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REF LON 00AH/LSC/2007/0240/

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985  
SECTION 27A

**AND IN THE MATTER OF First Floor flat 62 Holmesdale Road  
London SE25 6JF**

Applicant

**Cormorant Limited**

Represented by

**Mr T Deal of counsel instructed  
by George Ide Phillips solicitors  
Mr C Case of Hampton Wick  
Estates, Managing Agents**

Respondent

**Emmanuel Alexander**

Represented by

**In Person**

The Tribunal

**Mr P Leighton LLB (Hons)  
Mr T Johnson FRICS  
Mr O Aberbrese**

Hearing Date

**28<sup>th</sup> August 2007**

Date of Decision

**11<sup>th</sup> September 2007**

## **Introduction**

- 1 By an action in the Croydon County court commenced on 9<sup>th</sup> January 2007 the Applicant sued the Defendant for the sum of £2836.51 in respect of service charges and ground rent in respect of the property known as Flat 2 62 Holmesdale Road London SE25 6JF held by the Respondent under the terms of a lease dated 18<sup>th</sup> June 2000 for a term of 125 years from March 2000
- 2 The proceedings were transferred to the Tribunal by order of District Judge Wright dated 5<sup>th</sup> March 2007
- 3 Directions were given by the Tribunal on 6<sup>th</sup> July 2007 and the application came before the Tribunal on 28<sup>th</sup> August 2007 when the Applicants were represented by Mr T Deal of counsel and the Respondent appeared in person
- 4 The property in question is a first floor two bedroom flat in a Victorian house in Holmesdale Road London SE25. The landlord is also the owner of the neighbouring properties at 64 and 66 Holmesdale Road. Having regard to the issues raised it was not necessary for the Tribunal to inspect the property

## **The Lease.**

- 5 The Applicant has a duty to insure the property under Clause 4(2)(a) of the lease . The terms of the cover are prescribed in Clauses 4(2)(b)(i)-(ii) and are in fairly standard terms against the usual perils for the full rebuilding cost and with an insurer of repute. There is also a duty to insure for public liability under Clause 7 of the Seventh Schedule to the lease. Insurance premiums are “service costs “ for the purposes of the landlord’s services under Clause 1(a) of the Fifth Schedule and the lessee is required to contribute 50% of the total service costs. The lessee’s obligation to contribute to the cost of services is found in Clause 3(2) of the lease. .
- 6 There is no provision in the lease for the employment of a managing agent as such but clause 4(5) permits the landlord to engage “*to provide the services listed in the Seventh Schedule*” “*the services of “whatever employees agents contractors consultants and advisers the landlord considers necessary”*”

## **The Issues**

- 7 The proceedings included a claim for ground rent which is not within the Tribunal’s jurisdiction. The Tribunal had to consider two issues namely the question of insurance for the years March to November 2004, November

2004 to November 2005, and from November 2005 to November 2006 . The Tribunal also had to consider the management fee charged by the agents for the years 2004/5 and 2005/6

### **The Facts**

- 8 Mr Alexander acquired the lease in 2001 and for the first three years regularly paid the service charges. The property was then owned by Mr Peter Doyle and managed by agents Avrasons. The only charge which arose apart from the ground rent was the annual insurance premium. The policy was then placed with Royal and Sun Alliance and the premium for the year 2003/4 amounted to £657.72 of which Mr Alexander paid £328.86
- 9 Cormorant Limited purchased the freehold in March 2004 Thereafter the landlord made provision for a new policy on the premises with ACE Insurance apparently based on the block policy which existed for the landlord's portfolio of properties. The result was a significant increase in the cost of the premiums as follows: up to November 2004 £1120.43, up to November 2005 £1677.38 plus a figure for terrorist cover and property owners insurance of £119.73 making a total of £1797.11 ; up to November 2006 £1792.95 plus terrorism and property owners of £164.81 making a total of £1957.76
- 10 For the year up to November 2007 the landlord has obtained a quote from a different insurer Endurance in the sum of £1210 .71 plus a figure of £172.52 for the other areas of cover.
- 11 The previous agents Avrasons did not charge a management fee but the new agents have charged a figure of £460 for the first year and £480 for the second year. It appears that no works of maintenance or repair have been carried out to the property although Mr Case stated that he had visited the property once in the past year. He also stated that the fee was to cover all contingencies and that there had been a good deal of repair works carried out to the next door properties at 64 and 66 Holmesdale Road and that similar costs could arise in connection with No 62 in the future.
- 12 Mr Alexander claimed that the insurance quotes were excessive and produced an email showing quotes which he had obtained on the property in the sum of £440 with Lloyds of London and £541 with Ocaso. The details surrounding the cover are very limited and apparently do not include terrorism or public

liability cover. It may well be the case that the quotations were obtained on the basis of Mr Alexander living in the property.

