

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Ref: LVT/0038/10/16

In the matter of S.27A of the Landlord and Tenant Act 1985

In the matter of Flat 4, 280 Newport Road, Cardiff CF24 1RS

Tribunal: Andrew Sheftel (Chairman)
Roger Baynham (Surveyor)

Applicant: Mr Arun Patel

Respondent: Ms Amina Musa Latif

DECISION

The decision in summary

- 1. For the reasons set out below, the Tribunal determines that no service charges are payable by the Respondent as the Applicant has failed to supply any evidence of service charge demands, whether in accordance with section 21B of the Landlord and Tenant Act 1985 or otherwise.**

Background

2. The Tribunal is concerned with a claim to determine service charges payable under s.27A of the Landlord and Tenant Act 1985 (the "1985 Act"). The proceedings began as a claim in the Cardiff County Court (Claim No. C6QZK62), pursuant to which the Applicant is seeking payment of the sum of £2,116.27 from the Respondent (comprising the amount claimed of £2011.27 plus court fees of £105.00).
3. The matter was then transferred to the Tribunal by order of District Judge TM Phillips dated 18 October 2016 to determine the amount of service charges payable.

4. Directions were issued to the parties by the Tribunal on 3 November 2016 and 30 January 2017 and the matter proceeded to hearing which took place on 3 July 2017. The hearing was attended by the parties, each acting in person. Earlier that day, the Tribunal had attempted to inspect the property but were unable to gain access. The Tribunal did, however, view the outside of the building.

The parties

5. The Respondent is the lessee of Flat 4, 280 Newport Road Cardiff CF24 1RS and the proceedings before the tribunal relate to sums allegedly due by way of service charge under the terms of her lease.
6. According to the Respondent's lease (addressed in more detail below), the Applicant is one of four lessors (along with Manilal Madhaubhai Patel, Godavri Manilal Patel and Rita Patel all of Oakville Lodge, Rudry Road, Lisvane, Cardiff CF14 0SN). According to a document provided to the Tribunal by/on behalf of the Applicant, the property was sold to a Mr Ali Jamel on 22 July 2016 for £1. However, contrary to the Tribunal's Directions dated 30 January 2017, the Applicant has failed to file Official Copy Entries for either the freehold or leasehold titles to the property. It is also unclear whether any notification was given to the Respondent. However, in view of the Tribunal's decision that no service charges are payable because no demands have been served in accordance with section 21B of the Landlord and Tenant Act 1985, the Tribunal does not need to consider this issue further.

The premises

7. Flat 4 is a first floor rear flat located in a substantial semi-detached house situated on a very busy main road in the Roath area of Cardiff. The property is within easy reach of local amenities and the City centre is approximately 1 1/2 mile distant. The building was constructed in the late 19th century and has solid stone and brick walls which have been cement rendered to the side and rear. The roof is of slate and the building has double glazed UPVC windows although these are relatively old. The building was converted some 20 years ago to provide 5 No. bedsit flats and 3 No. 1 bedroom flats. There is a concrete forecourt to the front and a paved pedestrian side access leading to the large rear garden which has been totally laid in tarmac and provides designated car parking spaces for the flats with vehicular access via a rear lane.
8. As noted above, the Tribunal were not able to gain access to either the building or the flat but from the plans attached to the lease and the information provided by the Respondent it comprises a communal hallway with stairs leading to the first floor. The flat consists of an entrance hall, a living room with a galley type kitchen, a double bedroom and a shower room with shower, wash hand basin

and a WC. At the hearing, the Tribunal were informed by both parties that water is supplied to the entire building through a single meter.

The lease

9. Flat 4 is let pursuant to a lease dated 8 November 2007 for a term of 125 years commencing 1 July 2007 (the "Lease").
10. The service charge provisions are set out in Schedule 6 to the lease and under the terms of the lease, the Respondent is required to contribute 12.5% of the total expenditure. The service charge provisions include an obligation on the lessor as soon as reasonably practicable after each financial year, to issue a Certificate containing a summary of expenditure (clause 6-2.1) and to provide an account of the service charge payable (clause 6-2.8).
11. However, although the service charges had in fact been paid for a number of years by the Respondent, it was apparent that neither of the above had been provided.

