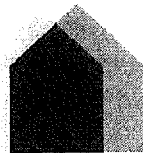


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**Residential  
Property**  
TRIBUNAL SERVICE

## Residential Property Tribunal Service

### Decision of the Leasehold Valuation Tribunal

**Landlord and Tenant Act 1985 section 27A**

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**LON/00BF/LSC/2010/0403**

**Premises:** Flat 2, 40 Sherwood Park Road, Sutton, Surrey,  
SM1 2SG

**Applicant:** Sinclair Garden Investments (Kensington)  
Limited

**Represented by:** P Chevalier & Co Solicitors

**Appearances:** Mr Asela Wijeyaratne of Counsel

**Respondent:** Ms Katie Louise Baines

**Appearances:** Ms Baines did not appear nor was she  
represented.

**Tribunal:** Dr Helen Carr  
Mr S.F. Mason  
Mr C.S Pairroux

**Date of Determination:** 2 September 2010

The sum of £636.39 which is the outstanding service charge for the service charge year ending December 2008 is reasonable and payable by the Respondent

## Background

1. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as amended of the reasonableness and/or liability to pay service charges relating to the service charge year ending 24<sup>th</sup> December 2008.
2. The Applicant is the freeholder of 40 Sherwood Park within which is situated flat 2 - the property that is the subject of these proceedings.
3. The Respondent is the leaseholder of the property and has been so since January 2008.
4. 40 Sherwood Park is a converted early 20<sup>th</sup> century semi detached house which has been converted into four flats. Flat 2 is a one bedroomed property within 40 Sherwood Park. It is on the ground floor with its own entrance at the rear of the property..
5. The case was transferred to the Tribunal from the Epsom County Court by an order of District Judge Letts dated 4<sup>th</sup> December 2009. The amount claimed in the County Court totalled £1,565.02p not including the court fee or the solicitor's costs. The outstanding service charges before the LVT on the date of the hearing total £636.39 which represents the Respondent's 23% share of the sum of £1,923.73 insurance premium, £58.55 for terrorism cover and £784.63 for repair works.
6. The issues before the Tribunal arise from the service charge year 2008 and can be summarised as follows:
  - a. Whether the insurance premium paid by the Applicant is reasonable, in particular
    - i. Whether the premium demanded to cover the property was unreasonably high
    - ii. whether the insurance company is sufficiently independent of the freeholder
    - iii. whether it is reasonable to include cover for terrorism
  - b. Whether the service charge demanded in 2008 in connection with works is reasonable and payable. The Respondent has particular concerns about the quality of the works which were carried out.
  - c. Whether the section 20 consultation process should have been adhered to in respect of those works.
7. The Tribunal also considered the s20C application made by the Respondent at the time of the Pre-Trial Review.

## The Hearing

8. The Applicant, Sinclair Gardens Investments (Kensington) Limited was represented by P Chevalier & Co Solicitors who instructed Mr Wijeratne of Counsel to appear at the hearing. Counsel was accompanied by Mr Mark Kelly who is a Director of Hurst Managements which manages the property on

behalf of Sinclair Gardens Investments (Kensington) Limited and of Princess Insurance Agencies.

9. Ms Baines did not attend the hearing nor was she represented. The Tribunal notes that Counsel was careful to address the details of the Respondent's statement of case and the defence she filed in the County Court.
10. The Tribunal dealt with the issues before it in the order set out above. It refused Counsel's request to consider new documentation in connection with insurance premiums as the Respondent had not had the opportunity to consider that documentation prior to producing her bundle. In reaching its determination it considered all other evidence provided to it. Relevant evidence will be referred to below where salient.

## **The Arguments**

### **Insurance**

11. The Respondent contests the buildings insurance premium charged by Endurance in the sum of £1,923.73p.
12. The Applicant, in seeking to demonstrate the reasonableness of this sum, drew the attention of the Tribunal to the terms of the lease, in particular its obligation to insure the property to its full value. Counsel also referred to the Lessee's obligations within the first schedule of the lease which enable lessees to sublet the property without restriction. This clause is relevant to the calculation of the insurance premium as it prevents the freeholder from limiting types of occupancy to assured or assured shorthold tenants, or to those in employment or self employed. The lack of any limit on the ability of the lessee to rent the property is likely to have an impact upon the premium demanded by an insurance company.
13. The Respondent produced to the Tribunal a variety of quotations for insurance which – on the face of them – suggested that the premium demanded by the Applicant was arguably excessive. The quotations were obtained using a website Simply Business.
14. The Applicant argued that it is not sufficient for the Respondent simply to produce cheaper comparables in order to demonstrate that the cost was unreasonably incurred.
15. Further, in a careful argument, which had been put to the Respondent in the statement provided by Mr Kelly, the Applicant, using the same website as the Respondent but varying the disclosures inputted to reflect accurately the status of the Applicant, the claims history of the property, the nature of the lock to the external door and the uncertainty about the status of any potential occupiers of the property, was able to demonstrate to the satisfaction of the Tribunal that the quotations produced by the Respondent were inadequate. The only quotation which could be obtained in these circumstances was one from AXA insurance Company Ltd which was for a total of £2,039.94.

