the Directions by a statement dated 28 January 2010 received on 1 February 2010. In this statement, the Respondent provided evidence relating to the insurance renewal for the period from 29 September 2009 – 28 September 2010, including correspondence from their insurance brokers Astbury Wren, as well as raising some historical issues relating to past litigation between the Applicant and the Respondent.

5. The Applicant responded to the points raised by the Respondent in a statement dated 12 February 2010..

### Inspection

6. The Tribunal made an external inspection of the Property on the morning of 1 March 2010. The Property is the north-easterly end of a terrace of 3 dwellings formed from what was originally constructed in 1865 as one dwelling. In June 1986, the Property was divided horizontally into 2 maisonettes, of which the upper maisonette is 22a, Abbots Park, and 22, Abbots Park is the ground floor maisonette. Nos. 22 and 22A have separate entrances. There are no internal communal areas. Under the terms of the Lease, the Applicant is granted, inter alia, a right of way over the driveway, a right to park 2 cars and a right to use the dustbin area but the Applicant has no proprietary rights to these areas. No. 22A is a 3-storey maisonette with a pitched slate roof. No. 22 is a single, ground floor

maisonette. Both the Applicant and the Respondent were at the Property during the inspection. The Tribunal entered No.22 in order to ascertain the ownership of the land accessed by a gate to the righthand side of the entrance door to No.22. The Tribunal advised the Applicant subsequently of the reason for entering No. 22.

**The Lease**

7. Under Clause 1(q) of the lease dated 11 June 1986 made between the Respondent as Lessors (1) and Charles McIntosh Millar (2), ("the Lease"), the Lessee covenants with the Lessors " [T]o pay two thirds of the cost of the premium paid by the Lessors in carrying out their obligation under Clause 2(e) hereof".

8. Clause 2(e) of the Lease obliges the Lessors "[T]o insure and keep insured the whole building of which the lower and upper maisonettes form a part against loss or damage by fire and such risks as are covered by a comprehensive house-owner's policy..."

**The disputed charges**

9. By the Application , the Applicant seeks a determination of the reasonableness of the amounts charged by the Lessors for insurance in respect of the Property in respect of each of the Insurance Years.

**The Law**

10. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(1) in the following provisions of this 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.

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

(3) For this purpose –
(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

11. Section 19 provides that –

(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 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.

12. Section 27A provides that

(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 date at or by which it is payable, and
(d) the manner in which it is payable.
(2) Subsection (1) applies whether or not any payment has been made.
(3) .....
(4) No application under subsection (1)...may be made in respect of a matter which –
(a) has been agreed by the tenant.....
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

13. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

**The submissions**.

14. It is the Applicant's contention as set out in the Application that the insurance premiums for each of the Insurance Years are "unwarrantably high" and had obtained three alternative quotations in support of this: these quotations were from Heath Lambert (£645.63), Zurich Insurance (£ 779.27) and Equity Red Star (£1091.15). Further clarification of the Applicant's submissions were set out in the Applicant's statement dated 12 February 2010 which included copies of the quotations referred to above.

15. The Respondent's submissions are set out in the Statement dated 28 January 2010, the relevant parts of which confirmed that the insurance was arranged through insurance brokers, Astbury Wren, who advised in their letter dated 17 September 2009 to the Respondent that they had "...carried out a market exercise to obtain alternative quotations but...have been unable to obtain a cheaper quotation to provide the same cover". Attached to the letter were further details of alternative quotations obtained from Zurich and Groupama and a statement that AXA had been unable to provide a competitive premium.

**The Tribunal's Conclusions**

16. The Tribunal must apply a three stage test to the application under section 27A:

(1) Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction and interpretation of the lease.

(2) Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?

(3) Are there other statutory limitations on recoverability, for example consultation requirements of the 1985 Act as amended?

17. The Tribunal determined that the Lease contained an obligation in clause 2(e) on the Respondent "to insure and keep insured" the Property ", and that the Lessee was liable to make payment of two-thirds of the annual premium payable.

18. The Tribunal determined that, save as set out in paragraph 19 below, the amounts in respect of insurance for each of the Insurance Years had been reasonably incurred. In particular, the Respondent had engaged reputable insurance brokers to effect the insurance cover who had, according to the evidence, conducted a market comparison exercise to obtain alternative quotations for the Insurance Year 2009/2010. The Tribunal accepted that a similar exercise had in all probability been carried out in respect of each of the Insurance Years. The Tribunal also noted the information provided by the Applicant in respect of their alternative quotations but accepted the Respondent's reasons for rejecting them.

19. Following their inspection, the Tribunal were not aware that there were any internal communal areas at the Property and accordingly determined that there was no reason to arrange insurance cover in respect of the contents of such internal communal areas. To that extent the Tribunal determined that the insurance premium in this respect had been unreasonably incurred and was not recoverable from the Applicant.

20. As there was no evidence as to the apportionment of the insurance premium as between the building and contents for each of the Insurance Years, the Tribunal

relied on its own knowledge and experience in determining that £60 per annum was an appropriate deduction in this respect. Accordingly, the Tribunal determined that the Applicant should be entitled to a refund of £40 in respect of each of the Insurance Years where payment had been made and a reduction of the same amount in respect of any Insurance Year where payment was due.

Catherine Wood
Chairman
Date 25 March 2010