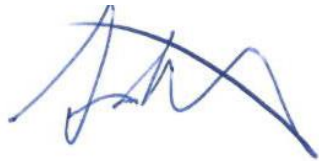
The items in dispute

12. The Applicant claims the sum of £2,011.27 (the Respondent's share of a total alleged expenditure of £16,090.17. Although the Applicant's calculations did not quite seem to add up (the total in fact being slightly less than the sum of the items claimed), this comprised of the following:
 - (1) Water costs of £5,197.70
 - (2) Boiler cost of £1,630.56
 - (3) Lock to door of £180
 - (4) A&B works of £4,575.70 – this related to a schedule of works required by the local authority. It does not appear that any consultation was carried out by the Applicant in advance of these works being undertaken.
 - (5) Fire extinguisher cost of £180
 - (6) JDS fire alarm service of £366
 - (7) Gwent Fire service and associated costs of £4,140.21Total - £16,270.17
13. At the hearing, the Respondent contended that the charges for water and the boiler had in fact been paid. After being provided with copies of the Respondent's bank statements, the Applicant accepted that this was indeed the case.

14. The 'A&B works' related to a schedule of works required by the local authority. It does not appear that any consultation was carried out by the Applicant with the lessees of the building in advance of these works being undertaken. However, in view of the findings below, the Tribunal does not need to consider this issue further.
15. The charges relating to Gwent Fire Service related to fire safety works required to be undertaken by the council. The Applicant had initially appointed Gwent Fire Service but later replaced them with an alternative contractor, JDS, due to alleged slow progress on the part of Gwent Fire Service. The Applicant contended that JDS then finished the outstanding works. However, Gwent Fire Service obtained a judgment in respect of its unpaid fees, which was subsequently enforced by the use of court bailiffs. At the hearing, the Applicant accepted that any sums over and above Gwent Fire Service's actual fees (such as court costs and bailiffs fees) should not be borne by the lessees. This would accordingly have the effect of reducing this item of expenditure to £2,744.
16. As regards the remaining items, the Respondent's statement raised various grounds for why she contended that the service charges were not payable, including the fact that she had never received any service charge demands. In this regard, the Tribunal also notes that the Directions dated 3 November 2016 required the Applicant to provide copies of all demands and a statement confirming how such demands comply (amongst other things) with section 21B of the Landlord and Tenant Act 1985. However, no copy demands were provided.
17. Section 21B of the 1985 Act provides that:
 - (1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
 - (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
 - (3) *A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.*
18. For Wales, the applicable regulations referred to in s.21B(2) of the 1985 Act are the Service Charges (Summary of Rights and Obligations and Transitional Provisions) (Wales) Regulations 2007. The Regulations provide a mandatory statement (in both English and Welsh) which must accompany service charge demands.

19. In the present case, not only was there not a *valid* service charge demand in accordance with section 21B, there had not in fact been *any* service charge demand. The Applicant accepted that all he had done was simply forward copies of the invoices making up the items of expenditure now claimed to the Respondent.
20. The provisions of section 21B of the 1985 Act are mandatory requirements. In the circumstances, the Tribunal finds that the provisions have not been complied with and accordingly, nothing is owed by the Respondent by way of service charge.
21. Separately, the Tribunal notes that at the hearing, the Respondent also disputed liability for the service charges claimed on the basis that she had had to spend her own money on other items (including following a roof leak) due to the Applicant's alleged failure to maintain the property. As such, it was submitted that such sums should be set off against those claimed by the Applicant. However, in light of the Tribunal's finding that nothing is payable by way of service charges, there is nothing against which the sums referred to by the Respondent can be set off. Accordingly, if and insofar as the Respondent has a valid claim against the Applicant for breach of terms of the lease, that can be determined in another forum and for the avoidance of doubt, the Tribunal makes no finding in this regard.

Dated this 14th day of August 2017

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized, illegible name.

Chairman