16. In her statement prepared for the hearing, which postdated that of Mr Kelly, the Respondent produced further quotations. It is not clear from the statement what information was input into the website to obtain those quotes, but Counsel suggested, reasonably, in the opinion of the Tribunal, that the quotes are likely to have been obtained in a similar fashion. Mr Kelly gave evidence that he input the accurate information into the website and once again he was only able to obtain one quotation of £2433.73 which is significantly higher than the Endurance premium which is currently being paid.
17. The Tribunal, drawing on the above evidence, **therefore determined that the quotations produced by the Respondent to demonstrate that the premium was excessive were not adequate to do so.** The Respondent should note that the burden of proof is on her to demonstrate that the premium was not reasonably incurred.
18. The Respondent has also expressed concern that the Applicant is using its own, and not an independent insurance company which is then charging an excessive and unreasonable amount compared with what would be available on the open market for landlord's insurance. Her point is that there is a serious conflict of interest. The landlord owns Cullinglow Ltd along with the management company First Management Limited. The companies are affiliated and linked and based out of the same small commercial office in Bognor Regis.
19. The Applicant submits that the insurance was arranged in the normal course of business within the meaning of the law as explained in the Court of Appeal in *Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington)* (1997) 29 HLR 444.
20. Counsel explained the process it follows.
  - a. It instructs its agent Princess Insurance Agencies who are responsible for preparing accurate portfolio schedules for buildings and terrorism insurance, index linking insurable sums in accordance with RICS data, and instructing international brokers HW Wood to present those schedules in the market place to obtain cover. HW Wood enter the market place in the following manner: current insurers are approached first with the schedules prepared by Princess Insurance Agencies. If the current insurer is unable to offer acceptable terms, insurers with a 'A' rating or better are approached with a view to underwriting the portfolio.
  - b. From time to time HW Wood test the competitiveness of their premiums in the market. This is done by going to the market with a random selection from the Applicant's portfolio to obtain quotations.
  - c. Counsel also pointed out that Endurance Worldwide are insurers of repute.

- d. Counsel further argues that it is reasonable for the Applicant to insure its entire portfolio with one insurer on standard terms and conditions with the same renewal dates to ensure that cover is in force for all the buildings owned by it. Otherwise the insurance of approximately one thousand buildings would be virtually unworkable.
21. In the light of this evidence **the Tribunal determines that the insurance premium was reasonably incurred by negotiations in the normal course of business and therefore is payable by the Respondent.**

#### **Terrorism Insurance**

22. The Respondent also objects to paying the additional premium demanded for terrorism insurance.
23. She has spoken to the Metropolitan Police based in Sutton who confirmed that Sherwood Park Road, which is in a leafy Surrey suburb is not considered a terrorist threat or at risk of a 'dirty bomb'.
24. The Applicant points to the terms of the lease which provides that it is for the Applicant to determine whether such cover is required. It properly determined the need for cover and as such the premium was reasonably incurred.
25. The argument of the Applicant is correct. The Respondent is bound by the terms of her lease and **the Tribunal therefore determines that the premium demanded for terrorism covered is payable by the Respondent.**

#### **Repair work**

26. The Respondent objects to paying the service charge demand for the works carried out to the property in 2008. She argues that the brick work was carried out to a poor and unreasonable standard, the standard of work carried out was at an unreasonable cost, working invoiced was not carried out namely 'clean and tidy up site on completion. She provides undated photographs to substantiate her claim. Her argument is stated in greater length in her defence to the county court proceedings. She also argues that the work should have been subject to the section 20 consultation procedure.
27. Both parties agree on the basic facts which led to the repair works. The resident of flat 4 contacted the management company to report damage to the masonry above the front door following high winds. There is a dispute as to whether falling bricks or plaster was reported.
28. Following the report the Applicant instructed Archgate to inspect the property which it did on 13<sup>th</sup> March 2008. As a result of the inspection two sets of works were carried out. Repairs were carried out to the storm damage and further works of repair were carried out to the brickwork. Two invoices were produced to the Tribunal in connection with these works.
29. The Applicant acknowledged that it overlooked the possibility of making an insurance claim in connection with the first set of works until the Respondent defended its claim in the county court.
30. The Applicant informed the Tribunal that it did not inspect properties after the completion of works but it noted on one of its regular inspections that the site was clean and tidy. The inspection report was produced to the Tribunal

Counsel pointed out that the photographs provided by the Respondent were not dated so it was impossible to determine when they were taken.

31. In the expert opinion of the Tribunal whilst the charges levied by Archgate for the works seem to be on the high side, and it certainly was surprised by the 2 square metres extent of the render repairs, it considers that the charges fall within a reasonable band of charges for such work. The Tribunal further determines that the Respondent has provided insufficient evidence to demonstrate that the works were not carried out to a reasonable standard.
32. The Applicant argues that the level of service charges demanded for this work means that they do not fall within the category of works for which the consultation process must be carried out. For the information of the Respondent it is not the overall charge which is considered but the charge payable by each lessee. The total cost of the works was £784.64 and the Respondent's share of this is £180.46 which falls below the threshold which is £250. The Tribunal agrees with the Applicant.
33. **It therefore determines that the services charges demanded in connection with the works carried out in 2008 are reasonable and payable.**

#### **Section 20C application**

34. The Respondent has made a s20C application. In the light of the determinations that this Tribunal has made and the proper and reasonable way that the Applicant has conducted the matter **the Tribunal determines that it is not appropriate to make a Section 20 C order in favour of the Respondent.**

Signed



Dated

2<sup>nd</sup> September 2010