- 13 It is accepted that Mr Alexander paid the sum of £1050 in September 2006 which covered three payments of interim service charge in the sum of £250 and three year's ground rent. At the conclusion of the hearing it was agreed that the amount due from Mr Alexander on the basis of the landlord's calculations without deduction would amount to £2107.65

### The Law

- 14 Under Section 19 of the 1985 Act the landlord must establish that sums spent on services including insurance must have been reasonably incurred and it was established in the case of Forcelux –v- Sweetman(LT 2001 EGLR 173 ) that the test is not whether the cost is reasonable but whether the cost of the insurance was reasonably incurred and the landlord does not have to establish that he obtained the cheapest cover available but merely that he acted reasonably
- 15 Mr Deal also referred to an Irish decision referred to the latest edition of Woodfall on Landlord and Tenant para 7.56 namely Sepes Establishment –v- KSK Enterprises (1993) IR 225 that there is a heavy burden on the tenant to establish that the landlord had “clearly gone wrong”
- 16 He also referred to the decision of the Court of Appeal in Berrycroft Management Limited –v- Sinclair Gardens (Kensington) Limited (1997) 1 EGLR 47 where the court held that the landlord was entitled to take out a block policy in respect of his portfolio of properties and that even if this proved to be more expensive than insuring the property separately the expenditure was nonetheless reasonably incurred.
- 17 It was clear from the decision in Forcelux that the Tribunal had to consider whether the policy was in line with general market rates . Judge Rich said: *“It has to be a question of degree and while the appellant has submitted a well reasoned.....interpretation of “reasonably incurred” this cannot be a licence to charge a figure that is out of line with the market norm”*
- 18 He came to the conclusion on the facts of the case before him that the insurance premiums were reasonably incurred.

### The Tribunal's Decision

## Insurance

- 19 The Tribunal heard no evidence as to market rates and was invited to conclude that the brokers Princess Insurance who acted for the landlord had obtained a quote which was in line with market figures.
- 20 However, the Tribunal observed that the figures for the years ending November 2004 ,November 2005 and November 2006 were not in line with either the figures obtained by Mr Doyle in 2003 or indeed the later figures obtained by the landlord from Endurance for the period up to November 2007
- 21 Whilst there might be some explanation for the fact that the Ace Insurance policy was so much more expensive than the others, such an explanation had not been given to the Tribunal. In most of the cases referred to evidence had been given as to what steps had been taken by the brokers to ascertain a good price.
- 22 The Tribunal is entitled to assume that even on the assumption that the landlord decided to use a block policy ,that there were policies in the market considerably cheaper than that provided by Ace. The tribunal has discounted the quotations by the Respondent because they were probably given on the assumption that the insured was occupying the property even though it was given at a commercial rate.
- 23 However, the Tribunal is entitled to infer that the policy from Endurance would have been available in March 2004 and subsequently, and that with reasonable diligence the brokers could have obtained a much cheaper policy either from them or from one of the other providers such as Royal and Sun Alliance.
- 24 The lessee has an inevitable sense of grievance that for exactly the same cover as he was receiving under his previous landlord he is being asked to pay more than double the price.
- 25 No evidence was given that there was a necessity for terrorist cover or whether it was an optional extra (as it appears to be) and whether such an expense was justified. The Tribunal has concluded ,however, that the landlord acted reasonably in obtaining terrorist cover although some landlords might not have considered the expense justified for a property in Crystal Palace.
- 26 The Tribunal therefore assesses what it considers the appropriate market level for the insurance based on the information before it. If the cover for 2003/4

was £657 and the cover for 2006/7 was £1210, the tribunal considers it reasonable in the absence of evidence to the contrary to assume a gradual increase in premium over the period. It therefore assesses the figure up to November 2004 at £850, the figure up to November 2005 at £1000 and the figure up to November 2006 at £1150. For the later two years the Tribunal will add the figures of £119.63 and £154.71 for the additional terrorist and property owners cover.

### **Management Fees**

- 27 This is a property which requires very little management and this is borne out by the fact that the previous agents charged no management fee and the present agents have only visited on one occasion and no repairs have been required. Accounts do not have to be audited so there is no accountancy charge.
- 28 Whilst the Tribunal recognises that management fees have increased because of the additional obligations imposed by the 2002 legislation and the regulations it is of the opinion that the figures charged in this case namely £460 and £480 for the property are excessive. Having regard to the fact that this is a small property with very little work for a managing agent to undertake other than to place the insurance and collect the charges, the Tribunal considers that a reasonable figure for the management of the property is £250 and that the Respondent should pay a figure of £125 for each year making a total of £250.

### **Conclusion**

- 29 Having regard to the figures which the Tribunal has assessed the total figure due on the property for the three years of insurance and two years management fees amounts to £3534.54 Half of this amounts to £ 1,767.27. The Respondent has paid the sum of £1050 in September 2006 of which £300 represented ground rent, so that £750 should be credited to this figure. As a result of the Tribunal's decision there is now a balance due of £ 1,017.27 and this sum is now payable. The Respondent will then be liable to pay the 2006/7 service charge when the demand is presented.

Chairman

Peter Leighton

Date 11<sup>th</sup> September 2007