Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

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REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL (WALES)

Landlord and Tenant Act 1985 s.27A

Premises:	8 and 9A Church Road, Barry, Vale of Glamorgan
LVT ref:	1012604/8 and 1012606/9A Church Road
Hearing:	22 August 2012
Applicant:	Tounack Investments Ltd
Respondents:	(8) Mr Peter Margetts (9A) Mr Darren Green
Members of Tribunal:	Mr R S Taylor – Chairman Mr R W Baynham FRICS

DECISION

1. Subject to valid service charge demands being served, each Respondent shall pay to the Applicant the sum of £22.50 (inclusive of any VAT) in respect of the Applicant's claim for £50 per leaseholder for repairs to guttering.
2. The Applicant shall remit this matter back to the county court by lodging this decision and reasons.

REASONS

Background.

1. These claims started life in the county court for £175 + costs in respect of each Respondent. £125 of each claim related to a disputed insurance charge which has now been paid. The remaining £50 per Respondent relates to their share of a global account for repairs to damaged guttering and the management costs associated with so doing.

2. The subject properties are in a development of 8 properties and the total disputed account (insurance having been settled) was for £400 between 8 leaseholders. This was made up of a cost of £240 for the attendance of a local builder, Mr C Anderson for the repair of the guttering. In addition to the £240 there is a further charge of £160 for an agent of the Applicant to drive from Carmarthen to Barry to inspect the damaged guttering prior to the instruction of a builder. The £160 is arrived at by time being charged at £50 per hour for 2.5 hours, which equates to £125 plus mileage at 78 miles at 45 pence per mile, equaling £35.

3. The claims were transferred to the LVT by order of District Judge Phillips on the 19 April 2012. The matter came before us for a determination on the papers only on the 18 June 2012. On that occasion it appeared that there was more in dispute between the parties than was formally before the tribunal (and having given the parties opportunity to make further application to us both have declined to do so), we did not have a copy of the lease, we required some further written evidence concerning the Applicant's attendance at the property, a copy invoice for the £240, evidence in respect of the service charge demand and the rights and obligations form and we made provision (subject to any party objecting and they have not done so) for flat 8 ("the property") to be a representative application which will determine both cases before us.

4. Mr Geraint Anthony Jones QC, on behalf of the Applicant, wrote to the tribunal under cover of letter dated 26 June 2012 enclosing "relevant parts only" of the lease, stating that the time and effort of obtaining a copy invoice was disproportionate and instead submitted a cheque stub indicating a payment of £230 to the builder (not the £240 as claimed). Further, the letter stated that the Applicant was unable to provide copy service charge demands as he stated that copies were not kept. The letter also

enclosed 2 statements, one from Mr Jones and another from Sonia Hartman, the agent who is said to have attended at the property.

5. This response necessitated further directions on the 20 July 2012 where the tribunal made further directions for the full copy lease to be produced and inviting Mr Jones to identity the relevant provision in the lease which provides for recovery of management charges as part of the service charge. The recital to the order noted that we had seen no evidence of service of the relevant rights and obligations form.

6. These further directions elicited a further response from Mr Jones dated 2 August 2012 wherein he:-

    a. Provided a copy lease

    b. Stated that there was no provision in the lease for the recovery of management charges and drew an analogy with a car being driven negligently into an electricity sub station

    c. Stated that he had enclosed a copy of the 2007 summary of rights and obligations. However, these were not received by the tribunal. It is further noted that we were not furnished with copy service charge demands stating the figure which the Applicant now claims.

7. We have carefully considered all the letters and documents which the parties have sent into the tribunal.

The relevant terms of the lease.

8. The lease is for a term of 99 years commencing 25 March 1988. It contains typical, if somewhat old fashioned, service charge provisions which oblige the leaseholder to pay his proportionate one eighth cost of variable costs brought about by the landlord performing his repairing and maintenance obligations under the sixth schedule.

9. In particular clause 10 of the fifth schedule provides for the leaseholder "At all material times hereafter to contribute and pay one-eighth of the expense of maintaining repairing or renewing ... (b) the gutter pipes and other things for conveying rainwater from the building."

Service of appropriate demands.

10. The case of *Tingdene Holiday Parks Limited* v *Cox* [2011] UKUT 310 (LT) is authority for the proposition that the rights and obligations form must be served with the service charge demand and it must be in the prescribed form. A landlord will not comply with the regulations by simply serving a copy of the regulations. Further, a landlord will not be in compliance if the notice is served at a different time to the demand itself.

