FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AX/OLR/2018/0438**
Property	**:**	**2, Hawker Court, Queens Road Kingston Surrey KT2 7SE**
Applicants	**:**	**Ms H M Prentice and Mr S T Prentice**
Representative	**:**	**Mr G Crewe, Solicitor**
Respondent	**:**	**Mr J C Abrahams**
Representative	**:**	**Mr M Young of Counsel**
Type of Application	**:**	**S.48 Leasehold Reform Housing and Urban Development Act 1993**
Tribunal Members	**:**	**Mrs F J Silverman Dip Fr LLM** **Ms M Krisko FRICS**
Date and venue of Hearing	**:**	**14 August 2018** **10 Alfred Place London WC1E 7LR**
Date of Decision	**:**	**14 August 2018**

DECISION

Decision of the tribunal

The tribunal determines that the new lease to be granted by the Respondent to the Applicants pursuant to Chapter II of Part 1 of the Leasehold Reform Housing and Urban Development Act 1993 shall contain a landlord's insurance covenant in the

exact wording as set out by the Applicants in paragraph 6 of their s42 notice dated 17 October 2107. This clause is in substitution for clause 5 of the existing lease which clause is to cease to have effect as from the date of completion of the new lease.

Reasons

1. The Applicant tenants seek a determination pursuant to s.48 Leasehold Reform Housing and Urban Development Act 1993 (the 1993 Act).

2. The hearing of this matter took place before a Tribunal sitting in London on 14 August 2018 at which Mr G Crewe, Solicitor, represented the Applicant tenants and Mr M Young of Counsel represented the Respondent landlord.

3. The Tribunal heard oral evidence from the Respondent.

4. The only matter which remained to be determined by the Tribunal was the wording of the landlord's insurance covenant to be included in the new lease. All other terms, including price, had been agreed by the parties.

5. The Applicants argued that the existing landlord's covenant to insure as contained in the lease (Clause 5) was inadequate and requested the Respondent to vary the clause by including in the new lease the wording of a covenant as set out in their s42 notice. They claimed that the wording of the existing covenant was inadequate because it did not require the landlord to insure the building (ie the subject property together with the other 16 flats in the building and its grounds) for more than £282,000, a figure specified in 1972 when the lease commenced. Under the clause as drafted the landlord could at his discretion insure for a higher figure but is not obliged to do so. Additionally, under the existing covenant the landlord was obliged to insure only against three named risks (fire, accident and aircraft) and was not under any obligation to re-instate or re-build the property in the event of damage.

6. The Applicants maintained that they were entitled to require the lease to be modified under the provisions of s57 (6) (b) of the 1993 Act which provides that: 'it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease'. On their behalf it was argued that the financial limit specified in the current lease was patently inadequate in 2018 and that the existing clause did not satisfy the terms of the UK Finance Lenders Handbook which require covenants and arrangements relating to insurance to be adequate.

7. The Respondent landlord stated that all the leases in the block were the same and he did not want one to be different. No other tenant who had been granted a lease extension had raised this point. He stated that no other leases had been varied on extension but was obliged to retract that assertion on evidence that in the present case (page 6) and in at least one other

documented case (page 68) he had demanded the variation of a clause relating to registration fees on the grant of a new lease under the 1993 Act. The Tribunal accepts his evidence that he did insure for full market value and against a greater number of risks than the three specified in the existing lease but reminded that Respondent that the Tribunal was considering the lease terms not just from the perspective of the current landlord and tenant but for the benefit of future assignees of both the lease and the reversionary interest. The Respondent maintained that the clause as proposed by the Applicants would impose a greater obligation on him and that there was no duty on him as landlord to comply with the UK Finance Lenders Handbook. He stated that the insurance policy was effected through his agency although the management of the property was in the control of an RTM.

8. Counsel for the Respondent sought to rely on two decided cases where previous Tribunals had refused to order variations under s 57. The Tribunal distinguishes the present case from CHI/00ML/OCE/2005/00084 (14 Meads St BN20 7QT) because in that case the Applicant had failed to request the variation in their notice under s42. The Tribunal notes however, that the decision in that case recognised that an insurance clause which did not cover the range of insured risks set out in the CML Handbook (now the UK Finance Lenders Handbook) would be regarded as unacceptable security to many lenders. The Rossman case ([2015]UKUT 288 (LT)) is also distinguished because that case was dealing with service charge proportions which are an entirely different type of obligation to an insurance covenant.

9. Having considered the submissions made on behalf of the respective parties and accompanying documentation the Tribunal concludes that the Applicants do satisfy the requirements of s57(6)(b) because since 1972 there has been a marked change in the circumstances relating to property insurance, not only in relation to property values having increased with inflation but also as to the number and type of risks insured against and the acceptability for security purposes of lease clauses to lenders.

10. The Tribunal considers that the insurance covenant as drafted in the existing lease is inadequate to protect either the tenants or their lenders because it imposes no obligation on the landlord to insure other than for the three named risks. Further, the maximum amount in which the landlord is obliged to insure is patently too low and the covenant does not oblige the landlord to re-instate or re-build in the event of damage. The failure to deal with those matters may render the clause inadequate in the terms of the UK Finance Lenders Handbook and thus adversely affect the mortgageability of the property and its value. The Tribunal rejects the Respondent's argument that the inclusion of the clause proposed by the Applicants would add to the burden of the landlord's covenants. A reasonable landlord would always insure responsibly and as such would automatically comply with any standard requirements imposed by residential mortgage lenders.

11. For the above reasons the Tribunal grants the Applicants' application and determines that the new lease to be granted by the Respondent to the

Applicants pursuant to Chapter II of Part 1 of the Leasehold Reform Housing and Urban Development Act 1993 shall contain a landlord's insurance covenant in the exact wording as set out by the Applicants in paragraph 6 of their s42 notice dated 17 October 2107. This clause is in substitution for clause 5 of the existing lease which clause is to cease to have effect as from the date of completion of the new lease.

12. The Tribunal was not asked to inspect the property and the circumstances of the application did not require it to do so.

Judge F J Silverman

As Chairman
14 August 2018

Note:
Appeals
1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.