



# Read the Lease!!

## Trevor Sadd v Ruth Brown [2012] UKUT438LC

This decision of the Upper Tribunal (Lands Chamber) serves as an important reminder that you must read and understand the terms of your Lease.

### Background

This case started as a standard challenge under Section 27A LTA 1985 to the Landlord's Service Charge demands. The Tenant at the time was Ms Rhona Wild. The case put forward by Ms Wild centred on the recoverability of an insurance premium. Ms Wild took issue with:

- How the premiums were apportioned; and
- Whether additional charges were being wrapped up in the insurance demand.

Historically, all parties to the Lease had assumed that it allowed the recoverability of the costs incurred by the Landlord for insuring the building.

### The LVT Decision

The LVT (as it was then) decided that the cost of insurance premiums were not recoverable under the terms of the Lease. This point was not raised by Ms Wild and the LVT did not raise it with either party before making its determination.

### The Appeal

Mr Sadd appealed to the Upper Tribunal on the ground that the LVT was "outside its jurisdiction in making determinations on questions that have not been asked".

By the time the Appeal was heard, Ms Wild had sold her interest to a Ms Brown who seems to have been named as Respondent to the Appeal. Ms Brown did not participate in the Appeal which was therefore rather one sided. Further, irrespective of the outcome of

the Appeal, Ms Brown would not have been liable for the insurance costs as they pre-dated her ownership of the Lease. The Upper Tribunal once again rounded upon the LVT and made it clear that it was not permissible for a Court, or Tribunal, to determine a dispute on the basis of a case not put forward by a party or even raised by the Court or Tribunal at the time. There have been a number of cases where the Upper Tribunal has criticised the Lower Tribunal for doing this. However, following some nifty footwork and statutory interpretation, the Upper Tribunal took the view that as Mr Sadd had, as part of his Appeal, put forward arguments on the interpretation of the Lease it was reasonable for the Upper Tribunal to determine the issue anyway.

The Landlord argued that it was unusual for the Lease not to include a term allowing the Landlord to recover the cost of insurance. He further relied upon the fact that until the current litigation, both parties had worked on the assumption that the Lease did allow for insurance premiums to be recoverable. The Landlord invited the Tribunal to imply such a term into the Lease to give business efficacy to the contract.

The Upper Tribunal held that to imply such term in the present case would be to effectively draft a completely new paragraph into the Lease. The implied term would involve re-writing the Lease. The fact that such a term would be reasonable or was probably omitted by mistake, is not enough. The Lease was not unworkable without such a term and given that the Lease contained detailed provisions regulating the parties' relationship it was not necessary to imply such a term to give effect to any other terms of the Lease in a way that often the term "reasonable" might be implied.

Having reached these conclusions, HHJ Robinson dismissed the Appeal. In closing the Upper Tribunal remarked that the Landlord was not without remedy, he may be able to bring a claim for rectification of the Lease or may apply for the Lease to be varied pursuant to Section 35 Landlord and Tenant Act 1987.

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## Comment

As said before, it is vital that you review and are familiar with the terms of the Leases within your stock. So often this is only done after an issue has been identified and the Landlord has incurred costs which have been rendered unrecoverable as a result of being unfamiliar with the terms of the Lease or the Service Charge mechanism within it.

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