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HM Courts
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Service



LEASEHOLD VALUATION TRIBUNAL
(SOUTHERN RENT ASSESSMENT PANEL)

Case Reference: CHI/43UM/LIS/2012/0002

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT
ACT 1985**

Applicant: Mr C. D. Bennett
Respondent: Freehold Securities Limited
Property: Foxhills, Woking, Surrey, GU21 3LT
Date of Hearing 18th April 2012

Leasehold Valuation Tribunal
Mr D. Whitney LLB (Hons)
Mr R. Potter FRICS

DECISION

INTRODUCTION

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act (as amended) ("the Act") for a determination of the reasonableness of the Insurance premium which the Respondent, Freeholder, seeks to recover for the Premium due for the Insurance year beginning September 2011.
2. The Applicant is a Leaseholder of a flat at the development known as Foxhills, Woking, Surrey GU21 3LT. The Application is dated 30th December 2011 and has various documents attached to it. Directions were given on 5th January 2012 providing that the matter would be dealt with on the basis of written representations unless objection was received from either party.
3. No objection has been received and the matter is to be dealt with on the written representations made. These are:
 - Applicants application and attachments dated 30th December 2011
 - Respondents Reply dated 30th January 2012
 - Copy specimen lease in respect of No. 8 Foxhills, Goldsworth Park, Woking, Surrey dated 21st June 1988
4. The Directions made did provide that the Applicant could if he so wished file a Reply to the respondents Statement of case by 1st March 2012 but no further documents were received by the Tribunal.
5. The Applicant accepts that the responsibility for insurance rests with the Respondent and that the Applicant should pay a reasonable proportion. The Applicant does not appear to dispute the proportion he is required to pay. The issue to be determined is whether the total premium which the Respondent seeks to charge is reasonable.

THE RELEVANT LAW

6. The substantive law in relation to the determination of this application can be set out as follows:

Section 19 of the Act: Limitation of service charges: reasonableness. .

(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.

(2) 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

And

Section 27A of the Act Liability to pay service charges: jurisdiction.

(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 amount which is payable, .
- (d) the date at or by which it is payable, and .
- (e) the manner in which it is payable. .

(2) Subsection (1) applies whether or not any payment has been made. .

(3) An application may also 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.

INSPECTION AND HEARING

7. The Tribunal inspected the development on the morning of 18th April 2012 prior to the Hearing. The Tribunal found that the development consisted of some 6 main buildings with

- ancillary bin stores and cycle sheds. There were allocated parking spaces for the flats and an area of visitor parking as well as communal grounds. The development appeared well managed. It is believed that the development was built in the 80's.
8. Subsequent to the Inspection the Tribunal met to determine the matter on the papers before it. The papers did not include a copy of the policy in place with Ageas Insurance Limited, a copy of the quote for this policy or any policy receipt. It did, however, appear from the papers to be common ground between the Applicant and the Respondent that this policy was in place.
 9. The Applicant contended that the premium charged by the Respondent for the period 29th September 2011 to 29th September 2012 of £9717.50 was unreasonably high. The Applicant sort to rely upon a quotation obtained dated 27th September 2011 from COBRA Underwriting Agencies Limited. The Tribunal was provided with two pages of this quote which was for a sum of £7,486.26 inclusive of tax etc.
 10. The Respondent in its Reply stated that in effect they had tested the market and whilst initial quotes were much higher (£14,642.21) they were able to obtain a quotation of £9,717.32. The Respondent asserts that they were not able to use the "scheme" proposed by the Applicant. Further the Respondent stated that when they had approached AVIVA and Allianz they had declined cover due to the claims experience.
 11. The quotation from the Applicant provided that the cover would be provided by AXA Insurance UK plc and Aviva insurance Ltd in defined proportions. This was an arrangement which the Tribunal was not familiar with. The Tribunal did note that one of the insurers, Aviva Insurance UK plc was one of the ones who had declined to provide the Respondents with a quote. It was not clear from the two pages of the quote supplied by the Applicant whether this quote took account of the claims history disclosed by the Respondent as part of their Statement in Reply dated 30th January 2012.

DECISION

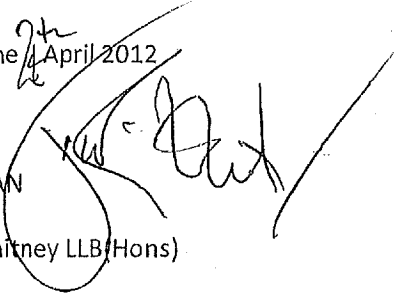
12. The Tribunal did find itself hampered by the lack of documentation they had from either side. The Tribunal took account of the papers before it and the fact that both parties had had an opportunity to put forward all matters they wished to raise. The Tribunal also relied upon its own knowledge and experience.
13. The Tribunal determines that the premium charged by the Respondent for the year 29th September 2011 to 29th September 2012 of £9,717.32 is reasonable and payable. The Respondent, freeholder, is required to obtain a reasonable price considering all factors not simply cost and in the Tribunals opinion the premium charged for the year is reasonable.

SECTION 20C

14. The Applicant had also made an application under section 20C of the Act seeking an Order that the Respondent do be disentitled from being able to recover all or any part of the costs it had incurred in responding to the substantive application.
15. Section 20C of the Act gives the Tribunal a discretion to make such an Order when it is just and equitable to do so having regard to all of the circumstances of the case.
16. The Tribunal declines to make such an Order in this case given they have determined that the premium charged by the Respondent is reasonable and no specific representations were

received from either party. Whether the Respondent can recover its costs under the service charge or against the Applicant individually will depend upon the terms of the lease and for the avoidance of doubt we make no determination one way or the other that the Respondent has such rights and have not been directed to any clauses under the lease which may allow recovery.

DATED the 27th April 2012



CHAIRMAN

Mr D. Whitney LLB(Hons)