11. We note that the Applicant does not retain copies of service charge demands and that the letter of the 1 August 2012 appears to merely enclose a copy portion of the regulations. The demand therefore appears to us to be unenforceable (and in any event without sight of the demand itself, we do not know if it was in compliance with s.47 Landlord and Tenant Act 1987) until it is served correctly.

12. We agree that it is permissible for further demands to be served, but the sum claimed will not be enforceable until the Applicant has done so properly and any decision here is subject to proper service of a demand.

The tribunal's interpretation of the service charge clause in the lease.

13. It is clear from decisions such as *Gilje v Charlgrove Securities Ltd* [2002] 1 EGLR 42 at paras 31 & 32 that service charge provisions should be interpreted restrictively against the landlord. More recently in the case of *Wembley National Stadium Ltd v Wembley (London) Ltd* [2007] EWHC 756 (Ch) it was highlighted that, "...it is appropriate for the interpretation to be more restrictive in the case of residential tenancies as opposed to a commercial transaction between two substantial parties."

14. Here the service charge provision provides only for the "expense of maintaining repairing or renewing." We do not read into this clause an entitlement to charge a management fee in addition to the costs of the works, taking a restrictive interpretation of this clause.

15. We do not find the analogy with tortious situations helpful. The relationship between the negligent driver and the owners of the substation is brought about by the imposition of a common law duty of care whereas landlords and tenants enter into contractual relationships.

The issue of reasonableness

Re management costs.

16. If we are wrong in our interpretation of the lease and it be right that management costs are recoverable under the lease then it is our determination, applying the test set out in s.19(1) Landlord and Tenant Act 1985, that these costs were not reasonably incurred. Whilst a reasonable landlord may wish to inspect a significant item of disrepair we do agree that it was reasonable for an agent of the Applicant to travel from Carmarthen to the property when such a relatively minor issue could be attended to by a local builder when pricing the job which he was ultimately asked to do.

17. Having made these findings it is unnecessary for us to consider the more contentious point raised by the Respondents as to whether the agent attended in person.

Re builder's costs.

18. The original claim was for £240 whereas the cheque stub is for £230. We have asked twice for a copy invoice and have been told by the Applicant that it is disproportionate and time consuming for the Applicant to obtain such a document. We do not consider a phone call to the builder to obtain a copy invoice to be disproportionate and we are left in a situation where we do not have the best evidence as to what works have been carried out.

19. We accept that the attendance of a general builder may incur a call out fee and there will be a charge for work undertaken. The First Respondent in his letter of the 1 May 2012 queries the cost of the work and states that the builder reused the exiting gutter and was on site for half an hour. We do not have any invoice which would suggest otherwise.

20. The case of Country Trade Limited v Marcus Nokaes and others [2011] UKUT 407 (LC) states:-

> "[15] The LVT does not have to suspend judgment or belief and simply accept the landlord's evidence. It is entitled to robustly scrutinise the evidence adduced by the landlord (and, of course, the tenant) which, after examination, it is entitled to accept or reject on grounds of credibility. The course of scrutiny is not just looking through the invoices or other documents, but identifying issues of concern and asking the landlord's (or tenant's) witnesses for explanations and observations. It is not necessary for each and every invoice to be minutely examined, but sufficient of them to be dealt with on a sample basis. It is only once this process has been gone through that the LVT will be able to reach any decision on the credibility of

witnesses which will be based on the answers given and any other available evidence.

"[16] The difficulty comes where the LVT accepts that "some" work has been done but does not accept that the "rates" claimed as reasonable are credible or justified but there is no other comparative evidence or market evidence (in the forms of estimates, or quotes or such like) of what those rates or charges might be. The LVT will not be able to reject the sum claimed because it has accepted that some work has been done to justify a charge, but will have concluded that the amount is too high.

"[17] In those circumstances, the LVT is entitled to apply a robust, common sense approach and make appropriate deductions based on the available evidence (such as it is) from the amounts claimed always bearing in mind that it must explain its reasons for doing so. The circumstances in which it may do so will depend on the nature of the issues raised and serve charge items in dispute, and will always be a question of fact and degree. In some instances, such as insurance premiums, it will be very difficult for the LVT to disallow the landlord's claim in the absence of any comparative or market evidence to the contrary. In other cases, such as gardening, cleaning or such like, the position might be different where the nature and complexity of the work is fairly straightforward. It is only where the issue is finely balanced that resort needs to be had to the burden of proof."

21. Applying our knowledge as an expert tribunal we determine that the sum recoverable for the work undertaken on the basis of the evidence before us should be a total of £180 inclusive of any VAT. This is equivalent to £22.50 per Respondent.

22 August 2012

Lawyer chairman